

she may be sold in any port that the lien should not be enforced or secured with all possible dispatch. The speed of mail or telegraphic communication in these days of steam and electricity has changed materially the principle of laches in admiralty; and what in the past would have been accomplished with so much difficulty, in enforcing a lien, that no court would have demanded it, is now so little of an inconvenience as to be deemed but reasonable. The ease with which maritime information can be obtained, and the movements of vessels of all classes traced, leaves no excuse for lack of diligence or loss of time in permitting them to continue their voyages under a secret lien, and he who does so permit it does it at the peril of encountering the bona fide claim of an innocent purchaser. Any one dealing with a foreign vessel upon credit should inform himself, to a certain extent, regarding the manner given by the laws of that nation for perpetuating and giving notice of such a lien; and while we do not desire to say that an admiralty lien, honestly obtained, should not be enforced under the laws of a forum permitting such enforcement, even in the absence of such a registration as is required, such registration is an additional protection and safeguard, of which the creditor should avail himself, if he desires to show due diligence. The papers of a vessel are always open to the examination and inspection of any one of whom the master is asking credit, and the law for the registering of liens upon vessels of the nationality of this one, as shown in this case, is but a reasonable protection for all parties dealing with her, which should be taken advantage of by them. While no laches can be imputed to the libellant, in this case, which would render void or invalid his lien in the absence of any superior intervening right, the intervention of such right is a risk which he assumed when anything but the utmost diligence was exercised, especially where notice of a desire to avoid payment and contest any suit was plainly given. In not following up the enforcement of his lien with greater diligence, and not seeing that it was duly indorsed upon the certificate of registry, we consider that the libellant has been so far guilty of laches as not to be entitled to protection at the expense of an innocent purchaser, who in no way appears to be in fault, but who made every inquiry possible before purchasing. It is ordered the decree below be affirmed, with costs.

THE J. G. CHAPMAN.

McCAFFREY v. THE J. G. CHAPMAN.

(District Court, D. Minnesota, Third Division. August 13, 1894.)

1. ADMIRALTY—ARREST OF VESSEL IN CUSTODY OF ASSIGNEE IN INSOLVENCY—PROPERTY IN CUSTODIA LEGIS.

After the owner of a vessel has made an assignment of all his property, including the vessel, under the insolvency law of Minnesota, and the assignment has been perfected, a United States marshal has no authority to seize

her under process from a federal court; for, under the law of Minnesota, the assignee is an officer of the state district court, and when the assignment is perfected, the assigned property, ipso facto, comes under its jurisdiction, and is in custodia legis.

2. SAME—ADMIRALTY CLAIMS IN STATE COURT.

A state court, having custody of a vessel through its assignee in insolvency, cannot adjudicate a maritime claim without the assent of the owner thereof; neither can it compel him to appear and assert his claim; and he can pursue his remedy in rem after the state court has disposed of the vessel.

This was a libel by Hugh McCaffrey against the steamer J. G. Chapman for wages. The claimant moved to dismiss for want of jurisdiction.

Williams, Goodenow & Stanton and Steel & Selover, for libellant.

Mullen & Bowditch and Warner, Richardson & Lawrence, for respondent.

NELSON, District Judge. A libel in rem was filed against the steamer J. G. Chapman, a vessel navigating the waters of the Mississippi, and duly registered at the port of La Crosse, to recover a balance due libellant for wages as pilot upon that steamer; and a motion is made to dismiss for want of jurisdiction.

Some months before the seizure by the United States marshal, the owner of the boat had made an assignment of all his property, which included this steamer, under the insolvency laws of the state of Minnesota; the assignee had duly qualified; and the assignment was perfected. An assignee, under the insolvency law of Minnesota, is recognized as an officer of the state district court; and, as long as he is in possession of the property, the marshal of this court cannot interfere with such possession, even to enforce a maritime claim. The supreme court of Minnesota has uniformly held that the insolvency law of 1881 is a bankrupt act, and that, when the assignment is perfected, the assignee is an officer of that court. *Simon v. Mann*, 33 Minn. 412, 23 N. W. 856.

The steamer was at the time of the seizure in the custody and under the jurisdiction of the district court of Wabasha county. In the language of the state supreme court in *Simon v. Mann*, supra:

"Upon the execution of the assignment, and filing it in court, the entire subject-matter, and everything involved in it, including the assigned property, come under the jurisdiction of the court, ipso facto, and the assigned property is in custodia legis."

See, also, *In re Mann*, 32 Minn. 60, 19 N. W. 347, where the court uses the same language.

That a federal court will not interfere with property in the custody of the state court, and in course of administration by it, is well settled. *Taylor v. Carryl*, 20 How. 583; *Lumber Co. v. Ott*, 142 U. S. 628, 12 Sup. Ct. 318. On the other hand, the state court has no authority to adjudicate this maritime claim without the assent of the libellant; neither can it compel him to appear and assert

his claim. When the state court has disposed of the property, then the libelant can pursue his remedy in rem against it, without regard to the proceedings in the state court.

The motion of the claimant is granted to this extent: that the marshal be ordered to deliver possession of the property to the assignee in the insolvency proceedings, from whom he obtained it. The costs will be divided equally between the parties.

THE HEKLA.

NATIONAL STEAMSHIP CO., Limited, v. THE HEKLA.

(District Court, E. D. New York. July 7, 1894.)

1. SALVAGE COMPENSATION—STEAMSHIP WITH BROKEN THRUST SHAFT.

A steamship on the Atlantic ocean, with her thrust shaft broken, must be considered as in a position of peril, although the shaft may be temporarily mended on board; and towing her into port is a meritorious service, entitled to a liberal reward.

2. SAME.

A steamship worth, with her cargo, \$213,300, and having 843 passengers on board, broke her thrust shaft on the Atlantic ocean, and was towed to New York by another steamship, worth \$200,000, having a cargo valued at \$248,000, and freight amounting to \$13,510. The towage occupied nine days, and was skillfully rendered, in rough weather, at an expense of \$3,681.05. *Held*, that \$30,000, with the expenses, was a reasonable reward.

3. SAME—RIGHTS OF CARGO OWNERS.

A shipper whose cattle suffer damage by reason of their detention on board during the extra time consumed in rendering salvage services is not entitled to share in the compensation. *Goldsmith v. North German Lloyds*, 23 Fed. 820, followed.

This was a libel by the National Steamship Company, Limited, against the steamship Hekla, her cargo and freight money, to recover for salvage services. The owner of cattle forming part of the cargo of the vessel rendering the services intervened, claiming to be entitled to share in the salvage award.

John Chetwood, for libelant.

Wing, Shoudy & Putnam, for claimants.

Butler, Stillman & Hubbard, for intervener.

BENEDICT, District Judge. This is an action to recover salvage compensation for services rendered the English steamship Hekla by the National steamship America in April, 1893. The Hekla, being a steamship of 2,113 tons, bound to New York, having a cargo on board consisting in part of exhibits for the World's Fair, and 843 passengers, on March 24th, when about 1,500 miles from New York and 250 miles from St. Johns, Newfoundland, broke her thrust shaft. The shaft was repaired, and on the evening of the 25th the steamer proceeded under steam towards New York. On the 27th a council of the officers of the steamer was held, at which it was decided to accept