

Case No. 5,083a. FREEMAN ET AL. V. THE ALBANY.  
[Betts, Scr. Bk. 554.]

District Court, S. D. New York.

May, 1857.

ADMIRALTY—APPLICATION TO SET ASIDE SALE BY DEFAULT.

[An application will not lie to set aside a sale by default in admiralty, where it is not entitled in the same cause, and it does not appear that the promovents were parties or privies to that action.]

In admiralty.

Mr. Laforge, for the motion.

Beebe, Dean & Donohue, opposed.

Before BETTS, District Judge.

The propeller was libelled for wages by one Johnson, and her owners not appearing, she was ordered to be sold by default, and was accordingly sold by the marshal at auction for \$2,000. Some time elapsed before the sale was completed, but after the money had been paid, and the bill of sale given, the present application was made to set aside the sale because of the irregularity in carrying the decree of sale into execution, and gross inadequacy of price accepted on the sale, and fraudulent and covinous acts and purposes in procuring the condemnation and sale of the vessel.

HELD BY THE COURT: That the allegations upon which the application is founded are strongly contradicted, and the court would not consider it consistent with a safe administration of justice to set aside the sale, upon the evidence, if this proceeding were otherwise unexceptionable. But the proceeding is wholly irregular. The proceeding is neither by nor against any party interested in the subject of it, or between whom any effective decree could be made, whatever may be the merits of the case. The motion is not entitled or made in the cause in which the decree was rendered and the sale made, nor does it appear that the pro-movents in the matter were parties or privies to that action. They have, therefore, no legal capacity to invoke these proceedings to review a judgment, by summary motion in another case. Motion denied, with costs.