

Case No. 6,564.

HODGSON v. BUTTS.

[1 Cranch, C. C. 488.]¹

Circuit Court, District of Columbia.

July Term, 1808.

PAYMENT UNDER MISTAKE—REIMBURSEMENT.

The purchaser of a vessel, who has paid the expenses and disbursements of a previous voyage upon the order of the master, cannot recover them from the master, although he paid them under a mistaken expectation that he was to be reimbursed out of the freight.

Assumpsit to recover the expenses and disbursements of the schooner *Mississippi*, which the plaintiff (who was the owner, by virtue of an absolute bill of sale made by R. & J. Hamilton to him, after the end of the voyage,) had paid on the orders of the defendant, who had been master of the schooner during the voyage, and who had received the freight, and applied it according to the directions of the former owners, R. & J. Hamilton.

Mr. Jones, for defendant, prayed the court to instruct the jury, in effect, that the defendant was not liable, although the plaintiff had paid those expenses and disbursements, under a mistaken expectation that he was to be reimbursed out of the freight which the vessel had earned, whether he paid them before or after he obtained possession of the vessel.

The defendant, the master, was not liable to the seamen for their wages, unless he had shipped them, and had personally made agreement with them. But if he had paid them, he would have a lien on the vessel therefor, which would have followed the vessel into the hands of the plaintiff, so that he could not have obtained a clear title until he had refunded them. *Abb. Shipp.* 106.

Mr. Swann and E. J. Lee, for plaintiff, prayed the court to instruct the jury, in effect, that if the plaintiff was not the owner of the vessel, and the orders were drawn up on the personal credit of the defendant; or, if at the time of drawing it was understood by the plaintiff and defendant, that the plaintiff was to be reimbursed out of the freight already earned, the defendant is liable.

THE COURT (DUCKETT, Circuit Judge, absent) gave the instruction prayed by Mr. Jones, and refused to give that prayed by Mr. Swann and Mr. Lee, because the evidence did not justify an inference by the jury, that the plaintiff was not the owner of the vessel at the time of paying the defendant's drafts, nor that the orders were drawn on the personal credit of the defendant; nor that there was any understanding by the plaintiff and defendant that the plaintiff was to be reimbursed out of the freight.

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Verdict for the defendant. The plaintiff took a bill of exceptions, but did not prosecute a writ of error.

¹ [Reported by Hon. William Cranch, Chief Judge.]