

ever, recognizing the fact that the patent of Berkey & Fox, belonging to the complainant, and the patent of Raymond & Doty, belonging to said Scott, are separate and independent inventions, in no way conflicting with each other, so that the manufacture and sale of the device described in the one is not to be prohibited by any claims described in the other. The rights accorded to the complainant in the fifth paragraph were, however, but a part of those provided for in the agreement. The parties did not intend to have a decree entered in this suit, and an injunction order go against the defendant herein, and continue their disputes in other tribunals. It cannot be that Scott intended to permit decree to be entered against him in the suits wherein he was the real defendant, and then be compelled to forego the advantage of decrees in those wherein he was complainant; to discontinue litigation by submitting to unlimited injunction against himself and his licensees, and receive in return permission to continue his suits for the establishment of his rights under the Raymond & Doty patent, which he claimed were infringed, if he did not submit to such decree as the defendants afterwards saw fit to accede to. The object of the agreement was declared to be the termination of all litigation between the parties, as well that elsewhere as in this court. The rights of the parties were made mutual and reciprocal to accomplish the end in view. Gunn, as well as complainant, is entitled to decrees of settlement.

The privilege of entering decree in this cause will not be granted to the complainants except upon terms, viz. that they should stipulate to give to William S. Gunn their consent to the entry of proper decrees in the said several suits wherein the said Gunn is complainant and they are the real parties defendant, the settlement of which was contemplated by the parties at the time the agreement was signed, to the end that the said agreement may be fully and simultaneously carried into effect.

THE BURTON.

CONSTANTINE et al. v. THE BURTON.

(District Court, D. Massachusetts. February 10, 1898.)

No. 754.

MARITIME LIENS—WHARFAGE AND SERVICES IN DISCHARGING—DEALING WITH BROKER.

Persons who furnish wharfrage and services in discharging, on the order of a broker, who merely states that he is the ship's agent, are placed upon inquiry as to the source of his authority, and are chargeable with notice that he was acting for the charterers, who were required by the terms of the charter party to pay these charges.

This was a libel by Constantine & Co. against the steamship *Burton* to recover for wharfrage and services in discharging the vessel.

John D. Bryant, for libelants.
Carver & Blodgett, for respondent.

BROWN, District Judge. A lien is claimed upon the British steamship Burton for wharfage and services in discharging the vessel in the port of New York. The Burton was under a time charter requiring the payment of such charges by the charterer, the New York, Mobile & Mexican Steamship Company. The libel avers that the wharfage and services were furnished at the special instance and request of the owners. The evidence shows that the libelants received a telephone message from the office of F. J. Lord, a ship broker and steamship agent, that he wished to see the representative of the libelants with regard to discharging a vessel. Libelants' secretary thereupon called at Mr. Lord's office, where he saw a Mr. Duckett, then connected with Mr. Lord in business. He informed Mr. Duckett that he had called in answer to the telephone message, and inquired the name of the vessel, which Mr. Duckett informed him was the "Burton." He then asked if Mr. Lord was the agent, and was informed by Mr. Duckett that he was. After a few minutes, he saw Mr. Lord, who had been engaged when he entered the office; and Mr. Lord told him he had the Burton, and inquired if he had a wharf at which to dock her, and urged him to reserve it, which he agreed to do. Mr. Lord also said he wished libelants to discharge the vessel, and to measure her cargo to determine the quantity, and asked if those services would be rendered at the usual rates, to which libelants' representative responded that the services would be rendered at such rates, and then left. This conversation occurred more than 24 hours before the steamship arrived at the libelants' dock, where she was discharged. There were no dealings with the master, nor were the bills presented for his approval.

As Lord, unlike a master of a vessel, was clothed with no ostensible agency, or apparent authority to bind the owners or the vessel, the libelants were subject to the ordinary rule of law, requiring them at their own risk to inform themselves of the actual authority of the agent. So far as appears, there was no reason for the libelants to assume that Lord was acting for the owners, rather than for the New York, Mobile & Mexican Steamship Company, the charterer, except the ambiguous statement of Duckett that Lord was "the agent." The libelants were dealing with a third person, not the master, not the owner, and, so far as appears, known to them simply as a ship broker, upon whose request they had performed similar services for other vessels. It does not appear that they knew whether the Burton was a foreign or a domestic ship, or whether her owners were resident at the port of New York, or at a foreign port. The duty of reasonable inquiry rested upon the libelants. *The Valencia*, 165 U. S. 264, 270, 17 Sup. Ct. 323; *The Kate*, 164 U. S. 458, 17 Sup. Ct. 135; *The Suliote*, 23 Fed. 919, 926. Had this inquiry been made, they undoubtedly would have learned that the vessel was under a time charter requiring the charterer to pay these charges, and that the vessel was in no need of credit, as her master had funds. There were ample time and oppor-

tunity for inquiries, and the libelants' rights must be determined by the facts as they existed. In *The Ludgate Hill*, 21 Fed. 431, cited by libelants, the fact of a general agency for the owners was proved. See *The Suliste*, 23 Fed. 919-926. In the present case it is not established that Lord was the general agent of the owners, or that in the transaction he assumed to act for the owners rather than for the charterers. To support their libel, the burden is upon the libelants to show that the person with whom they dealt was acting for the owners, and with actual or ostensible authority from them, and that it was intended to pledge the credit of the vessel. *The Valencia*, 165 U. S. 264, 271, 17 Sup. Ct. 323; *The St. Jago de Cuba*, 9 Wheat. 409, 416, 417. This, in my opinion, they have failed to do. I see no reason for distinguishing between the claim for wharfage and that for services. They were both contracted for at the same time, and with the same person. *The Kate*, 164 U. S. 458, 470, 17 Sup. Ct. 135. The libel will therefore be dismissed, with costs.

THE LYDIA A. HARVEY.

TARR v. THE LYDIA A. HARVEY.

(District Court, D. Massachusetts. February 10, 1898.)

No. 854.

1. MARINE INSURANCE—SALVAGE BY INSURER.

A vessel was stranded on the beach, so that the tide ebbcd and flowed through her, and was deserted by her master and crew. Her owner informed the insurer that he was unable to meet the expense of getting her off, and the insurer employed another to raise and float her, replace her ballast, and tow her to port for \$350. The work was performed, the sum paid, and the insurer took an assignment of the salvage claim. *Held*, that the insurer did not act as a voluntary adventurer, but in its own interest, because of the insurance contract, and that it had no claim on the proceeds of her sale.

2. MARITIME LIENS—RESIDUE OF PROCEEDS—NONLIEN CLAIMS.

As against the owner petitioning for payment of the residue of proceeds to him, the court cannot distribute the same in payment of claims not maritime liens.

This was a libel in rem by James G. Tarr against the schooner *Lydia A. Harvey*. The cause was heard on a question as to the distribution of funds in the registry, resulting from the sale of the schooner.

Edward S. Dodge and Chas. Wolcott, for libelants.

J. D. Bryant and L. E. Griswold, for China Mut. Ins. Co.

W. F. Prime, for Lockwood Mfg. Co.

Carver & Blodgett, for Low and others.

Dana B. Gove & Sons, for petitioner Pigeon.

BROWN, District Judge. This case presents questions of the validity of claims to funds in the registry resulting from a sale of the *Lydia A. Harvey*. The China Mutual Insurance Company, as assignee, claims a first lien for salvage. December 16, 1896, the Har-