

statute. That statute provides as follows: "All actions against a boat or vessel under the provisions of this title shall be commenced within one year after the cause of action shall have accrued." Hill's Ann. Laws Or. § 3706. This limitation applies to the procedure provided for by the state statute. It relates to the remedial provisions of the statute. It does not qualify the right of lien, nor constitute a condition of the lien. The statute provides for actions to enforce the liens it creates, and it limits the time within which such actions shall be brought. All these provisions which undertake to confer upon the state courts this right to bring actions to enforce the lien thus created are void. The *Hine v. Trevor*, 4 Wall. 555. And the limitation of such actions is therefore necessarily ineffectual and void.

It is contended that the assignee of the fireman's claim for wages for services on the *Resolute* cannot enforce the assigned claim; that the lien of a claim for mariners' wages is a personal privilege in the mariner, and for the mariner's protection, and is not assignable. The authorities are not in harmony upon this point. The assignment of a shipwright's lien for repairs is upheld in *Park v. Hull* of the *Edgar Baxter*, 37 Fed. 219, and that of a mariner's lien for wages is upheld in *The New Idea*, 60 Fed. 294. I am of the opinion that the lien of mariners for wages should stand upon the same footing with those of other laborers upon vessels and of material men. When the services are rendered, and the right is perfected, the assignability of a thing enhances its value, and a nonassignable character given to a mariner's lien is more likely to injure than protect the owner. When the services are rendered, and the right is perfected, there is no more reason to deny the mariner's right to dispose of this property than there is of any other belonging to him. The law guards him against imposition without imposing disabilities upon him in the enjoyment of his property and rights. Unless the assignee is a speculator, or there is other reason to question or suspect the fairness of the transaction, the lien for wages in the hands of the assignee should be enforced.

The exceptions to the libels are overruled.

BOLDEN v. JENSEN et al.

(District Court, D. Washington, N. D. August 27, 1895.)

IMPRISONMENT FOR DEBT—ACTION FOR UNLIQUIDATED DAMAGES—ADMIRALTY PROCESS.

The statute abolishing imprisonment "for debt" on process from the federal courts in states where imprisonment for debt has been abolished (Rev. St. § 990), and the amended forty-seventh admiralty rule, which abolishes imprisonment "for debt," under admiralty process, in like cases, are inapplicable to cases involving demands for unliquidated damages, and hence do not affect the power of the federal courts, sitting in admiralty, to issue a warrant of arrest as process for compelling defendants to respond to a claim for damages for personal injuries and cruelty inflicted on a seaman. *Hanson v. Fowle*, Fed. Cas. No. 6,042, followed. *The Carolina*, 14 Fed. 424, *Chiesa v. Conover*, 36 Fed. 334, and *The Bremena*, 38 Fed. 144, disapproved.

This was a libel in personam by Louis Bolden, a citizen of the United States, against A. Jensen and I. M. McLean, the master and

owner of the Chilean ship *Atacama*, to recover damages for personal injury and cruelty inflicted on the libelant while serving on board said vessel as a seaman.

Pursuant to admiralty rule 2, promulgated by the supreme court, a simple warrant of arrest was issued, and the defendants were taken into custody, and admitted to bail. Upon entering a special appearance by counsel, for the purpose of the motion only, the defendants moved the court to quash the warrant of arrest, and to discharge them and exonerate their sureties, for the reason that said writ was improvidently issued, and the same is contrary to law and the admiralty rules. The court refused to entertain said motion unless the defendant would first enter a general appearance, which was done, and thereupon, after argument, said motion was submitted to the court for its decision thereon.

A. R. Coleman, for libelant.

W. F. Rupert and Thomas Fitzgerald, for defendants.

HANFORD, District Judge: The argument for the defendants upon this motion is founded upon section 990, Rev. St., which provides that "no person shall be imprisoned for debt in any state, on process issuing from a court of the United States, where by the laws of such state, imprisonment for debt has been or shall be abolished," and the amended forty-seventh admiralty rule, which provides: "* * * And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the state in which the court is held, imprisonment for debt has been or shall be hereafter abolished, upon similar or analogous process issuing from a state court,"—and the seventeenth section of article 1 of the constitution of this state, which declares that "there shall be no imprisonment for debt, except in cases of absconding debtors."

The statute and the rule refer only to imprisonment for debt, and do not affect the power of the court to issue a warrant of arrest as process for compelling defendants to respond to a claim for unliquidated damages, which is not a debt, any more than it restricts the power of the court to imprison defendants for nonpayment of fines or by way of punishment for contempt. The word "debt," when used in a statute, without some plain or explicit declaration making it applicable thereto, does not include taxes nor claims for unliquidated damages. The legal definition of the word is opposed to unliquidated damages, or a liability in the sense of an inchoate or contingent debt, or an obligation not enforceable by ordinary process. *Rap. & L. Law Dict.*; *Cooley, Tax'n*, p. 13; *Lane Co. v. Oregon*, 7 Wall. 71-81. In the case of *The Kentucky*, Fed. Cas. No. 7,717, Mr. Justice Nelson, in discussing the admiralty rule above quoted, says that the rule was drawn with great care, and for the express purpose of conforming the practice in suits sounding in contract, in the district court, in admiralty, as to the arrest and imprisonment of the person of the defendant, to that of the state for like or analogous cases; and he interprets the rule thus:

"That is, if a defendant in the state court is exempt from personal arrest and imprisonment on all process, whether mesne or final, in cases sounding in contract, then the defendant in admiralty will, in all such cases, be in like manner exempt."

This exposition of the rule by one of its authors may well be regarded as authoritative and controlling. Counsel for the defendants have cited *The Carolina*, 14 Fed. 424, *Chiesa v. Conover*, 36 Fed. 334, *The Bremena*, 38 Fed. 144, in which courts entitled to very high respect have sustained his position on this motion, but apparently without giving consideration to the proper definition of the word "debt" as used in the statute and the admiralty rules under consideration. Notwithstanding these authorities, my judgment is not in accord with the defendants' contention. On the contrary, I prefer to follow the decision made, in this circuit, by Judge Deady, in the case of *Hanson v. Fowle*, Fed. Cas. No. 6,042, in which the subject is learnedly and exhaustively treated. The motion is denied.

BURRILL et al. v. CROSSMAN et al.

(Circuit Court of Appeals, Second Circuit. July 30, 1895.)

1. SHIPPING—CHARTER PARTY—CESSER OF CHARTERER'S LIABILITY.

A charter party provided that the vessel should be discharged at a specified rate per day; that for each day of detention a specified demurrage should be paid; that bills of lading should be signed as presented, without prejudice to the charter; that the vessel should have an absolute lien upon the cargo for freight and demurrage; and that the charterers' liability should cease when the vessel was loaded, and bills of lading signed. The charterers presented, and the master signed, bills of lading providing for paying freight, but making no reference to the provisions of the charter in regard to demurrage, and these bills were at once transferred. The discharge of the cargo was delayed, without fault of the consignees, and the owners filed a libel against the charterers for the stipulated demurrage. *Held*, that the provision in the charter for cesser of the charterers' liability applied only so far as the lien provided by the charter was commensurate with the charterers' original liability, and they, having, under the clause providing for signing bills of lading, presented bills which imposed no liability on the transferees for the demurrage stipulated in the charter, remained liable to the owners for such demurrage.

2. SAME—DEMURRAGE—FIXED TIME FOR DISCHARGE.

Held, further, that, the charter, by stipulating the rate of discharge, having fixed definitely the time for its completion, the charterers were liable for delay beyond that time, though caused by the acts of the public enemy, and without fault of the charterers or consignees.

3. SAME.

Where the charter party provides that demurrage should be payable "for each day of detention by default of the charterers or their agents," the word "default" means an omission or neglect to perform the contract.

4. ADMIRALTY—PLEADING—DENIAL OF ANTICIPATORY AVERMENT.

A denial in the answer of an anticipatory averment in the libel, that the agents of the libelants were without authority to make a certain agreement, is equivalent to an averment that they had such authority, and raises an issue as to its existence.

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

This was a libel by William Burrill and others, owners of the bark *Kate Burrill*, against William H. Crossman and others, to recover demurrage under a charter party. Libelants appeal.

Geo. A. Black, for appellants.

Wheeler & Cortis, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.