one who had real authority to bind him, or unless the defendant is precluded from denying that there was authority in the person who made the contract. It is perfectly settled now that the liability to pay for supplies to a ship depends upon the contract to pay for them, and not on the ownership of the ship. We are all satisfied that, on this evidence, the jury ought not to have found Thomson really agent for the defendant in making this contract, nor that the defendant held out false colors, representing that Thomson had authority to bind him, when in point of fact he had not, so as to induce the plaintiffs to believe that he could make the contract for the defendant, and that the plaintiffs acted in the supply on that belief."

Touching the summing up of the trial judge, the court said:

"Lord Campbell told the jury that 'the defendant would not be liable to the plaintiffs' demand, merely as owner of the ship, nor by reason of this being registered as such owner; nor would he be liable merely by the orders being given to the plaintiffs by the registered master of the ship,' and so far the direction is perfectly accurate; but then comes an enumeration of the circumstances under which the defendant 'might be liable,' which must be understood as meaning that, if the jury found that these circumstances all existed, they should find for the plaintiffs. We think that this enumeration is defective. The circumstances enumerated are: If the defendant 'remained in possession of the ship, and held himself out as owner, and if a person acted as master of the ship with his privity and consent, and the goods and work were supplied to and done upon the ship upon the credit of the owner, by the bona fide orders of the master, given with the privity of the owner, and if the goods and work were fit, necessary, and proper for the ship, under the circumstances in which she was placed, and fit and necessary for the purposes of the ship, at the time of the orders.' Now, we think that, though all these circumstances existed, yet it would not be enough to render the defendant liable, unless the person acted as the defendant's master of the ship with his privity and consent, and the goods and work were supplied to and done upon the ship, not merely 'upon the credit of the owner, by the bona fide orders of the master given with the privity of the owner,' but as on a contract with the owner on orders given by the master as for him. Now, in this case, on the evidence, it appears that the defendant did not, by word or deed, in any way hold out Thomson as his master; and therefore the defect in this part of the summing up is material, and would influence the verdict."

The mere fact that one stands on the registry as the owner by no means determines that he is the contracting owner made liable through the agency of the master. 3 Kent, Comm. pp. 133, 134.

In Howard v. Odell, 1 Allen, 85, the facts were these: The ship was registered as owned by Odell & Kidder. The plaintiff sold supplies for the ship to Odell. Upon inquiry made when the first bill was made, Odell said that the ship was owned by Odell & Kidder. Afterwards plaintiff sent to the customhouse, and found her so registered. The charge was made to the ship. The fact was that Kidder held a bill of sale absolute on its face for one-half of her from one Wilson, which was duly recorded. But it was shown that in fact Kidder only held this title as collateral security for the payment of a debt due him from Wilson, and never exercised any acts of ownership over her, nor authorized Odell to in any way incur liability for him. Upon the facts, it was sought to hold Kidder personally liable for repairs and supplies ordered by Odell. The court held Kidder not liable. Bigelow, C. J., delivering the opinion of the court, after saying that it was settled that the mortgagee of a vessel not having her in his possession or control was not liable for supplies or repairs furnished on the order of the master or mortgagor, said:

"Nor does the fact that the register or enrollment of the vessel stands in the name of the mortgagee, and that his apparent title on the record is by a conveyance absolute in form, of itself operate to render him liable for debts contracted for supplies and repairs. The real question in all such cases is: With whom was the contract made, and was the person who made it authorized to bind the mortgagee? If the mortgagee was not in possession of the vessel, and did not receive the benefit of her earnings, or exercise any control over her, but only held his title as collateral security for his debt, then it is very clear that neither the master nor the mortgagor could claim to act as his agent, or bind him by their contracts. In such case there is no authority, either express or implied, by which they can undertake to act in his behalf. Doubtless the mortgagee may, by his acts, hold himself out as the real owner of the vessel in such a way as to lead persons to believe that the master or mortgagor is his agent, authorized to make contracts concerning the vessel. He would then be bound by them, under the ordinary rule of law regulating the relation of principal and agent. * * * Indeed it would be giving altogether too much weight to the registry and enrollment of vessels to hold that persons whose names appeared therein as owners were thereby made liable for repairs and supplies. Every one conversant with shipping and commercial dealings knows that vessels are often employed under charter parties, by which even the real owners are exempted from all charges incurred in their management and navigation. Whenever the charterer is, by the terms of his contract, deemed to be owner pro hac vice, no liability for supplies or repairs attaches to the actual owner of the vessel in whom the legal title is vested. It is therefore well understood among all persons engaged in the business of making repairs or furnishing supplies that their right to recover payment therefor does not depend on the registry or enrollment, but on the right and authority of the person with whom they deal to act as agent for the owners, and to bind them by his contracts. The real transaction between the parties is to be looked at, in order to ascertain whether that which appears by the registry to be a legal title in a particular person is or is not such an ownership as will authorize the person making the contract to act as agent. An equitable title in one person, having the control and possession of the vessel, may well consist with a documentary title at the customhouse in another person." Philips v. Ledley, 1 Wash. C. C. 226, Fed. Cas. No. 11,096; Winslow v. Tarbox, 18 Me. 132; Duff v. Bayard, 4 Watts & S. 240; McIntyre v. Scott, 8 Johns. 159; Wendover v. Hogeboom, 7 Johns. 308.

In the case before us, it turns out that, though Reid stood on the enrollment as the master, he was not acting as master when these repairs were ordered. James Murdock was actually the master controlling the navigation of the Sea Gull, and was appointed to that place by Reid. That Murdock was acting as master was known to appellants. That his name had not been inserted in the license does not affect his actual status as master, for the registry and enrollment statutes are only for the protection of the revenue, and failure to have his name inserted as master would not affect Murdock's actual authority as master. The Boston, 1 Blatchf. & H. 309, Fed. Cas. No. 1,669; Steamboat Co. v. Scudder, 2 Black, 385. If one holds and exercises the position of master of a ship, the position at once gives him authority, and at the same time defines it. But here appellants cannot rely upon the implied authority of Reid as a master, because he was not in fact master, and was not at the time these repairs were made acting as master. These repairs were ordered by him in the character, as libelants understood, of "manager." Now, this is an agency unknown in general maritime law, and the authority implied from such a position is in that law undefined. There is evidence in the record that there is a custom on the lakes for lines of boats to be placed under the general direction

of an officer representing the owner, called a "manager," and that such managers contract for supplies, repairs, etc. It is also shown, though the matter would be evident without proof, that the principals represented by such manager are sometimes mere charterers of vessels. That, at last, would only bring us back to the point from which we started, namely, that the persons bound by the acts of such an agent would be those appointing him to the place. Now, there is not the slightest doubt of the fact that Baldwin never did appoint Reid to the place of "manager." Neither did Reid represent himself as managing for Baldwin. The clearly-established facts are that James Reid and his sons were partners, under the firm name of Reid & Sons, and under this firm name were engaged in wrecking and towing. In this business they employed two tugs, the Sea Gull and the Parker, and sometimes a third, the Manistique. Of this business James Reid was manager. The appellants have chosen to regard him as manager of the Sea Gull for Baldwin, who they understood was her owner. Now, there are three ways in which a person can be bound on a contract: First, when he himself has made it; second, when an agent really authorized to bind him has made the contract for him as principal. There is no evidence to support a liability based upon either of these grounds. The third and last method by which one may be bound is where a person has made a contract for him as principal, not really having authority to do so, but that the conduct of the supposed principal has been such as to preclude him from denying that there was authority.

This brings the case down to this question: What did Baldwin do which amounted to such a holding out of Reid as his manager as that he should now be precluded from denying that he was his agent in fact? The facts that he held a bill of sale absolute on its face, and that the vessel stood on the registry in his name as owner, were not of themselves such a holding out of himself as owner and Reid as his master as to preclude him from showing that he was not the owner, and that Reid was not his master; yet there is much more color for claiming that he ought to be estopped from denying that he was the real owner, and Reid his master, than there is for precluding him from denying that Reid was his "manager." The circumstance that in the enrollment he had stated that Reid was then the master might plausibly lead one to suppose him to be his master, and preclude him from denying liability within the well-defined limits of a master's office for his acts as master. But at the time Reid was doing business as "Reid, Manager," he was no longer exercising the authority of master of the Sea Gull. Another was in that situation, and exercising its authority. It is very clear that something more must be shown than that the title and registration stand in his name in order to preclude him from denying that Reid was his manager. No one pretends that Baldwin, by any affirmative act or word, held him out as managing the Sea Gull for him. Reid himself made no such representation. There was nothing in the circumstances, other than the condition of the legal title and the enrollment, calculated to lead libelants into believing that Reid was "managing" the Sea Gull for Baldwin. The general busi-

ness conducted by Reid, and his employment therein of other vessels known not to belong to Baldwin, were calculated to make them believe that Reid was managing the Sea Gull, as he was the other tugs, for himself and those connected with him in the business of Reid & Sons. It is indeed difficult, on the evidence in this case, to believe that libelants supposed that they were extending credit to Baldwin, and that he was the person with whom they were dealing as the contracting owner. If it is sought to charge Baldwin with a contract for him as principal, made through one not really having authority to bind him, it is absolutely essential to show two things: First, that libelants at the time supposed him to be the contracting person or one of the contracting persons; and, second, that the conduct of the supposed contracting principal has been such as to preclude him from denying that there was authority. Now, the evidence falls far short of what is necessary in respect to both divisions of the question. To say that credit was given to the Sea Gull, or that credit was given to the vessel and her owner, or that credit was given to Baldwin, is quite unsatisfactory. In the case of The Samuel Marshall, heretofore cited, where the question was as to whether certain supplies had been furnished upon the credit of the vessel, this court, speaking through Judge Taft, said:

"The fact that the supplies were charged against the vessel on the books of the libelants is evidence only of a self-serving practice which has no particular weight in the determination of this question." 6 U. S. App. 401, 4 C. C. A. 392, and 54 Fed. 403.

The evidence in this case shows that such a charge was habitual without regard to the circumstances. So, the statement that credit was given to Baldwin is even less satisfactory, for no corresponding charge was made, and no statement was made by either party indicating that such credit was asked or given. Indeed, the practice of saying to juries, in cases where it is sought to charge one other than the person actually procuring the supplies or repairs, that the question is, "To whom was the credit given?" has been most pointedly condemned as misleading.

In Mitcheson v. Oliver, 5 El. & Bl. 419–437, where the question was whether the ostensible owner of the vessel was bound by repairs made on order of the master, Park, B., said in regard to the liability of Oliver, the defendant sued as contracting owner:

"Supposing that Oliver had said or done something inconsistent with the true facts, which does not appear to be the case, still it would not bind him unless the plaintiff supplied the goods on the faith that Oliver was the contracting person. I purposely avoid saying 'on Oliver's credit,' a phrase which I wish were never used, as it constantly misleads juries into thinking that something short of being the contracting party will make a person liable."

Upon the other branch of the evidence necessary to make out a case which should preclude the appellee from denying Reid's authority, appellants have failed more signally. That Reid took out insurance upon the Sea Gull in Baldwin's name is of no significance upon this question of false colors held out by Baldwin, for the reason that this insurance was not procured until after the repairs were made. As evidence of an agency in fact, it has some weight, but could not have been a misleading circumstance inducing them

to believe that Reid was managing for appellee. That insurance was procured by Reid for his own benefit. It is true that Baldwin was collaterally interested, but that is wholly due to his creditor relation. That it was taken out in his name, and that he has collected it, is due to the situation of the title. Baldwin's ratification of Reid's act in taking this insurance in his name cannot help appellants in any view of the case. The subsequent ratification of an originally unauthorized act operates as a previous authority only as between the parties to the contract ratified. But, were it otherwise, an authority by a mortgagee to the mortgagor to take insurance in the mortgagee's name would not include an authority to bind the mortgagee for extensive repairs upon the property to be insured, even though without such repairs the vessel was uninsurable. The agency for such a purpose would not bring within its scope so foreign a matter as repairing the subject-matter of insurance.

The libel of James Murdock stands upon even less firm ground than those of his co-appellants. The decree dismissing all of the libels must be affirmed, with costs.

THE ISABEL.

CHAPMAN DERRICK & WRECKING CO. v. THE ISABEL.

(District Court, D. Connecticut. March 8, 1897.)

No. 1,097.

UNITED STATES MARSHALS—COMMISSIONS IN COMPROMISED ADMIRALTY CASES.

On a libel in rem for salvage, no monition was served, but the claimant appeared, gave bond, and consented to a decree for a specified sum, which he paid to libelant in settlement of the case. *Held*, that the marshal was not entitled to any commission thereon, as he had incurred no responsibility.

This was a libel by the Chapman Derrick & Wrecking Company against the steamboat Isabel to recover compensation for salvage services. The cause was heard on the marshal's appeal from the clerk's taxation of costs.

Samuel Park, for libelant.
R. C. Morris, per se.

TOWNSEND, District Judge. In the above-entitled cause a libel in rem for salvage services was filed, but no monition was served. The claimant appeared, filed a bond with libelant in the sum of $7,000, and consented to a decree for $2,500, which amount was paid to libelant in settlement of the case. The marshal included in his bill for taxation of costs a charge for a commission on said amount, which was disallowed by the clerk. The marshal contends that he is entitled to said commission by virtue of the provisions of section 829, Rev. St., which is as follows:

"When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: provided,