

that excludes the evidence of a verbal agreement, and under this authority I am of the opinion that the evidence is irrelevant and immaterial. It follows that the exception should be sustained, and it is so ordered.

THE MARY SANFORD.

MITCHELL v. THE MARY SANFORD.

(District Court, E. D. South Carolina. November 25, 1893.)

SEAMEN—IMPLIED WARRANTY OF FITNESS—DISABILITY—WAGES.

There is an implied warranty that a seaman is bodily fit for the station for which he contracts, and if at the time of engaging he has a disease, though unknown to himself, progressive and fatal in character, which disables him for service during the whole voyage, he is not entitled to wages.

In Admiralty. Libel by William Mitchell against the schooner Mary Sanford to recover wages. Dismissed.

F. J. Devereux, for libellant.

J. N. Nathans, for respondent.

SIMONTON, District Judge. The libel is filed by the cook of the Mary Sanford for his wages. He shipped at Boston 3d August, 1893, for a voyage from Boston to Charleston, S. C., thence to Kingston, Jamaica, and such other ports and places in any part of the world as the master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding six calendar months; wages, \$40 per month. After the voyage began, Mitchell for a day or two attended to his duties, but thenceforward did no work at all until the schooner reached Charleston. On arriving at that port, the master got him in the Marine Hospital, where he still is. He suffered from intense pain in his chest and side, nausea, and a pain in his bones. The surgeon of the Marine Hospital examined him on his admission. He is of the opinion that at that time, and for some time previous, he was suffering from tuberculosis, and in his opinion he still suffers from the same complaint. This disease, in the opinion of this medical expert, incapacitated Mitchell for work, and still incapacitates him. The question is, is he entitled to his wages? His claim is for the wages \$240, the whole voyage. The rule, without doubt, is that, if a sailor is prevented without his default from performing full services, still he is entitled to the stipulated hire for the whole period for which he contracted to serve. The Harriet C. Kerlain, and cases quoted, 41 Fed. 223. But when a seaman enters into his contract of service, there is always implied as a warranty that he is fit, bodily and mentally, for the station for which he contracts. Curt. Merch. Seam. 29; The Richmond, Pet. Adm. 263. Indeed the liberality of the rule as to wages requires strictness in enforcing this warranty. The libellant says that he had been sick, from time to time,

before this engagement, but never seriously sick. On the other hand, it is evident that when he engaged his service he had, unknown perhaps to himself, a disease, progressive and fatal in its character. It not only disabled him from service during the whole voyage, it also kept him in hospital during the whole stay of the schooner in this port,—four weeks. Indeed he is still in hospital, not cured of this disease. It seems clear that there is a breach of warranty in this case, and the libel is dismissed.

THE PHOENIX.

CORNWELL v. ROGERS et al.

(Circuit Court of Appeals, Second Circuit. November 17, 1893.)

COLLISION BETWEEN STEAMERS CROSSING COURSES.

A steam barge in a fog heard the fog signals of a tug with tows on her starboard hand. Both vessels were proceeding slowly, and neither could be seen from the other at a greater distance than 400 feet. *Held*, that for the collision which ensued between the barge and one of the tows the tug was not in fault, she having reversed, in obedience to rule 21, when she saw the steam barge kept coming towards her on a course involving the risk of collision; but that the steam barge, on which rested the duty of avoidance, must be held in fault, on the finding of the trial court on conflicting evidence that she did not reverse promptly on discovering the tug.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by William L. Rogers, master and owner of the canal boat Bartholomew Brewing Company, against the steam barge Phoenix (Charles C. Cromwell, claimant) and the steam tug Atlanta, for damages from collision of the canal boat, while in tow of the Atlanta, with the Phoenix. The district court held the Phoenix solely in fault for the collision, and entered a decree for libelants against the Phoenix, dismissing the libel as against the Atlanta. The claimant of the Phoenix appeals. Affirmed.

Treadwell Cleveland, (Gherardi Davis, on the brief,) for appellant.

W. W. Goodrich, for the Atlanta, appellee.

Wilhelmus Mynderse, (Butler, Stillman & Hubbard, on the brief,) for libellant, appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This is an appeal from a decree of the district court in the southern district of New York in favor of the libellant, as owner of the canal boat Bartholomew Brewing Company, against the steam barge Phoenix, and dismissing the libel as against the steam tug Atlanta.

The canal boat was the outer of two boats on the port side of the Atlanta, which had another boat on her starboard side. The