

The suit was necessary. The adjustment, having been based on an *ex parte* statement, could not bind the parties. No solution of the question could be had in any other way. The result has been a reduction of the amount due on general average, but has established the fact that it is a case of general average. I do not perceive any impropriety in bringing the suit, or any conduct on the part of the libelant which would have prevented a settlement if practicable. The main issue was, was all this claim for general average a fraud? This issue has been decided in favor of the libelant. The amount of his claim was diminished for want of evidence which could satisfy the court. There is an atmosphere of suspicion hanging around cases of this character which, resist it as we may, has its influence. The libelant has had the disadvantage of this. I am not disposed to burden him further. Let respondent pay the costs.

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THE GRACE LITTLETON.

LYONS *v.* THE GRACE LITTLETON.

(District Court, D. South Carolina. April 23, 1892.)

**SEAMAN'S WAGES—REFUSAL TO GO ABOARD—INTOXICATION—CONTRACT.**

Where a seaman, who has signed shipping articles, went to his vessel, on her sailing day, intoxicated, and declined to go aboard, and the master, being pressed for time, thereupon shipped another man, *held* that, while the fact that he was drunk was not a sufficient ground for a rescission of his contract, his refusal to go aboard entitled the master to supply his place, and, when the place was filled, no subsequent application could help him.

In Admiralty.

*Huger Sinkler*, for libelant.

*Bryan & Bryan*, for respondent.

SIMONTON, District Judge. This is a libel for damages for breach of contract of hire of a seaman. Libelant signed shipping articles for the Grace Littleton on 19th March, for a voyage to West Indies, at \$20 per month. When he signed he was told to go aboard the next day at 7 o'clock A. M., as the vessel would sail that afternoon. The vessel was at the Northeastern Railroad wharf, and libelant did go to her the next day about 9 A. M. Now comes the inevitable conflict of testimony. He says that he went to the vessel with his duds, ready to enter upon his engagement, and that the master refused to let him go aboard, alleging that he was drunk; that, although he had taken a glass of beer or so, he was sober; that during the day he sought the master, with his counsel, and offered again to fulfill his contract. Mr. Getty, a clerk at the wharf, says that he saw a sailor at that wharf that morning going towards the schooner, and that, although he evidently had been on a heavy spree, he had sobered up. I will come to his testimony again. Hendrix, the

boarding house keeper, says that this sailor was staying at his house with the two other sailors, who had signed the same articles as he had; that pursuant to appointment he got them ready the morning of the 19th to proceed in his wagon to the vessel; that the other two were ready with their duds, but that libelant could be found nowhere. Putting his baggage on the wagon, they started, and finding libelant on their way, at the corner of State and Cumberland streets, they went to the Northeastern Railroad; that libelant had all the appearance of a drunken man, and had a pint bottle of whisky in his pocket, from which he took drinks on his way up; when they reached the Northeastern Railroad, the other sailors got off, and went to the schooner; the libelant swore that he would not go on her, and, in despite of the remonstrances of witness persevered in his declarations to this effect; that the master came up, and asked who he was, and if he was for his schooner; on his reply that he was, the master ordered him to go aboard, and he positively refused to do so. The master confirms all this, and says that the man was drunk; that, finding libelant in this condition and refusing to go aboard, he went to the shipping commissioner and shipped another man; that he had no time to wait; his vessel was ready for sea; he intended to leave that evening, and that to do so he needed the services of the crew in fixing his deck load; so, this man refusing to go on board, he supplied his place at 10 A. M. The shipping commissioner says that he saw libelant the morning of 19th, about 11 A. M., and that he was then seeking the agents of the schooner. I have no doubt that the libelant did, about 1 o'clock, try to resume his engagement. I agree with the proctor for libelant that the fact that libelant was drunk when he went to the vessel, assuming that he was in this condition, would not be sufficient ground for rescission of this contract. *Duncan v. Shaw*, 19 Fed. Rep. 521. The difficulty in his way is his refusal to go aboard, spoken of by the master and the man Hendrix. The latter is in some measure corroborated by Mr. Getty at the railroad. He says that he heard a violent altercation between the sailor and the boarding house keeper after the wagon came up. To be sure, the witnesses are not free from suspicion. Neither is libelant. Unfortunately for him, he is alone. It is not improbable that the sailor was drunk, and that he did carry on as stated, and, if the master had had time and patience, he may have gotten him aboard all right. But the master was pressed for time. He was compelled to fill up his crew at once. He did so. It would be unreasonable to compel him to wait on the recovery of the sailor from the condition in which he put himself. When the place was filled, no subsequent application of libelant could help him. His own conduct forced the master to go for some one else, and, if he lost his place, libelant can only blame himself.

The libel is dismissed.

THE JAMES H. SHRIGLEY.

LAWSON v. THE JAMES H. SHRIGLEY.

(District Court, N. D. New York, April 22, 1892.)

## SEAMAN'S WAGES—FEMALE COOK—WIFE OF FIRST COOK.

On the evidence, *held*, that the libelant, who was the wife of the cook on a steam barge, had been engaged by the master of the barge as second cook, and was entitled in this suit *in rem* to recover wages for her term of service.

In Admiralty, Suit to recover wages.  
*Cook & Fitzgerald*, for libelant.  
*Clinton, Clark & Ingraham*, for respondents.

COXE, District Judge. Louisa A. Lawson brings this libel against the steam barge James H. Shrigley to recover wages as second cook, at the rate of \$15 per month from May 3, 1891, to August 18, 1891, in all \$54, under an agreement made with the master of the barge. That the libelant performed the duties of second cook faithfully and well and that her services were reasonably worth the sum demanded is not disputed. The defense is that no agreement was made with the libelant, but that an agreement was made with her husband by which he agreed to do the cooking for the barge, with his wife as assistant, for the sum of \$60 a month. The only question of fact is whether the contract was made as alleged in the libel. The libelant and her husband both swear in unqualified terms that the master agreed to pay her \$15 per month. This agreement is denied by the master. Three witnesses were called for the respondents who testified to declarations of the libelant and her husband inconsistent with their present testimony. The shipping articles of the barge were introduced in which, after the name of the libelant's husband, appear the words "cook and wife" and on the three pay rolls signed by her husband appear, not in his handwriting, however, the words "L. Lawson and wife, cooks." The libelant did not draw her wages when her husband drew his and nothing was said on the subject by either of them until they were about to leave the barge. These facts, certainly, tend to corroborate the testimony of the master that the contract was as stated by him. In an ordinary action between man and man the presumptions arising from facts like these would be persuasive and, perhaps, controlling, but in a case of mariners' wages, and that, too, where the libelant is a woman, a somewhat different rule obtains. It should be remembered that there are few claims so highly favored and studiously protected as the claims of mariners for their wages. They are regarded as the wards of the court and every shield and safeguard which the law can give is thrown around them, both by legislative enactment and judicial decision. Their usefulness and importance on the one hand and their proverbial improvidence and recklessness on the other have made them the objects of solicitude in all commercial nations. They