

Case No. 17,438.
[2 Ben. 212.]¹

THE WESTERN METROPOLIS.

District Court, S. D. New York.

March, 1868.

LIBEL FOR SEAMAN'S WAGES—ANSWER—PAYMENT AND RELEASE.

Where a libel was filed for seaman's wages, and the answer set up that the libellant had been paid in full before suit brought, and had released the vessel and her master and owners from all claim by a release under seal, and the libellant excepted to the answer because the date of the release was not set forth, nor the time when it was made, nor the consideration for which it was given, *held*, that the defence was payment, and the release was only evidence of it, and it was not necessary to state its date or consideration, or when it was given.

A. Nash, for libellant.

J. K. Hill, for claimants.

BLATCHFORD, District Judge. This is a hearing on exceptions to an answer. The libel is for seaman's wages. The answer sets up, that the libellant had, prior to the filing of the libel, been paid in full for all services rendered by him as seaman on the vessel, and, by a release, under seal, released the vessel and her master and owners from all claim and demand. The answer is excepted to because the date of the release is not given, or the time stated when it was made, or the consideration for which it was given. The claim in the libel is wholly for services rendered by the libellant as seaman on the vessel. The answer sets up, in proper form, payment in full to the libellant therefor, before the filing of the libel. The release is merely evidence of the payment, and is as good to that end, whether it was given at one time or another, or whether it bears one date or another. It was not necessary to state its date, or when it was given, or its consideration. On the trial, the claimants will be held to prove the payment as and when alleged. The release will not be conclusive evidence of such payment. The question which the proctor for the libellant seems to desire to raise, as to a settlement having been made in fraud of the rights of such proctor, cannot be raised by exception to this answer. His rights, if they have been violated, will be protected on the trial. The exceptions are overruled, but without costs.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]