

Case No. 4,345.

{1 Blatchf. 360.}¹

THE ELI WHITNEY.

Circuit Court, S. D. New York.

Oct. Term, 1848.²

CHARTER-PARTY—MISREPRESENTATION AS TO TONNAGE—LIBEL IN REM.

1. Parol evidence is inadmissible to enlarge or vary the terms of a charter-party.

{Distinguished in *The Baracoa*, 44 Fed. 103.}

2. In the case of a charter-party, a suit in rem against the vessel is not maintainable for the misrepresentation or concealment of facts by her master or owner in respect to her tonnage or capacity.

{Cited in *Baker v. Ward*, Case No. 785; *Williams v. Providence Washington Ins. Co.*, 56 Fed. 160. Distinguished in *The Electron*, 48 Fed. 690.}

{Appeal from the district court of the United States for the southern district of New York.}

Balchen & Schmidt, of New-York, filed a libel in rem in the district court against the ship *Eli Whitney*, for an alleged breach of a charter-party for a voyage from New-York to Bremen, in that the master had refused to receive on board the full amount of cargo that was stipulated for according to the terms of the charter-party. The decree of the district court was against the libellants {Case No. 792a}, and they appealed to this court.

THE COURT held that parol evidence was inadmissible to enlarge or vary the terms of the charter-party, there being no stipulation in it as to the precise amount of cargo to be carried, and that, in the case of a charter-party, a suit in rem was not maintainable for the misrepresentation or concealment of facts by the master or owner of a vessel in respect to her tonnage or capacity.

Decree affirmed.

¹ [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]

² [Affirming Case No. 792a.]