

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

of them to have been wanting, and there must be nothing in the case to repel the ordinary presumption, that the master acted under the authority of the owners. The master, when abroad, and in the absence of the owner, may hypothecate the ship, freight, and cargo, to raise money requisite to complete the voyage; and if the owner be personally bound, it must be to the extent of the requisite advances. The master may, also, if necessary, in the course of the voyage, sell a part of the cargo, to enable him to carry on the residue.

3. *What is the law as to the master's right of lien on the ship?*—165-167, n. (e.)

It is settled, in England, that the master has no lien on the ship, freight, and cargo, for any debt of his own, as for wages, or stores furnished, or repairs done at his expense, either at home or on the voyage. The captain is distinguished from all other persons belonging to the ship, and he is considered as contracting personally with the owners, while the mate and mariners contract with the master on the credit of the ship. He can hypothecate and create a lien in favor of others, but he himself must stand on the personal credit of his owners.

In this country, the general current and language of the American cases seem now to have settled the question, that the master has such a lien for his advances and responsibilities, as against the owner, though there should be no question as to the owner's solvency and responsibility. The American cases have taken the most reasonable side of the question. It was adjudged in the District Court of Maine, that the master had a lien on the freight for his necessary disbursements for incidental expenses, and the liabilities which he contracts for these expenses during the voyage, and also for his own wages. But the Court of Errors of New York recognized the English law, that the master had no lien on the freight, nor on the vessel, for his wages.

4. *Have material men a lien?*—170, notes.

It was decided* in the District Court of Maine, that, by the general maritime law of Europe, material men had a privi-

* *Daveis's R.*, 71.

leged lien on a vessel for repairs and supplies, but that, in this country, they had no such lien in a port of the State to which the vessel belonged, unless allowed by the local law; though, if in the port of another State, she was considered a foreign vessel, and the general maritime law applied. In Illinois, by special statute, vessels are liable to be attached for work and supplies by mechanics, etc., in that State. So, also, in New York, Indiana, Pennsylvania, Massachusetts, New Jersey, Ohio, California, and other States, similar enactments have been made.

5. *What is the rule as to the pilotage?*—175.

That it is the duty of the master engaged in a foreign trade, to put his ship under the charge of a pilot, both on his outward and homeward voyage, when he is within the usual limits of the pilot's employment.

6. *How far do the responsibilities of pilots extend?*—176.

The pilot, while on board, has the exclusive control of the ship. He is considered as master, *pro hac vice*, and if any injury or loss be sustained, in the navigation of the vessel while under the charge of pilot, he is answerable as strictly as if he were a common carrier, for his default, negligence, or unskillfulness; and the owner would also be responsible to the party injured by the act of the pilot, as being the act of his agent.

7. *What is the mate of a vessel?*—176.

He is the next officer to the master on board, and upon his death or absence, the mate succeeds, *virtute officii*, to the care of the ship and government of the crew. He is *quasi* master, with the same general powers and responsibilities, *pro hac vice*, and with the preservation of his character and privileges as mate.

8. *What are the principal provisions prescribed by Congress, in regard to seamen employed in the merchant service?*—177, 178.

That every seaman or mariner, on all voyages from the United States to a foreign port, and, in certain cases, to a port in another State, other than the adjoining one, shall sign shipping articles, which are contracts in writing or in print, declaring the voyage and the term of time for which the seamen are

shipped, and when they are to render themselves on board. If there be no such contract, the master is bound to pay to every seaman who performs the voyage, the highest wages given at that port for a similar voyage within the three next preceding months, besides forfeiting for every seaman a penalty of twenty dollars. The seamen are made subject to forfeitures if they do not render themselves on board according to the contract, or if they desert the service; and they are liable to summary imprisonment for desertion, and to be detained until the ship be ready to sail. If the mate and a majority of the crew, after the voyage is begun, but before the vessel has left the land, deem the vessel unsafe, or not duly provided, and shall require an examination of the ship, the master must proceed to, or stop at, the nearest or most convenient port, where an inquiry is to be made. If the complaint shall appear to be groundless, the expenses and reasonable damages, to be ascertained by the judge, are to be deducted from the wages of the seamen. But if the vessel be found or made seaworthy, and the seamen shall refuse to proceed on the voyage, they are subjected to imprisonment until they pay double the advance made them on the shipping contract. Fishermen engaged in the fisheries are liable to the like penalties for desertion; and the fishing contract must be in writing, signed by the shipper and the fishermen, and countersigned by the owner.

9. *What is provided in regard to wages?*—178.

That one third shall be due at every port at which the vessel shall unlade and deliver her cargo, before the voyage be ended; and at the end of the voyage, the seamen may proceed in the District Court, by admiralty process, against the ship, if the wages be not paid within ten days after they are discharged.

10. *What is provided for the health and safety of seamen?*—179.

That every ship belonging to a citizen of the United States, of the burden of one hundred and fifty tons, or upward, navigated by ten or more persons, and bound to a foreign port; or of the burthen of seventy tons, or upward, and navigated by six or more persons, and bound from the United States to the West Indies, shall be provided with a medicine chest, properly supplied with fresh and sound medicines; and if

bound across the Atlantic ocean, with requisite stores of water, and salted meat, and wholesome ship bread, well secured under deck. And it is further provided, for the purpose of affording relief to sick and disabled seamen, that a fund be raised out of their wages, earned on board of any vessel of the United States, and be paid by the master to the collector of the port, on entry from a foreign port, at the rate of twenty cents per month for every seaman. It is also made the duty of the American consuls, and commercial agents, to provide for those seamen who may be found destitute within their consular districts, and for their passage to some port in the United States, in a reasonable manner, at the expense of the United States. So, if an American vessel be sold in a foreign port, and her company discharged, or a seaman be discharged without his consent, the master must pay to the consul or commercial agent at the place, three months' pay over and above the wages then due, for every such seaman, two thirds of which is to be paid over to every seaman so discharged, upon his engagement on board of any vessel to return to the United States.

11. *How far has the master authority over the seaman?*—181-183.

He may imprison, and also inflict reasonable corporal punishment upon a seaman, for disobedience to reasonable commands, or for disorderly, riotous or insolent conduct; and his authority, in that respect, is analogous to that of a master on land over his apprentice or scholar. He may discharge a seaman for just cause, and put him on shore in a foreign country; but the cause must not be slight, but aggravated, such as habitual disobedience mutinous conduct, theft, or habitual drunkenness; and he is responsible in damages if he discharge him without justifiable cause. This power extends to the mate and subordinate officers.

12. *What is the maritime law as to the expenses attending sick and disabled seamen during the voyage?*—184.

It has been decided, that the expense of curing a sick seaman in the course of the voyage, was a charge upon the ship, according to the maritime law of Europe.

13. *What is the rule as to seamen's right to extra wages?*—185.

That every seamen engaged to serve on board a ship is bound, from the terms of the contract, to do his duty in the service to the utmost of his ability, and, therefore, a promise made by the master when the ship is in distress, to pay extra wages as an inducement to extraordinary exertion, is illegal and void. It requires the performance of some service not within the scope of the original contract, as by becoming a voluntary hostage upon capture, to create a valid claim on the part of the seaman to compensation, on a promise by the master, beyond the stipulated wages. So, no wages can be recovered, when the hiring has been for an illegal voyage, or one in violation of a statute.

14. *What is the rule, as to wages, where a seaman is unable to render his service by reason of sickness or bodily injury happening during the voyage?*—186.

He is entitled to his whole wages for the voyage. He will be equally entitled to his wages to the end of the voyage, when wrongfully discharged by the master during the course of it. If the seaman be wrongfully discharged on the voyage, the voyage is then ended with respect to him, and he is entitled to sue for his full wages for the voyage.

15. *What is the general rule as to wages?*—187-189.

The general principle of the marine law is, that freight is the mother of wages, and if no freight be earned, no wages are due. This principle protects the owner, by making the right of the mariner to his wages commensurate with the right of the owner to his freight; but that the rule may duly apply, the freight must not be lost by the fraud or wrongful act of the master. The policy of the rule applies to cases of loss of freight by a peril of the sea. Seamen's wages, in trading voyages, are due *pro rata itineris*.

16. *What is the rule where a seaman dies on the voyage?*—189.

There is no settled English rule on the subject of his wages. In one case, the court intimated that his representatives might be entitled to a proportion of his wages up to his death, when the hiring was by the month. In this country, there have been

contradictory decisions on the point. In the Circuit and District Courts of the United States, for Pennsylvania, it was decided that the representatives of a seaman dying on the voyage, were entitled to his full wages at the end of the voyage. On the other hand, it was subsequently decided, in the District Court for South Carolina, and in the District Court for Massachusetts, that full wages, by the marine law, meant only the full wages up to the death of the mariner.

17. *What is the rule as to wages, if a ship delivers her outward cargo, and perishes on her return voyage, the outward freight being earned?*—190, 191.

That the seamen's wages on the outward voyage are due; for, by the custom of merchants, seamen's wages are due at every delivering port. And seamen are entitled to their wages, not only when the owner earns freight, but also when, unless for his own act, he might have earned it. Even if the ship perishes on the outward voyage, if part freight has been paid, the seamen are entitled to a proportional part of their wages, for there is an inseparable connection between freight and wages.

18. *What effect has capture upon wages?*—191, 192.

Capture by an enemy extinguishes the contract for seamen's wages. The American decisions allow seamen taken prisoners by the captor, and detained, their wages for the whole voyage, if the same be afterwards performed, with a ratable deduction for expense of salvage. So, of a vessel captured, and afterwards ransomed, and enabled to arrive at her port of destination.

19. *What is the law in cases of embezzlement, or injuries produced by the misconduct of any of the crew?*—194.

They are bound to contribute out of their wages. But the circumstances must be such as to fix the wrong upon some of the crew; and then, if the individual be unknown, those of the crew, upon whom the presumption of guilt rests, stand as sureties for each other, and they must contribute ratably to the loss. If the embezzlement be fixed upon any individual, he is wholly responsible. And in case of uncertainty, the guilt of the par-

ties is to be established beyond all reasonable doubt, before the contribution can be demanded.

20. *How is the lien of seamen for wages regarded by the marine law?*—196.

Few claims are more highly favored and protected by law, and when due, the vessel, owners, and master, are liable for the payment of them. The seamen need not libel the vessel at the immediate port where they are discharged. They may disregard bottomry bonds, and pursue their lien for wages afterwards, even against a subsequent *bona fide* purchaser. There is no difference in the case of a vessel seized abroad, and restored in specie or in value; the lien attaches to the thing and whatsoever is substituted for it.

21. *What causes work a forfeiture of wages?*—198.

Desertion from the ship without just cause, or the justifiable discharge of a seaman by the master for bad conduct, will work a forfeiture of the wages previously earned. But the forfeiture is saved if the seaman repents, makes compensation or offer of amends, and is restored to his duty.

LECTURE XLVII.

OF THE CONTRACT OF AFFREIGHTMENT.

1. *What is a charter party?*—201.

It is a contract of affreightment in writing, by which the owner of a ship lets the whole, or a part of her, to a merchant, for the conveyance of goods, on a particular voyage, in consideration of the payment of freight.

2. *What does the charter party usually contain?*—202.

It describes the parties, the ship, and the voyage, and contains, on the part of the owner, a stipulation as to sea-worthiness, and as to the promptitude with which the vessel shall re-

ceive the cargo, and perform the voyage, and the exception of such perils of the sea for which the master and ship owners do not mean to be responsible. On the part of the freighter, it contains a stipulation to load and unload within a given time, with an allowance of so many lay, or running days, for loading and unloading the cargo, and the rates and times of payment of the freight, and rate of demurrage beyond the allotted days.

3. *What is the duty of the owner of a chartered ship?*—203.

It is his duty not only to see that she is duly equipped, and in suitable condition to perform the voyage, but he is bound to keep her in that condition throughout the voyage, unless he be prevented by perils of the sea. If, in consequence of a failure of equipment of the vessel, the charterer does not employ her, he is not bound to pay freight; but if he actually employs her, he must pay the freight, though he has his remedy, on the charter party, for damages sustained by reason of the deficiency of the vessel in her equipment.

4. *What is understood by demurrage?*—203.

The extra lay days (being the days allowed to load and unload the cargo) are called days of *demurrage*; and that term is likewise applied to the payment for such delay, and it may become due either by the ship's detention, for the purpose of unloading or loading the cargo, either before, or during, or after the voyage, or in waiting for convoy.

5. *What is the rule as to sea-worthiness?*—204-206.

The owner is bound to see that the ship be sea-worthy, which means that she must be tight, staunch, strong, well-furnished, manned, victualled, and in all respects equipped in the usual manner for the merchant service in such a trade. The ship must be fit and competent for the sort of cargo, and the particular service for which she is engaged. If there should be a latent defect in the vessel, unknown to the owner, and undiscoverable upon examination, yet, the better opinion is, that the owner must answer for the damage occasioned by that defect. The owner is also obliged to see that the ship be furnished with all the requisite papers according to the laws of the country to