

time within easy reach of process, and the vendor meantime, as in this case, has become insolvent, is lost through laches. After such ample opportunity to enforce the lien, the loss should fall upon the lienor, and not on the bona fide vendee. The period of limitation of liens in admiralty, as against a bona fide purchaser, is 'a reasonable opportunity to enforce them.' "

So, also, in *The Lillie Mills*, 1 Spr. 307, Fed. Cas. No. 8,352, the same principle was declared in the following language:

"When the rights of third persons have intervened, the lien will be regarded as lost if the person in whose favor it existed has had a reasonable opportunity to enforce it, and has not done so. This is the well-settled rule of the admiralty. The lien for supplies has its origin in the necessities and convenience of commerce and navigation. It is for the interest of navigation and commerce that these liens should exist, and it is equally so that they should not be allowed to extend unnecessarily, to the injury of innocent third persons."

The same rule is also approved in *The Utility*, 1 Blatchf. & H. 218, Fed. Cas. No. 16,806; *The Bristol*, 11 Fed. 156, 20 Fed. 800; *Nesbit v. The Amboy*, 36 Fed. 926. That in this case the libellant had, during the 10 months the *Tiger* was lying in the harbor of San Francisco, ample opportunity to commence proceedings to enforce his lien, cannot well be disputed; and as such lien was latent, and without such action upon his part could not well be known to the public, his delay in filing this libel until after the vessel had been sold to a bona fide purchaser was at his own peril, and operates as a waiver of the lien in favor of such purchaser. The libel will be dismissed, the claimant to recover costs.

MEMORANDUM DECISIONS.

ANTISDEL v. CHICAGO HOTEL CABINET CO. (Circuit Court of Appeals, Seventh Circuit. December 1, 1898.) No. 498. On petition for rehearing. For former opinion, see 32 C. C. A. 216, 89 Fed. 308.

PER CURIAM. It is now here ordered that, in lieu of the words "dismiss the bill," there be inserted in the opinion the words "proceed in accordance with this opinion"; and in the decree of this court there be inserted, in lieu of the words "dismiss the bill," the words "proceed in accordance with the opinion of this court"; and it is further ordered that the petition for rehearing in this cause be, and the same is hereby, denied.

ATWATER et al. v. CASTNER et al. (Circuit Court of Appeals, First Circuit. November 17, 1898.) No. 239. Appeal from the Circuit Court of the United States for the District of Massachusetts. This was a suit to enjoin the infringement of an alleged trade-mark or trade-name in the word "Pocahontas," as applied to coal. The circuit court having made an order granting a temporary injunction, defendants took an appeal, and this court on June 1, 1898, rendered an opinion affirming the order. 32 C. C. A. 77, 88 Fed. 642. The cause is now heard on a petition filed by the appellants, asking that the mandate be recalled and a rehearing ordered. Causten Brown and Jennings

& Morton, for petitioners. Before PUTNAM, Circuit Judge, and WEBB and BROWN, District Judges.

PUTNAM, Circuit Judge. Our opinion on the merits of this appeal was passed down on June 1, 1898, and the judgment in accordance therewith was entered on the same day. A mandate, pursuant to the judgment, issued on June 9, 1898, with the knowledge of the appellants and without objection from them. On September 30, 1898, during the term at which the judgment was entered and the mandate issued, the appellants filed with the clerk, without leave, a petition that the mandate be recalled and that a rehearing be ordered. The proceeding must be governed by the practice as it existed before the adoption at this term of amended rule 29. We have carefully examined the petition and the petitioners' brief, but none of the judges who concurred in the judgment desires that the case be argued anew. The ordinary judgment would be that the petition be denied, but, under the circumstances, the proper and more prudent course is to dismiss it. The petition that our mandate be recalled and a rehearing be ordered is dismissed.

BLUTHENTHAL et al. v. LONG et al. (Circuit Court of Appeals, Fourth Circuit. November 5, 1898.) No. 253. Appeal from the Circuit Court of the United States for the District of South Carolina. Mordecai & Gadsden, for appellants. William A. Barber, Atty. Gen., for appellees. No opinion. Affirmed, with costs.

BOARD OF COM'RS OF DOUGLASS COUNTY v. SAGE et al. (Circuit Court of Appeals, Eighth Circuit. December 6, 1898.) No. 852. Appeal from the Circuit Court of the United States for the District of Kansas. M. Summerfield and George J. Barker, for appellant. W. H. Rossington, Charles Blood Smith, A. L. Williams, and N. H. Loomis, for appellees. Dismissed, pursuant to the twenty-fourth rule, for failure of appellant to file brief.

BOWEN et ux. v. WATKINS. (Circuit Court of Appeals, Sixth Circuit. December 14, 1898.) No. 658. Appeal from the Circuit Court of the United States for the Eastern District of Tennessee. Dismissed on motion of appellee.

BROWN et ux. v. UNITED STATES CASUALTY CO. (Circuit Court of Appeals, Sixth Circuit. November 28, 1898.) No. 654. In Error to the Circuit Court of the United States for the Western District of Tennessee. Hill & Jones, J. P. Rhodes, and J. J. Hays, for plaintiffs in error. Natkins & Latimore, for defendant in error. Dismissed on motion of plaintiffs in error, at their costs. See 88 Fed. 38.

CARNEGIE STEEL CO., Limited, v. UNITED STATES MITS CO. (Circuit Court of Appeals, Third Circuit. October 21, 1898.) Thomas W. Bakewell, for appellant. Jos. C. Fraley, for appellee. No opinion. Affirmed, with costs. See 89 Fed. 206, 343.

CENTRAL PAC. R. CO. v. JOHNSON et al. (Circuit Court of Appeals, Eighth Circuit. December 8, 1898.) No. 1,039. In Error to the Circuit Court of the United States for the District of Utah. C. W. Bunn, L. R. Rogers, David Evans, H. V. Reardon, and William Singer, Jr., for plaintiff in error. B. Howell Jones, for defendants in error. No opinion. Affirmed, with costs.