THE GEORGIA.[1]

HOWARD *et al. v.* THE GEORGIA.

(*District Court, E. D. New York.* June 10, 1891.)

SEAMAN'S WAGES—PURCHASE OF CLAIM BY OWNER—DISCHARGE OF LIEN.

A purchase of a seaman's claim for wages against a vessel by the owner of the vessel is, in legal effect, a payment of the seaman's claim, and discharges the vessel of the lien for wages.

In Admiralty. Suit for seaman's wages.

Goodrich, Deady & Goodrich, for libelants.

R. D. Benedict, for bottomry holder.

BENEDICT, J. This is an action to recover seaman's wages. The defense is payment. The evidence is that the vessel was owned by a man in Matanzas named Torrontagui; that subsequent to the commencement of the action the libelant's proctor received from one Monjo, the agent of the owner of the vessel, money to pay off the crew, and accordingly the men were paid by the proctor, and receipts for those wages taken from the men. Monjo testifies that he had no interest whatever in the vessel; that the money he gave the proctor to pay the wages was an advance made by him for account of the owner of the vessel. The proctor says that the transaction between him and the crew was a purchase, by direction of Monjo, of the seamen's claims against the vessel. But this does not alter the legal effect of the act done. A purchase of a seaman's claim against a vessel by the owner of the vessel is, in legal effect, a payment of the claim, and it discharges the vessel of the lien. A man cannot pay his own debt, and be subrogated to any right of the creditor. That the wages were paid subsequent to the commencement of the action makes no difference. The wages are now paid, and no decree will be rendered against the vessel for wages already paid.

There is also a claim for master's wages. The vessel, as it now appears, was owned in Matanzas by Torrontagui, and not by the man whose name appears in the vessel's papers. She was in fact a Spanish vessel, and not a British vessel. In the absence of any evidence as to the Spanish law, the law of the forum governs the case, and, by our law, a master has no lien for wages.

The libel is therefore dismissed, but without costs.

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

THE DALE.[1]

MUMPTON *v.* THE DALE.

(*District Court, E. D. New York.* June 11, 1891.)

WEIGHT OF EVIDENCE—DISPUTE OF FACT—NUMBER OF WITNESSES.

In a dispute of fact, when all the witnesses are equally positive and equally credible, and one story is as plausible as the other, the party presenting two witnesses must prevail over the party presenting but one.

In Admiralty.

Hyland & Zabriskie, for libelant.

Edwin G. Davis, for claimant.

BENEDICT, J. The question in this case is whether the canal-boat James Nelson, while navigating the Erie canal, lost her rudder-blade by striking it on the berme bank through her own negligence, or whether the rudder-blade was knocked out by the steam canal-boat Dale, while passing the James Nelson. Upon this question of fact the testimony stands two witnesses in favor of the libelant's story to one witness for the claimant in opposition. All the witnesses are equally positive and equally credible, and one story is as probable as the other. If there be any difference in probability, it is in favor of the libelant. In such a case the party presenting two witnesses must prevail over the party presenting but one. Let a decree be entered in favor of libelant, with an order of reference to ascertain the damage.

CUFF *v.* NINETY-FIVE TONS OF COAL.

(*District Court, E. D. New York.* June 10, 1891.)

1. SHIPPING—LIEN FOR FREIGHT—WAIVER OF LIEN—WHAT CONSTITUTES—INTENT.

A delivery of cargo subject to a lien for freight, made to a person liable to pay the freight, will not be held to be a waiver of the lien for freight unless facts appear from which it can be found that the act of delivering the cargo was accompanied with an intention to waive the lien for freight. *Costello* v. *Laths*, 44 Fed. Rep. 105.

2. SAME—EVIDENCE OF INTENT.

When a master began to deliver cargo, but demanded his freight before the unloading of the cargo was completed, and when the freight was not paid stopped the delivery, and then, continuing, made special delivery of the remainder subject to the lien for freight, *held*, that this was not sufficient to show an intent to abandon the lien.

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