

UNITED STATES V. THE AUSTIN.

[9 Ben. 350.]¹

District Court, E. D. New York.

Feb., 1878.

PRACTICE IN ADMIRALTY—APPLICATION TO SET
ASIDE SALE—LACHES.

An application to set aside the sale of a vessel regularly made under a final decree in admiralty must be promptly made. Such application denied when three months had elapsed since the sale, and no excuse for its delay was offered, and the parties could not be put back into the same position as that occupied at the time of the sale.

In admiralty.

A. W. Tenney, for the United States.

J. J. Allen, for the Vessel.

BENEDICT, District Judge. The motion made in this cause to set aside the sale of the vessel cannot be granted. The delay of nearly three months before making the application is to great Applications of this character must be promptly made. Here the applicant had full knowledge of the proceedings against the boat and of her sale, and no valid excuse or the delay has been offered.

Furthermore, the parties cannot be put back into the same position they were before. The boat has since the sale been largely repaired, and the interest of parties in the boat has been changed by an assignment of a mortgage which covered this as well as other boats.

Finally, the proceeds of the sale have been distributed, and with full knowledge of the proceedings on the part of the applicant.

Under such circumstances there is no ground on which to justify the setting aside a judicial sale regularly made; and, the motion must be denied.

¹ [Reported by Robert D. Benerict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.]

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