

Case No. 4,484. ENEAS V. SCHIFFER ET AL.
[N. Y. Times, April 19, 1865.]

District Court, S. D. New York.

April 19, 1865.

SHIPPING—CHARTER-PARTY—CHANGE OF DESTINATION WITHOUT CONSENT
OF SHIPPER—EFFECT OF ACQUIESCENCE.

- [1. In a contract of affreightment, a stipulation giving a shipper the privilege of a change of destination because of blockade does not authorize the carrier to make such change on the advice of the consignee, because of a poor market.]
- [2. Acquiescence by a shipper in an unauthorized change of destination renders him liable for the price agreed upon for the voyage, but not for the especial premium agreed to be paid upon delivery of cargo at the port designated in the contract.]

[In admiralty. Libel by Joseph Eneas against Samuel Schiffer and others to recover upon a contract of affreightment. Decree for libelant.]

Before BETTS, District Judge.

The libel in this case was filed to recover the amount due on a charter of the schooner Wm. Smith. The vessel was chartered to the respondents on March 12, 1863, for a voyage from New York to Matamoras and back, for which they agreed to pay \$3,000 in specie on discharge of the outward cargo in Matamoras, and \$3,000 in current funds on discharge of the homeward cargo in New York. And the libelant alleged that the vessel had performed the voyage under the charter, and claimed to recover the value of the specie payment at Matamoras and the amount due in New York; making \$9,000 in

all. The answer denied the performance of the voyage by the vessel, and alleged that nothing was therefore due on the charter.

The evidence showed that there was indorsed on the charter an agreement, signed by the libelant, that if Matamoras should be blockaded, the respondents might "have the privilege of a second safe Mexican port on the Gulf of Mexico or the West India Islands," they paying all additional port charges, and the time used in making the change of port to be counted as lay days. The respondents sent out on board the vessel a supercargo to act in case Matamoras was blockaded. The vessel went out and found the port not blockaded, and G. W. Schiffer, the respondents' agent at Matamoras, certified that the vessel arrived at Matamoras April 28, 1863. But on her arrival there, the market being very unfavorable, the consignee of the cargo, with the supercargo, deemed it advisable not to have, the cargo landed at Matamoras, and on their request the master agreed to carry it to New Orleans. This was done, and the cargo was there landed and sold, and the proceeds transmitted to the respondents. This proceeding was claimed by the respondents to be unauthorized by them, but they gave no proof of any dissent or repudiation of it on their part.

HELD BY THE COURT: That as there was no blockade of Matamoras, the agreement indorsed on the charter gave no authority to go to another port. That no other change of voyage could be enforced without full assent of both parties thereto, as it would be to place the cargo and adventure of the freighter subject to hazards outside of those expressly specified in the contract of affreightment. That the libelant is not entitled to recover the charter money, because he did not complete the voyage according to the terms of the articles of shipment.

But it appears that the respondents, after they had notice of the alteration of the voyage at Matamoras, and the destination of the vessel to New York, by way of New Orleans, and her reception and entry at New Orleans, through the assent and intermission of persons assuming to act in behalf of the respondents without any disavowal by the respondents of their acts or authority in countenancing the change of the voyage of the vessel, they must be held ill equity to have acquiesced in that change.

It is tantamount to a consent by the shippers that, because of the unfavorable state of the market, the ship may be excused from unlading the outward cargo, and may be permitted to retransport it to its home port of New Orleans, receiving the stipulated compensation of \$6,000 for the round voyage, but losing the premium on the \$3,000 specie payable on delivery of the outward cargo, because he failed to discharge it as provided in the charter. Decree for the libelant for \$6,260.15, with costs.