

THE AMERICA.

JEPSON v. THE AMERICA.

(District Court, D. New Jersey. June 20, 1893.)

1. MARITIME LIENS—SERVICES RENDERED IN HOME PORT—WATCHMAN.

The services of a watchman or shipkeeper, rendered to a vessel lying at her home port, create no maritime lien.

2. SAME—LACHES OF CLAIMANT—COSTS.

Where, however, the claimant of a vessel which is libeled for such services is guilty of laches, in that he fails to intervene until after judgment pro confesso and order of sale, he will be required to pay the libellant's costs, as a condition of opening the decree.

In Admiralty. Libel by Jep Jepson against the dredge America, her tackle, etc., for wages. Libellant was a watchman on said dredge while she was in port. There was a decree pro confesso, and order of sale. The claimant moved to open the decree pro confesso, and let him into a defense, on the ground that watchman's wages were not the subject of a maritime lien. Motion granted on payment of costs.

Frank B. Stockley, for the motion.

Joseph H. Brinton, opposed.

GREEN, District Judge. This claim is a meritorious one, and should be paid. The services for which wages are claimed by the libellant were faithfully performed, and should be compensated for. But, unfortunately for the libellant, he has mistaken his remedy for the wrong done him. The libellant was employed simply as a shipkeeper or watchman of the dredge America, a domestic vessel, while she was lying in port. Such employment, and the consequent services rendered, are not maritime, and cannot be the basis of a maritime lien. *The E. A. Barnard*, 2 Fed. Rep. 712; *The Island City*, 1 Low. 375. The libel must therefore be dismissed.

In this case, however, the claimant has been guilty of laches. The libel was duly filed, and the cause proceeded regularly to a decree pro confesso, and an order for sale of the dredge. Then, for the first time, does the claimant intervene, and asks the indulgence of the court, seeking to open the decree pro confesso, and to interpose the defense which has been made. Had the defense been different in character, it is very doubtful whether the court would have interfered. But, having felt constrained to permit the defense to be made, it grants such permission to the claimant, but only upon the terms that the claimant shall pay all taxable costs thus far incurred by the libellant in the cause.

Upon payment of these costs, let the libel be dismissed.

RUSTED v. NICARAGUA MAIL STEAM NAVIGATION & TRADING CO.

(District Court, S. D. New York. June 23, 1893.)

COLLISION—STEAMSHIP AND LIGHTER—ORDERS TO CAST OFF.

A lighter came alongside of a steamship at anchor in an open roadstead, and, on being cast off, was carried by the swell against the ship's side, causing the latter some damage, to recover which this libel was filed. On conflicting evidence, the court found that the master of the ship had ordered the lighter away, and had given the order to cast off her lines, whereupon the collision had occurred before the tug in charge of the lighter could get her under control in the seaway. *Held*, that the ship could not recover.

In Admiralty. Libel for collision. Dismissed.

Goodrich, Deady & Goodrich, for libelant.

Daly, Hoyt & Mason, for respondents.

BROWN, District Judge. In the forenoon of October 19, 1891, while the libelant's steamship *Albert Dumois* was discharging cargo, being at anchor in the roadstead off Graytown, Central America, she received some slight damage from a loaded lighter, which had been towed out to her by the respondents' tug. There was a heavy swell rolling towards the land, which was on the port side of the ship. The libelant contends that the lighter was negligently cast off by the tug when 20 or 30 yards distant on the port or lee side of the steamship, and that either by the current or the sea, the lighter was swung against the port side of the steamer, doing some damage to one of her plates. The master and one additional witness for the steamer testify to the above facts. Four witnesses for the tug, however, namely her pilot, mate and engineer, and a lighterman from another lighter alongside the steamer, all testify that the lighter was first properly landed alongside the steamship, and made fast to her by stern and bow lines before the collision; that the tug thereupon drew away and hauled in her hawser; that the master of the *Dumois* thereafter hailed the tug to take the lighter away as he had not enough crew to handle two lighters at one time; that he also gave the order to cast off the lines of the lighter from the *Dumois*; and that the stern line having been cast off before the lighter had been made fast to her, the lighter swung off somewhat from the ship, but not being under control in the heavy swell, the two again came together, causing the slight damage complained of. The master of the *Dumois* testifies that he did direct the tug to take the lighter ashore again, but says that this was after the collision.

The weight of testimony seems to me clearly in favor of the respondents. One passage in the testimony of the master is, moreover, in conflict with the rest of his testimony on this point, although nothing is stated as a correction of it:

"Question. Did you give any orders to the *Millard* to cast off lighter No. 1 when it came alongside on the 9th of October? Answer. Yes, sir; after she struck.