

Case No. 4,519a.
[Betts, Scr. Bk.,272.]

ERLEN V. THE BREWER.

District Court, S. D. New York.

1853.¹

CHARTER PARTY—AGREEMENT TO GUARANTY—POSSESSION OF VESSEL.

[Where a charter party provided that a ship was to be put in the charterer's possession, the charter to be guaranteed to the satisfaction of the owner, upon proof of a guaranty to the owner's satisfaction, the court will decree possession of the vessel to the charterer.]

[In admiralty. Libel by John C. Erlen against the ship Brewer, her tackle, etc.]

This case came up to determine the validity of a charter party, entered into for the ship in question, to go from New York to Melbourne, in Australia. By the terms of the charter party, it was agreed that the ship was to be put in the possession of the charterer on the 17th June. The charter to be guaranteed to the satisfaction of the owner—the respondent in the suit. The libellant claimed that the respondent, who was the general owner, had by the terms of the charter party, divested himself of the possession of the ship, and had vested it in the libellant, who claimed a decree by which he could be put in possession of the vessel, and prosecute the intended voyage. The respondent contended that the charter party was not perfected, and that if the charter had been delivered to the libellant, it was only conditional. The charter party was executed on the 16th June, 1853, in duplicate,

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one copy given to each party. In the instrument it was provided that it was to be guaranteed to the satisfaction of the respondent, before possession should be given. Samuel D. Jones became the guarantor. The proof was that the consideration to be paid was guaranteed to the entire satisfaction of the respondent.

Before INGERSOLL, District Judge.

THE COURT, in giving judgment in the case, remarked, that in many charter parties there is no letting or hiring of the ship, but only a contract to carry freight for the charterers, the owner continuing to hold possession and retaining the control of the vessel and her movements; the captain and crew being subject to the control of the owner. This case differs from that. Here is a transfer of the right of possession to the charterer, the libellant; and by the terms of the charter, he had the sole right of possession under the charter party, and the decision of the court must be to restore him to the actual possession. A court of admiralty will restore a party having such right when he had been wrongfully deprived of it where the respondent had been the wrong doer. The decree of the court must be to that effect, and the respondents must pay the costs.

Counsel for the respondent said they intended to appeal to the United States circuit court, and asked for a specific order in damages and costs, and they would give the usual security. Counsel for the libellant said his client wanted the ship to depart on her voyage, and that her value was estimated at \$20,000, in which sum the libellant was willing to give security. The judge declined to make any further order, except the regular papers were served.

¹ [Reversed in Case No: 4,519.]