

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.

HOLLISTER v. BELL.¹

JAMES v. SAME.

(Circuit Court, D. California. October 16, 1882.)

1. REMOVAL OF CAUSES.

The second clause of section 639 of the Revised Statutes was repealed by the act of congress of March 3, 1875.

SAWYER, J. This action was brought in the state court of Santa Barbara county, and removed by R. S. Den as to himself, under the second clause of section 639 of the Revised Statutes, on the ground of citizenship, and that there was a controversy which could be wholly determined as to him, without the presence of other parties.

At the last term of the supreme court of the United States it was held, in *Hyde v. Ruble*, that "the second clause of section 639 of the Revised Statutes was repealed by the act of 1875." *Hyde v. Ruble*, 104 U. S. 407.

The law under which the removal was had having been repealed long before the removal, it was not removable. The case must, therefore, be remanded to the state court for want of jurisdiction, and it is so ordered.

As to repeal of first clause of section 639 of the Revised Statutes, see *State v. Lewis*, 14 FED. REP. 65; and as to repeal of third clause, *Miller v. Chicago. B. & Q. R. Co.*, *ante*, 97.—[ED.]

* SMITH and others v. CRAFT and others.

(Circuit Court, D. Indiana. September 14, 1883.)

1. INSOLVENCY—OBTAINING CREDIT—PROMISE TO SECURE CREDITOR.

The mere fact that a borrower, at the time of procuring a loan or credit, makes an oral statement or promise that if he should become insolvent he will secure or prefer the one who gives such credit over others, will not disqualify him from giving, and the creditor from receiving, the promised favor; and a transfer of property made in pursuance of such promise will not be set aside as fraudulent, at the instance of the other creditors, except when a fraud was intended, or the circumstances within the knowledge of the creditor preferred were such that he must have known that injury to others would probably result.

2. SAME—EMPLOYER OF INSOLVENT TO MANAGE PROPERTY.

Nor will the fact that the insolvent, in the writing by which the agreement was effected, was employed to manage the property conveyed, in the absence of proof of fraud, be sufficient to avoid such transfer

¹From 8th Sawyer.