

endants, it must be held, in the absence of proof that the fire was caused by the negligence of the defendants or their servants, the liability of the defendants has not been made to appear.

Let a decree be entered dismissing the libel, with costs.

BOURNE v. ROSS.

(Circuit Court, D. Massachusetts. August 25, 1883.)

SEAMEN'S WAGES—SUIT IN ADMIRALTY—ATTACHMENT FROM STATE COURT.

The right of a seaman to sue in admiralty in personam for his wages is not taken away or suspended by an attachment of his wages by trustee process from a state court in an action at law.

Ross v. Bourne, 14 Fed. Rep. 858, affirmed.

In Admiralty.

E. L. Barney, for Bourne.

C. T. Bonney, for Ross.

LOWELL, J. To the reasons given by NELSON, J., in *Ross v. Bourne*, 14 FED. REP. 858, for entering a decree for the libellant, I assent. I have given my view of the law relating to attachments in a foreign jurisdiction in a late case in the district of New Hampshire. *Lynch v. Hartford Ins. Co.*, ante, 627. As a general rule such attachments should be respected out of comity; but the attachment of seamen's wages is so unusual that it has been held to be impossible by Judge BENEDICT, in *The City of New Bedford*, 4 FED. REP. 818; and though Mr. Justice GRAY has doubted the reasoning and conclusions of that case, in a very learned opinion from which I do not dissent, (see *Eddy v. O'Hara*, 132 Mass. 56,) still, I am of opinion that comity does not require us to hang up a summary action in the admiralty in favor of a seaman, to await the dilatory proceedings in a court of common law. In ordinary cases I should be inclined to go further than most of the courts have gone in the direction of comity. I have always regretted the narrow rulings in favor of domestic attachments as against foreign bankruptcies and assignments, especially when neighboring states are treated as foreign; but the present case is one in which the admiralty court is bound to give that prompt and speedy justice which is one of the principal reasons for its existence. Decree affirmed.

THE WARREN.¹

(District Court, E. D. New York. May 19, 1883.)

ADMIRALTY—WRECKAGE—PRIVATE SALE WITHOUT NOTICE OR APPRAISEMENT.

Where a boiler removed from the wreck of a vessel injured by collision was sold at private sale without the knowledge of those sought to be charged with its value, and without appraisement, the commissioner appointed to fix the amount of the damages credited the libelant with the full value of the boiler, as proved on the reference, instead of the price so realized; and, on exceptions to the commissioner's report, his finding was sustained.

In Admiralty.

Jas. K. Hill, Wing & Shoudy, for libelant.

Beebe, Wilcox & Hobbs, for claimants.

BENEDICT, J. The commissioner's report as to the value of the libelant's boat was made after hearing the testimony given by many witnesses, and upon a serious conflict of evidence. I have examined the evidence, and am unable to conclude that any injustice will be done to either party by confirming the report of the commissioner in that particular.

In regard to the value of \$3,500 put by the commissioner upon the boiler removed from the wreck and sold by the libelant at private sale for \$1,700, I should be induced to take the price realized for the boiler as its value, instead of the sum reported by the commissioner, if the libelant had given the claimants notice of his intention to sell the boiler, or afforded them an opportunity to examine it and determine its value. But the sale was a private sale, made without the knowledge of the parties who were to be charged with its value, and without any appraisement, and the sum realized is proved by the libelant himself to be less than the intrinsic value of the boiler, which he says was as good as new.

Upon such facts the finding of the value of the boiler to be \$3,500 is justified. The exceptions of both sides are, therefore, overruled, and the report confirmed.

See *The Warren*, 11 FED. REP. 443.

¹Reported by R. D. & Wyllys Benedict, of the New York bar.