THE LEO.

Case No. 8,253.
{8 Ben. 506.}[1]

District Court, E. D. New York. July, 1876.

COLLISION—STALE CLAIM—LACHES—SEAMEN'S EFFECTS.

1. The owners of a schooner filed a libel against the steamship Leo, owned by a corporation, to recover for her loss by collision. Before the trial of the cause, libels were filed against the Leo, on behalf of the seamen on the schooner, to recover for the loss of their effects by the collision. No process was issued however on these libels until nearly five years thereafter, during which time the suit of the owners had been carried by appeal to the supreme court of the United States, which had held both vessels in fault. After such decision processes were issued on the seamen's libels against the steamship, which still continued to be owned by the same corporation, although nearly all its stock had in the meantime been transferred to other hands: *Held,* that, if the libellants were ordinary persons, or if tie libels had not been filed within a reasonable time, the

claims would have been held to he lost by neglect to prosecute: but, the libellants being seamen, it was the duty of the court of admiralty to prevent their losing their claims by reason of the negligence of their proctor, if it could be done without injustice.

2. No injustice would be done here by a decree in favor of the seamen, as the claimants were the same and were chargeable with knowledge of the fact of the loss of the seamen's effects.

3. The transfer of the stock of the corporation made no difference, for it could not be supposed that such claims as these could have made any difference in the value of the stock.

4. The seamen therefore must have a decree for half their damages without interest or costs.

In admiralty.

Beebe, Wilcox & Hobbs, for libellants.

John Sherwood, for claimants.

BENEDICT, District Judge. These are actions by the crew of the schooner Saxon to recover of the steamship Leo the value of their clothes lost in a collision between those vessels, which occurred in November, 1869. The merits of this collision first came before this court upon a libel filed by Jed. Frye, the owner of the schooner. That case {Case No. 8,251} was tried on the 4th of March, 1871. The libels in these causes were filed on February 28th, 1871, after the filing of the libel of Frye and before the trial of that case. But no process was then issued upon such libels, or other proceeding taken in these causes until December 28th, 1874. During this period the question as to the liability of the Leo for the collision in question was pending before the courts, the case of Frye having been taken by appeal to the supreme court,[2] where the collision was held to have resulted from negligence on both the schooner and the steamer. Shortly after the final decision as to the question of liability, demand was made for the payment of these claims of the crew for their clothes; and the same being refused, process was then issued upon the libels which had been filed some five years before. The steamship, having been seized upon such process, now defends upon the ground that these claims are stale.

As to the question of fact upon which any liability depends, it has been assumed that the decision thereof in these cases will follow the opinion as to the fact expressed by the supreme court in the action brought by Frye, inasmuch as by consent the evidence in that case has been made the evidence in these cases.

The only question then is whether the libellants have lost their rights by laches. If the libellants were ordinary persons, or if these libels had not been filed within a reasonable time, there would be no doubt that these claims should be held to have been lost by neglect to prosecute. But the libellants are seamen. In due time they placed their demands in the hands of a proctor, and they swore to their libels, which were then filed. Moreover, they knew that the question of the liability of the steamer was before the court undetermined, for they were witnesses; and they may well have supposed that their rights were dependent upon the proceeding which they knew to be pending. The omission to make enquiry as to their actions, and to ascertain that process had not been issued upon their

libels, cannot therefore be imputed to seamen as negligence. They had done all that was to be done by them, and they cannot justly be compelled to lose their claims, by reason of the neglect of their proctor sooner to move for process. In behalf of seamen in such a case, it is the duty of a court of admiralty to prevent the loss of their claims by the negligence of their proctor, if it can be done without injustice. Here no injustice will arise, for the claimants are chargeable with the knowledge that the seamen's clothes were lost with the vessel. The liability of the steamship is no greater now than it would have been had the processes been issued, and these causes tried with the case of Frye. The proof, that a considerable part, but not all, of the stock of the corporation, which owned the steamer at the time of the accident and still owns her, has been sold since the accident to persons having no knowledge of this demand of the crew, does not change the case. The same corporation is the claimant before the court, and it cannot be supposed that any difference in the value of the stock of that corporation would be caused by demands such as these under consideration.

There must therefore be a decree for the libellants for one-half the value of the property set forth in the libels, which may be proved to have been lost, without interest or costs. A reference can be had to ascertain the amounts, if that be not agreed to, in which case the costs of the reference will be left to be determined upon the coming in of the report.

{NOTE. There is no report of either of these cases in the supreme court, and an examination of the supreme court docket fails to show any such case having been docketed. The records of the circuit court show that on October 2, 1873, a petition and bond on appeal were filed, but the proceedings appear to have been carried no further. In Case No. 8,254 the circuit court held (reversing Case No. 8,251) that the collision was the result of negligence of both vessels.}

[1] {See Case No. 8,254 and note at end of this case.}

[2] {Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.}