

jectionable on the ground that it increases the irrelevant matter in the bill, its length would not be a very serious objection. But it is well, in all cases, to keep the pleadings strictly within the rule. Now, in this case, it is not averred that the respondents or their privies in any way took part in the interference proceedings in the patent office. The result of that interference was the granting of letters patent to Elisha Gray on December 23, 1884. As between the same parties, interference proceedings in the patent office are binding; but, as to outside parties, they may have persuasive force, or not, according to the merits of the interference proceedings. For what purpose are the averments concerning that proceeding inserted in this bill? If they are placed there for the purpose of being used in case an application for preliminary injunction should be made, they will prove of little value or use. Judge Lacombe well says in the case of *Edward Barr Co. v. New York & N. H. Automatic Sprinkling Co.*, 32 Fed. 79, that:

“The complainant relies upon a successful interference in the patent office, in which one Bishop was a party. That such a successful interference is sufficient ground for presuming the validity of a patent is abundantly settled by authority, with one restriction: Namely, that such presumption arises only against the parties to the interference and their privies.”

As the averments concerning these interference proceedings are not binding upon these parties, it is wrong to make an issue concerning them, and to compel the respondents to go to the expense of meeting them in the pleadings. The motion to strike from the bill is therefore sustained.

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### THE KNICKERBOCKER.

#### DARLING v. THE KNICKERBOCKER et al.

(District Court, E. D. New York. January 25, 1894.)

#### MARITIME LIENS—SUPPLIES—DREDGES, SCOWS, ETC.

A dredge, tugs, scows, water boats, etc., composing a dredging plant, cannot be treated as a single vessel, so that supplies furnished to any one of them, without showing which, will constitute a lien payable out of the proceeds of all, under the New York statute giving a lien upon a domestic vessel for provisions supplied to such vessel.

Eighteen libels were filed against a fleet of boats composing a dredging plant,—a tug, a dredge, several scows, water boats, etc.,—for wages, for supplies, for repairs, and for other services. The libels for wages were consolidated by order of court, and, no one opposing, a decree was made for the amounts found due. The men were hired to work on the plant, and served indiscriminately on all the boats. Several libels for towage of the dredge and scows back and forth from New York to Port Jefferson Harbor, on Long Island Sound, where a contractor employed the plant in dredging work for some time, were also filed; and, without opposition, decree was also made for the sums found due for towage. The fleet was sold by order of the court, and the proceeds of sale paid into court as a single fund. Subse-

quently judgment creditors of the contractor intervened for their interest, and, without contest as to the other claims, or objection to their payment out of the fund, opposed the libels for supplies and repairs, claiming that there was no lien therefor on the fleet conjointly, as a domestic vessel. The opinion given below in one case was considered to control them all, and the others were thereafter discontinued. The remainder of the fund in court was then paid to the judgment creditors on their petition.

Thos. J. Ritch, Jr., for certain libelants.

Alexander & Ash, for other libelants and for interveners.

BENEDICT, District Judge. This is an action to enforce a lien upon the above vessels jointly, for supplies furnished by the libelant. He claims a lien by virtue of the statute of the state of New York, the vessels being domestic vessels. The theory of the libel seems to be that this fleet of boats should be treated as one vessel, and, the supplies in question having been bought for the fleet (although used on some of the vessels, and not on others), this gives the libelant a lien therefor upon all of the vessels jointly. This proposition cannot be maintained. The statute of the state of New York creates a lien upon a vessel for provisions supplied to such vessel, and not otherwise. It is impossible to say from the evidence here what part of the supplies in question, or whether any of them, was used to provision any particular vessel. The evidence will not permit holding that the vessels proceeded against were so employed as to constitute in law a single vessel; but, if such a case be possible, the statute of the state makes no provision for a lien upon several vessels so employed. The testimony fails to designate the vessel which was supplied with provisions furnished by the libelant. Doubtless, the provisions were used to supply the needs of men employed on some of the vessels proceeded against, but which of the vessels was supplied by the libelant does not appear. The libel must be dismissed, but without costs.

## THE ANGLER.

## VAN HOESEN v. THE ANGLER.

(District Court, E. D. New York. March 13, 1894.)

**MARITIME LIENS—WAIVER—INNOCENT PURCHASERS.**

A delay of over two years in attempting to assert a lien for damages for wrongful discharge of a pilot held to be a waiver thereof as against purchasers of the vessel who bought her while the lien claimant was suing the owner personally, without giving notice to the purchasers of an intention to hold the vessel, so that they had no opportunity for taking indemnity against the claim.

This was a libel by Francis Van Hoesen against the steamboat Angler, to enforce a lien for damages.

Alexander & Ash, for libelant.

Goodrich, Dedy & Goodrich, for claimants.

BENEDICT, District Judge. This is an action to enforce a lien on the steamboat Angler for damages arising from the discharge of the libelant from the service of the boat before the expiration of his term of service. The libelant was hired as pilot by the then owner of the boat, one Foster, on February 11, 1889, and on July 11, 1890, he was discharged by Foster. In October, 1890, the libelant sued Foster in the state court to recover the same demand here presented. In January, 1892, the steamboat was transferred to a corporation, who are now her owners. In December, 1892, the libelant obtained judgment against Foster in the state court, and on December 27, 1892, he filed his libel against the steamboat in this action. The proofs in regard to the transfer of the boat to the corporation warrant the conclusion that the claimants were bona fide purchasers for value. They purchased the steamboat with no notice that the libelant claimed to have a lien upon her, but with notice that he had sued the former owner for his demand. When the claimants purchased the boat they paid all outstanding debts presented, and the demand of the libelant would then have been paid if it had been presented. It was not presented, and instead it was prosecuted against Foster. Any sum recovered by the libelant in this action will be so much lost to the present owners, for they are without security. Under these circumstances, I am of the opinion that the libelant should be held to have waived his lien against the boat by allowing it to remain dormant for over two years. The cases cited by the libelant are clearly distinguishable from the present case. Here no excuse is given for the libelant's delay to prosecute his claim for over two years; and this delay is coupled with the fact that in the meantime he put his claim in suit against the owner, and gave no notice of an intention to hold the boat, and coupled with the further fact that by withholding such notice he deprived the claimants of the opportunity of seeing that his claim was paid at the time of the transfer of the boat or taking indemnity against it. In such a case it would be inequitable to cause the claimants to pay the libelant's demand. The libel is accordingly dismissed, with costs.