

though the *Jenny Otto* was navigating close to the wharf where she had no right to be, that did not authorize the *Monticello* to run into her, nor to leave her slip without the exercise of that vigilance and nautical skill in avoiding danger which the law imposes upon ferry-boats as much as upon other vessels in order to secure the safety of life and property. *The Continental*, 14 Wall 345, 359; *The Louisiana*, 2 Ben. 371, 380; *The Vim*, 12 FED. REP. 906, 913, and cases there cited. Had either performed its own legal duty, the collision would have been avoided. Each is, therefore, chargeable with contributory negligence, and the damages in such cases in admiralty are divided.

An order of reference is directed to compute the damages, with costs.

THE SECRET.

(Circuit Court, S. D. New York. December 1, 1879.)

CHARTERERS' POWER TO BIND VESSEL FOR COAL.

It was held in this case that the charterers of a vessel had no authority to bind her owners or the vessel, for a supply of coal in a foreign port, and that the vendor was put upon inquiry to ascertain the fact of authority.

H. E. Tremain, for libelant.

T. E. Stillman, for claimants.

BLATCHFORD, J. Although the *Secret* was in a foreign port, and although *Murray, Ferris & Co.*, when ordering the coal, stated to *Russell & Hicks* that it was for the *Secret*, yet the circumstances were such that the libelant's agents, *Russell & Hicks*, were put on inquiry, from which they could easily have learned this, notwithstanding the above facts. *Murray, Ferris & Co.* were the charterers of the vessel, and had no power to bind the claimant or the vessel to pay for coal bought for her. If they had used due diligence they would have ascertained such want of power. *The Lulu*, 10 Wall. 192; *The Patapsco*, 13 Wall. 329.

Moreover, I concur with the district judge in the view he took of the case, in the opinion delivered by him.

STACKHOUSE v. ZUNTS.*

(Circuit Court, E. D. Louisiana. January, 1883.)

JURISDICTION—REMOVAL.

A suit was instituted in a Louisiana court by a citizen of that state against a citizen of Mississippi, and a preliminary writ of injunction issued, enjoining the defendant from proceeding under an execution issued upon a judgment obtained in that court, on the grounds that said judgment had been extinguished by compensation, and had been rendered by reason of error both of fact and law, and was therefore null and void. On the application of the defendant the suit was removed to this court, and the plaintiff moved to remand on the ground that the federal court had no jurisdiction, these proceedings being merely incidental and auxiliary to the original action in the state court, and so within the decisions in *Bank v. Turnbull*, 16 Wall. 190, and *Barrow v. Hunter*, 99 U. S. 80; held, that the proceeding instituted and removed is not only "tantamount to a bill in equity to set aside a decree for fraud in obtaining it," but really amounts to "a new case arising on new facts, although having relation to the validity of a judgment," as laid down in *Barrow v. Hunter*, 99 U. S. 83.

Bondurant v. Watson, 103 U. S. 281, followed.

On Motion to Remand to State Court.

E. D. White, *H. B. Magruder*, and *F. L. Richardson*, for complainant.

A. C. Lewis and *T. M. Gill*, for defendant.

PARDEE, J. This case comes up on a motion to remand to the state court, where it was instituted, on the ground—

"That this court has no jurisdiction of a suit seeking to enjoin the execution of a judgment rendered by a state court, neither to pass upon, dissolve, nor perpetuate such an injunction granted by a state court, and more especially where the complainant or plaintiff obtaining said injunction is now, and was at the time of the rendition of the judgment enjoined or sought to be enjoined, a citizen of this state, and within the jurisdiction of said state court."

The transcript shows that the suit was instituted by filing in the state court a petition of the following substance:

"The petition of Herbert W. Stackhouse, a resident of the parish of Plaquemines, respectfully shows that James E. Zunts, a resident of Harrison county, and a citizen of the state of Mississippi, claiming and pretending to be the subrogee of one Ruggles S. Morse, a citizen of Maine, resident in the city of Portland, has caused to be issued out of this honorable court two writs of *feri facias* in the suits entitled *R. S. Morse, James E. Zunts, subrogated, v. Herbert W. Stackhouse*, and numbered 371 and 372 of the docket of this hon-

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.