

struck up from a single piece of metal, and formed with a flat bottom, curved front and sides, and flat back. It is useless to multiply examples of manufacturers from single sheets of wrought metals, possessing every merit and peculiarity claimed for this sink. The list might be indefinitely prolonged. The catalogue of patented machines and process for swaging, stamping, and striking up household and miscellaneous utensils and conveniences which were jointless and seamless, and preserved the entirety of the material of the article, is as voluminous. The instances cited of the application of this art to common uses deprive these features of this sink to all claim to novelty. While an exact counterpart of Kilbourne's sink in shape had not been produced in wrought metal, its prototype in form appears in Bignall's cast-iron sink, for which letters patent were issued January 1, 1867, to L. C. and M. C. Bignall. This is without joint, seam, or interior angle, and has a grooved or recessed flange in its upper and outer edge, projecting horizontally, into which the upholding framework or inclosure is fitted. The flat flange of complainant's sink serves the same purpose. The form or pattern, therefore, lacks originality.

3. The use of wrought steel or iron in lieu of cast metal is mere substitution of materials, which, whatever the degree of superiority given to the manufacture thereby, is not patentable. *Hotchkiss v. Greenwood*, 11 How. 248; *Hicks v. Kelsey*, 18 Wall. 670; *Phillips v. Detroit*, 111 U. S. 604, 4 Sup. Ct. Rep. 580; *Gardner v. Herz*, 118 U. S. 180-192, 6 Sup. Ct. Rep. 1027; *Brown v. District of Columbia*, 130 U. S. 87, 9 Sup. Ct. Rep. 437; *Florsheim v. Schilling*, 137 U. S. 64, 11 Sup. Ct. Rep. 20.

The decree of the circuit court dismissing the complainant's bill is clearly correct, and is affirmed, with costs.

THE JOHN C. FISHER.

THE TOM ROSS.

ROSS *et al.* v. GRUBBS.

(Circuit Court of Appeals, Third Circuit. April 22, 1892.)

1. COLLISION—RIVER STEAMER LANDING—BOAT AT WHARF.

A large river steamer, which in landing, head on, swung her stern around so as to strike a smaller steamer, safely moored at an adjacent private wharf, where she had a right to be, is liable for the damages caused thereby.

2. MARITIME LIENS—EXTINGUISHMENT—GIVING NOTE.

In admiralty a note does not extinguish the lien of the claim for which it is given unless such is the understanding of the parties at the time. *The General Meade*, 20 Fed. Rep. 923, followed.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

In Admiralty. Suit by I. W. Grubbs, owner of the steamer Tom Ross, against William Ross and others, claimants of the steamboat John C. Fisher. Decree for libelant. Libelee appeals. Affirmed.

Mr. Barton, for appellant.

David S. McCann, for appellees.

Before ACHESON, Circuit Judge, and BUTLER and GREEN, District Judges.

ACHESON, Circuit Judge. On December 10, 1889, the small steamer Tom Ross was safely moored and securely tied at a private wharf in the port of Cincinnati, Ohio. The boat was lying along the outside of a barge, and was at her usual berth, and in a place she had a right to occupy. About noon of that day the large and powerful steamboat John C. Fisher came into port, and in landing immediately above the Ross, head on, swung her stern around so as to strike the Ross with great force, and squeeze that vessel between the Fisher and the barge, crushing in both sides of the Ross. It does not appear that the Ross was culpable in any particular. She was plainly visible to those in charge of the Fisher, and it was their duty to steer clear of her. *Culbertson v. The Southern Belle*, 18 How. 584; *The Granite State*, 3 Wall. 310. No good reason for not avoiding the Ross is shown. The conclusion of the court below that the Fisher was wholly at fault, and was liable for the damages caused by the collision, was clearly warranted by the proofs.

Some months after the occurrence, the captain of the John C. Fisher, acting on behalf of that boat and the owners, signed as captain, and gave to the owner of the Tom Ross, a 90-days promissory note on account of the damages occasioned by the collision, and, if this note had been paid, the amount, although less than the claim, would have been accepted in full satisfaction. But it was not paid, and after default the libel in this case was filed against the Fisher. It is now contended that the taking of the note discharged the lien, and this is set up in bar of the libel. It is, however, well settled in admiralty that a note does not extinguish the lien of the claim for which it is given unless such is the understanding of the parties. *The Kimball*, 3 Wall. 37; *The General Meade*, 20 Fed. Rep. 923. Here it is not proved that there was any express agreement that the note should operate as a discharge of the lien. Neither do the circumstances under which the note was accepted warrant the inference that a waiver of the lien was intended. But the decided weight of the evidence is towards the conclusion that the note was taken by the owner of the Ross upon the express condition that it was not to operate as satisfaction of the claim unless it was paid. This defense altogether failed upon the proofs.

We find no error in this record, and the decree of the court below is affirmed.

AHLHAUSER v. BUTLER *et al.*

(Circuit Court, E. D. Wisconsin. June 6, 1892.)

1. REMOVAL OF CAUSES—WAIVER OF OBJECTIONS—JURISDICTION OF STATE COURT.

The filing of the petition for removal of a cause from a state to a federal court is no waiver of an objection that the state court was without jurisdiction of the cause for want of personal service of process, and of a *res* to support service by publication. *Atchison v. Morris*, 11 Fed. Rep. 582, followed.

2. SAME—GARNISHMENT—PRIOR FEDERAL SUIT.

B., a nonresident, brought suit in the federal circuit court against C., a resident, to recover moneys due. Pending that action, and before trial, A., a resident, brought suit in the state court against B., and therein garnished C. as debtor of B. B. filed a petition for removal of the suit to the federal circuit court. *Held*, that the pendency of the suit against C. in the federal court, being *in personam* only, did not deprive the state court (and the federal court, on removal) of jurisdiction of the garnishment, which was a proceeding *in rem*, though no judgment should have been rendered against the garnishee had the suit remained in the state court.

3. SAME—PLEA OF PRIOR SUIT.

Whether, both suits being now within the same jurisdiction, the plea of prior suit within another jurisdiction is longer availing, *quære*.

At Law. Action by William Ahlhauser against William Allen Butler and others. Heard on motion to dismiss for want of jurisdiction. Motion denied.

Charles Quarles, for the motion.

W. H. Timlin and *C. H. Hamilton*, opposed.

JENKINS, District Judge. The defendants, citizens of New York, brought suit in this court against Messrs. Cotzhausen, Sylvester & Scheiber, citizens of Wisconsin, to recover certain moneys claimed to be owing from them. Pending that action, and before trial thereof, the plaintiff here, a citizen of Wisconsin, brought this suit in a court of the state of Wisconsin, and therein garnished the defendants in the other suit as debtors of the defendants here, and for the debt which was the subject-matter of controversy in that other suit. The garnishees answered, and *inter alia* pleaded the pendency of the prior suit against them in this court. There was no personal service of process upon the defendants, substituted service being had by publication under the state law. The basis of jurisdiction was that the debt garnished was property of the defendants within the state, and subject to attachment. Within the time for answering, and without otherwise appearing to the suit, the defendants filed in the state court their petition for the removal of the suit into this court, and it was removed accordingly. The defendants now appear specially to a motion to dismiss this suit for want of jurisdiction of the state court in this: that the debt was not subject to garnishment because of the pendency of the prior suit against the garnishees in another jurisdiction; that, therefore, no property or debt was impounded in the state court which could be subjected to the payment of the plaintiff's demand if and when ascertained, and there was no *res* for the exercise of any jurisdiction by the state tribunal.

It is objected preliminarily that the filing of the petition for removal