

defendants have infringed beyond the extent of the sales of the 18 dozen of neck scarfs purchased by them of Hellenberg & Lowenstein. If the complainants choose to take a decree upon the basis of the royalty upon the 18 dozen neck scarfs sold by the defendants, they are entitled to do so. But, if they prefer to go to an accounting, it is their right to do so. If it should turn out that the defendants have not sold any more than that number, the question will arise whether the costs of the accounting should not be imposed upon the complainants. The usual decree is ordered.

THE ALBERT DUMOIS.

**RUSTAD v. FOUR HUNDRED AND FIFTY-SEVEN BAGS OF COFFEE
et al.**

(District Court, E. D. New York. January 27, 1893.)

CHARTER PARTY—LIEN ON CARGO—BILL OF LADING STATING FREIGHT—LIABILITY OF CARGO FOR UNPAID CHARTER MONEY.

The provisions of a charter party gave the shipowner a lien "on all cargoes and all subfreights for any amounts due under this charter." The charterer subchartered the vessel by a charter party of similar terms, and claimant shipped certain cargo, for which bills of lading, fixing the freight due, were given by the purser of the subcharterer. Claimant having paid to the subcharterer the freight due on the cargo as per bills of lading, after notice that the shipowner claimed a lien thereon, *held*, that the shipowner could enforce a lien upon the cargo for the freight stated in the bills of lading, but for no more.

In Admiralty. Libel for balance of charter money. Decree for libellant.

Libellant was the master of the steamship *Albert Dumois*, and libeled 457 bags of coffee, 110 bales of deerskins, 151 bales of rubber, and 400 bales of hides, for the amount due under the charter party of the vessel, dated August 5, 1890, by which she was chartered to H. Dumois & Co. H. Dumois & Co. subchartered the steamer to the Central American & Honduras Steamship Company, under a charter party similar in its terms to the original charter party. The charter party contained a clause giving the owners a lien "upon all cargoes and upon all subfreights for any amounts due under this charter." The vessel was loaded by the steamship company at Honduras, and brought to this port the cargo above named. After the commencement of this action the cargo was claimed by Hoadley & Co., and a stipulation given by them. After the filing of the libel they paid to the Honduras Steamship Company the amount of the freight on the libeled cargo. The libellant claimed that he was entitled to his lien upon the cargo to the extent of the unpaid charter money, namely, \$1,433.53. The claimant insisted that the vessel had a lien on the cargo only to the extent of the freight named in the bills of lading which were given by the steamship company to shippers.

Goodrich, Deady & Goodrich, for libellant.
Wheeler, Cortis & Godkin, for claimants.

BENEDICT, District Judge. The charter party shows that it was the intention of the parties to confer upon the charterers authority to fix the freight to be paid by cargo that might be shipped under bills of lading. The cargo in question was shipped under bills of lading signed by the purser, by which the freight to be paid on each shipment was fixed. These bills of lading were authorized

contracts which, as between the shipper and the ship, fix the freight to be paid by each shipment, notwithstanding that provision is made in the charter party for a shipowner's lien for the charter money. By virtue of this provision the shipowner may enforce a lien upon the cargo for the freight stated in the respective bills of lading, but for no more. Let the libelants have a decree with an order of reference to ascertain the amount of such freight.

OLSEN v. HUNTER-BENN & CO.¹

(District Court, S. D. Alabama. October 29, 1892.)

1. SHIPPING—CHARTER PARTY—"ALL CONVENIENT SPEED."

The provision in a charter party that the vessel chartered shall proceed to port of loading "with all convenient speed" is equivalent to a contract that she shall proceed without unnecessary delay, and implies an agreement that it shall be without unreasonable delay, and these are conditions precedent.

2. SAME—"AT PORT OR SAILED."

The provision in a charter party that the vessel to be chartered is "at Santos, or sailed," is a contract that she will soon sail, or has sailed, therefrom.

3. SAME—REASONABLE DILIGENCE.

One of the conditions implied in a charter party is that the vessel will commence the voyage with reasonable diligence, and this is violated by waiting over four months to carry out a previous contract before beginning the new one.

4. AGENT—POWER TO WAIVE CONDITIONS.

An agent to load cargoes has not, in general, power to waive forfeiture of charter party, so as to bind his nonresident principal.

5. SHIPPING—CHARTER PARTY—WAIVER OF FORFEITURE.

The advancement by an agent of a small sum, without commissions, to a delayed vessel, is not a waiver of forfeiture of charter party by delayed arrival, when accompanied by a declaration that he did not know what his principal, the charterer, would do about the delay.

In Admiralty. Libel in personam to recover damages for breach of charter party. Libel dismissed.

G. L. & H. T. Smith, for libellant.

Pillans, Torrey & Hanaw, for defendants.

TOULMIN, District Judge. On the 27th day of July, 1891, the libellant, and owner of the Norwegian bark Franklin, through an agent in Pensacola, Fla., chartered his vessel to the defendants to carry a cargo of timber from Ship island, Miss., to some port in the United Kingdom. The charter party, among other stipulations, contained the following:

"Ship or vessel now at Santos, or sailed, * * * Said ship, being * * * and in every way fitted for the voyage, shall, with all convenient speed, sail and proceed to Ship island, Miss., and there load for the said charterers a full and complete cargo, to consist of," etc.

¹Reported by Peter J. Hamilton, Esq., of the Mobile, Ala., bar.