

Case No. 8,504.
[Chase, 527.]¹

THE LORD.

Circuit Court, D. North Carolina.

June Term, 1869.

CARRIERS—ATTACHMENT BY SHERIFF—STIPULATION TO HOLD FOR SHERIFF—DEMAND AND SUIT BY CONSIGNEE.

1. The master of a vessel may lawfully refuse to deliver goods to the consignee which, having been attached on his vessel, are carried to the port of consignment under an agreement with the sheriff that they should be returned.
2. Goods are being shipped from N. to W., some of which are on the wharf, some on the steamer. At this time the sheriff levies an attachment on them, hut those on the steamer being covered up by other goods, and difficult to remove, he allows the captain to proceed with them under an agreement that he will bring them back. When the steamer arrives at W., the consignee tenders the freight and demands the goods. The captain might lawfully refuse to deliver them up.

[Appeal from the district court of the United States for the district of North Carolina.]

Moore shipped certain cases of mechandise at New York by the steamer Lord, consigned to himself at Wilmington, North Carolina, and received bills of lading for them. After part of the goods were stored in the hold of the vessel, and the remainder were on the dock about to be so stored, the sheriff of New York appeared with an attachment against the goods of Moore, and took possession of the cases on the dock, and was about to have the vessel discharged so as to get possession of those in the hold. To save time, trouble, and expense, the New York agent of the ship gave the sheriff a receipt for the goods on board, agreeing to bring them back from Wilmington, whither she was then bound, and deliver them to him on his return. On her arrival at Wilmington, Moore's agent went on board the ship, offered the freight money due by the bills of lading, and demanded the goods. The master declined to deliver them to the said agent, but took them back to New York and delivered them to the sheriff, the latter paying charges and giving his receipt therefor. Soon after that Moore produced to the sheriff an order from the plaintiff in the attachment countermanding it, and that officer then delivered the goods to Moore, he paying sheriff's fees, costs, and charges. Moore then filed his libel in the district court of the United States for the district of Cape Fear in the district of North Carolina, against the steamer in the port of Wilmington, claiming to recover the full value of all the goods shipped and taken by the sheriff's attachment, which value was eight hundred and twenty-five, dollars and eighty-eight cents. The district court decreed that Moore was not entitled to recover for the value of the goods seized by the sheriff on the dock, but that he should be paid such sum as it cost him to get back from the sheriff the goods which had been brought to Wilmington by the ship, and which the master there refused to deliver to Moore's agent, but carried back to New York, and delivered to the sheriff. This amount was fixed by agreement of counsel at five hundred dollars, and the

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court pronounced a decree for that amount against Ward, the master and claimant of the steamer, from which decree is this appeal.

Person & French, for libellant.

A. M. Waddell, for reclaimant.

CHASE, Circuit Justice. This is a case of affreightment. The libellant purchased certain goods in New York, which were shipped by his agent on the steamer Charles W. Lord for Wilmington. Bills of lading were given, in the usual form, by the master of the steamer.

Before the lading of the goods had been completed, a writ of attachment was issued from one of the courts of New York, in favor of a creditor of the libellant. Under this attachment, the sheriff seized the goods not actually on board, and levied the writ upon the remainder of the goods already in the hold of the vessel. As it would occasion great inconvenience to discharge the cargo for the purpose of taking actual possession of the goods in the hold, the sheriff consented to receive a stipulation from the master of the vessel, and from the agent of the libellant, for the safe return of the goods from Wilmington to New York, and their delivery upon arrival at the latter port to him.

Under the circumstances, the steamer proceeded to Wilmington, where the freight money was tendered by the libellant, and delivery of the goods demanded. The master of the steamer refused compliance with this demand, and carried the goods to New York, and delivered them to the sheriff in fulfilment of his stipulation. Subsequently, the libellant effected a compromise with the

attaching creditor, and the goods were delivered into his possession in New York. Under these circumstances, damages are claimed by the libel for non-delivery of the goods at Wilmington according to the bills of lading.

The only question presented for consideration by the court is whether the master of the steamer was excused from compliance with his contract with the libellant by action of the sheriff, under the writ of attachment, and the stipulation made with him. Undoubtedly it was the right and duty of the sheriff under the writ of attachment to seize the goods described in the writ. He had the right to remove all the goods on board, so far as such removal was necessary to reach and take possession of those goods. The authorities cited to us sufficiently establish the law of New York to be, that the sheriff, instead of pursuing this course, had a right to take from the master a stipulation for the safe return of the goods. The custody of the master, during the time he had possession under this stipulation, was the custody of the sheriff. He had no more right to deliver the goods to the libellant at Wilmington than the sheriff would have had to convey the goods to that port and make the delivery. The right of the creditor in attachment displaced, for the time being, the right of the purchaser and assignee of the goods.

It follows that the master was under no obligation to deliver the goods when demanded by the libellant. The decree of the district court must be reversed, and the libel dismissed; and it is ordered.

¹ [Reported by Bradley T. Johnson, Esq., and here reprinted by permission.]