

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.

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#### 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

whom he procured to ship on the Retriever. His claim is simply to recover compensation for his services and for expenses incidental to securing a crew, and the reasons for allowing a lien upon a ship for money advanced to pay the wages of seamen have no existence in this case. The business of shipping agents is usually conducted wholly in a boarding house or an office upon land, and is as much a land business as the negotiations carried on by brokers for the purchase and sale of mining stocks or wheat, or negotiations leading up to the making of other nonmaritime contracts. I have recently had occasion to consider this subject with some care, and have become firmly convinced that brokers employed to negotiate contracts incidental to commerce carried on by vessels navigating the seas are not entitled to hold liens upon vessels for the compensation which they earn. *Grauman v. The Humboldt*, 86 Fed. 351. Exceptions sustained.

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THE F. W. VOSBURGH.

THE DR. J. P. WHITBECK.

(District Court, E. D. New York. April 8, 1899.)

**1. MARITIME LIENS — POSTPONEMENT BY LACHES — FAILURE TO ISSUE PROCESS ON LIBEL FILED.**

The delay of a libelant in rem in having process issued for the seizure of the libeled vessel after the filing of his libel, by which the vessel is allowed to pursue her ordinary business, constitutes laches, as against persons who thereafter and before her seizure furnish supplies to the vessel in good faith, and postpones his lien to theirs.

**2. SAME—RIGHTS OF CO-DEFENDANT.**

A libelant entitled to recover damages for an injury against two vessels as joint and several wrongdoers may elect to proceed against either or both; and hence, where he joins both in his libel, his failure to issue process against one does not constitute laches of which the other can complain, though it is compelled by reason of such fact and the consequent intervention of other liens against its co-defendant to bear more than its just proportion of the recovery.

On Application for Distribution of Fund Arising from Sale of Libeled Vessels.

James J. Macklin, for libelant.

Goodrich, Deady & Goodrich and Alexander & Ash, for subsequent lienors.

Carpenter & Park, for the F. W. Vosburgh.

THOMAS, District Judge. Heretofore a decree of this court determined that the two tugs Vosburgh and Whitbeck were equally in fault for the collision resulting in injury to the libelant's barge, and payment of one-half damages and costs was awarded primarily against each tug, with a right of recourse to the other in the case of the insufficiency of one tug to meet its share. The collision occurred on the 19th day of December, 1892. A libel in rem was filed against both tugs on March 30, 1893. The Vosburgh voluntarily appeared and bonded, but the Whitbeck was not seized until July 7, 1893, and then only on an order of the court made at the instance of the Vosburgh.