

COXE, District Judge. This is a libel in personam, filed November 16, 1898, against the respondent as the owner of the steam canal boat Hugo Keller, to recover for supplies furnished to the said boat and repairs made thereon during the years 1895, 1896, and 1897. It is agreed by both parties that the only question is one of fact, namely, was the respondent the owner of the Keller during the period in question? The testimony is exceedingly conflicting and it is difficult to explain some of the transactions upon any rational business principle, but after considering the entire evidence, oral and documentary, the court has reached the conclusion that the respondent was not the owner. The respondent testifies that in 1893 he sold the Keller for \$6,000 to Edward Wildey, who continued to own and hold the uninterrupted possession of her until December, 1897. At the time of the sale Wildey paid the respondent \$2,500. The testimony as to this payment is not denied by Wildey. Wildey had the entire management of the boat, made purchases and ordered repairs, including those in controversy, and exercised all the rights of ownership. Various payments were made from time to time on account of the sale and statements of the amounts paid were rendered by the respondent to Wildey. The latter denies the sale generally, but his testimony is inconsistent with this denial and leads to the conclusion that the respondent's version of the transaction is substantially correct. For instance, he says regarding the sale in December, 1897: "He [Witter] asked me if I would sell her [the Keller] and I told him I would if he could make arrangements. \* \* \* Finally I told him if he would give me \$2,000 \* \* \* I would get off the boat." Subsequently he testified that although he never agreed to pay anything for the Keller and never agreed to pay a "certain sum," he did actually pay for her; that when in December, 1897, she was transferred to Fisk he received \$1,000 and later \$200; that the respondent credited him from time to time with sums paid by him on the purchase money of the boat and that he expected that he would get a bill of sale when he "got the boat paid for." There is no escape from the conclusion that there was a sale; as to this fact both vendor and purchaser agree. There was no record of the conveyance and many of the respondent's acts are entirely inconsistent with his present contention, but it is thought that the presumptions arising from these acts are insufficient to overcome the positive and uncontradicted testimony establishing a sale. The libel is dismissed, but as the libelants were justified in bringing the suit against the record owner, the dismissal should be without costs.

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#### THE CARRIER DOVE.

(District Court, D. Massachusetts. May 9, 1899.)

No. 993.

#### SEAMEN—VOYAGE ON LAYS—RIGHT TO LIEN ON VESSEL.

An agreement by seamen to serve on lays on a fishing voyage, made with the master, who had made an oral agreement with the owners of the vessel to ship the crew and to pay to the owners a specified portion of the proceeds of the catch, does not change their character as seamen,

their shares being substantially wages, nor deprive them of their right to a lien therefor against the vessel, where the master, after disposing of the catch, absconded with the proceeds.

In Admiralty. Libel in rem against the fishing schooner Carrier Dove by Joseph Williams and others, as members of the crew, to recover their lay.

J. W. Keith, for libelants.

Carver & Blodgett, for respondent.

LOWELL, District Judge. The owners of the libeled fishing schooner made with one Silva, her master, an oral agreement for a fishing voyage. Silva was to ship the crew, and the owners had no connection with the crew except through Silva. The terms agreed upon between Silva and the owners, and between Silva and the crew, were as follows: From the gross proceeds of the catch, wharfage and scalage were to be deducted. One quarter of the balance was to go to the owners; the remainder, after deducting the cost of groceries, ice, bait, etc., and 10 per cent. paid to the master for use of gear, was to be divided equally among the crew, including the master. A custom was proved that the master should sell the catch and collect the price, and that, in his absence, the crew should appoint one or more of their number to take his place. All supplies were bought by the master or other member of the crew. If the catch was insufficient to discharge the bills incurred for supplies, the same were charged against the next voyage; but there was no evidence how the bill was to be collected if the next voyage was made by another master and crew. This, I understand, is called the "quarter clear." The master sold the catch, collected the price, and absconded therewith. The other members of the crew bring their libel against the vessel for their lay.

This case seems to be covered by *Crowell v. Knight*, 2 Low. 307, Fed. Cas. No. 3,445. There the circumstances were in some respects more favorable to the claimants than here. The libelants were "sharesmen," of whom there were four, while seven other seamen were shipped for special wages in money. In that case, there was stronger reason than in this in holding the libelants to be partners and joint charterers. It is true that in *Crowell v. Knight* it was said that "they [the sharesmen] have no voice in the disposal of the catch in any respect," while here it was otherwise; but this difference seems to me not very important. The method of sale is not decisive upon the question of title, and was probably adopted largely for the convenience of all parties. The supreme court of Massachusetts has decided that seamen have no lien upon the catch for their lay. *Story v. Russell*, 157 Mass. 152, 31 N. E. 753. But that case was made to turn largely upon a construction of Rev. St. §§ 4391-4394, which provisions are not applicable here. The same court has decided, in a case like this in some respects, that those who furnish supplies have no lien. *Rich v. Jordan*, 164 Mass. 127, 41 N. E. 56. This may be true. For the sake of argument, it may be admitted that, if courts of admiralty considered seamen to deal on equal terms with owners, the former might not prevail in a case like that at bar; but, consider-

ing the favor always shown in admiralty to seamen, I think that the agreement here made should not be construed to deprive them of their lien.

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AMERICAN SUGAR-REFINING CO. v. MADDOCK.

(Circuit Court of Appeals, First Circuit. May 12, 1899.)

No. 279.

SHIPPING—LIABILITY OF CARRIER FOR SHORTAGE IN CARGO—EFFECT OF BILL OF LADING SIGNED BY MASTER.

The rule that the master of a vessel has no authority by virtue of his position, either actual or apparent, to sign a bill of lading for cargo not actually received, on board, applies when there is only a deficiency in part through mistake, and the owner cannot be held liable, either by the original consignee or an indorsee of the bill of lading, for such a shortage, where the quantity actually received is delivered.

Appeal from the District Court of the United States for the District of Massachusetts.

Charles T. Russell and Arthur H. Russell, for appellant.

Eugene P. Carver (Edward E. Blodgett, on brief), for appellee.

Before COLT and PUTNAM, Circuit Judges, and WEBB, District Judge.

PUTNAM, Circuit Judge. In this case, the American Sugar-Refining Company purchased, in Cuba, a quantity of sugar in bags, and paid in full therefor. The parties of whom it purchased shipped the sugar by the steamer Salamanca, and took a bill of lading for a precise number of bags named, which also gave the weight. The bill of lading contained also the following words: "Weight and contents unknown." It acknowledged that the sugar was shipped by the parties of whom the cargo was purchased, and it ran in favor of the American Sugar-Refining Company and its assigns, deliverable at Boston. It is admitted that the steamer delivered all the sugar which she received, but the delivery was short of the bill of lading 37 bags. There was no claim that there was any shortage in weight. The American Sugar-Refining Company claims to be allowed the value of 37 bags, estimated at the average weight per bag of the whole cargo, and this is the issue in the case. The proceeding below was by a libel in personam in the district court, and the decision was in favor of the owner of the vessel. 91 Fed. 166.

In *The Freeman*, 18 How. 182, it was held that neither a vessel nor her owners were liable in that case in favor of a bona fide holder of a bill of lading, it having been shown that none of the goods called for by it were shipped. The American Sugar-Refining Company, however, maintains that there is a substantial distinction between a case where a bill of lading is issued fraudulently, or where no merchandise called for by it was in fact shipped, and the case at bar, where it is claimed that the master erred innocently in his count, and there is only a small shortage in what the shipping documents call for. It is not denied that, as towards an