other place on, or adjacent to this continent, and north of the equator, or in any British or foreign possessions in the West Indies, or elsewhere in the western Atlantic Ocean, or Europe, ten per cent. The damages are to be in lieu of interest, charges of protest, and all other charges incurred previously to and at the time of giving notice of non-acceptance or non-payment.

The laws and usages of the other States vary essentially on this subject. In some the result is nearly similar, while, in other States, the damages allowed vary from four and a half to fifteen per cent.

37. *What is a mercantile guaranty?*—121.

It is a promise to answer for the payment of some debt or duty, in case of the failure of another person who is in the first instance liable.

38. *What is the principal legal rule governing a mercantile guaranty?*—121, 122.

The English statute of frauds, which has been adopted throughout this country, requires, that "upon any special promise to answer for the debt, default, or miscarriage of another person, the agreement, or some memorandum thereof, must be in writing and signed by the party, to be charged therewith, or some other person thereunto by him lawfully authorized." An agreement to become a guarantor is within the statute; and if it be a guaranty for the subsisting debt or engagement of another person, not only the engagement, but the consideration, must, according to the English decisions, be in writing. The English construction of the statute, in this respect, has been adopted in New York and South Carolina, and rejected in several other States. The decisions have all turned on the force of the word *agreement;* and where by statute the word *promise* has been introduced, as in Virginia, Tennessee, and Mississippi, the construction has not been so strict, and the consideration of the promise need not be in writing.

39. *What are some of the principal rights and duties of the respective parties to a mercantile guaranty?*—123, 124.

The doctrine in the case of negotiable paper, as to demand

and notice, has a feeble and qualified application to the guarantor. Thus it has been held, that the guarantor of a note could be discharged by the laches of the holder, as by neglect to make demand of payment of the maker, and to give notice of non-payment to the guarantor, provided the maker was solvent when the note fell due, and became insolvent afterwards. And, in the case of the absolute guaranty of the payment of a note, no demand or notice is requisite to fix the guarantor. The claim against a surety is *strictissimi juris;* and the surety, who pays the debt of his principal, will, in a clear case, in equity, be entitled to all the liens held by the creditor, who is bound to preserve them unimpaired when he intends to look to the surety for payment.

LECTURE XLV.

OF THE TITLE TO MERCHANT VESSELS.

1. *How may the law of shipping be arranged?*—129.

It may be conveniently arranged under the three following heads, viz.: 1. Of the title to vessels; 2. Of the persons employed in the navigation of merchant ships; and 3. Of the contract of affreightment.

2. *What are the requisites to a title to a ship?*—130–132.

A bill of sale is the true and proper muniment of title, and one which the maritime courts of all nations will look for, and, in their ordinary practice, require. In Scotland, a written conveyance of property in ships has, by custom, become essential; and, in England, it is made absolutely necessary by statute, as to British subjects. Possession of a ship and acts of ownership will, in this, as in other cases of property, be presumptive evidence of title, without the aid of documentary proof, and will stand good until that presumption be destroyed by contrary proof; and a sale and delivery of a ship, without a bill of sale, writing, or instrument, will be good at law, as between the parties.

Upon the sale of a ship in port, delivery of possession is necessary to make the title perfect; and by an act of Congress, passed July 29th, 1850, no bill of sale of any vessel is valid against any person but the grantor, unless it be recorded in the collector's office where the vessel is registered and enrolled. If the buyer suffers the seller to remain in possession, and act as owner, and the seller should become bankrupt, the property would be liable to his creditors, and, in some cases, also to judgment creditors on execution. The same rule exists in the case of the mortgage of the ship; but where a sale is by a part owner, it is similar to the sale of a ship at sea, and actual delivery can not take place. Delivery of the muniments of title will be sufficient, unless the part owner be himself in actual possession. If the ship be sold while abroad, or at sea, a delivery of the grand bill of sale, and other documents, transfers the property, as in the case of the delivery of the key of a warehouse.

3. *What is understood by the grand bill of sale?*—133.

The instrument whereby the ship was originally transferred from the builder to the owner, or first purchaser. But the American cases speak simply of a bill of sale, and usually refer to the instrument or transfer from the last proprietor while the vessel is at sea, and which is sufficient to pass the property, if accompanied by the act of taking possession as soon as conveniently may be after the vessel arrives in port.

4. *What will constitute a person owner, for the purpose of charging him for necessaries and repairs?*—133, 134.

The ownership, in relation to this subject, is not determined by the register, and the true question, in matters relating to repairs, is, upon whose credit was the work done. Nor is a regular bill of sale of property, essential to exempt the former owner from responsibility for supplies furnished. But where the contract of sale is made, and the possession delivered, the circumstance that the naked legal title remains in the vendor, for his security, does not render him liable, as owner, on contracts, or for the conduct of the master.

5. *How is the liability of mortgagees considered?*—134, 135.

It has been a disputed question, whether the mortgagee of

a ship, before he takes possession, be liable to the burdens and entitled to the benefits belonging to the owner. The weight of American authority has been in favor of the position, that a mortgagee of a ship, out of possession, is not liable for repairs or necessaries furnished on the order of the master, and not upon the particular credit of the mortgagee, who was not in receipt of the freight; though the rule is otherwise, when the mortgagee is in possession and the vessel employed in his service. To whom was the credit given, seems to be the ground on which the question ought to stand.

6. *In what cases is the charterer liable for supplies furnished the ship?*—137, 138.

The question in these cases is, whether the owner, by reason of the charter party, has divested himself of the ownership *pro hac vice*, and whether there has been any direct contract between the parties varying the responsibility. The question of responsibility dépends upon the inquiry, whether the lender or hirer, under a charter party, be the owner of the ship for the voyage. If the general owner retains the command and navigation of the ship, and contracts to carry a cargo on freight for the voyage, the charter party is a mere affreightment sounding in covenant, and the freighter is not clothed with the character or legal responsibility of ownership. But where the freighter hires the possession, command, and navigation of the ship, he becomes the owner, and is responsible for the conduct of the master and mariners; and the general owner has no lien for freight.

7. *What is necessary, under the registry acts, in order to entitle a vessel to the privileges of a United States ship?*—141–143.

No vessel is deemed a vessel of the United States, nor entitled to the privileges of one, unless registered, and wholly owned and commanded by a citizen of the United States. The American owner in whole, or in part, ceases to retain his privileges as such owner, if he usually resides in a foreign country, during the continuance of such residence, unless he be a consul, or agent for and a partner in some American house, carrying on trade within the United States. The register is to be made by the collector of the port to which the vessel belongs, or in which it

shall be, and founded on the oath of the owners, stating the time and place where she was built, or that she was captured in war, by a citizen, as prize and lawfully condemned; and stating the owners and master, and that they are citizens, and that no subject of a foreign power is, directly or indirectly, by way of trust, or otherwise, interested therein. Previous to the registry, a certificate of survey is to be produced, and security given, that the certificate of such registry shall be solely used for the ship, and shall not be sold, lent, or otherwise disposed of. If the vessel, or any interest therein, be sold to a foreigner, and the vessel be within the United States, the certificate of the registry shall, within seven days after the sale, be delivered up to the collector of the district to be canceled; and if the sale be made when the vessel is abroad, or at sea, the certificate is to be delivered up within eight days after the master's arrival within the United States; and if the transfer be made to a foreigner, in a foreign port, for the purpose of evading the revenue laws of the foreign country, it works a forfeiture of the vessel, unless the transfer be made known within eight days after the return of the vessel to a port in the United States, by a delivery of the certificate of registry to the collector of the port. So, if a registered ship be sold, in whole or in part, while abroad, to a citizen of the United States, the vessel, on her first arrival in the United States thereafter, shall be entitled to all the privileges of a ship of the United States, provided a new certificate of registry be obtained within three days after the master makes his final report upon her first arrival. If the vessel be built in the United States, the ship-carpenter's certificate is requisite to obtain the register; and when the ship is duly registered, the collector of the port shall grant an abstract or certificate of such registry.

8. *What form is requisite in the transfer of American ships?*—43.

There must be some instrument in writing, in the nature of a bill of sale, which shall recite at length the certificate of registry, and without it the vessel is incapable of being registered anew. Upon every change of master, the owner must report such change to the collector.

9. *What are the rules prescribed in regard to the coasting trade?*—144.

In order to obtain a license to carry on the coasting trade or fisheries, the owner, or the ship's husband and master, must give security to the United States, that the vessel be not employed in any trade whereby the revenue of the United States may be defrauded; and the master must make oath that he is a citizen, and that the license shall not be used for any other vessel, or any other employment; and if the vessel be less than twenty tons burden, that she is wholly the property of a citizen of the United States. The collector thereupon grants a license to carry on the coasting trade or fishery. Vessels engaged in such trade or business, without being enrolled or licensed, or licensed only, as the case may be, shall pay alien duties, if in ballast, or laden with goods the growth or manufacture of the United States, and shall be forfeited if laden with any articles of foreign growth or manufacture, or distilled spirits.

10. *In what relation do part owners of a ship stand toward each other?*—151.

As tenants in common. Each has his distinct, though undivided interest; and when one of them is appointed to manage the concerns of the ship, he is termed the ship's husband.

11. *How is the employment of the ship regulated?*—151–153.

If there be no certain agreement among the owners, the Court of Admiralty authorizes a majority in value of the part owners to employ the ship upon any probable adventure, and, at the same time, takes care to secure the interest of the dissenting minority. In such case, the ship sails wholly at the charge and risk, and for the benefit of, the majority. If the part owners are equally divided in respect to the employment of the ship, either party may obtain the like security from the other seeking to employ her.

12. *Is there a distinction between part owners and partners in a ship?*—154.

Yes; a clear and well-settled one. A part owner is but a tenant in common, and he has only a disposing power over his

own interest in the ship. But there may be a partnership as well as a co-tenancy in a vessel; and in that case one part owner, in the character of partner, may sell the whole vessel.

13. *When is a person to be considered as part owner, and when as partner?*—155, *n.* (*b.*)

It will depend on circumstances; a part ownership is the general relationship between ship-owners, and a partnership the exception which requires to be specially shown. Part owners are analogous to partners, and liable, under that implied authority, for necessary repairs and stores ordered by one of them. This is said to be the principle and limit of the liability of part owners, but there may be cases when the general rule is otherwise.

14. *What is the rule as to the joint responsibility of part owners?*—156.

That they are responsible *in solido*, as partners, for repairs and necessary expenses relating to the ship, and incurred on the authority of the master or ship's husband. But where a ship has been duly abandoned to separate insurers, they are not responsible to each other as partners, but one is answerable for the previous expenses of the ship, ratably to the extent of his interest as an insurer, and no further.

15. *Who is the ship's husband?*—157.

He may be either one of the part owners, or a stranger, and he is sometimes merely an agent for conducting the necessary measures on the return of the ship to port. His contracts, in the proper line of a ship's husband's duty, will bind the joint owners.

16. *Are part owners of the cargo tenants in common or partners?*—157.

They are tenants in common of the cargo, as well as of the ship.

LECTURE XLVI.

OF THE PERSONS EMPLOYED IN THE NAVIGATION OF MERCHANT SHIPS.

1. *What are the qualifications which the master should possess?*—159, 160.

He must be a person of experience and practical skill, as well as deeply initiated in the theory of navigation. He must watch for the preservation of the health and comfort of the crew, as well as for the preservation of the ship. It is necessary that he should maintain perfect order, and preserve the most exact discipline, under the guidance of justice, moderation, and good sense. Charged frequently with the sale of the cargo, and the reinvestment of the proceeds, he must be fitted to superadd the character of merchant to that of commander; and he ought to have a general knowledge of the marine law, and of the rights of belligerents, and the duties of neutrals, so as not to expose to unnecessary hazard the persons and property under his protection.

2. *What authority may the master exercise?*—161–163.

As he is the confidential agent of the owners, he has an implied authority to bind them, without their knowledge, by contracts relative to the usual employment of the ship. And the person furnishing supplies, or repairs, can sue the owner, or the master personally, unless the credit was expressly confined to the owner. The master may, by charter party, bind the ship and freight. This he may do in a foreign port, in the usual course of the ship's employment; and this he may also do at home, if the owner's consent can be presumed. The ship and freight are, by the marine law, bound to the performance of the contract. The master can bind the owners, not only in respect to the usual employment of the ship, but in respect to the means of employing her. His power relates to the carriage of goods, and the supplies requisite for the ship, and he can bind the owner personally as to repairs and necessaries for the ship. But the supplies must appear to be reasonable, or the money advanced for the purchase