

## CLAYTON and others v. FOUR HUNDRED AND TEN TONS OF COAL.

(District Court, S. D. New York. June 17, 1884.)

## DEMURRAGE—CONSIGNEE TO FIND BERTH—DUTY OF VESSEL.

Where a consignee is bound to provide a berth for the ship or pay demurrage for the delay, the vessel is not bound to enter upon a struggle with other vessels for the possession of the berth, or upon a race to obtain it. The consignee must find a berth accessible to the ship without difficulty or struggle, and in default thereof must pay for the delay.

## In Admiralty.

*Owen & Gray*, for libelants.

*William M. Hoes*, for claimant.

BROWN, J. The libelant claims demurrage for the detention of his vessel during 11 working days, from the time of his arrival on the twenty-eighth of December to the time of completing his discharge on the fourteenth of January. The bill of lading provided for the delivery of the coal at the rate of 100 tons a day, commencing 24 hours after notice of arrival, excluding Sundays and holidays, and for demurrage at the rate of eight cents a day per ton for detention beyond such time. When the libelant's vessel arrived at the claimant's dock at Haverstraw, on the twenty-eighth of December, he gave notice to the consignee. There was a sunken wreck immediately in front of his wharf, which appeared to be in the way, but which, on measurement, was found to leave sufficient room for the libelant's boat to get in. The place was occupied, however, by another boat; and when that boat was ready to move away, the place was claimed for pontoons of the wrecking company to move the wreck. The pontoons were nearer than the libelant's boat, and the latter could not have obtained her place without a struggle for the possession. No such duty was obligatory upon the boat. It was the consignee's duty to provide a place for the discharge of the cargo peaceably, and without either a race or a struggle for a berth. The libelant offered to go to other places near by to discharge, but the respondent refused to receive the coal elsewhere. The pontoons having first got alongside his dock, the libelant's boat was not able to obtain a berth there until the fifth of January; one of the intervening days was Sunday, leaving six days' detention since the boat's arrival, exclusive of the first day.

The libelant also contends that there was delay on the part of the consignee in receiving the coal after the discharge was commenced. The evidence on this point is very conflicting. This was the first coal the libelant had undertaken to discharge. Changes were twice made in the means of discharging, which, I think, the weight of evidence shows was not as free from embarrassment as it should have been. On the whole, I cannot find that the three days' delay after the discharge was commenced was occasioned through any fault of the respondent. He is liable, however, for the six days' detention before

the discharge was commenced, which, at the rate provided by the bill of lading, amounts to \$196.80, making, with interest to date, \$237.51, for which the libelant is entitled to a decree, with costs.

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THE BRISTOL.

(Circuit Court, S. D. New York. July 1, 1884.)

1. ADMIRALTY—COLLISION—LIBEL—INNOCENT PURCHASERS.

A vessel which has collided with another, and not been subjected to a libel therefor within two years, after which it passed into the hands of innocent purchasers, who, before the purchase, took every means to ascertain the existence of any liens, cannot be libeled on account of that collision, as against the new owners, four years after the damage was done.

2. SAME—LIEN—LACK OF DILIGENCE IN ENFORCING—INNOCENT THIRD PARTIES.

Admiralty denies the privilege of enforcing a lien which has been suffered to lie dormant, without excuse, until the rights of innocent third parties would be prejudiced if it should be recognized.

In Admiralty.

*Beebe, Wilcox & Hobbs*, for libelants.

*Pritchard, Smith & Dougherty*, for claimants.

WALLACE, J. The court below properly dismissed the libel in this case because of the laches of the libelant in not asserting its claim seasonably. The collision took place July 5, 1872. The Bristol at that time was owned by the Narragansett Steam-ship Company. June 9, 1874, that company sold the steamer to the Old Colony Steam-ship Company, the present owner. During this period of nearly two years that intervened between the time of the collision and the sale of the steamer, the Bristol could have been libeled at any time. The Old Colony Steam-ship Company was not only an innocent purchaser for a valuable consideration, but its officers took unusual precautions to ascertain whether there were any claims asserted against the steamer by examining the records of all the admiralty courts which might acquire jurisdiction *in rem*, and for several months after it took possession and exercised notoriously the rights of an owner, it retained control of a fund as security in its hands against any latent liens upon the vessel. The libelant did not assert any claim so as to reach the knowledge of the purchaser until more than four years had elapsed after the collision; and in the mean time, the Narragansett Steam-ship Company had become practically defunct, and was represented by its officers to be irresponsible.

Admiralty denies the privilege of enforcing a lien which has been suffered to lie dormant without excuse until the rights of innocent third persons would be prejudiced if it should be recognized. The application of the rule to this case is eminently just, and the opinion of the district judge is fully approved.

In this view, it is unnecessary to consider whether the Bristol was culpable in the collision.