

against. But this cargo was not obtained by virtue of the permit that had been issued to the libelant, but by virtue of a subsequent permission which Williams obtained for himself. By the permission issued to the libelant, the libelant acquired no interest in any of the phosphate on Rat island. His right of property could only attach to what he might acquire possession of by extracting it and loading it upon his vessel under the permit issued to him. I am, therefore, unable to see any ground upon which to hold the libelant to be owner of this cargo, which was not extracted by him and was never in his possession. If this cargo had been obtained by Williams through a false representation that in applying for the permission that was given to him he was acting in behalf of the libelant, and he had been allowed to take this cargo as the agent of the libelant, and not for himself, his acts could have been adopted by the libelant, and in such case it might not be open to Williams to deny the libelant's ownership of cargo so obtained. But no such case has been proved. The most that can be said is that the circumstances proved are calculated to cast suspicion upon the account given by Williams in regard to his acts in obtaining this cargo. It is not enough, however, in a case like this, to raise suspicion. The libelant's ownership must be proved. That not having been done, the action must fail.

Let a decree be entered dismissing the libel, with costs.

See opinion on argument of exceptions to libel in same case. *The Dauntless*, 7 FED. REP. 366.

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THE J. W. DENNIS.

(District Court, N. D. New York. March 23, 1884.)

**RETAINING OF VESSEL BY A SHIP-KEEPER.**

A vessel which has been detained by a ship-keeper, pending a controversy, must be delivered up to her owner immediately upon the settlement of the suit. The marshal will not be justified in employing a ship-keeper after the suit has been settled, merely because a formal order of discontinuance has not been entered.

**In Admiralty.**

This is a motion in the nature of an appeal from the taxation of the marshal's bill of costs, by the clerk. The marshal employed a ship-keeper at \$2.50 per day to take charge of the libeled vessel. The clerk allowed the bill at \$1.75 per day. Various affidavits were submitted by the parties. Some to the effect that the amount was too high; others that it was a very reasonable charge for the work done. It appears from the affidavits that the controversy between the parties has been settled, though no formal order to that effect has been entered. It also appears that since the settlement and the taxation by

the clerk as aforesaid the ship-keeper has retained possession of the vessel and has demanded pay for his services.

*George N. Loveridge*, for motion.

*James A. Murray*, opposed.

COXE, J. I have read with care all of the affidavits and papers submitted in this case and have reached the conclusion that the bill of costs and disbursements as taxed by the clerk, February 28, 1884, cannot with propriety be reduced. As the stipulation limits the inquiry to the items of that bill, I express no opinion upon the question as to the right of the ship-keeper to compensation since that day. There should be no delay, however, if the controversy is settled, in discontinuing the action and restoring the vessel to her proper owner.

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### THE ONTONAGON.

(*District Court, N. D. New York. March, 1884.*)

#### COSTS—LIBEL IN REM—SETTLEMENT.

The respondent in a suit for seamen's wages cannot avoid the payment of costs by settling with the libelant without the knowledge of his proctors.

*Cook & Fitzgerald*, for libelant.

*Williams & Potter*, for respondent.

COXE, J. This is a libel for seamen's wages. The simple question is: can the respondent by a settlement with the libelant avoid the payment of costs? I am clearly of the opinion that he cannot. The libelant was compelled by the respondent's refusal to pay his wages to commence this suit. Costs and disbursements were incurred, due not only to the proctors, but to the marshal and clerk. By paying the libelant the respondent admits that the claim against him was a just one. Why should he not discharge all the debts which his own conduct made it necessary to incur? To permit a party, by means of what Judge BETTS sententiously terms "an out-door settlement," to avoid the payment of such obligations would be to encourage practices which the court should be slow to sanction. Courts of admiralty in actions of this character have seldom failed in similar circumstances to grant protection to the injured party. *The Sarah Jane*, 1 Blatchf. & H. 401, 422; *The Victory*, Id. 443; *The Planet*, 1 Spr. 11; *Angell v. Bennett*, Id. 85; *Collins v. Nickerson*, Id. 126; *Gaines v. Travis*, 1 Abb. Adm. 301.

The libelant's proctors are entitled to recover their costs to be taxed by the clerk.