

in the transaction. From his statement it appears that the settlement was made at the request of the libelant. After some negotiation he offered to take \$300 and clear the ship and owners. This offer was accepted by the owners, and upon being paid that sum he signed the release. If any deception was practiced upon him, or any fact affecting the voyage was concealed from him or misrepresented, he ought not to be held to his settlement. But I am satisfied that this was not the case. The accounts of the ship were explained to him, and he was put in possession of every fact concerning the voyage which was known to the owners. The settlement was made voluntarily at his own request and for his benefit, and no undue advantage was taken of his necessities. A seaman in the whaling service, when discharged during the voyage at his own request, is not disqualified from making a settlement of his wages upon the payment of a sum fairly and intelligently agreed upon, when the amount to become due him is uncertain and depends upon the future success of the voyage. This voyage might have terminated unfortunately, and the owners have been the losers. The libelant ought not to be permitted to go back of his bargain merely because the voyage was successful. I see no reason to disturb the settlement.

Libel dismissed.

ONE HUNDRED TONS OF COAL.

(Circuit Court, N. D. Illinois. January 6, 1883.)

SHIPPING—DEMURRAGE.

Where the shipper of coal on a schooner expressed some doubts as to the depth of water at a certain dock at the port of delivery being sufficient to admit of the delivery of the coal at that dock on account of the size of the schooner, but the captain took the chances of there being sufficient depth of water there, and on arrival it was discovered that delivery could not be made at such dock, the captain can lay no claim for demurrage for delay caused by the necessity to proceed to another dock, or for expenses in consequence of the delay.

In Admiralty. Appeal from the district court.

Mr. Condon, for libelant.

Mr. Kremer, for respondent.

DRUMMOND, C. J. In September, 1880, Henry P. Card, of Cleveland, Ohio, chartered the schooner *Ida Keith*, of which the libelant was owner and captain, to take a cargo of coal from Cleveland to Chicago; and the libel was filed by the captain for the reason, as al-

leged, that necessary dispatch was not given to the schooner after her arrival in Chicago. The district court dismissed the libel, and I think that decree was right.

At the time the contract was made in Cleveland for the charter of the vessel, which seems to have been entirely verbal, Card suggested to the captain that he had some fears lest the schooner was too large to deliver the cargo of coal at the dock of P. O'Connor, near Rush street bridge, in Chicago, on account of drawing too much water, to which the captain replied that the water was a foot deeper there than it had been in the spring, and he would take the chances of there being sufficient depth of water there if the cargo of coal were delivered to him.

This fact, upon which the case must substantially turn, seems to be established by a clear preponderance of evidence. The coal had been sold to P. O'Connor, to be delivered at his dock. The shipper seems to have been doubtful as to whether the schooner could deliver the coal there on account of her size, declaring that he would prefer to ship on a smaller vessel. That doubt was removed by the statement of the captain himself, who professed to be familiar with the depth of the water, and took the chances of its being sufficient to enable him to land the cargo there on his arrival in Chicago with the schooner. It seems that she drew too much water, as he himself admits, for him to land the cargo at O'Connor's dock, the result of which was that it was necessary for the shipper, Card, to direct his agent to sell the coal to some other person, and the coal was accordingly sold to J. D. Stone, at a loss to Card, as he says, of more than \$200; and this involved the necessity of the schooner being towed up the river to Stone's wharf, where there was considerable delay in consequence of the delivery not being made by three hatches instead of two, as was the fact. It followed, from this condition of affairs, that there were more or less delay and expense in consequence of the coal not having been delivered at O'Connor's wharf; but it seems to me that this grew out of the conduct and statements of the captain himself, and he can lay no claim to demurrage, or expenses in consequence of the delay and delivery of the coal at another wharf.

The decree of the district court will, therefore, be affirmed.

THE HATTIE LOW.

(District Court, S. D. New York. December 21, 1889.)

1. SEAMAN'S WAGES—MINOR SON OF MASTER.

A father is entitled to the earnings of a minor child who lives with him, and is under his governance, protection, and support.

2. SAME—LIEN DOES NOT ATTACH.

Where a father agreed to run a vessel on shares, and to pay all the expenses of running her, and his minor son, being a member of his household and living on board as a member of the father's family, acted as mate, *held*, no lien against the vessel could, under such circumstances, be acquired by either the father or son, and the libel, therefore, was dismissed.

In Admiralty.

Beebe, Wilcox & Hobbs, for libelant.

Samuel B. Caldwell, for claimant.

BROWN, D. J. The libelant is shown by the evidence to have been a minor about 18 years of age, and during all the time he rendered the services as mate, for which this libel was filed, to have been a member of his father's household, who was master of the vessel and lived with all his family on board, and as such member was under his father's governance, protection, and support. The libelant was never employed by the owners, but by the father only. Whatever his father paid him in money, then or previously, under such circumstances, were voluntary payments; the father was legally entitled to his earnings, (*Plummer v. Webb*, 4 Mason, 382; *Luscom v. Osgood*, 1 Spr. 82; *Cutting v. Seabury*, Id. 522; *The David Faust*, 1 Ben. 183; 2 Pars. Shipp. & Adm. 371,) and no suit at law could have been maintained by the libelant against his father therefor. The father being, therefore, entitled to these services, and under his agreement with the owners being bound to pay all expenses in running the vessel on shares, no lien could arise against the vessel for the son's services so rendered. Action like that of the father in this case, in endeavoring to assist in fastening a lien upon the vessel under such circumstances, has been declared to be "committing a virtual fraud upon the owners." *The Columbus*, 5 Sawy. 487, 492; and see *The William Cook*, 12 FED. REP. 919.

For these reasons, in addition to those stated by the commissioner, the exceptions are overruled, and judgment ordered for the claimant.