

or at any other period of the voyage. The utter indifference manifested by the tug master in command of the flotilla while the vessels that were lost, and others, were in distress, is suggestive, and permits an inference of his recklessness which reflects upon the character of his judgment in concluding to leave the Kills. The circumstances attending the foundering of the Annie and Lucy sufficiently account for the disaster to her, without necessitating very critical inquiry into the question of her seaworthiness. The argumentative suggestion of her unseaworthiness has very little evidence to support it. The decrees are affirmed, with interest and costs.

GINN et al. v. OGDENSBURG TRANSIT CO.

(Circuit Court of Appeals, Seventh Circuit. March 16, 1898.)

No. 445.

SHIPPING—LIMITATION IN BILL OF LADING.

A stipulation in a bill of lading against liability for loss or damage, unless "the action in which said claim shall be sought to be enforced shall be brought within three months after said loss or damage occurs," is forbidden by no rule of law, nor by any consideration of public policy, and, like any other term of the agreement, will be presumed to have had the full assent of both parties, and will be regarded as reasonable, unless the contrary be made apparent.

Appeal from the District Court of the United States for the Northern Division of the Northern District of Illinois.

Robert Rae, for appellants.

Charles E. Kremer, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This appeal is from a decree of the district court dismissing a libel, whereby it was sought to recover damages for injury to a consignment of school books while in course of transportation by the propeller John R. Langdon from the port of Ogdensburg to Chicago. The bill of lading, a copy of which was annexed to the libel, besides other conditions designed to limit the carrier's common-law liability, contained a stipulation against liability "in any case or event, unless written claim for the loss or damage shall be made to the person or party sought to be made liable within thirty days, and the action in which said claim shall be sought to be enforced shall be brought within three months after said loss or damage occurs." This libel was not brought until after the lapse of little less than a year from the date of the injury, and for that reason was dismissed. An amendment to the libel, added after the filing of the answer, alleges "that the conditions in the bill of lading," referred to in the answer, were in no manner assented to by the libelants at the time of the receipt of the bill of lading; that they had no knowledge of the contents thereof, either at the time of the shipment of their property, or at the time of loss, or at any time prior to the filing of the answer; and that they never agreed to be bound by the same. Otherwise than this,

knowledge of and assent to the particular stipulation in question are not denied.

The contention of the appellants—based upon the opinions of the supreme court in *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344; *York Mfg. Co. v. Illinois Cent. R. Co.*, 3 Wall. 107; *Walker v. Transportation Co.*, *Id.* 150; *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 9 Sup. Ct. 469; *The Majestic*, 166 U. S. 375, 17 Sup. Ct. 597; and other cases—is that such conditions of restriction upon the carrier's liability are not binding upon the shipper unless his consent thereto be shown, and that his consent will not be presumed, nor be inferred from the mere fact that the conditions are expressed upon the face or in the body of a bill of lading delivered to him when he surrenders his goods to the carrier. That doctrine, where recognized, rests on considerations of public policy, and is an exception to the general rule that one who has become a party to a written agreement will be presumed to have had knowledge of its contents, and, in the absence of fraud in procuring his signature or assent, will not be heard to assert the contrary. To what extent the decisions of the supreme court go in respect to conditions intended to restrict the liability which, in the absence of special agreement, the law imposes on a carrier, it is not necessary now to inquire. The stipulation that suit must be brought within a time named is not of that character. It in no manner affects the nature or extent of liability, but simply prescribes a time within which suit to enforce it, whatever its character or scope, must be brought. This accords with the familiar doctrine that a statute which fixes a shorter time for the bringing of suit upon existing contracts than had been prescribed by a statute of limitations does not impair the obligation of contracts, within the meaning of the national constitution, provided the time allowed for bringing suits thereon be not unreasonably short. That it is within the power of contracting parties to fix by agreement a shorter time for the bringing of suit on the contract than that provided by the statute of limitations is not open to dispute. *Riddlesbarger v. Insurance Co.*, 7 Wall. 386; *Express Co. v. Caldwell*, 21 Wall. 264; *Hart v. Railroad Co.*, 112 U. S. 331, 5 Sup. Ct. 151; *Phœnix Ins. Co. v. Erie & W. Transp. Co.*, 117 U. S. 312, 6 Sup. Ct. 750, 1176; *Primrose v. Telegraph Co.*, 154 U. S. 1, 14 Sup. Ct. 1098. Such a stipulation is forbidden by no rule of law, nor by any consideration of public policy, and will be presumed, equally with any other term of the agreement, to have had the full assent of the parties; and, having been assented to by the parties, the limitation will be regarded as reasonable, unless the contrary be made apparent. It is the more important when found in a contract which contains restrictions upon liability, the validity of which depends on evidence aliunde of the knowledge and assent of the party to be affected, because it brings the question to an early determination. In *Railroad Co. v. Soper*, 21 U. S. App. 24, 8 C. C. A. 341, and 59 Fed. 879, this particular stipulation was under consideration by the circuit court of appeals for the First circuit, and, though the requirement that a written claim should be presented within a month was declared to be unreasonable and invalid, the limitation of the time for bringing suit to three months was upheld. Taking the same judicial cognizance as was

taken by that court of facts within common knowledge, we cannot reach a different conclusion.

There is nothing in the contention that the goods of the appellants had been placed in the possession of the carrier, and a receipt given therefor, before the bill of lading was executed, and that there was, therefore, no consideration for the special conditions in the bill of lading. It is evident that the receipt was taken as a preliminary step to be used as the means of obtaining the bill of lading. What the terms of the receipt were is not shown. It may or may not have contained enough to constitute a contract of carriage, but it does not appear that even the destination of the consignment was stated or had been agreed upon. The libel shows a contemporaneous delivery of the goods and the bill of lading, and the evidence does not show any other contract of carriage, express or implied. The decree of the district court is affirmed.

THE LYMAN D. FOSTER.

HINDSGAUL v. THE LYMAN D. FOSTER.

(District Court, D. Washington, N. D. March 5, 1898.)

1. ADMIRALTY JURISDICTION—SUITS IN REM.

Admiralty rule 16 precludes a member of the crew from maintaining a suit in rem to recover damages for assaults and injuries inflicted by the captain.

2. FOREIGN COURTS—CRIMINAL JURISDICTION—ASSAULT IN HARBOR.

An assault committed on board a merchant vessel in a harbor within the territorial jurisdiction of a foreign country is within the jurisdiction of the courts of that country; and, if a member of the crew is there convicted and imprisoned, the judgment will be conclusive here, so that he cannot afterwards sue for wages, etc., on the theory that a wrong was done him at the instigation of the captain.

3. SAME—SHIPPING—IMPRISONMENT OF MATE IN FOREIGN COUNTRY.

Where a mate was imprisoned in a foreign country after conviction of an assault on the captain in the harbor, and the captain, when the ship was ready to sail, placed his wages for the time he was on board in the hands of the American consular agent, who paid therefrom the costs of the criminal prosecution, and turned over the remainder to the prisoner, *held*, that the ship was not liable for any misapplication, if there was one, made by such consular agent.

This was a libel in rem by Nils E. Hindsgaul against the schooner Lyman D. Foster to recover wages, expenses, and damages for an assault alleged to have been committed upon him by the master.

P. P. Carroll, for libellant.

Metcalfe & Jurey, for respondent.

HANFORD, District Judge. The libellant was employed as first mate of the schooner Lyman D. Foster, for a voyage from Port Townsend to the port of Freemantle, West Australia, and return to a port of the United States on the Pacific coast,—the voyage not to exceed 16 months,—and was to receive wages at the rate of \$50 per month. Within a short time after sailing from Port Townsend there was trouble between him and the captain, in consequence of which the libellant was deposed, and the captain himself performed the duties of mate.