

bitt, 81 N. Y. 516; *Buckley v. Gould, etc.*, M. Co. 14 FED. REP. 833. In the case last cited, and the note thereto, (page 841,) the authorities are collated as to who are to be deemed fellow-servants; and many additional ones will also be found in the note to *Charles v. Taylor*, in Moak's English Reports, vol. 30, pp. 337-349. The man at the winch was, in this case, acting under the immediate orders and direction of the stevedore's men at the platform. It is immaterial that he was paid directly by the ship. *Rourke v. White Moss Colliery Co.* 2 C. P. Div. 205; *Murray v. Currie*, L. R. 6 C. P. 24; *Johnson v. Boston*, 118 Mass. 114; *Ill. Cent. R. Co. v. Cox*, 21 Ill. 20. All the other men being paid by the day by the ship, they were in fact under the ultimate control of the officers of the ship, although the general superintendence of the work was in the stevedore and his foreman. This superintendence, however, included the winchman as much as the others; so that it is really immaterial here whether the men be regarded as the servants of the stevedore or the servants of the ship, since all were under a common direction and in a common service.

The evidence does not show that the work was stopped through any unfitness of the winch, or that the fixing required was different from what is occasionally needed in oiling and turning up the screws. Nor does it appear that the man at the winch was incompetent or unfit for his position, or that any negligence or remissness is chargeable upon the officers of the ship in selecting him for that work. The duties to be performed by him were of a very simple character, being only the handling of a brake at the winch, and the accident is attributable chiefly to his momentary inattention in starting the winch without notice.

As there appears to have been no remissness attributable to the ship or its officers, the libel must be dismissed.

THE LUDGATE HILL.

(District Court, S. D. New York. June 30, 1884.)

MARITIME LIEN—SUPPLIES—SHIP'S AGENTS—SECRET AGREEMENT WITH STEVEDORE.

A supply of rope necessary for use in unloading a ship, furnished to the ship by request of the ship's agents, binds the ship to pay for it. The ship's agents have presumptive authority to procure it on account of the ship. A secret agreement with a stevedore that he shall provide and pay for all such rope does not prevent a lien therefor in favor of one who furnishes such rope to the ship on her account, at the request of the ship's agents, when he has no knowledge or notice of such an agreement.

In Admiralty.

Beebe & Wilcox, for libelant.

Lorenzo Ullo, for claimant.

BROWN, J. The rope, on account of which this libel is filed, was necessary for the use of the ship in the discharge and unloading of her cargo under the stevedore. The evidence shows that it was so used. It comes under the head, therefore, of necessary supplies, and went to the use of the ship. By a private arrangement, not known to the libelants, the stevedore did the work for all the ships of the same line, at a specified price, furnishing his own rope. This, however, did not change the nature of the service to the ship, nor diminish her actual need of the stevedore's work, and of this rope as one of the appliances necessary for that work. The evidence leaves no doubt that the libelants refused to supply the rope to the stevedore personally; and in their dealings with Seagar Bros., the agents of the ship, they referred only to a supply of the rope to the ship. One of the libelants testifies that the cashier of the agents of the line told him that it was all right, and that the bill would be paid if Williams (the stevedore) signed it as correct. The rope was accordingly furnished, and charged to the ship. The bill was certified as correct by Williams, and was rendered to the ship's agents for payment, but was not paid. In a subsequent conversation, the cashier denied that he had promised payment; but his testimony has not been obtained on this trial. The statement in his subsequent conversation, when not under oath, cannot stand against the libelant's sworn statement, that payment was promised by him when the libelants first went to the office of the ship's agents; and the charge to the ship, the certifying of the bill by Williams, and the rendering of it to the agents, are all in agreement with the libelant's testimony, and tend to substantiate its truth. Various circumstances in the testimony show that the agents of the line had general authority to attend to the bills of the ship, and to the necessary business connected with loading and unloading; and this would embrace the procuring of any needed means for that purpose, including rope such as this. It is not an unusual thing for necessary supplies to be ordered by a ship's agents in a foreign port, and I have never known a lien refused for any want of authority on their part, where the supplies actually came to the use of the ship. *The Patapsco*, 13 Wall. 329. No question would have been made in this case, except for the private arrangement with Williams; but as that was not communicated to the libelants it cannot affect them. I think they are entitled to recover, therefore, on the ground that the rope was necessary in and about the work of unloading the ship, which was necessary to enable her to earn her freight; that it was furnished to the ship, and on her credit, and not to Williams, or on his credit; and that it was so furnished by authority of the agents of the ship, and on their promise to pay for it in behalf of the ship, and that their promise bound the ship as well as themselves.

Decree for the libelants for \$128.96, with interest from December 15, 1883, with costs.

REYNOLDS v. PALMER.

(Circuit Court, W. D. North Carolina. April Term, 1884.)

1. CONTRACT—ACTIONS IN CONTRACT AND TORT—JOINDER OF CAUSES.

Under the Code of North Carolina causes of action in tort and contract may be joined in the same case, provided they arise out of transactions connected with the same subject-matter, and affecting the same parties.

2. SAME—DECEIT IN BUSINESS TRANSACTIONS.

Deceit in business transactions consists in fraudulent representations or contrivances by which one man deceives another who has a right to rely upon representations, and has no means of detecting the fraud.

3. SAME—SALE OF GOODS—FRAUDULENT REPRESENTATIONS AS BASIS FOR SUIT AT LAW.

Fraudulent representations in the sale of goods will not of themselves constitute deceit, which will be the subject of a suit for damages. Mere "dealing talk," unless accompanied with some artifice to deceive the purchaser, or throw him off his guard, or some concealment of intrinsic defects not easily detected by ordinary care and diligence, does not entitle one to an action.

4. SAME—NEGLECT OF PURCHASER TO INSPECT GOODS.

A party cannot be relieved by law, who, having every opportunity allowed him to inspect goods for himself, neglects to do so, but takes the goods at the estimate put on them by the seller.

5. SAME—SALE BY SAMPLE—IMPLIED WARRANTY.

To constitute a sale by sample with warranty implied, it must appear that the parties contracted solely with reference to the sample, and mutually understood that they were so dealing with the quality of the bulk.

6. SAME—IMPLIED WARRANTY GENERALLY.

It is generally understood that in the sale or exchange of goods a warranty as to quality is not implied in law. The law presumes that a party who distrusts his own judgment and shrewdness will protect himself by requiring an express warranty.

7. SAME—"SOUND ORDER" IN CONTRACT FOR SALE OF TOBACCO.

The words "sound order," as applied in a contract relating to tobacco to be delivered to a manufacturer, means such order as would, with ordinary care, insure the sound condition of the tobacco at the time of its arrival at the place where it is to be manufactured, and for a reasonable time thereafter, until it could be used in the course of manufacture.

8. SAME—ONE PARTY CANNOT RESCIND CONTRACT IN PART.

A party entering into a contract for the purchase of goods to be sent in two consignments, cannot accept, pay for, and use the the first consignment, and refuse the second, and rescind the contract, without the consent of the seller.

9. SAME—WRITTEN CONTRACT PRESUMED TO EMBRACE PREVIOUS ORAL ONE.

It is a rule of law that all previous stipulations between parties to a transaction are presumed to be embraced in a subsequent written contract about the same subject-matter.

10. SAME—RIGHT OF ACTION NOT WAIVED BY ACCEPTANCE OF GOODS.

A party who accepts and uses a commodity, notwithstanding the fact of its being other than it was represented to be, does not thereby waive his right of action, but is entitled to recover for the breach of warranty the difference between the values of the goods in their damaged and undamaged condition.

At Law.

C. B. Watson, J. T. Morehead, and J. H. Dillard, for plaintiff.

John N. Staples and J. C. Buxton, for defendant.

DICK, J., (charging jury.) This is an important case to the parties on account of the amount of money involved. It is an interesting one to the persons who have heard the trial, as the evidence and the