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

are recognized as a thoughtless, imprudent, rash and impulsive class, ignorant of their rights and easily imposed upon by sharp and designing men. Admiralty courts which do not follow the harsh and unyielding rules of the common law, but sit rather as courts of equity, are vigilant to protect them and hold as void and as of no effect all contracts and stipulations made by them which are in derogation or relinquishment of any of their general rights and privileges. It is the aim of the law to shield them from oppression and take care of their rights and interests by protecting them, not only against the master, but also against themselves. In the light of these well-known rules it is thought that the libelant is entitled to recover, and for the following reasons:

1. The preponderance of direct testimony is with her on the main issue. The three witnesses to the principal transaction were all interested, but the libelant and her husband agree as to the terms of the contract. They are contradicted by the master alone.

2. The contract as testified to by the libelant was an equitable and natural one. The shipping articles show that on former trips the cook on this barge received as high as $75 per month and never less than $60, and that the second cook, on one trip, received $25 per month. It is conceded by the respondents that the sum of $60 a month for both first and second cook was low wages. As this was the lowest sum theretofore paid to the cook alone it is hardly probable that the libelant's services were to be counted as nothing, especially when it is conceded that she was a competent cook and discharged her duties faithfully.

3. The character of two of the witnesses called to contradict the libelant and her husband does not commend them to the favor of the court. Their testimony was evidently dictated by a hostile animus.

4. The libelant was, in legal sense, a mariner. She was part of the crew. It was the duty of the master to have the agreement, even if it were as stated by him, reduced to writing and signed by her. Rev. St. §§ 4520, 4521. If he had obtained a contract as advantageous as the one he says was made, a contract clearly understood by all parties, is it not probable that he would have had it so signed? His failure to do so, if it has no other effect, at least, tends to strengthen the position of the libelant that the contract was as stated by her.

It is thought that the action can be maintained by the libelant in its present form and that she is entitled to a decree for the sum demanded in the libel with costs.

TAYLOR *et al.* v. FRANKLIN SAV. BANK.

(*Circuit Court, N. D. Illinois.* August 10, 1891.)

TRUSTS—INFANT BENEFICIARIES—FORECLOSURE—BILL OF REVIEW.

Land was conveyed to a trustee by deed of trust, which provided that no lien, incumbrance, or charge should be created. The record of such trust deed having been destroyed by fire, a decree was entered in a proceeding under the burnt record act, establishing the trust deed without the provision aforesaid, but with a clause authorizing the trustee to create liens. After entry of this decree the trustee gave a mortgage and allowed a mechanic's lien to be created, under which the land was sold. Some of the *cestuis qui trustent* who were infants when the decrees of foreclosure and the decree restoring the trust deed were rendered, but who had appeared therein by guardian *ad litem*, filed a bill to review the foreclosure suits. *Held* that, as to them, the mortgages and the mechanic's lien were invalid, since the record of the trust deed, though destroyed, gave the mortgagee and lien holder notice of the inability of the trustee to incumber the property.

In Equity.

R. B. Kendall and *Mr. Pope*, for complainants.

Swift, Campbell & Jones, for Franklin Sav. Bank.

BLODGETT, District Judge. This is a bill to review, reverse, and set aside a decree of foreclosure, entered in this court on the 30th of April, 1880, under which defendant claims title to lots, 1, 4, and 5 of the subdivision of lot 4, in block 16, in Bushnell's addition to the city of Chicago; and also to set aside a sale made July 15, 1881, under a decree for a mechanic's lien, in favor of Gilsdorf and others, entered in the superior court of Cook county July 20, 1874. The original bill of review was filed by Robert C., Katharine, and Margaret Taylor, children of Frank C. and Louisa Taylor. And the cross bill was filed by Frank C. Taylor, Jr., and Maria Louisa Taylor, Jr., Josephine S. Taylor, and Alexander Taylor, infants, and older children of Frank C. and Louisa Taylor, Sr. The facts, as they appear from the proof, and which are not disputed, are that on the 13th of June, 1871, Maria Louisa Taylor, being seised in fee of all of lot 4, in block 16, Bushnell's addition to Chicago, joined with her husband, Frank C. Taylor, in the execution of a deed of said premises to Ira Scott, to hold upon certain trusts in the deed set forth, which trusts, so far as it is necessary to state them for the purposes of this case, were that the property was to be held for the benefit of Mrs. Taylor and the children of the marriage between Frank C. Taylor, her husband, and herself, except that, in the event of the death of Mrs. Taylor, and of the children, before the youngest child had reached the age of 21 years, Mr. Taylor or his heirs should become entitled to the remainder of the estate. The deed of trust contained an express provision "that no lien, incumbrance, or charge shall be created on said premises," and, although there was a provision in the trust deed that the trustee might sell some portion of the premises for the purpose of improving that which was unsold, yet that provision was so guarded as to prohibit the creation of any lien, incumbrance, or charge upon the unsold portion of said premises. At the time the deed was made there