

Case No. 2,726.

THE CIRCASSIAN.

{11 Blatchf. 472.}¹

Circuit Court, S. D. New York.

Feb. 19, 1874.²

MARITIME LIENS—EFFECT OF ADMIRALTY RULE 12—PRIORITIES.

The new 12th rule in admiralty, of 1872, cannot, in respect to a libel filed since such rule was adopted, have the effect to revive a claim which is almost barred by the statute of limitations, and make it a lien upon a vessel, so as to cut off titles thereto perfected or acquired before such rule was adopted.

{Cited in *Whittaker v. The J. A. Travis*, Case No. 17,599. Stated in *The John Farron*, Id. 7,341, to be overruled in part by *The Lottawanna*, 21 Wall. (88 U. S.) 558.}

{Appeal from the district court of the United States for the southern district of New York.}

This was an appeal from a decree of the district court, dismissing a libel in rem. The opinion of the district court was as follows: {The original report contains the opinion of the district court in full. For this opinion, see Case No. 2,720a.}

William W. Goodrich and Thomas M. Wheeler, for libellant.

William Allen Butler, for claimant.

WOODRUFF, Circuit Judge. The decision I have felt constrained to make in the case of *The Edith* {Case No. 4,283}, in which an opinion is herewith filed, is conclusive against the libellant in this case. That opinion, *mutatis mutandis*, must be taken as my opinion herein. It differs only in the form of proceeding, the absence of any bond taken on the attachment in the state court, and the fact that the libel herein was filed since the new 12th rule in admiralty, of 1872, was adopted. Neither of these differences can affect the result; and it may well be added, that, by their new rule, the supreme court did not intend to revive claims which were almost barred by the statute of limitations, and to make them liens, either directly or by implication, upon vessels, so as to cut off the rights of mortgagees and subsequent purchasers of the ship, whose title had been perfected or acquired before the rule was adopted.

Let the libel be dismissed, with costs, in accordance with the decision appealed from.

¹ {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}

² {Affirming Case No. 2,720a.}