ship constitute one party, and the owners of the cargo the other, the law of freight applies, and the fundamental rule, says Mr. Parsons, is that the rights of the respective parties are reciprocal, and that each has a lien against the other to enforce those rights, and the better opinion is, that the lien for freight commences as soon as the goods are delivered into the control of the master, or certainly as soon as they are put on board.*

Usually the charter-party contains a clause binding the ship to the merchandise and the merchandise to the ship, but the law-merchant, as already explained, imposes that mutual obligation even if it be omitted.†

Decree of the Circuit Court must be reversed with costs, and the cause remanded for further proceedings in conformity to this opinion. Libellants, upon the payment of the amount of the protested acceptance and interest and costs of suit, will be entitled to a decree that the stipulation given for the return of the goods shall be given up to be cancelled. Otherwise the libel must be dismissed.

DECREE REVERSED WITH COSTS.

UNITED STATES v. THE COMMISSIONER.

A *mandamus* will not be granted to compel the performance of an office, such as the issuing of a patent for land, in a case where numerous questions of law and fact arise, some of them depending upon circumstances which rest in parol proof yet to be obtained, and where the exercise of judicial functions, some of them of a high character, is required. Nor will it be granted where it is reasonable to presume that there are persons at the time in possession under another title, and who therefore should have an opportunity to defend it.

THIS was a writ of error to the Supreme Court of the District of Columbia.

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* 2 Parsons on Contracts (5th ed.), 286; Abbott on Shipping, 462; Fragano *v.* Long, 4 Barnewall and Creswell, 219; Cooke *v.* Wilson, 1 Common Bench, N. S. 153; Maclachlan on Shipping, 353; Tindall *v.* Taylor, 4 Ellis & Blackburn, 219; Same case, 28 English Law and Equity, 210.

† Brig Casco, Davies, 184; 2 Parsons on Contracts, 303; 2 Parsons's M. L. 561.

The case in that court arose on a petition by McConnell for a mandamus to command the Commissioner of the General Land Office to cause to be prepared, signed, countersigned, recorded, and issued, a patent to him for the north part of the south half of section No. 10, T. No. 39 W., range 14 E., situate in the city of Chicago. There was a rule to show cause, and a return thereto by the Commissioner of the Land Office.

The right to the patent was founded upon a certificate of purchase by private entry at the register's office in Chicago, on the 15th June, 1836. The relator complained that he had been denied the patent, since the issuing of the certificate down to the present time, some twenty-eight years, though repeated applications had been made by him for the same.

The return set up that one Robert Kenzie entered this same land, under a pre-emption right, as early as the 7th May, 1831, five years before the relator's entry, and, that the latter's certificate of purchase on the 1st June, 1834, was cancelled on the 20th August thereafter, by the commissioner on account of this previous entry.

Several objections were taken to the legality of the entry by Kenzie, such as, that it was made in the wrong district, and, if in the right one, that the entry on this part of the south half of section No. 10 was in violation of law; which objections were answered by allegations that an act of Congress was passed confirmatory of the defective entry; and also, that the parcel entered and contested belonged to the north and not to the south part of the section.

It further appeared that a patent was issued to Kenzie 4th March, 1837, in pursuance of an act of Congress passed 2d July, 1836; but to this it was objected that the rights of the relator had become vested by the previous entry of 1st June, 1836.

The court below refused to grant the mandamus, and the case was now here for review.

Mr. McDougal, for the relator.

Opinion of the court.

Mr. Justice NELSON delivered the opinion of the court.

Where the merit of the several objections and questions made in this case lie, we do not undertake to determine, nor can they be determined, understandingly, upon this record. Many of the acts of the parties, and of the officers, the registers, and commissioners of the Land Office, may be valid or void, depending upon the facts and circumstances attending them at the time, and which rest in parol, and are the proper subject of proofs. We have referred to them for the purpose of showing that this case is not one to which the remedy by mandamus can be applied. It calls for the exercise of the judicial functions of the officer, and these of no ordinary character. Indeed, however eminent, it is plain no intelligible decision could be made without the aid of facts not within his knowledge, nor attainable by proofs consistent with the proceedings in the case of mandamus. The duty is not merely ministerial, but involves judgment and discretion, which cannot be controlled by this writ. Besides, it appears that Kenzie was in possession when his entry was made in May, 1831, and was there in 1836; and, as the premises are situated in the settled part of the city of Chicago, it is but reasonable to presume that persons are at this time in possession of the same premises under his title who should have an opportunity to defend it. The relator has mistaken his remedy, for if his title under the certificate is valid, and presents a superior equity over the opposing title, as in the case of *Lyttle et al.* v. *The State of Arkansas*,* and *Lindsey* v. *Hawes*,† the appropriate remedy is by bill in equity.

Whether or not a mandamus will lie in any case to compel the issuing of a patent is a question not necessarily involved in this case; we have not therefore examined it, and express no opinion upon it. We have found no case in which this power has been exercised.

Patents are to be signed by the President in person, or in

* 9 Howard, 315.

† 2 Black, 554.

his name by a secretary, under his direction,* and countersigned by the recorder of the General Land Office.†

Judgment of the court below

AFFIRMED.

Mr. Justice MILLER did not sit in the case.

GOODRICH *v.* THE CITY.

1. Where a matter is directly in issue and adjudged in a court of common law, that judgment may be set up as an estoppel in a court of admiralty.
2. Where an action is brought in a State court against a city for its neglect to do a public duty imposed on it by law (as *ex. gr.* to keep its harbor free from obstructions hidden under water), the declaration going upon its neglect to do the thing at all, a judgment in such State court that it was not bound to do the thing at all, may be used as an estoppel in another suit (a libel in admiralty), where the allegation of the libel is that, being bound to keep the river clear, the city began to clear it—entered upon its duty—but never finished the work, by which neglect to finish it the injury occurred; the cause of action being otherwise the same.

GOODRICH filed a libel in the District Court for the Northern District of Illinois, in a cause of damage, civil and maritime, against the City of Chicago, *in personam.*

The libel alleged that he was the owner of the steamer Huron; and that, on the 27th of March, 1857, while leaving the port of Chicago, the vessel ran against a sunken wreck in the Chicago River and was sunk; that, prior to this damage done, the city had been vested with exclusive jurisdiction over the river as a common public navigable river and highway by the State of Illinois, and with all the necessary means to provide funds for defraying the expenses incident thereto; that the city accepted the act of the legislature, and had ever since assumed the exclusive jurisdiction and control over the river harbor; that on the 20th day of May, 1856, the city had passed an ordinance for the removal, without delay, of any obstruction to free navigation, by which it was ordained that whenever there should be in the harbor

* 4 Stat. at Large, 663. † 5 Id. 417.