FOUR HUNDRED AND SIX HOGSHEADS OF MOLASSES.

Case No. 4,988.

{4 Blatchf. 319.}[1]

Circuit Court, S. D. New York. May 17, 1859.

CHARTER PARTY—CONSTRUCTION OP BILL OF LADING GIVEN BY MASTER FOR GOODS PURCHASED BY CHARTERER—SPECIFIED FREIGHT.

Where a vessel was chartered to G. by a charter party, for a specified sum, for a voyage to Cuba and return, and G., at Cuba, loaded the vessel with molasses which he bought there from P., but the purchase was not absolute, the transfer of title to the molasses depending on the payment of drafts drawn by P. on G., and the molasses was shipped in the name of P., and a bill of lading was signed therefor by the master, which stated that the cargo was to be delivered to the order of P., at a specified rate of freight, to be paid by him or his assigns, but contained at its foot the words, "without prejudice to charter party," and afterwards R. advanced, on the security of the bill of lading, the money to take up the drafts, and took an assignment of the bill of lading: *Held,* on a libel filed by the owner of the vessel against the molasses, for the charter money, that the molasses was liable only for the freight specified in the bill of lading.

{Cited in The Peer of the Realm, 19 Fed. 217.}

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

This was a libel in rem, filed in the district court, to recover freight under a charter party, entered into between one Townsend, agent and part owner of the vessel, and the firm of T. R. Gordon & Co., for a voyage from Savannah, Georgia, to Matanzas, Cuba, and back to the port of New York. The charterers were to load the ship with a cargo of yellow pine timber at Savannah, and with such return cargo as they might think fit, and were to pay for the vessel, for the voyage, $3,400. The cargo of yellow pine was taken on board, and delivered at Matanzas to the firm of C. E. Poujaud & Co., of that place, agents of the charterers. A return cargo of molasses was taken on board, T. R. Gordon, one of the charterers, being present, and, on the arrival of the vessel at New York, she was reported by the master to Gordon. A bill of lading was signed by the master at Matanzas, from which it appeared that the molasses was shipped by C. E. Poujaud & Co., to be delivered at New York to their own order, they or their assigns paying freight at the rate of $2.50 for every 110 gallons. At the bottom of the bill of lading were the words, "without prejudice to charter party." The house of D. Curtis & Co., correspondents of C. E. Poujaud & Co., received, early in May, 1857, advices from the latter concerning the cargo, together with a copy of the bill of lading, which was dated the 25th of April previous. With the bill of lading they received drafts of C. E. Poujaud & Co. on T. B. Gordon & Co., the charterers, for the price of the molasses, payable at 60 days' sight D. Curtis & Co. received the amount of the drafts, deducting the discount for the time they had to run, from T. R. Gordon & Co., and endorsed the bill of lading, and delivered it to that house. It appeared, from the proofs in the case, that T. R. Gordon & Co. were unable

to raise the money for the price of the molasses, and that they applied to the claimants, Reid & Nash, who advanced the money, and took an assignment of the bill of lading as their security. They claimed to have the goods delivered to them, on payment of the stipulated freight in the bill of lading, and that they were not bound to pay the amount due on the charter party. The district court decreed for the libellants, for the full amount of the charter money [case unreported], and the claimants appealed to this court

Welcome R. Beebe, for libellants.

James N. Platt, for claimants.

NELSON, Circuit Justice. It is quite clear that the purchase of the molasses by the firm of T. B. Gordon & Co., at Matanzas, was not absolute, so as to vest the title, legal or beneficial, in it; arid that the transfer of title depended upon the payment of the drafts at New York. The molasses was shipped in the name of the vendors, and bills of lading were taken in the usual way, and the bills of lading, drafts, &c, were forwarded to their correspondents, to close the transaction. Reid & Nash advanced the purchase money, on the security of the bills of lading, and the cargo of molasses became subject to this advance. There can be no claim, therefore, upon the cargo, for the payment of the charter money, founded upon the idea that the molasses belonged to the charterers. This brings the case down to the question as to the effect to be given to the words at the foot of the bill of lading, "without prejudice to charter party." On the part of the libellants it is insisted, that these words should be construed as qualifying the price of the freight stipulated in the bill of lading, and as subjecting the shipper to the payment of the charter money, though that should exceed the specified freight. On the part of the claimants it is insisted, that these words were intended only to guard against any waiver of the charter money, as between the charterers and the

owner. I am inclined to adopt the latter view.

The bill of lading contains the contract between the shipper and the master, and in it the latter stipulates to carry the cargo at a fixed rate; and it appears to me, that if he intended to qualify the contract in respect to the rate of the freight, he should have used more specific terms than those relied on. The shipper was specially interested in the matter of freight, as it was to be paid by him or his agent on the arrival of the cargo; and it is quite clear that he had a right to enter into this particular contract for the freight, without regard to the charter party. In the Case of Heckscher v. McCrea, 24 Wend. 304, it was held, that if the charterer had no cargo at the place stipulated in the charter party, the master was bound to take cargo offered by others, sign bills of lading therefor, and credit the proceeds of the freight to the charterer, and look to the charter party for any balance. The master may have had this rule of law in view when he consented to enter into the special contract of affreightment irrespective of the terms in the charter. Even if the charter party contained a clause hypothecating the cargo for the freight (which it does not), it would be difficult to maintain the position that the consent by the master to ship the goods of a third party for a specific freight, differing from that in the charter party, should not be binding between the parties.

It was insisted, on the argument, that there was some collusion between Reid & Nash and T. R. Gordon, with a view to evade the lien or liability of the cargo for the charter money. I am not satisfied that the evidence in the case supports any such conclusion; but, if it did, the question here is solely between the shippers (G. E. Poujaud & Co.) and the owner, as the former were bound to pay the freight; and, if the cargo is liable for the balance of the charter money, instead of the price specified in the bill of lading, the loss would fall on them. At least, this is the necessary conclusion from the terms of the bill of lading, and there is nothing in the proofs tending to contradict it

Upon the whole, after the best consideration I have been able to give to the case, I think that the decree below should be reversed, with costs, and a decree be entered charging only the freight specified in the bill of lading; and, as this was tendered, this decree must be entered without costs.

[1] {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}