

THE BATTLER.

WESTERN ASSUR. CO. et al. v. SCHRADER et al.

(Circuit Court of Appeals, Third Circuit. February 13, 1896.)

TOWAGE—LOSS OF BARGES—LIABILITY OF TUG.

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

This was a libel in rem by the Western Assurance Company of Toronto, Canada, against the tug *Battler*, to recover damages for loss of coal, insured by libellant, which was shipped on the barges *Tonawanda* and *Wallace*, and lost, with them, through the alleged negligence of the tug. Frank M. Neall, trustee, as claimant of the *Battler*, filed a petition for limitation of liability. See 58 Fed. 704. The district court held that libellant was not entitled to share in the proceeds of the tug because it had refused to join with the owner of the barges in an attempt to hold the tug liable, and had stood by, pending the suit brought by him (see 55 Fed. 1006, and 72 Fed. 537), and did not present its claim until a decree had been obtained therein. The court held that, by such conduct, the assurance company had waived or forfeited its claim, in so far as the libellant in that suit was concerned. 67 Fed. 251. From this the assurance company appealed.

John F. Lewis, for appellant.

Henry Flanders, for appellees.

Before ACHESON and DALLAS, Circuit Judges, and WALES, District Judge.

ACHESON, Circuit Judge. The decree we have just rendered in the case of *Neall v. Schrader*, 72 Fed. 537, makes it unnecessary for us to consider the questions raised by the appeal of the Western Assurance Company. The views we have expressed in our opinion in the other case require a reversal of the decree of the court below in this case. In remanding this record, however, we will make no order with respect to the costs in the court below in the proceeding for the limitation of the liability of the owner of the *Battler* (No. 115 of 1893) 58 Fed. 704, but will leave the question of costs in that proceeding to the judgment of the district court.

The decree of the district court is reversed.

 THE OBDAM.

INTERNATIONAL NAV. CO. v. THE OBDAM.

(District Court, D. New Jersey. February 27, 1896.)

SALVAGE COMPENSATION.

Eighteen thousand dollars awarded to a steamship worth, with her freight, \$90,000, for towing into Halifax in rough weather a steamer valued, with her cargo, at \$384,000, which was found with a broken shaft, some 30 miles from Sable Island, in a condition in which her propeller was liable, in the course of long drifting, to batter the rudder post, and seriously damage the ship.

This was a libel by the International Navigation Company against the steamship *Obdam* to recover compensation for salvage services.

Robinson, Biddle & Ward, for libellants.

Wing, Putnam & Burlingham, for claimant.

GREEN, District Judge. On Thursday, October 31, 1895, in the forenoon, the steamship Pennland, bound on a voyage from Liverpool to Philadelphia, sighted a steamship to the northwest, apparently in distress. This vessel proved to be the Obdam, from Rotterdam, bound to New York. It appeared that her shaft was broken; that she had but an insignificant sail area, and was drifting as the wind and tide might take her. At her request, the Pennland took her in tow, and though, from stress of weather, she was compelled to abandon her for a time, the towing hawser breaking, she afterwards went to her assistance again, and brought her safely into the harbor at Halifax. This action is to recover for these services. It is stipulated that the Pennland, which is a mail, passenger, and freight steamer, is worth \$90,000, and that the Obdam and her cargo were worth \$384,000. It is not denied that the service rendered was a salvage service. The only question in dispute concerns the amount to be awarded. It is alleged by the libellant that when taken in tow by the Pennland the Obdam was in very dangerous proximity to Sable Island, notorious for disastrous shipwrecks. It is quite true that shortly before she was taken in tow the Obdam had drifted to within 30 miles of this "Graveyard of the Atlantic." But the wind had veered to the northwest, and just previous to commencement of these salvage services she had drifted away from this locality, and seemed to be in no immediate danger, at least from this source. It is also claimed that the breaking of the propeller shaft made it possible for the propeller itself, during a long drift, to batter the rudder post, and so seriously damage the ship. This was undoubtedly an element of danger, and deserves consideration. The distance towed was about 200 miles. The actual time consumed was about 2½ days. The services rendered were every way meritorious, and deserve substantial reward. Perhaps more so on account of the position of the Obdam when help was given her, for it is not disputed that she was some distance north of the usual track of vessels crossing the Atlantic, and in fact, from the time of her accident until she was sighted by the Pennland, she had seen but one vessel, and that a fishing vessel, who had promised to report her at the first opportunity. Salvage awards must of necessity be to some extent arbitrary, and rest in the discretion of the court. Having in view the general principles which underlie such awards, and having respect to the special circumstances of this case, the sum of \$18,000 is awarded as a fair salvage.

BISSELL CARPET-SWEEPER CO. v. GOSHEN SWEEPER CO.

(Circuit Court of Appeals, Sixth Circuit. March 5, 1896.)

No. 404.

1. CIRCUIT COURT OF APPEALS—JURISDICTION—INTERLOCUTORY DECREE—DISSOLVING INJUNCTION.

An order so modifying an interlocutory decree for a broad perpetual injunction against infringing a patent as to permit defendant to manufacture and sell for a limited time certain infringing machines is an order dissolving pro tanto the original injunction, and is, consequently, an appealable interlocutory order or decree, within the act of February 18, 1895, amending section 7 of the act of March 3, 1891.

2. APPEAL FROM INJUNCTIONAL DECREE—EFFECT OF SUPERSEDEAS.

An appeal with supersedeas from an interlocutory decree granting a perpetual injunction against infringement of a patent on a bond conditioned to prosecute the appeal, and, on failure to make the same good, to pay costs and damages, "as well as all damages and profits resulting from" defendant's manufacture and sale of the infringing articles "after the date of the said decree," only operates to suspend the injunction pending the appeal, and is not a license to defendant to continue the manufacture and sale of the infringing articles pending the appeal.

3. CIRCUIT COURT OF APPEALS—EFFECT OF DECISIONS.

The decree and mandate of the circuit courts of appeal have precisely the same finality as the decrees and mandates of the supreme court. Whatever is before the court by virtue of the appeal, and is disposed of by it, is finally settled, and becomes the law of the case, so that the court below must carry it into execution according to the mandate, without power to modify, reverse, enlarge, or suspend it.

4. SAME—APPEAL FROM INTERLOCUTORY ORDERS AND DECREES.

It is the practice of the court that, on an appeal from an order or decree granting a preliminary injunction merely, the court will not ordinarily consider or determine the merits of the cause, but will confine itself to a consideration of the question as to whether the court below has abused its discretion. Consequently, when such an order or decree is affirmed, the court below is still at liberty to enlarge, modify, or suspend the same, as the future circumstances of the case or the ends of justice may require.

5. SAME—APPEAL FROM INTERLOCUTORY DECREE FOR PERPETUAL INJUNCTION.

Where, on appeal from interlocutory decree granting a perpetual injunction, the court necessarily examines and determines the entire merits of the cause, its power to decree is not limited to the matter of the injunction alone, but extends to the whole merits, and its decision is final and conclusive on every point actually decided. Consequently, the court below has no power to modify, in any respect, a decree which is thus affirmed, but must give it full effect in the very terms of the decree of the appellate court. *Richmond v. Atwood*, 2 C. C. A. 596, 52 Fed. 10, and *Marden v. Manufacturing Co.*, 15 C. C. A. 26, 67 Fed. 809, followed. *Watch Co. v. Robbins*, 3 C. C. A. 103, 52 Fed. 337, overruled.

Appeal from the Circuit Court of the United States for the Western District of Michigan.

A. C. Denison and Geo. H. Lothrop, for appellant.

Charles K. Offield and J. W. Champlin, for appellee.

Before TAFT and LURTON, Circuit Judges, and HAMMOND, J.

LURTON, Circuit Judge. This is a second appeal in this case. The former appeal was by the Goshen Sweeper Company, and was from an interlocutory decree determining the validity of a certain patent owned by the Bissell Carpet-Sweeper Company, and finding
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