

would not be an unreasonable share; but in this case there has been no appeal on behalf of the officers and crew from the decree fixing their amounts, and, although we consider a larger proportion might well have been given them, we do not desire to increase the amount decreed them by the court below. The sum of \$5,275 (the same amount given in the former decree) will be awarded to the officers and crew of the steamship Engineer in the same proportions as were awarded them therein, and the sum of \$13,441 to the Charente Steamship Company, Limited, owners of the steamship Engineer.

In the matter of the intervening libel of Rousseau, Latour & Co. et al., we consider the reasoning of the learned judge in the case of *The Persian Monarch*, 23 Fed. 820, which we cordially approve, is conclusive. The property of the interveners in no way assisted in rendering the service, nor received any damage or injury from it. It would be most strongly against public policy, upon which salvage is founded, to permit the owner of every shipment in a cargo to claim a portion of any salvage award earned by the efforts of the officers and crew, and the use of the machinery and power of the ship in which it was carried. The accepting a bill of lading in which was specially reserved the right to render aid to vessels in distress was no such consent on their part to the rendering of such service as could entitle them to a portion of what was so earned. *The Persian Monarch*, 23 Fed. 820; *The Nathaniel Hooper*, 3 Sumn. 542, Fed. Cas. No. 10,032; *The Waterloo*, 1 Blatchf. & H. 114, Fed. Cas. No. 17,257; *The Colon*, 10 Ben. 60, Fed. Cas. No. 3,024; *The Brixham*, 54 Fed. 540. The decree dismissing the intervening libel is so far affirmed.

It is ordered that the decree upon the libel below be reversed, and the cause be remanded with directions to enter a decree for the libelants for the sum of \$18,716, with costs, and of said amount \$5,275 be awarded to the officers and crew of the steamship in the proportion of their rank and pay, as before decreed, and the sum of \$13,441 to the Charente Steamship Company, owners of the steamship Engineer; and that appellees pay the costs of the appeal.

THE ALFRED J. MURRAY.

AMERICAN TOWING & LIGHTERING CO. v. THE ALFRED J. MURRAY.

(District Court, D. Maryland. March 9, 1894.)

1. MARITIME LIENS—INNOCENT PURCHASERS—TAKING VESSEL FOR DEBT.

One who takes a barge in payment of a debt is not an innocent purchaser, so as to entitle him to the benefit of the rule that, when the business in which a vessel is engaged is divided into distinct seasons of activity, old claims must be enforced before the debts growing out of the next season are incurred.

2. SAME—EXTINGUISHMENT—TAKING NOTE.

The taking of a note does not extinguish the lien, unless such was the understanding of the parties.

Libel by the American Towing & Lightering Company against the barge Alfred J. Murray.

Robert H. Smith, for libelant.

R. M. McSherry and Alan McSherry, for respondent.

MORRIS, District Judge. If the claimants of the barge were the same owners who contracted the debts for which maritime liens are asserted by the libelant and petitioners, there would be no doubt of the respective rights of the libelant and petitioners to enforce their liens in rem against the barge. The only ground of defense is that, by laches in allowing their respective claims for towage and supplies to run on, accumulating during the year preceding the sale to the present owners, they have been guilty of such laches as estops them from now asserting the lien against the barge in the hands of her present owners.

The present owners obtained title May 9, 1893, from J. A. and C. Griffin, who owned the barge at that date, and who were the owners when the claims of the libelant and petitioners were contracted. They had failed in business in April, and owed the claimants a debt, in payment of which they had nothing to offer except their interest in the barge, and the claimants, in their effort to secure something, obtained their title to the barge. The claimants were creditors of J. A. and C. Griffin, just as the libelant and petitioners were, except that they had no lien on the barge for their debt. The claimants were not, therefore, purchasers for value who paid money on the faith of their purchase, but simply unsecured creditors seeking to get what they could on account of their debt.

The rule which applies to the case of a purchaser for value does not apply to them. They knew, from specific information, that there were some small unpaid claims for supplies, and they took the chances as to there being others. They acquired only the interest of their debtors. *The Key City*, 14 Wall. 660; *The James T. Easton*, 49 Fed. 656. Undoubtedly, there are many cases in which so long a delay in enforcing a maritime lien as in this case would properly be held to be laches, but the circumstances which excuse the nonenforcement are always to be considered.

With regard to the libelants, they could not conveniently have caused the arrest of the barge, except when she was in the prosecution of a voyage, and as to the petitioners, although she was frequently in her home port, in New Jersey, where they lived, it was only for a brief interval, when she was discharging or loading, and from December to March she was laid up for the winter at a distance on a remote river of Virginia. Their claims were all small compared to the value of the barge, and were for items of a continuing account. When barges and vessels are used in a business in which the year is divided into distinct seasons of activity, it is a wise rule which requires that, as against purchasers for value or meritorious lien claims, old claims must be enforced before the debts growing out of the next season are incurred; but

the claimants in this case were not purchasers for value, and are not entitled to the benefit of that rule.

The taking of a promissory note by the libelants does not affect their rights to maintain their lien. It is established law that the taking of a note does not extinguish the lien of the claim for which it was given unless such was the understanding of the parties.

The first item—\$60.09—of Tunison's account is disallowed.

The claims are allowed, without interest and without costs.

THE SHARPEE SHE.

BRALEY v. BELL.

(District Court, S. D. New York. March 24, 1894.)

COLLISION—ANCHORED VESSEL—BREAKING ADRIFT—INSECURE ANCHORAGE.

When the owner of an anchored vessel has reasonable notice of the insufficiency of his anchorage, and the danger of drifting in a storm, he takes the risks of such drifting, and a collision caused thereby is due to his neglect, and cannot be held to be inevitable.

Stewart & Macklin, for libelant.

John J. Roach and Peter S. Carter, for respondent.

BROWN, District Judge. During the storm of the night of September 13 to 14, 1892, the defendant's yacht Growler, anchored upon the grounds of the Pavonia Yacht Club, at Communipaw, dragged and fouled the libelant's yacht Sharpee She, causing her some damage. The owners of both yachts were members of the same yacht club. There were no rules of the club concerning the mode of anchoring; and the sufficiency and responsibility of each must, therefore, be judged by the ordinary rules of law.

I must find, upon the evidence, that the anchorage ground was an unsafe one in storms, by the usual methods of anchoring, and was known to be so. The ground was soft mud, beneath which were oyster shells, under which was again mud. Anchors would not take a firm hold. Drifting and fouling in storms had been previously frequent; and the insecurity of the anchors was, I must find, so generally known that reliance upon them in storm was at the risk of the owner that used them. Many of the yachts were made fast to poles driven from six to eight feet into the mud. The libelant's yacht was made fast in that way, and held both yachts through the remainder of the storm after the Growler had fouled and remained pounding her. The storm in this case was not of any extraordinary severity; and where there is reasonable notice of danger of drifting in storms that are liable to arise, the owner takes the risk of reliance on means known to be of doubtful sufficiency. No accident in such cases can be held to be "inevitable." Many authorities to this effect are cited in the recent case of *The Anerly*, 58 Fed. 794.

Decree for the libelant, with costs.