

3. It is contended that undue weight was given to the Butterfield patent in our former opinion. The model, which was filed with application for that patent and which was damaged by the fire which occurred in the patent office in 1877, has been found, and the experts on both sides have testified as to the inferences which they draw from it. It exhibits a hole in the frame of the machine, and a slot in the knife-carrying frame. There is no reference to these in the specifications, nor are they shown in the drawings, nor is there anything in the patent to indicate what purpose they were intended to subserve. Complainant's expert draws the inference that they were devised so that a set screw might be used to clamp the knife-bearing frame after the racks and pinions had raised or lowered the knife to its desired position. Defendant's expert suggests that we may quite as fairly infer that they were adapted to receive "a rod or stop which might brace the frame, or hold the knife frame from falling upon the rollers at the bottom." In the absence of any reference to a set screw, either in the specifications, claims, or drawings, we are not inclined to give much weight to either of these inferences. Nor does the evidence satisfy us that the machine of Butterfield would be inoperative without a set screw. And, even if irregularities in the boards to be planed would at times destroy the adjustment of the knife (unless a set screw were used), as complainant's expert claims, by reason of the increased pressure of the plank against the feed roller, causing the latter to rise and carry the rest of the frame with it, that difficulty would disappear with the disappearance of the feed roller; and, as was stated in *Briggs v. Ice Co.*, "it is obvious that the feed roller would be unnecessary in an ice-planing machine," where the substance to be cut is fed forward by the moving base on which it rests. The decree of the circuit court is affirmed, with costs.

JACOBSEN et al. v. DALLES, P. & A. NAV. CO.

(District Court, D. Oregon. May 6, 1899.)

No. 4,432.

1. PARTIES IN ADMIRALTY—JOINDER OF LIBELANTS IN ACTION FOR COLLISION.

Under the rule in admiralty that all parties may join as libelants where their rights of recovery rest on a common cause of action, whether the suit is in personam or in rem, though, as between themselves, their interests may be separate, persons suffering separate injuries from a collision may join in a libel to recover damages therefor from the owner of the vessel in fault.

2. PLEADING IN ADMIRALTY—SUFFICIENCY OF LIBEL FOR COLLISION.

A libel to recover for personal injuries received in a collision must set out the facts which constitute the negligence, and also the injuries complained of.

3. DAMAGES—ACTION FOR COLLISION.

Expense incurred by a libelant in replacing certain papers lost by him in a collision is not recoverable as an element of damages, being too remote.

In Admiralty. On exceptions to libel.

T. J. Geisler and Geo. W. Hazen, for libelants.
E. P. Mays, for defendant.

BELLINGER, District Judge. This is a libel in personam for damages resulting from a collision on the Columbia river, between the river steamer Sarah Dixon, navigated under a lease by the defendant company, and a small sailing vessel owned by the libelant Jacobsen. Jacobsen sues in his own behalf for the loss of the vessel and other property and for personal injuries. Dresser and Forde are joined in the libel,—Dresser as the administrator of the estate of Hansen, who was on board the sailing vessel, and who was drowned as a result of the accident; and Forde, who was also on board the sailing vessel, and who claims to have sustained personal injuries, and damages in the loss of certain personal property. Defendant excepts to the libel on various grounds,—among them that there is a misjoinder of distinct causes of suits; that there are different causes of action, not separately stated in the complaint; that the negligence complained of is not specially stated, and that there is no allegation tending to show in what the negligence complained of consisted; that the libel is defective in failing to specify the injuries from which the damages have resulted; and that the libelant Forde is not entitled to recover on account of the loss of certain papers which the libel alleges relate to an estate owned by him in England, and which loss has entailed upon him an expenditure of \$1,000 in supplying the papers so lost.

The rule as to the question of misjoinder is that all parties in admiralty suits may join as libelants whose interests rest upon a cause of action common to all, though, as between themselves, their interests are separate and distinct, and that this rule applies both in suits in personam and in rem; and the rule has been so far extended as to allow the master of a vessel in collision cases to bring actions in behalf of seamen, shippers, and passengers. *Insurance Co. v. Johnson*, 1 Blatchf. & H. 9, 1 Fed. Cas. 665; Ben. Adm. § 384. In this case, the cause of action being common to all the parties, it is sufficient; it is not material that the interests of the parties are distinct. The exceptions are overruled as to the third and fourth grounds of exception above stated, and they are sustained as to the allegation of negligence, as well as that of damages, set forth in articles 5, 6, and 10. It is not enough to allege generally that the defendants were guilty of negligence, but the facts showing the negligence must be alleged. A general charge of negligence does not state any fact, but a mere conclusion, and leaves the defendants in the dark as to the character of the charge they are required to meet. So, too, of the general allegation of physical injury. This is not sufficient. The libelants must specify their injuries; the ultimate facts showing the injury must be alleged. The allegation of damages to Forde resulting from the loss of the papers in question is not sufficiently definite and certain to be made the basis of a decree; and, furthermore, these damages are not the natural and probable consequence of the act complained of, and for this reason there can be no recovery for such damage.

DAVIS v. ADAMS.

(District Court, N. D. California. April 29, 1899.)

No. 11,829.

PLEADING IN ADMIRALTY—ACTION BY SEAMAN—VARIANCE.

A libel for damages, on the alleged ground that libelant was induced to visit a vessel by fraudulent pretenses, and there detained, and compelled to go on a voyage, sounds in tort, and a recovery cannot be had thereunder for wages due the libelant for his services as seaman rendered under shipping articles, which he signed.

In Admiralty.

Libel for damages. The libel alleges that the libelant was induced by fraudulent pretenses and assurances to go on board the bark *Retriever*, then lying in the harbor of San Francisco, for the purpose of visiting said vessel, and when on board "was unable to escape from said vessel, and was threatened, under penalty of being placed in irons, if he attempted to escape or make an outcry," and was thus compelled to go upon the voyage referred to in the opinion of the court.

P. C. Dormitzer, for libelant.

Charles E. Naylor, for respondent.

DE HAVEN, District Judge. The evidence in this case shows that the libelant, on or about the 11th day of May, 1895, signed shipping articles by which he agreed to go as a seaman on board the bark *Retriever*, on a voyage from San Francisco to Port Hadlock and return. In pursuance of this agreement, the libelant proceeded on the bark to Port Hadlock, and there left the vessel. In my opinion, the evidence shows that he was justified in leaving. The evidence also shows that the libelant has not been paid the wages earned by him. The libel will, however, have to be dismissed, as there is a fatal variance between the case proven and the cause of action alleged in the libel. The cause of action set forth in the libel is for a tort in the nature of false imprisonment, and not upon the contract established by the evidence. Libel dismissed, the respondent to recover costs.

 HALL et al. v. WITTER.

(District Court, N. D. New York. May 8, 1899.)

ADMIRALTY—ACTION FOR REPAIRS AND SUPPLIES—COSTS.

The record owner of a vessel during the time repairs were made and supplies furnished to her is not entitled to recover his costs in an action brought against him to recover for such repairs and supplies, though he is successful in defeating recovery by showing that he was not in fact the owner.

In Admiralty.

Ingram, Mitchell & Williams, for libelants.

Josiah Cook, for respondent.