

vessels. The mere fact that the work of saving occupied the *Mary* only two or three hours does not materially affect the case. In the case of *The Blackwall*, 10 Wall. 1, where fire engines from San Francisco put out a fire on the steamer in the harbor in 30 minutes, the supreme court of the United States sanctioned an award of many thousands of dollars salvage. Really, the only open question in the case is, what shall be the amount of award? I consider the value of the *Carrie* after she was delivered at Blair's wharf was \$2,400. I will give a decree for a fourth of this value; that is to say, for \$600. As to the portion of the cargo that was saved, I will give a decree for half its net value.

TWO HUNDRED AND SIXTEEN LOADS AND SIX HUNDRED AND SEVENTY-EIGHT BARRELS OF FERTILIZER.¹

(District Court, E. D. Virginia. July 13, 1881.)

DEMURRAGE—LIEN ON CARGO—EFFECT OF DELIVERY.

When cargo has been absolutely delivered to the consignee before service of process thereon, the lien for demurrage is lost.

This was a libel for demurrage filed by Thomas K. Jones, master of a schooner, against her cargo of fertilizer. The libel was filed on the day on which the delivery of the cargo to the consignee was completed, and process was not served thereon until the following day.

HUGHES, District Judge. There is no doubt that a cargo may be libeled for freight so long as it is on the vessel or in custody of a wharfinger or warehouseman, holding either actually or constructively for the owner of the vessel. But, when the cargo has been absolutely delivered to the consignee against whom the freight is claimed, the maritime lien is lost, and the jurisdiction of the admiralty court to enforce it is lost with it; for it is settled law that "the lien of a ship-owner for freight, being but a right to retain the goods until payment of freight, is inseparably associated with the possession of the goods, and is lost by an unconditional delivery to the consignee." See the opinion of Chief Justice Taney in *Bags of Linseed*, 1 Black, 108. The libel must be dismissed at the libellant's costs; and the clerk may check upon the fund in bank for the costs, and, after deducting these, then in favor of the master for the residue of the sum.

¹ This case has been heretofore reported in 5 Hughes, 310, 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*.

MEMORANDUM DECISIONS.

ABILENE v. FOLEY. (Circuit Court of Appeals, Fifth Circuit. February 25, 1897.) No. 510. In Error to the Circuit Court of the United States for the Northern District of Texas. T. J. Freeman, Wm. Alexander, W. H. Clark, and W. L. Hall, for plaintiff in error. W. L. McDonald, for defendant in error. Dismissed pursuant to the twentieth rule.

ALABAMA G. S. R. CO. v. CARROLL. (Circuit Court of Appeals, Fifth Circuit. June 7, 1897.) No. 518. In Error to the Circuit Court of the United States for the Southern Division of the Northern District of Alabama. A. G. Smith and James Weatherly, for plaintiff in error. Sam. Will John and Richard L. Brooks, for defendant in error. Reversed and remanded, with directions to dismiss for want of jurisdiction. A petition for a rehearing having been allowed, the opinion was on June 7, 1897, withdrawn by order of the court. See 28 C. C. A. 207, 84 Fed. 772.

AMERICAN CONST. CO. v. PENNSYLVANIA CO. FOR INS. ON LIVES AND GRANTING ANNUITIES. (Circuit Court of Appeals, Fifth Circuit. April 20, 1897.) No. 520. Appeal from the Circuit Court of the United States for the Southern District of Florida. H. Bisbee and C. D. Rinehart, for appellant. J. C. Cooper, for appellee. Dismissed pursuant to the twentieth rule.

PRESIDENT, ETC., OF BANK OF KENTUCKY v. CITY OF LOUISVILLE.

(Circuit Court, D. Kentucky. June 4, 1898.)

No. 6,556.

RES JUDICATA.

Humphrey & Davie, for complainant.
Henry L. Stone, for defendant.

Before HARLAN, Circuit Justice, and TAFT and LURTON, Circuit Judges.

TAFT, Circuit Judge. The bill filed herein presents the same questions as those already considered in the case of Bank v. Stone, 88 Fed. 383; but it relates to the taxes for 1893-94, which were certified down by the state board of valuation and assessment to the city of Louisville for collection. We do not think that the questions differ in any respect from those already considered, and must therefore hold that the city of Louisville is estopped by the former judgment between the bank of Kentucky and it, in which it was held by the court of appeals of Kentucky that the Bank of Kentucky had an irrevocable contract under the Hewitt act (Act Ky. May 17, 1886) for the exemption of the property and franchise of the Bank of Kentucky from any other taxation than as therein imposed; and therefore that the bank is entitled to the preliminary injunction against the collection by the city of Louisville and its agents of the taxes provided in the revenue act of November, 1892. The demurrer to the bill is overruled, and the motion for an injunction granted.