

manded to the court below, with instructions to set aside the decree thereinbefore granted, and enter a decree in favor of the libelant for \$4,590.10, with interest from the 27th day of November, 1893, the date of judicial demand, at the rate of 6 per cent. per annum, and the costs in that court incurred; and that the \$4,122.10, now on deposit in the registry of the court in this cause, less the costs of such deposit, be applied in part payment thereof; and that libelant have judgment for any balance then remaining unpaid against the African Steamship Company, composed of Elder, Dempster & Co., and Thomas H. Sweeney and George Sealy, sureties upon its stipulation, and such judgment be without prejudice to the rights of N. W. Cuney, libelant herein, against the steamship Sirona, W. W. Wilson, agent, or any one else on account of any amount that may be due him from said steamship; and that the costs herein be taxed against the appellee herein; and it is so ordered.

THE PORT ADELAIDE.

JAMISON v. PERRY.

(Circuit Court of Appeals, Second Circuit. June 7, 1894.)

No. 148.

SHIPPING—CHARTER PARTY—RIGHT TO EXTRA FREIGHT EARNED.

By the terms of a charter party, the charterer was entitled to the whole cargo capacity of the vessel, and the services of her officers and crew, for the specified voyage. The master, without the charterer's permission, used the vessel on part of the voyage for carrying cargo for third persons. *Held*, that the charterer might recover the freight thereby earned, less the expenses incurred in earning it, by libel against the vessel. 59 Fed. 174, modified.

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

This was a libel by Edward Perry against the steamship Port Adelaide (David E. Jamison, claimant) for freight received by said steamship while under charter to libelant, and for damages for breach of the charter party. The district court rendered a decree for libelant. 59 Fed. 174. Claimant appealed.

J. Parker Kirlin, for appellant.

David Thomson, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. By the terms of the charter party, the whole cargo capacity of the steamship, and the services of her officers and crew, belonged to the libelant for the specified voyage. If it had been intended to reserve to the shipowner any part of the vessel for the purpose of carrying cargo, that intention would doubtless have been expressed in the contract, but instead the charter party was for "the whole of the vessel." Under such a contract the master had no right, without the permission of the libelant, express or implied, to use the vessel upon any part of the voyage for carrying cargo for third persons. Having done so, however, and earned freight thereby, the libelant, if he saw fit to adopt the

master's act, became entitled, upon the plainest principles of law, to the freight earned. We fully agree with the views expressed in the opinion of the learned district judge as to the right of the libellant to recover the amount of freight. But the amount earned was \$500, and not \$950, and there is no evidence in the record which justifies a finding that the expenses incurred in earning the freight were not as stated in the testimony of the master.

The decree should be modified accordingly, and the cause remitted, with instruction to the court below to decree for the reduced amount, with interest and costs of the district court; the appellant to have costs of this appeal. Ordered accordingly.

THE PHOENIX.

PARSONS et al. v. ROCKWELL.

(Circuit Court of Appeals, Fourth Circuit. May 22, 1894.)

No. 68.

SALVAGE—COMPENSATION—REVIEW ON APPEAL.

A steamship, worth, with her cargo, about \$160,000, was disabled by the breaking of her shaft, far out at sea, and after drifting under sail several days, changing position but little, was taken in tow by another steamer, valued at \$125,000, whose cargo was worth \$400,000, and whose freight and passage money amounted to \$13,000. No unusual trouble occurred, and no unusual risk was involved in the towage, and the only storm encountered arose on the fourth day, when the vessels were anchored in a place of comparative safety; and, on the next day the towage was completed. *Held*, that an award of \$35,000 was excessive, and should be reduced to \$20,000.

Appeal from the District Court of the United States for the Eastern District of Virginia.

This was a libel by Cyrus O. Rockwell, master of the steamship *Saginaw*, against the steamship *Phoenix*, John J. Parsons and Thomas Linton, claimants, for salvage. The district court rendered a decree for libellant. Claimants appealed.

The decision of the district court, rendered by HUGHES, District Judge, was as follows:

Statement of the Case by the Court.

The British steamship *Phoenix* (Philliskirk, master) left Macio, Brazil, on the 19th of January, 1893, laden with 2,100 tons of sugar, bound for New York, where the cargo was worth \$98,953. The vessel herself was worth not less than \$60,000. Her freight money on this cargo was \$5,000. She was of two short masts, schooner rig, carrying foresail, square foresail, double top-sail, fore and aft foresail, fore staysail, main staysail, and jib. Her tonnage was 1,728 gross; her length, 256 feet; beam, 36 feet; and depth, 18 feet 6 inches. On the 8th day of February her shaft broke square off in the thrust bearing. The steamer was then in longitude 70° 20', latitude 30° 31'. All sails were set, and the ship headed to the northwest. She proceeded under sails until the afternoon of the 12th, making a total distance in the time of 117 miles. The engineers began an attempt at repairing the broken shaft on the 9th by cutting out the thrust collars, and placing in these two steel plates, on opposite sides of the shaft, fastened with bolts, as is shown by that portion of the shaft itself, which is exhibited in court. They worked at this job continuously from the 9th to the afternoon of the 12th, and now they say they could have completed the two patches and have fastened them in place in four or five hours longer. The job was never completed, and its efficacy was