

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.

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.

HAHN v. SALMON and others.

(Circuit Court, D. Oregon. July 18, 1884.)

1 ATTACHING CREDITOR.

The lien of an attachment is sufficient to enable a creditor to maintain a suit in equity to set aside a fraudulent assignment of the property attached; particularly under section 148 of the Oregon Code of Civil Procedure, which makes an attaching creditor a *bona fide* purchaser for a valuable consideration.

2. ASSIGNEE, POWER OF.

The assignee in a voluntary assignment is the mere instrument of the debtor for the distribution of his property, and unless the power is conferred upon him specially by statute, he cannot maintain any action or suit concerning the same, that the debtor could not, in case no assignment had been made.

3. CONSTRUCTION OF ACT—TITLE AND PREAMBLE.

In the construction of a statute, both the title and preamble may be considered in doubtful cases.

4. ACT TO PREVENT FRAUD AND INJUSTICE—CONSTRUCTION OF.

An act to prevent fraud and injustice, as the assignment act of 1878, (Or. Sess. Laws, 36,) should be liberally construed to that end.

5. CASE IN JUDGMENT.

The Oregon assignment act of 1878 (Sess. Laws, 36) declares a general assignment by an insolvent debtor invalid, unless made for the equal benefit of all the creditors of the debtor; but when so made, it shall have the effect to dissolve a prior attachment in an action in which judgment is not then taken, but does not affect a prior judgment against the debtor or an execution thereon. S., an insolvent debtor, whose debts equaled \$38,000, and assets did not exceed \$30,000, confessed judgment in favor of his Portland creditors for \$6,690, and had execution issued thereon and levied on his stock of goods, worth \$27,000, and sold thereby \$25,000 worth of them to said Portland creditors, with the intent to prefer them to his San Francisco ones, and with the understanding that they would return the same to him as soon as he was able to settle with the latter on terms sufficiently favorable to himself. The day after this judgment was confessed an action was commenced against S. on the claims of the San Francisco creditors, amounting to \$29,205.40, and an attachment issued therein and levied on said stock of goods then in the hands of the sheriff on said execution. Soon after, and before judgment could be had in the latter action, S. made a general assignment for the benefit of his creditors, in pursuance of which the assignee therein claimed the possession of the remainder of the goods—about \$2,000 in value—still held under the attachment, on the ground that the same was dissolved by the assignment, and threatened to take the same and dispose of them thereunder; thereupon the attaching creditor filed a bill to restrain the assignee, and have the assignment set aside as fraudulent, to which there was a demurrer. *Held*, (1) that the attaching creditor could maintain the suit; and (2) that the confession of judgment and assignment being parts of one common purpose and transaction, by which the Portland creditors were preferred to the San Francisco ones, in the distribution of the insolvent debtor's property, the assignment was fraudulent and void.

Suit to Set Aside a Fraudulent Assignment.

M. W. Fehcheimer, for plaintiff.

Joseph Simon, for defendants.

DEADY, J. This suit is brought by the plaintiff, a citizen of California, against the defendants A. Salmon and L. Bettman, citizens of Oregon, to have declared void and set aside an assignment made by the former to the latter, on March 1, 1884, with intent to hinder and delay, cheat and defraud, the plaintiff and others, his San Fran-