

Case No. 12,274.

SALZOBEL ET AL. V. THE ROLLING WAVE.
 [N. Y. Times, Nov. 13, 1863.]

District Court, S. D. New York. 1863.

CHARTER PARTY—ACTION IN REM—GOODS IN
 POSSESSION—IN PERSONAM.

In admiralty. This action [by Vincenzo Salzobel and others against the brig Rolling Wave, and W. W. Collins, her master] was brought to recover damages for breach of a charter party. The libel alleged that the charter was made at Philadelphia, May 22, 1862, between Collins and Rubira & Co., agent of the libellants, who live in Cuba, for a voyage from Cienfuegos to the United States, and that the charter was wholly un-complied with by the vessel. The answer denied that allegations of the libel constitute any cause for action against the vessel, and set up other matters, which, not being supported by proofs, cannot be considered by the court. The case was submitted to the court on the libel and answer.

Eaton, Davis & Tailler, for libellants.

Beebe, Dean & Donohue, for claimant.

HELD BY THE COURT (BETTS, District Judge):

That the contract is of a maritime character, and comes within the scope of a court of admiralty. But that the authority of the court cannot be exercised in rem against the ship to compel the performance by her of agreements in relation to the cargo to be transported in her, unless the cargo is actually or constructively in her possession. [Hickox v. Buckingham] 18 How. [59 U. S.] 182; [Dynes v. Hoover] 19 How. [60 U. S.] 82. That the action in rem cannot be maintained on the averment of the libel. That the libellants, however, may possess a right to seek relief under the other form of the action by charging the master personally for the damages.

Libel dismissed as to the vessel.

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