cotton is to be delivered primarily to the Torgorm, but, if not delivered to the Torgorm, then to some other steam-ship or company, or (another alternative) to vessels chartered thereby, to be transported by the mode selected,—that is, either by the Torgorm, or by steamers of a line selected in lieu of her; or if neither of these be done, then by the charter of other vessels. It is clear that a charter is not contemplated except upon the contingency that the delivery is not to the Torgorm. Now, the fact being established that the libelant himself and his agents had no knowledge of the existence of a charter-party, and the through of lading did not put him on the inquiry, if he had inserted the words demanded by the master he would have added a new condition to the contract of carriage. This he had not and could not have had any right to do. He was entitled on delivery to a simple declaration of that fact. He could not have demanded more. He could not be compelled to take less than this. It was urged with great force that this cotton was really the property of William Fatman, who had made the charter-party for his company. It was more than suggested that this suit was a skillful device to protect him from a just claim. Assuming that this be so, (it is due to Mr. Fatman to say that the evidence does not sustain it,) it cannot affect the right of libelant. If there be any claim on the part of the ship against the charterer, the master cannot force libelant into the controversy, or make him his instrument in enforcing his claim. With the cotton in his possession, he could enforce any lien he may have had. He did not need any new condition inserted in the contract by the libelant. Such being the right of the libelant, has he taken the proper course of securing it? He is not the shipper, nor is he the owner,—the absolute owner,—of the cotton. But he is the bailee, with a qualified ownership, and intrusted with the possession for the purpose of making delivery according to the bill of lading. Until so delivered, he can claim the possession of the cotton, and maintain an action for it. If the cotton went out of his possession by fraud or mistake, the possession would be restored to him. The libelant would not have delivered this cotton if the conditions insisted upon by the master had been made known to him in advance. He cannot now be prevented from regaining possession, when it is sought to interpolate these conditions, after a delivery made in good faith, and according to the usage of the port. *Peek* v. *Larsen*, L. R. 12 Eq. 378; Macl. Shipp. 352; Story, Ag. § 398; Add. Torts, p. 562, § 540; *The W. A. Morrell*, 27 Fed. Rep. 570. The libelant is entitled to a decree. It has been stated by counsel for respondent, however, that pending this suit the cotton in question has reached Bremen, and has been delivered to and accepted by the holder of the through bill of lading. This being so, it will protect libelant, and will certainly diminish the money claim. Let a reference be held, in which the inquiry will be as to the fact, circumstances, and terms of this delivery.

UNITED STATES v. GUESS.

(*District Court, E. D. Louisiana.* December 23, 1891.)

SHIPPING REGULATIONS—INSPECTION—PASSENGERS.

Where the wife and neighbors of a tug-owner go upon the tug during a trial trip, merely to witness the test of her machinery, they are not passengers, within the meaning of the statute requiring passenger boats to be inspected and licensed; and the owner is not liable to the fine imposed by Rev. St. U. S. § 4499, for navigating any vessel contrary to the shipping regulations.

In Admiralty. Libel of information against C. M. Guess to recover a penalty for carrying passengers on a steam-tug not inspected or licensed to carry passengers. Libel dismissed.

Wm. Grant, U. S. Atty.

E. Sabourin, for defendant.

BILLINGS, J. This case is submitted on the libel of information, and the answer and the affidavits and depositions taken under a commission. The suit is for a penalty of $500 for a violation of the Revised Statutes, in this: That the steam-tug of the defendant, the Black Prince—

"Being an American vessel propelled by steam, and not being a public vessel of the United States, or of any other country, and not being a ferry-boat or a boat propelled in whole or in part by steam for navigating canals, was engaged in navigating waters of the United States which are common highways of commerce, and open to general and competitive navigation, in that, while navigating as aforesaid, she did carry as passengers, not having then and there been inspected and licensed as a passenger steam-boat, and not having a certificate from any board of local inspectors of steam-vessels of approval of said vessel and her equipments, as proper for such service, contrary to the form of the statute."

It is to be seen that the *gravamen* of the charge in the information is that the defendant, as owner, had violated the statute, in that, while navigating his vessel, he had carried passengers upon a steam-tug without a certificate of inspection. The only point presented is whether the steam-tug did carry passengers. The proofs adduced by the libelant's depositions, and by the answer of the defendant and his affidavits, contain no conflict of evidence. They all show that the steam-tug Black Prince, in the summer of 1890, had to be laid up for extensive repairs; that after they were made and completed, solely with a view "to test the machinery, and to ascertain if it worked satisfactorily," the defendant, the owner of the boat, raised steam, and steamed down the Bayou Teche, from New Iberia to Jeanerette and back, a distance of 10 miles each way; that the time occupied in going and returning was about four hours; that the persons described in the information as passengers were the wife and neighbors of the owner, who had no purpose in being on board, except to accompany the owner in his effort to see the working of the repaired machinery. There is no proof that there was any commercial purpose intended or accomplished, or any transportation as travelers, in