the result, and that it was then impossible for the tug, by any change of her own, to have escaped. The heavy logs lashed to her sides necessarily prevented any rapid maneuvering. Though the want of a proper lookout was reprehensible, I am satisfied that in this case it in no way contributed to the collision.

The tug was moving at about half the rate of the Bermuda. Had she been unembarrassed by anything lashed to her side, she undoubtedly could have been quickly handled, and might have got out of the way. It is probable that those on board the Bermuda did not see the heavy logs which embarrassed her motions until they had nearly reached her, and that they supposed she would, therefore, get out of the way at the last moment, by a rapid maneuver, which small tugs are easily able to make, and that there was no need of observing the strict rules of navigation. As the tug was, however, incumbered by the logs in tow, so as to be almost as unwieldy as the steamer herself, the latter must bear the consequences of her mistake, if that was the mistake, in assuming that the rules might be neglected with impunity.

Decree for libelants, with costs.

THE FLAVILLA.[1]

GILL *v.* PACKARD.[1]

(*Circuit Court, E. D. Louisiana.* June, 1883.)

ADMIRALTY—DESTRUCTION OF PROPERTY WHILE IN CUSTODY.

Where a *res* is seized by judicial process in admiralty for a debt, which carries with it a *jus in re*, as between debtor and creditor, the destruction of the seized property, without fault of the debtor, works a payment of the debt to the extent of its value. The destruction of the debtor's property under such circumstances operates as a payment up to its value, precisely as would its sale and the application of its proceeds. Unless there was a residuum of value over and above the valid claims rightfully interposed against the *res*, its destruction worked no injury and gave the owner no right of action.

The defendant, S. B. Packard, when United States marshal of the then district of Louisiana, seized the steam-boat Flavilla under an admiralty warrant issued by the district court. In the admiralty action, in due time, a default was entered, and thereupon a decree condemning the vessel for a number of claims, aggregating more than her value. A writ of *venditioni exponas* was issued to the marshal, and pending proceedings thereunder the vessel sank and became a wreck, which was sold under the writ for a trifling amount. This suit was brought against the marshal by the owners of the Flavilla for her value, and

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

a peremptory exception of no cause of action was filed for the defendant.

In Admiralty.

Wm. F. Mellen, for plaintiff.

J. R. Beckwith, for defendant.

BILLINGS, J. This cause having been heretofore submitted upon the peremptory exception to the petition and amended petition, and the same having been duly considered by the court, the court declares—

1. That it appears that the vessel, which is alleged to have been the property of the plaintiff, for the destruction of which damages are sought to be recovered, had been seized under a proceeding *in rem*, and that the claims of the libelants and the intervenors in said proceeding, which were asserted in and upon said vessel, were largely in excess of the value of said vessel as stated by the petitioner; and that it is not stated in said petition that there was any value to said vessel above the amount of said claims so made and binding; nor is it denied that all of said claims were valid.

2. That where a *res* is seized by a judicial process for a debt, which carries with it a *jus in re*, as between debtor and creditor, the maxim *domino periit res* means that the destruction of the seized property, without fault of the debtor, works a payment of the debt to the extent of its value. Where third parties voluntarily join the seizing creditor in his proceeding, and unite, so to speak, in the seizure, also asserting claims which carry with them liens, the destruction of the property without fault of the debtor works a payment of their respective claims to the extent of the value of the property destroyed in the order of the priority of their claims; that the destruction of the debtor's property, under such circumstances, operates as a payment up to its value precisely as would its sale and the application of its proceeds.

3. And, consequently, that unless there was a residuum of value over and above the valid claims rightfully interposed against the *res* it perished for the owners of them, and its destruction worked no injury and gave no right of action to the plaintiff.

It is, therefore, ordered, adjudged, and decreed that the said peremptory exception is good and valid in law; that it be maintained; and that the petition herein be dismissed at the cost of the plaintiff.

MYERS and another *v.* REED and another.

(*Circuit Court, D. Oregon.* August 8, 1883.)

1. CONVEYANCE TO HUSBAND AND WIFE.
   At the common law a conveyance to husband and wife, as such, made them tenants by entirety, and neither could dispose of the estate thus conveyed without the consent of the other; but upon the death of either, the survivor was the sole owner of it.
2. SAME.
   Prior to June, 1863, if then, or even since, this common-law rule was not changed or modified in Oregon.
3. LAW OF THE STATE.
   The common and statute law of the state, as expounded by the settled decision of its highest court, furnish the rules that govern the descent and alienation of real property therein, and the effect and construction to be given to conveyances thereof.
4. QUITCLAIM, OR DEED OF BARGAIN AND SALE.
   A quitclaim, or deed of bargain and sale, by an occupant of the public land in Oregon before he became a settler thereon under the donation act, passed only the possession, and does not affect an after-acquired estate in the same premises under the donation act or otherwise.
5. PURCHASE OF ADVERSE TITLE BY CO-TENANT.
   In the case of a co-tenancy arising by descent, devise, or one conveyance, the purchase of an adverse title by one of the co-tenants will generally inure to the benefit of the other tenants; but in the case of a mere tenancy in common, this depends upon the circumstances of the case, as that the co-tenant used the co-tenancy, or the title, right, or claim under which it exists, or is claimed to exist, to acquire such adverse title.
6. SAME—BY TENANT FOR LIFE.
   A purchase by a tenant for life of an adverse title will inure to the benefit of the remainder-man.

Suit in Equity to Declare a Trust in Real Property.

William B. Gilbert, for plaintiffs.

Thomas N. Strong, for defendants.

DEADY, J. The plaintiffs, citizen of New York and Connecticut, respectively, bring this suit against the defendants, citizens of Oregon, to obtain a conveyance to them of the undivided four-ninths of the north half of lot 4 in block 10 of Couch's addition to Portland, alleging that the same is worth "at least $5,000." The case was heard upon a demurrer to the bill. From the latter it appears that on February 16, 1860, William Baker, Robert Pittock, and Tobias Myers were in the possession of the premises, claiming each to be the owner of an undivided third thereof, under and by virtue of a conveyance from John H. Couch and Caroline, his wife, in 1850, to George Flanders, and sundry mesne conveyances thereunder; that at the date of such conveyance said Couch and wife were occupants of a tract of the public land, including the premises in question; that in 1871 the widow and heirs of said John H. "made final proof of his settlement" upon said tract as a donation claim, and on November 13, 1871, a patent issued to them for the same, whereby the south half thereof,