

recover. The position in which he was placed was undoubtedly unpleasant, and one which carried with it a sense of mortification and shame. The contumely to which he was subjected and the indignities he endured were certainly uncalled for, and aggravate the whole affair. 1 Wood, Mayne, Dam. p. 74, note. Whatever may be the mental distress he suffered, he does not appear to have sustained any particular physical injury. He claims to have contracted a severe cold, from the effects of which he afterwards suffered considerably,—to such an extent that he claims he was compelled to give up some employment he had obtained at the Midwinter Fair, and had to make application to a society in Tacoma, of which he was a member, for sick dues. He says he contracted a bad cough, and was otherwise physically distressed; but although he testifies that he visited a doctor, and took some medicine on his advice, yet that person was not called to substantiate his statements in that regard. I am rather inclined to believe that he was suffering from nothing more than a very bad cold, contracted on the night he was without accommodations. It may be observed, however, that the libelant had been a member of the police force in Tacoma for a period of some three years, and that, as such, to use his own language, he "was out steady every night for a whole year * * * on the night patrol." He must have been, therefore, somewhat accustomed and inured to cold and damp nights, and although, under the circumstances of this case, his exposure to the foggy and damp weather was a hardship, yet it was not as great a hardship to him as it would have been to a frail and delicate person. Aside from his mental distress, the actual damage may be summed up thus: He had to pass the night without any accommodations whatever, exposed to the inclemency of the weather, by reason of which he suffered inconvenience and hardship, and contracted a severe cold, and he was not given anything to eat for nearly 24 hours. Taking all the facts of the case into consideration, I think that \$300 is a fair recompense for the damage he has sustained, and a decree in that amount, with costs, will be entered.

THE LENA MOWBRAY.

MCDOWELL v. THE LENA MOWBRAY.

(District Court, S. D. Alabama. December 24, 1895.)

1. MARITIME LIENS—WAGES OF MASTER AND PART OWNER — STATE STATUTES. A state statute giving a lien for master's wages (Code Ala. § 3054) will not be enforced by a federal court in favor of a master who is also a part owner, or where the services were not rendered upon the credit of the vessel.¹

¹ See *Thompson v. The J. D. Morton*, 2 Ohio St. 31, 32; *The Daniel Kaine*, 35 Fed. 785, and numerous citations; *Patton v. The Randolph*, Gilp. 457, 458, Fed. Cas. No. 10,837; *The Edith*, 94 U. S. 518; *Abb. Shipp.* (13th Ed.) 870; 1 W. Rob. Adm. 399; *The Brothers*, 7 Fed. 878; *Kellum v. Emerson*, Fed. Cas. No. 7,669.

2. SAME—PRESUMPTIONS.

The presumption is that the master trusts to the personal credit of the owner for his wages. The *Atlas*, 42 Fed. 793, followed.

This was a libel by John W. McDowell against the tug *Lena Mowbray* to enforce a claim for master's wages.

G. L. Smith and W. D. McKinstry, for libelant.
Pillans, Torrey & Hanaw, for claimant.

TOULMIN, District Judge. This is a libel for wages as master. The services for which wages are claimed were rendered in the home port of the tug. The libelant was a part owner of the tug, and operated her on the joint account of himself and one W. G. Catrell, the other owner. Under an agreement with his co-owner libelant was to receive \$80 a month as master and pilot. He served some five or six months, operated and managed the tug, purchased most of the supplies, made the disbursements out of the earnings, and kept the accounts of the vessel. Out of the earnings he paid himself \$189 on account of his wages as master, and he now sues the vessel in rem for a balance of wages alleged to be due him.

The controlling question presented for the court to decide is whether a part owner of a vessel can maintain a suit in rem against her for wages as master. I think it is clear that a part owner has no maritime lien on his own vessel for advances or disbursements made by him on her account or for services rendered to her as master or otherwise. *White v. Proceeds of The Americus*, 19 Fed. 848; *The Wyoming*, 36 Fed. 493; *Kellum v. Emerson*, Fed. Cas. No. 7,669; *The Larch*, Id. 8,085. The contract under which the libelant performed the services was one to which he, as part owner of the tug, was a party, and upon which he is, himself, personally liable. In the case of *Thompson v. The J. D. Morton*, 59 Am. Dec. 662, which was a proceeding under a statute giving a lien against water craft, the court said:

"The craft itself is endowed with no capacity to become a party to a contract. The law simply authorizes the craft to be made liable upon seizure by a proceeding in rem. It is true the craft is named as the defendant in the proceeding, but this does not constitute it an artificial person with capacity to contract. This proceeding, therefore, is only an accumulative remedy, given by the statute, for the recovery of a claim against the owner himself. To authorize the owner of a boat or vessel to institute a suit upon his own liability and against his own property would be, to say the least of it, a gross absurdity."

By the maritime law the master has no lien on the ship for his wages. But the state statute gives him a lien. The language of the statute is:

"A lien is hereby created on any ship, steamboat or other craft * * * for the wages of the masters * * * of such ship, steamboat or water craft in preference to other liens thereon, for debts contracted by or owing from the owners thereof." Code Ala. § 3054.

This language clearly implies that the wages of a master of a ship constitute a debt contracted by or owing from the owners thereof for the security of which a lien is given on the ship. The object of the

maritime law is to provide a convenient and efficient remedy by subjecting the liability of the vessel itself, and thus avoid the difficulty which sometimes exists of ascertaining and proceeding against the owner or owners in person; and the object of the state statute is to put that local lien on a par with the general maritime lien, that the creditors of the domestic vessel in her home port may be put on the same footing with creditors of a foreign vessel and with creditors of the particular vessel in a foreign port. *The Daisy Day*, 40 Fed. 538.

That the person having the demand has the option to proceed against the owner or the ship itself in any court of competent jurisdiction, I presume, will not be questioned. But there are qualifications pertaining to maritime liens in general which would limit the jurisdiction of the admiralty court in enforcing the lien given by the state statute. It is because the contract for the services is maritime that the admiralty court has and exercises any jurisdiction in the matter, and that court construes and enforces the lien given by the state statute in harmony with the general principles of the maritime law. The local statute cannot enlarge the jurisdiction or scope of the general admiralty law. *The Samuel Marshall*, 49 Fed. 754; *Id.*, 4 C. C. A. 385, 54 Fed. 396.

Under the general maritime law the part owner is not entitled to a lien on his own ship, and I think it follows that he has no such right of lien under the state statute.

There is a question of fact involved in this case which, it seems to me, must carry the decree against the libelant irrespective of the principles of law to which I have already adverted, and that is that it does not appear from the proof that the libelant's services were rendered on the credit of the vessel. A maritime lien against a vessel for services created by a state statute will not be enforced by the United States courts unless the services were rendered on the credit of the vessel. *The Samuel Marshall*, 4 C. C. A. 385, 54 Fed. 396; *S. H. Harmon Lumber Co. v. Lighters Nos. 27 and 28*, 6 C. C. A. 493, 57 Fed. 664. One seeking to enforce against a vessel such lien must establish by proof that credit was given to the vessel and not to the owner. *The Samuel Marshall*, 49 Fed. 754. The presumption is that a master trusts to the personal credit of the owner. *The Atlas*, 42 Fed. 793. The only proof on the subject in this case tends to show that the libelant looked to the earnings of the tug for his compensation. It shows that he paid himself, out of the earnings of the tug, all the money he ever received on account of his wages. Irrespective, then, of the principle of maritime law that a part owner has no lien on his ship for compensation for his services to her, the libelant is not entitled to recover, because of his failure to establish by proof that credit was given to the vessel. My opinion is that whatever claim he may have on the ground alleged must form one of the items of an account to be taken of the earnings and expenses of the tug, and which cannot be taken in this court for want of jurisdiction. The libel must, therefore, be dismissed, and it is so ordered.

THE NICARAGUA.

ORR & LAUBENHEIMER CO., Limited, v. THE NICARAGUA.

(District Court, S. D. Alabama. April 11, 1895.)

No. 693.

1. CHARTER PARTY—WHEN SHIP IS DEMISED.

By a charter party the owners were to provide all provisions, wages, consular, shipping, and discharging fees of the officers and crew, pay for insurance of the vessel, and for all room and deck stores, maintain the ship in efficient working condition, and victual and provide for all passengers,—charterers paying a fixed sum for each passenger per day. The charterers were to provide coal, pay port charges, pilotages, agencies, and commissions, and expenses or lading, but were not to be responsible for improper stowage. They were to have at their disposal all the steamer's holds and decks, and all places of loading and passenger accommodation, reserving only sufficient space for the crew, tackle, provisions, stores, and fuel. The captain was to be appointed by the owners, but to be at the direction of the charterers in respect to employment, agency, or other arrangements. *Held*, that this was not a demise of the vessel, as the owners did not part with the possession, command, and navigation of her.

2. SAME—AGENCY OF MASTER.

Under such charter party the captain was the agent of the owners of the vessel, and it was his business to get suitable papers and proper entrance permits to the ports within the charter limits; and any error or default of his in that respect was chargeable upon the owners.

3. SAME—LIABILITY FOR LOSS OF CARGO.

A steamer was chartered, by a charter party not amounting to a demise, expressly to carry perishable cargoes of fruits, etc., from Central America to Mobile. The charter party provided that the master should prosecute the voyages with the utmost dispatch, and that the steamer should not stop to assist or tow any vessel liable to cause detention, except for the purpose of saving human life. At Bluefields, Nicaragua, the master took on board as a passenger, without the direction of the charterers' agent, a person not in danger of his life, who was without the health certificate which the master knew was required by the quarantine authorities at Mobile; and for lack of such certificate the vessel was detained in quarantine at that place until the cargo was lost by deterioration. *Held*, that the ship was liable therefor to the charterers.

This was a libel in rem by the Orr & Laubheimer Company, Limited, against the Norwegian steamship Nicaragua, to recover under a charter party for the loss by deterioration of perishable cargo during detention of the vessel in quarantine at the port of Mobile.

Libelants, fruit importers at Mobile, Ala., were the charterers of the steamer Nicaragua. She was chartered under a time charter party made in New Orleans, La., for the tropical fruit trade,—that is to say, to bring bananas and like fruit to Mobile from Central America,—and the carrying of any lawful merchandise and passengers, as far as accommodations would allow, as the charterers or their agents should direct. The charter party, among other things, provided that:

"(1) That the owners shall provide and pay for all provisions, wages, and consular, shipping, and discharging fees of captain, officers, engineers, firemen, and crew; shall pay for the insurance of the vessel; also for all engine room and deck stores; and maintain her in a thoroughly efficient state, in hull and machinery, for and during the services, guarantying to maintain the boilers in a condition to bear a working pressure of at least 60 pounds (and this pressure to be carried continuously), during the whole