

Jackson, who was a mechanic, and said to complainant that he would make and sell all he could. Jackson, through his attorney, in answer to a letter notifying him that he was infringing complainant's patent, said that complainant had copied the invention from him, (Jackson,) and that Colling must disclaim or be prosecuted for perjury, and damages. The witness Sherwood testified that he called at Jackson's house, and asked for electric belts; that Mrs. Jackson showed him a belt, a similar one to Exhibit C, offered in evidence. She offered to sell the belt to him, but said she would rather the witness would call when Mr. Jackson was in, because he had the day before given her a great scolding for exhibiting belts, for fear it might get him into trouble. The testimony of the defendant is in many respects secretive, evasive, and unsatisfactory. Especially is this true of the testimony of Jackson. Upon the whole case, after a careful consideration of all the testimony, I am of opinion that complainant is entitled to recover. Complainant's counsel will prepare and submit the usual decree in cases of this character, that there has been an infringement by defendants; with an order referring the case to the master in chancery to ascertain the damages.

UNITED STATES v. THE FRANK SILVIA.

(Circuit Court, N. D. California. February 23, 1891.)

SHIPPING—PASSENGER REGULATIONS.

Under Rev. St. U. S. § 4499, providing that vessels violating the law relating to the carrying of passengers "may be seized and proceeded against by way of libel," in the district court, such court has no jurisdiction until there has been a seizure of the vessel. Reversing 37 Fed. Rep. 155.

In Admiralty. Appeal from district court.

John T. Carey, for libellant.

Milton Andros, for claimants.

Before SAWYER, Circuit Judge.

SAWYER, J. Since the order of proceeding required seems purely technical, I regret to say, that I shall be compelled to sustain the point as to the jurisdiction. The libel of information in the case is promoted to recover a fine of \$500 under title 52, c. 2, Rev. St. U. S. §§ 4499 and 4500, for carrying passengers without complying with the terms of the title.

The point is made, that the district court does not appear to have acquired jurisdiction, before filing the libel, by a seizure of the vessel by the collector, or other executive officer of the government. There is no allegation that any seizure was made, and, I understand, none was, in fact, made. A seizure of the vessel before filing the libel is necessary to give jurisdiction. This has been settled by numerous cases. The first appeal in

admiralty heard by me, when I first came upon the circuit bench, involved this question, and the decree was reversed and the libel dismissed on that ground. See *The Fideliter v. U. S.*, 1 Sawy. 154, and cases cited; and the question of jurisdiction in that case, was not raised in the district court. See also *The May*, 6 Biss. 243. The statute under which this prosecution is had, as it did in the case of *The May*, recognizes this order of proceeding—first a seizure, and then the procedure against the vessel. The language is, “and may be seized, and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.” Section 4499. Section 4496 provides: “All collectors or other chief officers of the customs, and all inspectors within the several districts shall enforce the provisions of this title against all steamers arriving and departing.” The first thing to be done, is for some of these officers to seize the vessel, as smuggled goods for instance, are seized, thereby acquiring jurisdiction. Having thus acquired jurisdiction, by seizure by the proper officers, the proceedings may be had in the district court, to enforce the penalties arising under section 4499.

As before remarked, I regret being obliged to decide the case on this ground, but so the law appears to require. Let the decree be reversed, and the libel dismissed.

THE U. S. GRANT.¹

In re THE U. S. GRANT.

(District Court, S. D. New York. March 7, 1891.)

1. LIMITATION OF LIABILITY—VALUE OF OWNER'S INTEREST—SALE—AMOUNT OF BOND.

In proceedings to limit the liability of a ship-owner, the price realized at a marshal's sale of the vessel, though *prima facie* fixing the value for which a bond will be required, is not conclusive, and the court, upon cause shown, may require a bond for the actual value, as proved.

2. SAME—WHAT OWNER MUST SURRENDER.

In order to obtain a limitation of liability with respect to claims arising upon a voyage subsequent to the accruing of previous liens the ship-owner must surrender the vessel, or her proceeds, free from such previous liens.

In Admiralty. On petition for limitation of liability.

Carpenter & Mosher, for petitioners.

A. B. Stewart and Alexander & Ash, opposed.

BROWN, J. *Prima facie* the price realized on the marshal's sale is deemed to be the value of the tug when sold; and the last clause in the fifty-seventh rule of the supreme court in admiralty permits the proceeds of such a sale to represent the vessel upon an application for a limitation of liability. It was certainly not the intention of that rule, however, to

¹Reported by Edward G. Benedict, Esq., of the New York bar.