

that certain lines on these drawings represent the corrugations, and indicate that, when completed, there is an elliptical opening on the side of the ball. This is very unsatisfactory evidence, especially as the markings on all four balls of Fig. 8 are not alike; and, if on one or two of them they might seem to indicate an opening on the others, they quite as plainly indicate a metal corrugation at the same place. Moreover, the lines on Fig. 9, which shows the balls in section, would, by the same reasoning, be taken to indicate that there was an opening on the other side as well, which is absurd. Moreover, the drawings most certainly do not indicate any overlapping at the ends, but, on the contrary, a folding together of the corrugations. In the face of the express statement of the Munger patent that "a piece of metal of the proper size is bent into cylindrical form [thus giving a cylindrical blank], and the two edges united," we are unable to assent to the proposition that Munger's process is to be limited to a section of tube slit open longitudinally.

In view of all these facts, we concur with the circuit court in the conclusion that defendant's process, which produces the spheroidal bodies from corrugated tubing solely by folding and unfolding the corrugations, or, if extreme contraction of diameter is required, by buckling or doubling in some of the corrugations, and which does not upset the metal, nor make it thicker in some parts and thinner in others, is not an infringement of complainants' patent. The decree of the circuit court is affirmed, with costs.

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THE MARACAIBO.

HEALEY v. THE MARACAIBO.

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

SEAMEN'S WAGES—OFFSET—ALLEGED SMUGGLING—FINE—SETTLEMENT BEFORE CONSUL.

Upon a seaman's discharge before the consul at Maracaibo and a settlement of his wages with a month's extra wages included in a written order given to the seaman upon the owners in New York for the payment of the balance due and on suit by the seaman for the nonpayment, a claim to an offset was interposed for an alleged fine of \$300, imposed upon the ship for the seaman's alleged smuggling; but the facts, whatever they were, being known to the master prior to the settlement before the consul, and the order for the extra wages being unqualified, and the proofs as to the fine or any payment thereof being doubtful; *held* that the offset should not be allowed.

(Syllabus by the Court.)

Cowen, Wing, Putnam & Burlingham, for libelant.  
Coudert Bros., for claimant.

BROWN, District Judge. The settlement made by the master and the agents of the steamship with the libelant at Maracaibo, as regards the wages then due him, the discharge of the libelant by the consul at that port as a part of that settlement, the allowance of a month's extra wages, and the delivery to the seaman of a written order for the amount due him, including the extra wages, and the consul's assurance to the libelant, as testified to,

that the order was as good as gold, seem to me incompatible with the claim which the respondents now put forward, to offset against this order the fine which it is claimed was imposed on the vessel and paid, as it is said, on account of the libelant's smuggling. All the facts in the case relating to the smuggling, it is evident, were known to the master, and to the ship's agents before the settlement referred to. Moreover, there are no entries in the log, such as the Revised Statutes require, to authorize the offset of the fine alleged to have been paid on account of the alleged smuggling; and the omission to make the entry in the log, and to read it to the libelant, was evidently intentional, because inconsistent with the settlement made with the libelant. Nor is there any proof of the payment of any specific sum for the alleged fine. Two depositions were taken at Maracaibo in regard to that subject in behalf of the respondent on direct and cross interrogatories, and the extremely meager answers to the inquiries, the omission of any particulars in regard to the amount paid, and the failure to take or produce any receipt or voucher, are significant omissions. The record of the judicial proceedings in regard to the smuggling shows that the articles smuggled were condemned and confiscated, and sentence passed against the libelant; but I cannot make out that any fine was imposed upon the ship, or the owners; or that anything was to be paid by anybody above what might be realized from the articles condemned to be sold. Under such a state of proofs, it is impossible for me to deny to the seaman a decree for the wages which were due to him, and for which, upon a settlement made with full knowledge of the facts, a written order was given to him that did not intimate on its face any such qualification, or reservations, as would be inconsistent with the consular action at that port.

Decree for the libelant, with costs.

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DISNEY v. FURNESS, WITHEY & CO., Limited.

(District Court, D. Maryland. March 24, 1897.)

1. SHIPPING—SUITS IN MASTER'S NAME.

The master, by his general agency for the owners in relation to the ship, is authorized to sue in his own name, in their behalf, to recover damages for breach of a contract of affreightment.

2. AFFREIGHTMENT—READINESS TO RECEIVE CARGO—SUNDAYS.

A provision in a contract of affreightment that the shippers may cancel the contract if the steamer "be not ready for cargo on or before March 15, 1896," gives the steamer the whole of that day, though it falls upon Sunday, and she is not required to be ready on the preceding Saturday.

3. SAME—STATE OF READINESS—SHIFTING BOARDS FOR GRAIN CARGO.

Failure of the ship to have up the top board of the shifting boards, where the board and the slots for receiving it are fitted and prepared, is not a want of readiness to receive grain cargo, such as would authorize the cancellation of the contract of affreightment. Nor is cancellation authorized by failure to have up the shifting boards in the hatch combings, as these, if used at all, are better put in when the cargo is partly loaded.

4. SAME.

A practice peculiar to the port of lading, which requires battening of the seams even when not needed, and merely out of abundant caution, cannot, without previous notice, authorize the shipper to cancel the contract for want of such unnecessary battening.