

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 Fidelity 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.

enable the owners of the tug to obtain any unfair advantage in respect to the amount for which they should be accountable in limiting their liability under the statute; and where there is any reason to suspect that the sale was greatly below the market value of the vessel, or that the sale was made a means by which the former owners might reduce the amount for which they were responsible, while they indirectly retained the benefit of the vessel, I have no doubt that the court may relieve the parties interested by inquiring into the facts, and requiring a larger sum than the proceeds of the sale thus obtained. The libellant in the libel for repairs, under whose decree the vessel was sold, has an undoubted lien upon the vessel and her proceeds. There has not, as yet, been any decree in the damage suit, and there is nothing, therefore, to displace the repair lien. Accordingly, as I have already held in *Gokey v. Fort*, 44 Fed. Rep. 364, the petitioners, in order to limit their liability with respect to claims arising upon the third voyage after the repair lien accrued, must surrender the vessel, or her proceeds, free from that lien. They must, therefore, in any event, as the case now stands, give a bond for the whole amount in court, because that amount is less than the repair lien, and the amount now on deposit will, for aught yet known, be absorbed by that lien. As respects the damage claim not yet adjudicated, the libellants therein may, if desired, within five days take an order of reference to ascertain whether the sale by the marshal was for a sum greatly below the fair and reasonable value of the vessel at such a sale, and whether the same was purchased directly or indirectly for the benefit of the petitioners, or either of them; if so, what was the fair value of the vessel at the close of the voyage? such libellants, at the time of filing their order, to enter an appearance, and give security for the payment of the costs of such reference, if the price realized at the marshal's sale is finally sustained for the purpose of the petitioners' application; and the determination of the amount of the bond to be given by the petitioners is reserved until the coming in of said report, if such reference be taken. If not taken, a bond for the price realized at the marshal's sale will be approved.

NATIONAL BOARD OF MARINE UNDERWRITERS v. MELCHERS.¹

(District Court, E. D. Pennsylvania. January 6, 1891.)

1. ADMIRALTY—RELEASE OF ATTACHED PROPERTY—ADDITION OF PARTIES.
Where a suit has been brought against one of two ship-owners, and property attached thereunder released before the name of the other owner is introduced, the suit must be regarded as against the original respondent only.
2. SHIPPING—AVERAGE—LIABILITY OF OWNER.
A part owner of a vessel is liable *in solido* for a balance due on an average adjustment.
3. ADMIRALTY—JURISDICTION—RECOVERY ON AVERAGE ADJUSTMENT.
A district court proceeding in admiralty has jurisdiction by foreign attachment in a suit against a vessel owner to recover a balance due on an average adjustment.

¹ Reported by Mark Wilkes Collett, Esq., of the Philadelphia bar.