RUSSELL *v.* RACKETT.[1]

(*District Court, S. D. New York.* April 25, 1891.)

SEAMAN'S WAGES—VESSEL RUN ON SHARES—MASTER TO PAY WAGES—NOTICE TO SEAMAN—OWNER'S LIABILITY.

A schooner was run under an agreement between owner and master by which the master was to pay all wages of crew. Libelant was engaged as mate of the vessel, without notice that the schooner was running on a lay, which fact he learned incidentally some months later. On libelant's discharge the master gave him a written statement that "Capt. Schr. Eurotas & owner" owed him $90 wages. This was not presented to the owner of the vessel, nor any notice of it given him until after the master had been discharged in debt to the owner. This suit was brought against the owner to recover the said amount of wages. *Held*, that the cumulative remedies against ship, master, and owner, which the law upholds in favor of a seaman for his wages, ought not to be abridged, except in cases of a clear, common understanding to that effect; that the accidental notice of the lay received by libelant was not sufficient to relieve the owner from liability in case the master were negligent or treacherous; and that libelant was entitled to recover.

In Admiralty. Suit to recover balance of seaman's wages.

C. Brainerd, Jr., for libelant.

Wilcox, Adams & Macklin, for respondent.

BROWN, J. The libelant, mate of the schooner Eurotas, sues the respondent, her owner, for a balance of $90 wages, at the rate of $25 per month, up to the 26th of April, 1889, when he was discharged. The schooner was engaged in the coasting trade, and was run by the master upon shares, under an agreement by which he was to pay for all provisions and wages of the crew and one-half of the port charges, the owner paying the other half of the port charges. The net proceeds of the freight were to be divided equally between the owner and the master. The mate was engaged by the master in September, 1888, without notice that the schooner was running on a lay. He was incidentally informed of the fact, however, by the master several months later, and he afterwards assisted the master sometimes in making up the computations. The balance of wages claimed accrued after he had this knowledge. Upon his discharge the master gave him a statement in writing that "Capt. Schr. Eurotas & owner" owed him $90 wages. This was not presented to the respondent, nor any notice of it given him, until a demand by letter on the 20th of June, about 10 days after the master had been discharged. The respondent meantime had paid the master about $250, and the master was then in debt to the respondent. The mate had been all the time in Haddam, Conn., and no other reason is given for not previously notifying the respondent than that he was expecting shortly to come to New York. The mate was informed by the master some time before he left the schooner that the lay was not turning out well, and he occasionally, he says, lent the master small sums of money, which were returned when the mate was discharged.

[1] Reported by Edward G. Benedict, Esq., of the New York bar.

The various cumulative remedies against ship, master, and owner which the policy of the law upholds in favor of seamen for the collection of wages due them ought not to be abridged, except in cases of a clear, common understanding to that effect. *Skolfield* v. *Potter*, 2 Ware, 394; *Harding* v. *Souther*, 12 Cush. 308. Analogies drawn from supplies furnished to chartered ships are not precisely applicable to vessels running upon shares with the captain. It is more consonant with justice in the latter class of cases that the remedies of seamen and officers against all interested should remain unimpaired, except upon some distinct understanding to the contrary, either at the time of shipment, as intimated by Judge WARE, or subsequently by some notice equally explicit. It is always in the power of the owner, if it is his intention that the crew shall have no personal remedy against him, to give them explicit notice that such are the terms of service. No doubt in the present case it was expected that the master would pay the wages; but the libelant had no notice of the arrangement with the owner for several months after he shipped, and he first learned it, not on notice from the owner, but only upon casual information from the captain, evidently not intended to change the mate's relation to the owner, or to inform the mate of any curtailment of his security for wages. The respondent at no time did anything to protect himself against his ultimate responsibility in case the business of the ship should be unprofitable, except to inquire from time to time of the master whether all bills were paid. These inquiries were prudent, and they were consistent with the fact of the owner's ultimate responsibility in case the master was negligent or treacherous. No doubt the owner relied upon the master's information, but this did not prejudice the seamen.

I cannot doubt, upon the testimony of the libelant and the master, that the balance claimed is really due the libelant. The reason assigned by him for not presenting his claim to the owner sooner is not indeed very satisfactory; but the certificate which he received from the master stated that the master, as well as the owner, owed him the $90 now claimed, and, as the master was expected to pay it in the first instance, the libelant might naturally give the master some further time to pay, and wait until he came to New York before calling upon the owner. The mere delay in presenting the claim does not constitute any such estoppel as to prevent recovery. The owner must look to the master for indemnity under his contract. Decree for libelant for $90, with interest and costs.

CHAMBERLAIN *v.* THE TORGORM.

(*District Court, D. South Carolina.* May 6, 1891.)

1. ADMIRALTY—BILL OF LADING—LIBEL—PLEADING.
Where a railroad company libeled a steam-ship, alleging that it had delivered to it certain bales of cotton for transportation to Bremen under customary bills of lading, which cotton had been received by libelant at Atlanta under through bills of lading to Bremen, and that the master took the cotton, but refused to deliver to libelant any bill of lading therefor except one containing a provision that it should be subject to the conditions of a charter-party to which libelant is not a party, and by which it is not bound, and also refused to redeliver the cotton, the action is in no sense founded on the through bill of lading under which libelant first received the cotton, and the libel was not insufficient because it failed to set it out.

2. SAME.
Nor can the libelant be required to set out the terms of bills of lading expressed to be subjected to the conditions of the charter-party, which were tendered by the libelee, since it had not received and could not be expected to know their provisions.

3. SAME.
The through bills of lading under which libelant took the cotton provided that it should be delivered to the libelee steam-ship for transportation to Bremen under "customary bills of lading." *Held*, by this language it was intended to designate not a particular instrument, but a class of instruments whose tenor is susceptible of proof, and that it is no objection to the libel that it failed to set out such bill of lading, or have a copy thereof annexed.

In Admiralty. On exceptions to libel.

I. N. Nathans and *Mitchell & Smith*, for libelant.

I. K. Bryan, for claimant.

SIMONTON, J. The libel, after stating that libelant is the receiver of the South Carolina Railway Company, alleges that he delivered to the steam-ship Torgorm 52 bales of cotton, marked "Sa-Sa," to be carried from the port of Charleston to Bremen, under the usual and customary bills of lading, to be issued by said steam-ship to libelant; that the cotton had been transferred over the road of the South Carolina Railway from Atlanta, Ga., under what are known as "through bills of lading," and to be delivered by libelant to said steam-ship for transportation to Bremen under the customary bills of lading to be issued by said steam-ship; that the steam-ship received the cotton, and is about to depart without giving libelant proper bills of lading, and in lieu thereof tenders bills with the words written thereon, "subject to the conditions of a charter-party," to which libelant is not a party, and by which he is in no manner bound; that he has demanded proper bills of lading or redelivery of cotton to him; that the master has refused both; and fixes his damage at $3,000. The master has intervened and filed claim for the owners, and makes exceptions to the libel for insufficiency and want of certainty and definitiveness in the allegations thereof:

1. Because it fails to set forth and allege the terms of the said alleged through bill of lading from Atlanta to Bremen, mentioned in paragraph 2 of said libel, and fails to attach thereto a copy of the same as an exhibit to said libel.