

Statement of the case.

The decree of the Supreme Court of the Territory is REVERSED, and this case is remanded to that court with directions to enter an order

AFFIRMING THE DECREE OF THE DISTRICT COURT.

WOODWORTH v. INSURANCE COMPANY.

Where, in case of a collision, one of two parties injured institutes proceedings against the vessel in fault, and at his own expense prosecutes his suit to condemnation of the vessel, or of the proceeds of her sale in the registry, another party injured by the same collision, who has contributed nothing to the litigation to establish the vessel's liability, but has stood by during that contest, and taken no part in it, cannot share in the proceeds of the sale of the vessel, until the claim of the first party is satisfied in full.

THIS was a question involving the proper disposition of the surplus proceeds of the sale of the schooner Harriet Ross in the Admiralty Court of the Northern District of Illinois.

The schooner had been libelled in that court for supplies furnished, to the value of \$72, and sold for about \$5000.

While the surplus proceeds of this sale were still in the registry, the Corn Exchange Insurance Company filed a libel against them. The libellant alleged that shortly before the schooner was seized at Chicago by the process of the District Court, a collision had occurred on Lake Ontario, between her and the schooner Flora Watson; that the Flora and her cargo were sunk by the collision; that this was caused solely by the want of care and skill on the part of the crew of the Harriet Ross; and that the libellant had taken risks on the Flora and her cargo, which it had been compelled to pay, to an amount exceeding \$8000.

Bradley, owner of the Harriet Ross at the time of the collision, appeared as claimant of the proceeds of her sale, and defended this suit. An answer was filed by him and testimony taken, and the matter litigated on a considerable body

Argument for the appellant.

of testimony between the Corn Exchange Company and Bradley.

Some time after the Corn Exchange Company had filed its libel against the proceeds of the sale, one Woodworth, who was mortgagee of the Harriet Ross for a large sum prior to the collision; and who, when she was sold, under the decree, for \$72 for supplies, had become the purchaser of her, filed a similar libel, claiming as assignee of the *Columbian* Insurance Company, which had also paid a loss upon a part of the cargo of the Flora Watson. This libel was filed April 1, 1863, but no further proceeding was had in regard to it until February 2, 1864, when the libellant asked leave to amend his libel.

On the 14th April, 1864, still, however, before final decree in the matter between Bradley and the Corn Exchange Company, this same Woodworth filed another libel against these same proceeds and remnants, claiming as assignee of the *Security* Insurance Company, for similar loss paid on the hull of the Flora.

In the meantime, though as mortgagee of the vessel, Woodworth was entitled to these proceeds, unless the Harriet Ross should prove to be liable for the sinking of the Flora, he did nothing; deferring action on his part until that matter was litigated by Bradley, the former owner.

A decree, however, having been rendered in favor of the Corn Exchange Company, in December, declaring the proceeds of the Ross liable, Woodworth then proceeded with his libels.

The District Court was of opinion that he was not entitled to be paid the claims which he held as assignee of the *Columbian* and *Security* Companies until the Corn Exchange Company had been paid the full amount of its claim; and the Circuit Court was of the same opinion. The matter was now here on appeal.

Mr. Hibbard, for the appellant:

Woodworth is entitled to have his claims paid out of the proceeds in the registry, although the libel of the Corn

Opinion of the court.

Exchange Company was first filed, as his libel was filed before any decree of any kind was made in the other case.* Had Woodworth, indeed, delayed filing the libel until after decree in the other case, the result might be different.† But that is not the case, and an error would be made if the rule of that case were applied, as a suit in admiralty is against all the world, and as a decree binds all the world.

Mr. Rae, contra.

Mr. Justice MILLER delivered the opinion of the court.

The litigation to establish the liability of the Ross was troublesome and expensive to the Corn Exchange Company. Mr. Woodworth did not, in any manner, aid, or offer to aid in it. His interest was against the liability which the company sought to establish; for, if the Ross was declared not liable, he received these proceeds and remnants as mortgage of that vessel. But, after permitting his own libel to sleep during this struggle, he attempts, when it is over, to revive that libel, and claims to share in the fruits of a victory won without his aid, and against his wishes. The District and Circuit Courts both thought he was not entitled to do this, so long as the Corn Exchange Company remained unpaid. In this view we concur.‡

Our remarks are meant to apply to the libel filed April 1, 1863. But all that we have said in reference to that libel applies with additional force to the one filed 14th April, 1864, arising from the longer delay in asserting the claim.

DECREES AFFIRMED WITH COSTS.

* *Cobb v. Howard*, 3 Blatchford, 524.

† *The Steamboat America*, 2 *Western Law Monthly*, 279; *The Desdemona*, 1 *Swabey*, 158.

‡ See *The Saracen*, 6 *Moore P. C.* 56; *The Clara*, 1 *Swabey*, 1.