

the Amoskeag Company knew that they might be sued at any time, but believed that they could not be sued with effect. Under such circumstances a court of equity might well decline to give any extraordinary assistance to patentees who had remained quiet for years; but in the cases of that sort, in which equitable relief has been refused, the courts have said that the plaintiff must be left to such damages as he might obtain at law. This is laches, and not estoppel; and for laches the remedy at law is found in the statute of limitations, and if that statute is inadequate there is no other remedy.

The same remark, I apprehend, is true of the damages. The hardship which these plaintiffs apprehend appears to arise from the very large damages which are claimed by the patentees. The record before me does not show the grounds of this claim. Supposing it to be, as intimated at the argument, that the regular license fee would be an annual payment, the equitable complaint is that the city was permitted to use the improvement for so many years without notice. This would apply, in a greater or less degree, to all cases of laches; and if the court and jury are incompetent to deal with it, I know of no power in a court of equity to set a limit to the damages which a court of law shall award under such circumstances.

Injunction refused.

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#### THE CHARLES A. SPARKS.\*

#### THE AGNES R. BACON. (Two Cases.)\*

(District Court, E. D. Pennsylvania. May 14, 1883.)

##### 1. COMPULSORY PILOTAGE—CONSTITUTIONAL LAW—AUTHORITY OF STATE.

Where, by a statute of one state, vessels bound to a port of that state were free from the obligation of compulsory pilotage when not spoken outside of a certain line, such a statute has no application to pilot services tendered by a pilot licensed under the laws of another state situated on the same river.

##### 2. SAME—DELAWARE STATUTE, IMPOSING OBLIGATION TO COMPULSORY PILOTAGE UPON VESSELS BOUND TO THE PORT OF PHILADELPHIA, CONSTRUED.

A pilot, licensed by the state of Delaware, may, by a libel *in rem*, recover the fees provided by a Delaware statute for pilot services tendered to a vessel on a voyage from a foreign port up the Delaware bay and river to the port of Philadelphia, after the vessel had crossed a straight line drawn from Cape May light to Cape Henlopen light, although such services were refused, and notwithstanding a statute of Pennsylvania exempted all such vessels from the duty of taking a pilot, and in case such service was accepted and performed,

\*Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

prescribed a lower rate of compensation than that provided by the Delaware statute.

*The Clymene*, 9 FED. REP. 165, and 12 FED. REP. 346; and *The Alzena*, 14 FED. REP. 174, followed.

#### Hearing on Libels and Answers.

These were two libels by John P. Virden, a pilot licensed under an act of the state of Delaware, approved April 5, 1881, claiming the fees prescribed by that act for his services as a pilot tendered to and declined by the schooner *Agnes R. Bacon* and the brig *Charles A. Sparks*, on their way from a foreign port to the port of Philadelphia, Pennsylvania.

The answers set forth that when the libelant tendered his services the vessels had crossed a straight line drawn from Cape May light to Cape Henlopen light, and were by the laws of Pennsylvania, to one of whose ports they were bound, exempt from the obligation of taking a pilot, as provided by the act of the eighth of June, 1881, which is as follows: "A deduction of 10 per centum from the rates mentioned in section 1 shall be made when the vessel is first spoken by the pilot inside of a straight line drawn from Cape May light to Cape Henlopen light; but the vessel shall in every such case be exempt from the duty of taking a pilot on her voyage inward to the port of Philadelphia, and the vessel, as well as her master, owner, agent, or consignee, shall be exempt from the duty of paying pilotage or half pilotage, or any penalty whatsoever, in case of her neglect or refusal so to do;" and denied the right of libelant to recover any part of the fees claimed; but that, if entitled at all, no more than the rate allowed by the Pennsylvania act for the performance of such services could be recovered.

*Curtis Tilton* and *Henry Flanders*, for libelant.

*H. G. Ward* and *M. P. Henry*, for respondents.

BUTLER, J. I do not find anything in this case that does not seem to be fully covered by the decisions in *The Alzena* and *The Clymene*, and the claim must, therefore, be allowed.

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The attorney general of the state of Pennsylvania afterwards filed in the supreme court of the United States a copy of the record in the above case of *The Charles A. Sparks*, with a suggestion that the admiralty court of this district hath no jurisdiction to impose on vessels bound to the port of Philadelphia a lien or privilege, by virtue of the laws of the state of Delaware; and prayed for a writ of prohibition to be directed to the judge of said dis-

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trict to prohibit him from further proceeding in the said cause; and from proceeding to make or enforce any decree by execution or otherwise in said cause. Whereupon, on June 13, 1883, a rule to show cause was entered by BRADLEY, J.—[REP.

In re WRIGHT, Petitioner.

(District Court, S. D. New York. May 26, 1883.)

1. VESSEL—PROCEEDS OF SALE—LIEN, WHEN LOST.

Where a vessel is sold and the proceeds paid into the registry, the shares of the different owners of the surplus are equitably liable *pro rata* for the payment of any additional liens upon it.

2. SAME—EQUITABLE RELEASE.

Where a person, having such liens, purposely delays filing his claim against the remnants until the shares of some of the owners have been drawn out, and then files it in order to charge the whole upon the remaining shares, *held*, that such withholding is equivalent to a release of the shares withdrawn and a discharge of the lien *pro tanto*; the remaining shares are only chargeable with their due proportion of the claim filed.

3. SAME—COSTS—HOW CHARGED.

The costs of the prevailing party are ordinarily treated as a legal incident of the debt, and, like the debt, paid out of the fund, though subsequent lienors may be prejudiced thereby; but where the action is unreasonably defended, costs in admiralty, as in equity, may, in the discretion of the court, be imposed personally on the litigating parties.

4. SAME—PART OWNERS.

Part owners of vessels have a right to litigate a doubtful claim against the vessel. When the defense is reasonable, *bona fide*, and in part successful, the libelant's costs should be imposed, not upon those defending personally, but upon the proceeds of the vessel.

In Admiralty.

*Beebe, Wilcox & Hobbs*, for petitioner.

*Gibson, Whiting & Parlin*, for respondents.

BROWN, J. Upon the sale under the decree, in the case of *The J. C. Williams*, 15 FED. REP. 558, there was a surplus of \$8,946.43 in the registry after paying the amounts decreed to the libelant. Wright, as receiver of Brett, Son & Co., held a mortgage upon five-eighths of the vessel sold, and had previously presented and proved his claim to that proportion of the surplus, which was less than the mortgage debt, and the owners of the remaining three-eighths of the vessel had proved their claims. The proceeds of the sale of the vessel were paid into the registry of the court on the fourteenth day of February, 1883, and the amount due the libelant was drawn out on that day. Wright, as receiver, immediately thereafter obtained an order for the