

The orator makes and sells these patented attachments; marks them "Patented September 10, 1889," the date of the former patent, and not as patented at the date of this patent. The statute (section 4900) requires a patentee making or selling the patented articles to give notice of the patent by fixing thereon, or on the packages, the word "Patented," with the day and year of the grant, and provides that, on failure in this, no damages shall be recovered, except on proof that the defendant was duly notified of the infringement, and continued it afterwards. This statute prevents a manufacturing patentee from recovering any damages without alleging and proving, either the marking of the articles or packages as patented, with the day and year of the patent, or actual notice to defendants of the patent and the infringement, as a part of the case. *Dunlap v. Schofield*, 152 U. S. 244, 14 Sup. Ct. 576. In this case the orator has alleged marking the articles "Patented," "according to the statute," without alleging actual notice of the patent or of the infringement. The answer neither admits nor denies this, but puts the orator to proof of it. The proofs do not show marking with the day and year of this patent, and therefore the orator has failed to show any right to recover damages for the infringement of this patent. Upon these considerations the orator seems to be entitled to an injunction only.

Let a decree be entered for the orator for an injunction, with costs

THE WANDRAHM.

MERRITT et al. v. THE WANDRAHM.

(District Court, E. D. New York. August 1, 1894.)

MARITIME LIENS—CONTRACT—RAISING SUNKEN VESSEL.

A subcontract to furnish materials and do certain work in the raising of a vessel sunk in the St. Lawrence river for a stated sum *held*, in view of all the circumstances, and especially the absence of any reference to the credit of the vessel, to have been made upon the credit of the principal contractors alone, and to have given the subcontractors no lien.

This was a libel by Israel J. Merritt and another against the steamship Wandrahm to enforce an alleged lien.

Benedict & Benedict, for libelants.

Hyland & Zabriskie, for claimants.

BENEDICT, District Judge. The steamship Wandrahm having been wrecked in the St. Lawrence river, her owners made a contract with the Morse Iron Works, a corporation of the state of New York, by which the vessel was to be raised by the Morse Iron Works, brought to New York, and there repaired so as to restore her to her former condition, the whole for the sum of \$60,000, to be paid by the owners to the Morse Iron Works. Thereafter, the Morse Iron Works employed the libelants to do certain work in raising the vessel then sunk in the St. Lawrence river, in pursuance of

which employment the libelants dispatched eight men and some \$10,000 of material to the St. Lawrence river, to be used in raising the vessel. They now seek, by this proceeding, to enforce a lien upon the vessel for the contract price of the work done and materials used by them in the performance of their contract with the Morse Iron Works.

In view of all the circumstances, the situation of the vessel, and the fact that the libelants' contract with the Morse Iron Works made no allusion to the credit of the vessel, I am of the opinion that the evidence does not justify holding that the libelants furnished the labor and material on the credit of the vessel, but, on the contrary, shows that the libelants relied on the credit of the Morse Iron Works alone. Upon this ground the libel is dismissed.

THE NIKITA.

SUNDSTROM v. FRAGNUL.

(Circuit Court of Appeals, Fifth Circuit. June 5, 1894.)

No. 229.

MARITIME LIENS—ENFORCEMENT—LACHES.

Attempts to enforce a lien for supplies and repairs to an Italian vessel at Marseilles were made at her first port of arrival in Europe, and, about a year later, on her return to Europe from a voyage to Buenos Ayres; but, though payment was contested, no effort was made to follow the vessel to Buenos Ayres, the only port to which she made regular voyages, and the residence of her owner; and the lien was not indorsed on her certificate of registry as provided by the law of Italy for giving notice of such liens. *Held*, that the lien could not be enforced against an innocent purchaser for full value of the vessel at Buenos Ayres, who made every possible inquiry before purchasing.

Appeal from the District Court of the United States for the Northern District of Florida.

This was a libel by John O. Sundstrom against the bark Nikita, formerly named the Duca di Galliera, to enforce claims for repairs and supplies. The district court dismissed the libel. Libellant appealed.

John C. Avery, for appellant.

W. A. Blount and A. C. Blount, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

LOCKE, District Judge. The Italian bark Duca di Galliera, declared to be of Genoa, with one G. Maglio, master, was at the port of Marseilles, France, in November, 1888, and had sails and tarpaulins made, and other canvasswork, amounting to 2,921 francs, done, by John O. Sundstrom, for which Maglio, as master, gave him a note payable to his order 20 days after his arrival at a port in Europe from the voyage which he was about to undertake, to Buenos Ayres and Pensacola, or, in the event of the loss of the