

parties, under which the cargo was brought forward, seem based upon the same assumption.

3. The stipulation in the bill of lading, that the shipowner "is not to be liable in any case for more than the invoiced or declared value" of the goods, does not mean that the consignees shall pay freight in addition to the loss of the invoice price; but under the agreement with the parties for forwarding the cargo to New York, I think that the consignees are entitled to deduct the freight paid by them from the gross proceeds of the sale of the brimstone, as a part of the expenses of realizing the moneys derived from it.

Decrees may be entered in accordance with the above findings; and if the parties cannot agree as respects the net proceeds and the invoice price, a reference may be taken in each case to adjust the same.

THE A. M. BAXTER.

(District Court, D. Washington, N. D. April 4, 1899.)

1. SEAMEN—IMPROPERLY FURNISHED QUARTERS—RIGHT TO ABANDON SERVICE.
To justify seamen in leaving their vessel before the expiration of their term of service because of a failure to properly heat their quarters in cold weather as required by Act March 3, 1897 (29 Stat. 687, § 2), so as to entitle them to wages for the unexpired time, it should be shown that they made complaint to the captain, and requested that the fault be remedied.
2. SAME—SUIT TO RECOVER WAGES—FORFEITURE OF WAGES EARNED.
A court will not decree a forfeiture of the wages of seamen for time actually served because they were not fully justified in leaving the vessel at the time they did, before the expiration of their term of service, where the answer to their libel does not ask such relief, nor charge them with desertion, or other substantial grounds for such forfeiture.

This was a libel by John Anderson and others against the schooner A. M. Baxter to recover wages as seamen.

M. M. Madigan, for libelants.

W. H. Gorham, for claimant.

HANFORD, District Judge. The libelants signed shipping articles at San Francisco for a voyage in the schooner A. M. Baxter from San Francisco to Honolulu via Everett, in this state, and return to a port on the Pacific Coast, and served under their contract on the run from San Francisco to Everett, at which place they voluntarily left the vessel; assigning as their reason for doing so that the food supplied to them was bad, and that the forecabin was wet, cold, and uncomfortable. The preponderance of the evidence is against the libelants on the question as to the quality of the food which was served to them. There is no question but what the forecabin was clean and properly ventilated, and complied fully with the requirements of the statute on the subject, except in one particular,—that it was not supplied with any apparatus for heating. At the time they left the vessel the weather was cold, and the crew suffered discomfort by having to work in the wet, chilly weather, without means for drying their clothing, or any artificial heat in their sleeping room. However, to justify their leaving the vessel before the expiration

of the time for which they were hired, they should have first complained to the captain of the discomfort to which they were subjected, and requested him to supply heating apparatus, as required by section 2 of the act of March 3, 1897, entitled "An act to amend the laws relating to navigation." 29 Stat. 687. That request was not made, and, as they left the vessel voluntarily, I hold that they cannot recover wages for services not rendered, nor expenses for their return to San Francisco. They are entitled, however, to receive their wages at the contract rate for the time of their actual service. No reason for refusing to pay them for the time of actual service in the ship is suggested, except that the contract was broken on their part by their leaving the vessel without reasonable cause. The answer, however, does not charge the libelants with desertion, nor allege that they have forfeited their wages by leaving the vessel without the master's consent. Courts do not favor the forfeiture of wages earned by toil and exposure to hardship and danger, to the extent of giving decrees against seamen suing to recover wages, when such relief has not been demanded, and substantial legal reasons therefor alleged, in the respondent's pleading. Let a decree be entered in favor of the libelant Francis for the sum of \$22, and in favor of each of the other libelants for the sum of \$24, and their taxable costs.

THE RETRIEVER.

(District Court, D. Washington, W. D. April 4, 1899.)

MARITIME LIENS—BROKERAGE COMMISSIONS FOR PROCURING SEAMEN.

Brokers employed to negotiate contracts incidental to commerce carried on by vessels navigating the seas, such as shipping agents employed to procure crews for vessels, are not entitled to a lien upon the vessels for their commissions.

On Exceptions to a Libel in Rem.

Claypool & Cushman, for libelant.

W. H. Gorham, for claimant.

HANFORD, District Judge. This case has been heard upon exceptions to a libel in rem filed to recover brokerage commissions for procuring seamen to serve on the barkentine Retriever. In the case of *The Gustavia*, Fed. Cas. No. 5,876, decided by Judge Betts in the Southern district of New York in the year 1830, it was held that a ship's broker has a lien on a foreign vessel, in the nature of the lien of a material man, for services in shipping a crew for the vessel and for advances for their wages; but, in the light of more recent decisions, I consider it very doubtful whether that case would be, at the present time, sustained by the supreme court, or followed in the district court for the Southern district of New York. See *Vandewater v. Mills*, 19 How. 82; *Seaver v. The Thales*, Fed. Cas. No. 12,594; *Scott v. The Morning Glory*, Id. 12,542; *Marquardt v. French*, 53 Fed. 603.

The case under consideration differs from *The Gustavia* in this: that the libelant has paid no money on account of the wages of those