

That was the opinion of Capt. Matthews and the committee of underwriters. It is not apparent from the result that anything was gained by the delay, nor that any injury arose therefrom save the additional expense of wharfage and expense of crew. If, in any case, it would be prudent to suspend the immediate discharge of a cargo, pursuant to the direction of the surveyors, until the arrival of a special agent, other facts than those here present should be given to justify it. It follows that the items for wages and provisions and wharfage as above should be disallowed.

THE NEVADA.

THE PORTIA.

O'MEARA v. THE NEVADA and THE PORTIA.

(District Court, E. D. New York. February 23, 1898.)

1. ADMIRALTY—SUIT IN REM—SALE OF RES.

A sale of a libeled vessel may be ordered before final decree, on the claimant's motion, when the libelant does not object after due notice, and especially when the claimant is financially responsible and personally liable for all lawful demands against it growing out of the collision in question.

2. SAME.

The claimants could obtain no advantage from such a sale, even in case they should institute proceedings for limitation of liability, for the price realized would not establish the vessel's value for that purpose, though it might be some evidence of value.

This was a libel by John O'Meara against the ferryboat Nevada and the steamship Portia to recover for injury to his horse, caused by a collision between the two vessels. The question was heard on a motion by the claimant for an order of sale of the Nevada before final decree. The owner of the Portia opposed the motion, upon the ground that the Portia had been injured in the collision, and that it was such owner's intention to file a libel against the Nevada therefor.

Hobbs & Gifford, for libelant.

Wilcox, Adams & Green, for the Nevada.

Butler, Notman, Joline & Mynderse, for the Portia.

THOMAS, District Judge. A collision between the Nevada and the Portia on January 31, 1898, resulted in an alleged injury to the libelant's horse, carried on the Nevada. The libel was filed against the Nevada and Portia February 16, 1898. The claim of the Brooklyn & New York Ferry Company, as the owner of the Nevada, was filed February 23, 1898. No other proceedings relating to the collision are before the court, save the pending motion made by the claimant for an order to sell the Nevada before final decree. The libelant did not oppose the motion, and thereby consented thereto. Hence no person who has a property interest in the Nevada, or, so far as the records of the court show, who has taken proceedings

against her, opposes the application. This meets the requirements of rule 33, that no sale of the res will be ordered "except on default or by consent of the parties appearing, unless by express order of the court because of the perishing or perishable condition of the res." There is, under rules 10 and 11, no apparent reason for discrimination against the Nevada on such a motion. The Swedish Bark Adolph, 5 Fed. 114, 116. The owner of the res has, until a decree favorable to the libelant, presumptively the entire beneficial interest, while the burden of establishing the libel rests upon the libelant. But in the present instance, the libelant does not oppose the claimant's application. Nor is it apparent that the owner of the Portia would be prejudiced by a sale. Such owner has no present standing in this court suggesting a right to affirmative relief against the Nevada. But the consideration is a most important one, and very influential in the decision of this question, that the Brooklyn & New York Ferry Company is presumptively of large financial responsibility, and quite able to meet all claims against it; and a libel against it in personam is permitted for damages arising from the collision in question. However, should the claimant desire to resort directly to the ship, the proceeds of the sale would be in the registry of the court, standing in the place of the res, and obtainable by proper proceedings.

It is suggested that the Nevada would be sacrificed if sold at the present time. She should bring as large a sum upon a sale under the order directed to be made herein as under a usual marshal's sale after the deterioration incident to her lying at the wharf during the time necessary to dispose of the litigation with reference to her. Nor would the sale of her be of advantage to her owner, should it institute proceedings to limit its liability. Her value for the purposes of that proceeding would not be established by her sale under the order here applied for, although such sale might be some evidence of her value.

It results from the foregoing suggestions that the motion of the claimant should be granted, but the order of sale should provide for a daily publication of the notice of sale for 12 days previous to such sale, in a newspaper published in the borough of Manhattan, and for a like publication in a newspaper published in the borough of Brooklyn, and for a personal service on all persons who have instituted, or within five days of the day of sale shall institute, proceedings in this court against the ship or her owner, on account of such collision, or any matter arising therefrom. The order of sale will be settled on one day's notice.

IN RE ACCOUNTS OF SHIPPING COMMISSIONER.¹

(Circuit Court, S. D. New York. May 5, 1884.)

SHIPPING COMMISSIONERS—SALARIES AND EXPENSES—REGULATIONS.

On motion of the shipping commissioner of the port of New York for confirmation of his accounts of the receipts and expenditures of his office for the year 1882, *held*, that the payment of a salary of \$3,648 to each of his three sons as deputies was unreasonable and excessive, and that for the future the following regulations should be adopted: (1) That the employment of one chief clerk, deputized, in case of necessity, to act for the shipping commissioner in his official capacity, and to be allowed a salary not to exceed \$2,500 per annum, may be justified by the demands of the office, and is authorized. (2) Three other clerks, at salaries not to exceed \$1,200 each, or two at salaries not to exceed \$1,600 each, in the discretion of the commissioner, may also be employed. (3) All compensation received by the commissioner, or his subordinates, for services rendered during office hours to owners or masters of vessels or to seamen, are to be accounted for and returned with the receipts of the office.

In the Matter of the Confirmation of the Accounts of the Shipping Commissioner of the Port of New York.

Elihu Root, U. S. Dist. Atty.

Enos N. Taft, for shipping commissioner.

WALLACE, Circuit Judge. The immediate question presented by the report of the master, and the motion made on behalf of the shipping commissioner to confirm the report, is whether the salaries paid by the shipping commissioner to his deputies for the year 1882 were reasonable. Having filed his account of the receipts and expenses of his office for the year 1882, an order was made, pursuant to the established mode of procedure since the year 1876, by which the account was referred to a master for an examination and report to the court, upon notice to the United States attorney. Pursuant to that order, Mr. Gutman, the master, in February, 1883, filed his report, showing that the receipts of the office for the year 1882 were \$22,531.50, and the expenses for the year were \$22,531.50. Among the items of expenses in that account were three, of \$3,648 each, paid by the shipping commissioner to his three sons, for their salaries as deputy shipping commissioners. Upon the motion to confirm that report, objection was made by the United States attorney that the salaries paid by the shipping commissioner to his deputies were excessive. Thereupon, and on the 2d of October, 1883, this court made an order referring back the report to the master, and directing him to take such proof as might be produced by the shipping commissioner and by the United States attorney, and report explicitly upon the reasonableness of these salaries. Although, since 1875, the accounts of the shipping commissioner have been returned annually, have been passed by a master, and on several

¹ This case has been heretofore reported in 22 Blatchf. 148, and is now published in this series, so as to include therein all circuit and district court cases, elsewhere reported, which have been inadvertently omitted from the Federal Reporter or the Federal Cases.