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IN RE "TRENTON."

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written evidence of sale is agreed to." Similar provisions are found in article 1398 of the Portuguese, article 193 of the Belgian, article 290 of the Italian, article 840 of the Chilean, and article 477 of the Brazilian code. In short the doctrine that the sale of a vessel by a court of competent jurisdiction discharges her from liens of every description, is the law of the civilized world.

Such sales, however, may be impeached by the owner or other person interested, by showing:

1. That the court or officer making the sale had no jurisdiction of the subject matter by actual seizure and custody of the thing sold: *Rose v. Himely*, 4 Cranch. 241. *Bradstreet v. The Neptune Ins. Co.*, 3 Sumn. 601. *The Mary*, 9 Cranch. 126. *Woodruff v. Taylor*, 20 Vt. 65. *Daily v. Doe*, 3 Federal Rep. 903. Whether it be not also essential that there should have been proper judicial proceedings upon which to found the decree, and personal or public notice of the pendency of such proceedings, it is unnecessary here to determine, since it appears that sworn petitions were filed and notice of the pendency of the proceedings given through the newspapers, pursuant to the practice of the maritime court.

2. That the sale was made by a fraudulent collusion, to which the purchaser at such sale was a party: *Parkhurst v. Sumner*, 23 Vt. 536. *Annett v. Terry*, 35 N. Y. 256. *Castrique v. Imrie*, L. R. 4 H. L. C. 427.

3. That the sale was contrary to natural justice: *The Flayoden*, 1 Rob. 135; *Castrique v. Imrie*. In case of the sale by a master the court will enquire into the circumstances and see whether it was necessary for the interest of all concerned; but the effect of such sale to discharge the liens is the same: *The Amelie*, 6 Wall. 18.

In the case under consideration none of these objections are taken to the validity of this sale, but it is insisted that it cannot be held to have discharged the vessel of liens which the court making the sale had no jurisdiction to enforce. I have found no case, except possibly that of the *Angelique* (17 Law Rep. 104, since expressly over-ruled), which lends countenance to this proposition. Upon principle it seems to me wholly untenable. It is true the vessel was originally condemned, in part at least, upon a

claim for ship-keepers' fees, which would not in this country be considered to import a maritime lien: *The Thomas Scattergood*, Gilpin 1; *The Havana*, 1 Sprague 402; *The Island City*, 1 Low 375; *The Sarah Jane*, 2 Am. Law Rev. 450; *Gurney v. Crockett*, Abb. Ad. 493). But this was a question exclusively for the consideration of the maritime court under the laws of Canada, and the presumption is conclusive that the facts necessary to give that court jurisdiction existed: *Hudson v. Guestier*, 6 Cr. 281; *Comstock v. Crawford*, 3 Wall 396. To say that the judicial sale of a vessel frees her only from such liens as the court making the sale had jurisdiction to enforce by original process is a practical denial of the principle that such a sale vests a clear title in the purchaser. This would make the validity of the sale depend, not upon the power of the court to condemn and sell, but upon its authority to assume jurisdiction of all claims, which by the law of another country, might be liens upon her. There are probably no two countries in which the jurisdiction of the admiralty courts is identically the same. That of our own courts does not extend to all cases which would fall within such jurisdiction according to the civil law and the practices and usages of continental Europe. By the codes of most civilized nations the cost of construction, the wages of shipkeepers, the rent of warehouses for the storage of her tackle and apparel, money lent to the captain for the use of the vessel are all ranked among the privileged debts. In England the court of admiralty is vested with jurisdiction not only of ordinary collisions, but of damages done by a ship to wharves, break-waters and other fixtures annexed to the soil; while in this country it is limited to floating structures. In England a master has a remedy against the ship and freight for wages. In the United States he is confined to a proceeding *in personam*. By the law of continental Europe a lien arises for necessities furnished in a home port, while in this country there is none unless created by a state statute, and none in England if an owner is domiciled within the kingdom. We also recognize liens for general average, wharfage, stevedores' wages and premiums of insurance, none of which are within the jurisdiction of the Admiralty Division of the High Court of Justice. We also admit claims for damage to cargoes, while the English court can only proceed against the vessel where