

v. Steamship Co., 56 Fed. 602, where similar stipulations were held invalid. In the case of *The Silvia*, 15 C. C. A. 362, 68 Fed. 230, 231, it is said by the Court of Appeals that the carriers' "responsibility to the cargo owner, who sues in the courts of this country, cannot be curtailed in any of the particulars prohibited by the Harter act." In the case of *The Glenmavis*, 69 Fed. 472, 476, the same conclusion was reached by Judge Butler on full consideration; and I have nothing further to add to what has already been said in this Court in previous cases. *The Brantford City*, 29 Fed. 373, 396; *The Hugo*, 57 Fed. 403-411; *The Etona*, 64 Fed. 880; *The Guildhall*, 58 Fed. 796; *The Energia*, 56 Fed. 124, 127, affirmed 13 C. C. A. 653, 66 Fed. 604. See *The Iowa*, 50 Fed. 561.

Decree for the libellant, with reference to compute the damages.

THE ALFRED DUNOIS.

GEO. F. BLAKE MANUF'G CO. v. THE ALFRED DUNOIS.

(District Court, S. D. New York. May 5, 1896.)

MARITIME LIEN—SUPPLIES TO CHARTERED VESSEL—CAPTAIN PRESENT—CREDIT OF THE SHIP.

The superintendent of the charterer's agents purchased a pump for the chartered vessel, for which the charterer, by the terms of the charter, was bound to pay. The superintendent stated to the libellant at the time of the purchase that his principals were the ship's agents, which was incorrect. The captain was present with the superintendent at the time of the purchase, and examined the different pumps, and he gave no notice to the libellant that the purchase was not on the ship's account and the libellant relied upon the credit of the ship: *Held*, the circumstances justified trusting the ship, and that she was liable.

In Admiralty. Supplies to chartered vessel.

S. H. Guggenheimer, for libellant.

Mr. Mynderse, for defendants.

BROWN, District Judge. The *Dunois* was a foreign vessel, under charter to a resident of Cuba. She was designed for freight service. The charterer wished to carry passengers also, and by the terms of the charter was required to pay any expense of adapting her to that traffic. His agents in this city, through their superintendent, purchased of the libellant a pump which was required by the inspectors at this port for passenger service. The captain of the ship accompanied the superintendent when the purchase was made, and examined the different pumps at the libellant's store. The pump was delivered to the ship, and the engineer's receipt taken for it. At the time of the purchase, the superintendent told the libellant that the pump was to be charged to the ship, and that his principals were the ship's agents, and that the bill was to be sent to them, a credit of 30 days being allowed. The bill was sent accordingly, charging ship and owners. The superintendent's statement that his principals were the ship's agents, was incorrect. They were the charterers' agents only. The shipowners had other agents in this city. The captain testified

that he did not hear this statement, or that the charge was to be made to the ship; and that he would not have received the pump on board if he understood that. The libellant had no knowledge that the ship was under charter, nor any acquaintance with the charterers' agents, and made no inquiries in regard to them; but in fact trusted in part to the credit of the ship.

Under the above circumstances, I think the libellant is entitled to recover. The captain's presence, and the part that he took in the purchase, although small, were sufficient to give an apparent sanction to the acts and representations of the superintendent, and would naturally be understood by the libellant as rendering any further inquiry unnecessary concerning the authority of the superintendent, or his principals, to make the purchase on account of the ship. I think it was the captain's duty, under the circumstances that appear in evidence, to notify the seller that the purchase was not on the ship's account. The agent's acts in the captain's presence, and with his apparent sanction, with the delivery to the ship, I think justified the reliance on the ship's credit, and the libellant's understanding that the sale was a sale to the ship. There was nothing to put the seller on inquiry.

I must, therefore, allow the lien as claimed.

HURLBUT v. TURNURE.

(District Court, S. D. New York. October 29, 1896.)

GENERAL AND PARTICULAR AVERAGE—APPORTIONMENT—DEFICIENT COAL SUPPLY—HURRICANE—PORT OF DISTRESS—BILL OF LADING—"LIBERTY TO CALL."

The steamship D. left Cuba upon a voyage for New York in October, with a half day's less supply of coal than the customary supply, which was for at least 10 days; she met a hurricane on the voyage, and was obliged to put into Newport News for coal, after 12 days, during which time she had been obliged to consume ship's material to the amount of about \$900 in value, and sugar amounting, with damage to other sugar, to \$3,293. A clause in the bill of lading authorized the vessel "to call at any port or ports for whatever purpose": *Held* (1) that the bill of lading clause did not release the vessel from the duty of taking in the customary supply of coal for the whole voyage to New York; nor from the consequences of her failure to do so; (2) that the ship must therefore bear as particular average the damage caused by her failure to take the customary supply, including the expense of putting into Newport News, and the loss of ship's material and sugar during the time that the coal she ought to have taken would have lasted, but not for any longer period; (3) that the residue of the loss of ship's material and sugar, which in this case amounted to four-fifths of the whole, was owing to the hurricane alone, and being in no way consequent on the short supply, was a general average charge, for which the defendant as one of the cargo owners should bear his proportion.

This was a libel by William W. Hurlbut, against Lawrence Turnure on a general average bond.

Convers & Kirlin, for libellant.

Carter & Ledyard, E. L. Baylies, and W. F. Taylor, for respondent.

BROWN, District Judge. The above libel was filed upon a general average bond to recover the defendant's share of a general average