THE C. E. CONRAD.

THE RHODA AND CHARLIE.

FOSTER v. THE C. E. CONRAD and THE RHODA AND CHARLIE.[1]

(District Court, S. D. New York. May 31, 1893.)

MARITIME LIENS—UNAUTHORIZED POSSESSION OF BOAT—BREACH OF CONTRACT BY WRONGDOER—LIABILITY OF BOAT.

Where one obtained possession of boats without the owner's consent or authority, and afterwards, in his own name, entered into contracts of towage in regard to such boats, which contracts he subsequently violated, *held*, that mere possession, without right, is not even apparent legal authority, and one who deals with the wrongdoer in possession does so at his peril, and no lien against the boats was created by such breach of contract.

In Admiralty. Libel by Pell W. Foster against the C. E. Conrad and the Rhoda and Charlie to enforce lien for breach of contract. Libel dismissed.

Lamb, Osborne & Petty, for libelant.
Hyland & Zabriskie, for claimants.

BROWN, District Judge. In this case, which in some respects resembles that of Foster v. The Rosenthal, 57 Fed. Rep. 254, it appears that Hazard, the master, under a contract for the purchase of the boats, had obtained possession of them from the owner without his consent or authority, and then made in his own name the contract to carry the libelant's goods for the breach of which the libel is filed.

I doubt whether merely proceeding to Rochester with the intention of taking the libelant's salt, and on arrival there going elsewhere for a different cargo, would constitute such an entry on the performance of the contract, as would bring the case within the rule of a partial execution of the charter, sufficient to sustain a libel in rem for the breach of the contract. Aside from that, however, the uncontradicted evidence shows that Hazard had not the least authority to make any charter, or contract binding on the boats; that possession of them had never been delivered to him by the owner, nor any consent given that he should navigate them or make any contract of carriage. He had no authority real, implied, or apparent; for mere possession without right or the consent of the owner, is not even apparent legal authority. The libelant in dealing with him, dealt, therefore, at his peril. It follows that the libel must be dismissed; but as the claimant, the true owner, has obtained actual possession of the boats by means of these very libels, not previously knowing where the boats were, the libel may be dismissed without costs.

[1]Reported by E. G. Benedict, Esq., of the New York bar.

BLAIR et al. v. HARRISON et al.[1]

(Circuit Court of Appeals, Seventh Circuit. June 10, 1893.)

No. 64.

1. ATTORNEY AND CLIENT—FEES—LIEN ON JUDGMENT.
Where the amount due on a judgment recovered for the purchase price of property sold by plaintiff to defendant is paid into a court of equity for distribution, plaintiff's attorneys are entitled to receive therefrom the money due them for meritorious services rendered to plaintiff in other suits growing out of such purchase, where such services were rendered with the expectation that they would be paid for out of the proceeds of such judgment. 51 Fed. Rep. 693, affirmed.

2. PARTNERSHIP—WHAT CONSTITUTES—EVIDENCE.
Proof that two men owned a ranch and herd of cattle jointly, that they managed the ranch together, rendered accounts in their joint names, and referred to themselves as a company, is sufficient to show that they were copartners, although they had no articles or agreement of copartnership. 51 Fed. Rep. 693, affirmed.

3. SAME—SETTLEMENT BETWEEN PARTNERS—RIGHTS OF CREDITORS.
A settlement between copartners which determines their respective interests in a certain partnership fund is conclusive as to the rights of their individual creditors to that fund. 51 Fed. Rep. 693, affirmed.

4. SAME—VACATING SETTLEMENT—EVIDENCE.
A settlement between copartners, who are both capable men, of a business amounting to hundreds of thousands of dollars, and involving many items of account depending upon the memories of the copartners, should not be opened at the instigation of their creditors, after the death of one of the copartners, even though there is a strong prima facie showing of mistake in the settlement. 51 Fed. Rep. 693, affirmed.

5. SAME—RIGHT OF PARTNER TO PLEDGE FIRM PROPERTY.
One of two copartners cannot pledge the partnership property to secure his private debt, except to the extent of his interest therein. 51 Fed. Rep. 693, affirmed.

6. EQUITY PLEADING—AMENDMENT.
After the announcement of the final decision of the chancellor upon the merits of a case, it is proper to refuse to permit the pleadings to be amended, so as to meet objections which were raised at the hearing, two months before the decision was rendered, especially where such amendment would not affect the grounds on which the decision is based. 51 Fed. Rep. 693, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

In Equity. Bill in the nature of a suit of interpleader brought by John Claflin and others, composing the firm of H. B. Claflin & Co., against Jessie I. Bennett, John A. Blair, Samuel J. Garvin, John C. Harrison, Robert L. Dunman, and others. A decree was rendered in favor of Harrison and Dunman. An appeal was taken by Blair and Garvin. Affirmed.

For opinion of the lower court in this case, see Claflin v. Bennett, 51 Fed. Rep. 693.

A. B. Wilson, E. F. Thompson, and C. B. McCoy, (Gardiner Lathrop and John N. Jewett, on the brief,) for appellants.

Charles M. Osborn, (S. A. Lynde and S. B. Ladd, on the brief,) for appellees.

[1] Rehearing pending.