THE HUNTER.

(*District Court, D. California.* January 22, 1886.)

1. SEAMAN—"LAY" ON WHALER—EVIDENCE.
A shipwrecked seaman was taken on board a whaler in the Arctic ocean. The master did not put the seaman's name on the shipping articles, as he was requested to do, and he testifies, without corroboration, that the lay allowed the seaman was 1-170. The latter told the master that his lay on the wrecked vessel was 1-100, when it was in fact 1-125; but he testifies that the master believed him, and allowed him 1-100, which is corroborated by the engineer of the wrecked vessel. It was admitted that shipwrecked seamen taken on board in the Arctic ocean usually receive a higher lay than those shipped at the commencement of the voyage. *Held*, that the seaman was entitled to a lay of 1-100.

2. SAME—OFFSET—EVIDENCE.
In a libel of a whaling vessel for a seaman's lay in the bone and oil taken, the master sought to establish an offset for a pair of boots furnished libelant. He produced no books of account containing entry thereof, and his evidence was uncorroborated, whi e libelant denied that the boots were furnished him. *Held*, that the claim should be disallowed, as it was in the nature of a counter-claim, and required a preponderance of proof to establish it.

3. SAME—DISCHARGE.
When a seaman was not discharged or expelled from the vessel against his protest, but left it under a mutual agreement with the master in consequence of their disagreement, he is not entitled to share in oil and bone taken after he left the ship.

In Admiralty. Libel *in rem* by a seaman to recover his lay in the oil and bone taken by a whaling ship.

J. D. Sullivan, for libelant.

Wm. H. Cook, for claimants.

HOFFMAN, J. The proofs, I think, show that the libelant was engaged at a lay of the 1-100. He so swears himself, and he is corroborated by the testimony of Mr. Russell, who was engineer on board the ship-wrecked vessel Rainbow, from which they were received with others of the crew of the latter. At the time of his shipment, in answer to the master's inquiry, he said that his lay on board the Rainbow was the 1-100 lay. In fact it was the 1-125 lay, but the master believed his statement, and agreed, as he alleges, to take him on the same lay. It is admitted that shipwrecked seamen taken on board a ship in the Arctic ocean usually receive a higher lay than that allowed to crews shipped at the commencement of the voyage. The master swears the lay was the 1-170 lay. He is wholly uncorroborated. The preponderance of proofs, therefore, as well as the probabilities of the case, indicate that the lay was the 1-100. All doubt, however, might have been removed if the master had put the man's name on the shipping articles, which he omitted to do, though, as the libelant says, he often requested it.

The "hail" of the master on his arrival, stating the catch to be 280 barrels of oil, is proved to be erroneous. The oil actually taken was 309 barrels. The libelant is, of course, entitled to have his account settled upon the basis of the actual catch of the vessel. As far as I can ascertain from the testimony, the crew are not entitled, unless specially stipulated for, to any lay in the "trade bone;" that is, bone obtained from the natives by barter.

I am inclined to think that the libelant cannot claim any share in the oil and bone taken after he left the ship. He does not appear to me to have been discharged; that is, expelled from the vessel against his will or protest. A disagreement occurred between him and the master, at which both seemed somewhat irritated. They seem to have parted by mutual consent. Under the special circumstances of this case, the recovery of the libelant must be limited to his lay in the oil and bone taken while he was aboard. Some of the oil taken from the dead whale seems to have been of an inferior quality. The bone was shipped to New York for sale, there being no market for it here. The freight and incidental expenses of conveying it to a market and selling it must be deducted from its proceeds, or its value, (if not sold.) A tabular statement is appended, drawn up in accordance with these views, and showing the amount and value of the oil and bone on which the libelant is entitled to the 1-100 lay. I have added 10 per cent. to the cost price, so far as I can ascertain it, of slops furnished to the libelant. I have disallowed a charge against him of three dollars for a pair of boots. The master swears they were furnished, but produces no books of account. The libelant denies that he received them. I am inclined to suspect that they were furnished to him, but the claim of the master is in the nature of an offset or counter-charge to the demand of the libelant. He is bound to establish it by a preponderance of proof. As between his assertions and the libelant's denial, I must accept the latter. If the master of a vessel proposes to charge the seamen with supplies of this nature, he should set each item down at the time it was furnished in an account-book kept for the purpose, the entries in which he can verify by his oath. The libelant is entitled to a decree for the sum of $48.20, together with costs.

SCHEDULE.

The amount of oil obtained from the two whales taken while libelant was on board I find to have been, - - - -	5,435 gals.
The amount of bone obtained from the whales taken while libelant was on board I find to have been, - - -	3,090 lbs.

I allow as the value of the oil, for the purpose of ascertaining libelant's share of the catch, as follows:

1,800 gals. oil, @ 18c. per gal., - - - - -	$ 324 00
3,635 gals. oil, @ 25c. per gal., - - - -	908 75
And for the value of of the bone as follows:	
3,090 lbs. bone, @ 1.75 per lb., - - - - -	5,407 50
Total value of catch, - - - - -	$6,640 25
The 1-100 lay of which would be, - - - - -	$ 66 40
I have allowed slops, @ $18.20, - - - -	18 20
(Disallowing charge for boots,)	
Due libelant, - - - - -	$ 48 20

THE DON CARLOS.

SPRECKELS *et al.* *v.* THE DON CARLOS.

(District Court, N. D. California. October 5, 1891.)

SALVAGE—COMPENSATION—STRANDING—SERVICES OF TUGS.

The bark Don Carlos, worth $15,000, with a cargo of nitrate of soda, worth $34,000, the freight being $4,000, stranded on South beach, near the entrance to the bay of San Francisco. News of the disaster was telephoned to San Francisco, and libelants immediately sent their tug-boat Alert to the scene. At her arrival, there was a rolling swell, sufficient, combined with the ebb-tide, to swing the bark around broadside to the shore, when it was reasonably certain that she would soon become so banked with sand as to render removal impossible. The captain of the Alert refused to render assistance, except on the master's agreement to pay $8,000 for pulling him off, which, after trying to obtain better terms, he agreed to do. Thereupon a hawser was made fast, and the tug began pulling, and prevented the bark from swinging. Soon afterwards the Relief and the Reliance, two powerful tugs, also owned by libelants, arrived, and the master of the bark agreed to pay $2,000 additional for their assistance. In about two and one-half hours they succeeded in pulling her off. She was then towed into the bay, and grounded upon the mud flats. The value of the tug Alert was $25,000, of the Reliance, $30,000, and of the Relief, $50,000, and the ordinary expense of maintaining the three in readiness for salvage service about $7,500 a month. None of the tugs were in any danger. *Held*, that the demand for $8,000 for the services of the Alert was exorbitant, and the agreement should be disregarded, and that $5,500 should be awarded for the services of the three tugs, to be apportioned among the ship, freight, and cargo, according to value.

In Admiralty. Libel for salvage.

Andros & Frank, for libelants.

Charles Page and *E. W. McGraw*, for claimant.

ROSS, J. This is a cause of salvage. The evidence shows that the principal services in question were rendered under contracts which, though not counted on in the libel, libelants claim should serve as a guide to the court in awarding compensation. If the contracts are not shown to be unfair and inequitable, that is doubtless true; but if, as is contended on the part of the claimant, they were exorbitant and unconscionable, they should be disregarded by the court in making the award. The case is this: On the 10th of July last, the bark Don Carlos, then on a voyage from a Chilian port to the port of San Francisco, laden with a cargo of about 1,000 tons of nitrate of soda, was approaching the entrance to the bay of San Francisco. At about half past 5 o'clock of the afternoon of that day, in consequence of a dense fog then prevailing, she was stranded at what is known as the "South Beach," at a point thereon about one mile to the southward of Point Lobos. At the time of the stranding the tide was ebb, the vessel under all sail, and proceeding at a speed of from 3 to 4 knots an hour. She brought up on the beach at a distance of from 150 to 200 yards from high-water mark. The master immediately made signals of distress by the firing of a rifle and revolver. A life-boat was quickly manned from the life-saving station, which was in the near vicinity, and went to the assistance of the vessel. News of the disaster was telephoned to the Merchants' Exchange, at San Francisco, and the tug-boat Alert, owned by the libelants, was