THE TIGER.

RISDON IRON & LOCOMOTIVE WORKS v. THE TIGER (LOUGHERY, Intervener).

(District Court, N. D. California. August 17, 1898.)

No. 11,445.

MARITIME LIEN—REPAIRS—IMPLIED CONSENT OF MASTER.

Libelant performed work upon the engine and boilers of a steamer at the request of the engineer, to whom he had been recommended by the master as a suitable person to do any such work required. The master knew of the doing of the work, and made no objection. *Held* that, in legal effect, the work was done by direction of the master, and the vessel was liable therefor.

Libel for repairs. Claim of intervener for work done.

H. H. Reid, for intervener.

DE HAVEN, District Judge. The intervener performed work as a steam fitter and plumber, upon the engine and boilers of the steamer Tiger, at the request of her engineer, and under his supervision. The master of the steamer had, however, previously recommended the intervener to the engineer as a proper person to do any work which the latter might think necessary to be done, and was on board the steamer at the time, and knew that this particular work was being done, and made no objection to it; nor did he notify the intervener that the steamer would not be responsible for the labor performed by him. I am of the opinion that, upon this state of facts, there should be a finding that the intervener's work was done with the consent, and, in legal effect, by the direction, of the master. Certainly, he was justified under the circumstances in believing that the engineer was authorized by the master to employ him upon the credit of the steamer, and the matter must have been so understood by the master. The case is in principle the same as that of The Alfred Dunois, 76 Fed. 586. This conclusion does not in the least conflict with the case of The H. C. Grady, reported in 87 Fed. 232. There was here something more than acquiescence upon the part of the master. The engineer, in employing the intervener, only complied with the direction of the master. The exceptions will be sustained, and a decree for the intervener, for the amount of his claim and costs, entered.

FAYERWEATHER et al. v. RITCH et al.

(Circuit Court, S. D. New York. August 30, 1898.)

JURISDICTION OF FEDERAL COURTS—SUITS IN REM.

A suit by heirs against trustees under a will to recover a residue in the hands of defendants is not one to enforce a lien or claim on property, within the act of March 3, 1875, giving the circuit court of the district where the property is situated jurisdiction in such cases, with power to bring in nonresident defendants.

Motion for a temporary injunction, and for the appointment of a receiver, and motion to set aside service of a subpœna on a nonresident defendant.

Roger M. Sherman and William Blaikie, for the motion.
W. B. Putney, John E. Parsons, and C. N. Bovee, Jr., opposed.
Howard A. Taylor, for Lincoln University.

LACOMBE, Circuit Judge. In view of Judge Wheeler's opinion upon decision of the demurrers (88 Fed. 713), it must be assumed that there has been no adjudication in any court, sufficient to constitute due process of law, as to the validity of the release which complainants impeach as being obtained by fraud. There is sufficient shown in the moving papers to warrant the court in preserving the status quo until final hearing, but it would seem that this may be done sufficiently by injunction. Complainants may take an order enjoining Ritch, Bulkley, and Vaughan from paying over any more of the $600,000 still in their hands, and such of the other defendants served as are residents of this district, or have appeared here either by notice of appearance generally, or otherwise by actual appearance without reservation, from disposing of or further incumbering the proceeds of any sums of money paid to them under the alleged secret trust until final hearing or further order of this court.

The present suit is not one "to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district." No specific real property or personal property is sought to be affected. It is not therefore within the saving clause of the act of 1888, which preserves section 8 of the act of 1875. The motion, therefore, of Lincoln University, a citizen and resident of Pennsylvania, to set aside service of subpœna, is granted; and the injunction against Ritch, Bulkley, and Vaughan will except any payments to that particular corporation. Motion for receiver is denied.

RYAN v. SEABOARD & R. R. CO. et al.

(Circuit Court, E. D. Virginia. September 26, 1898.)

INJUNCTION—TEMPORARY RESTRAINING ORDER.

A restraining order, in anticipation of a hearing of a motion for an injunction, should not be granted except upon the moral certainty of an irreparable injury if it be refused, nor should it be continued when it is made to appear that such a result is not imminent.