GRING v. A CARGO OF LUMBER.[1]

(*District Court, E. D. New York.* March 13, 1889.)

SHIPPING—FREIGHT LIEN—WAIVER.

A vessel discharged a cargo of lumber in August, and during the delivery some portions were carted away by persons to whom it had been sold, without objection from the vessel, and no notice was given to the consignee or his vendee of any intention to hold the lumber for freight, and no steps were taken to enforce a lien for freight until late in September. *Held*, that the lien had been waived.

In Admiralty.

Hyland & Zabriskie, for libelant.

R. D. Benedict, for claimant.

BENEDICT, J. This is an action to enforce a lien for freight against a cargo of spruce lumber transported in the canal-boat Silver Wave from Etchim, near Quebec, Can., to the port of New York. By the bill of lading the lumber was consigned to Dunbar & Co., of New York. Upon the arrival of the vessel at New York, and reporting to Dunbar & Co., they directed that the lumber be delivered to William Richenstein, Newtown Creek. The vessel proceeded to Newtown Creek, and there the lumber was discharged at the lumber-yard of Richenstein. After the lumber had been discharged, the libelant went to the office of Richenstein with the intention of getting his freight, and was there told that the freight was to be paid by Dunbar & Co., and that there was a shortage in the lumber delivered. Thereafter the libelant was paid by Dunbar & Co. the amount of his freight, less $20 for shortage. It appears in evidence that the lumber, when delivered, was placed in a lumber-yard; that during the delivery some of it was carted away by persons to whom it had been sold by Richenstein. No objection was made to this by the libelant, nor at any time was any notice or intimation given to Dunbar & Co. or to Richenstein of an intent to hold the cargo for freight. Moreover, no steps were taken to enforce a lien until September 22, 1887, although the discharge had been concluded in August. Such a state of facts does not permit the inference that an understanding existed between the libelant and the consignee that the delivery of the lumber at Richenstein's lumber-yard should not be regarded as a waiver of the lien. The libel must be dismissed, and with costs.

[1]Reported by Edward G. Benedict, Esq., of the New York bar.

McDermott v. Chicago & N. W. Ry. Co.

(*Circuit Court, N. D. Iowa, E. D.* May 8, 1889.)

Removal of Causes—Local Prejudice.

The right to a removal of a cause under the local prejudice clause of the act of August 13, 1888, § 2, is not dependent on the amount involved, there being no provision in relation thereto in such clause.

At Law. On petition for removal because of prejudice and local influence. Action by John McDermott against the Chicago & Northwestern Railway Company.

Hubbard & Dawley and *Henderson, Hurd, Daniels & Kiesel*, for petitioner.

Shiras, J. The above-entitled cause is now pending in the district court of Clinton county, Iowa; the damages claimed therein being the sum of $499, the plaintiff being a citizen and resident of the state of Iowa, and the defendant a corporation created and organized under the laws of the state of Illinois. A petition asking the removal of the action into this court on the ground of prejudice and local influence has been filed on behalf of the defendant, and the showing made in support thereof is sufficient to justify the granting the order of removal if the court can thus take jurisdiction of a cause involving no more than $499. The case, therefore, presents the question whether, under the provisions of the act of August 13, 1888, the right of removal on ground of prejudice and local influence is dependent upon the amount involved in the controversy.

In case of *Fales* v. *Railway Co.*, 32 Fed. Rep. 673, I had occasion to construe the provisions of the act of March 3, 1887, and in so doing held that there was no limitation by way of amount upon the right of removal upon the ground of local influence and prejudice. Since the hearing in that case the act of March 3, 1887, has been supplanted by that of August 13, 1888, passed for the purpose of freeing the act from the errors and mistakes that had been incorporated in the enrolled bill, and I have re-examined the question as presented by the phraseology found in the amended act, and in the light thrown thereon by the cases since reported. The decisions in the circuits are not in harmony. The leading decision holding adversely to the right of removal unless the amount involved exceeds $2,000, is that rendered by Mr. Justice Harlan in *Malone* v. *Railroad Co.*, 35 Fed. Rep. 625, a case pending in the circuit court for North Carolina. It will be borne in mind that in section 2, art. 3, Const. U. S., which defines the extent of the judicial power that may be exercised by the courts of the United States, there is not found any limitation by way of amount. When congress, therefore, provides by act for the exercise by the circuit courts of jurisdiction over controversies coming within the constitutional grant of power, such jurisdiction will exist as to all such controversies, regardless of the amount involved therein, unless the act providing for the exercise of the jurisdiction provides a