

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

which she belongs, and according to treaties and the law of nations. And, generally, as a common carrier, he is answerable for all losses other than what arise from the excepted cases.

6. *What is understood by a bill of lading?*—206.

It is an acknowledgment by the master of the receipt of the goods on board, and of the conveyance of them which he assumes.

7. *What does it contain?*—207.

It contains the quantity and marks of the merchandise, the names of the shipper and consignee, the places of departure and discharge, the name of the master and of the ship, with the price of freight. The charter party is the contract for the hire of the ship, and the bill of lading for the conveyance of the cargo. By the bill of lading, the master engages, as a common carrier, to carry and deliver the goods to the consignee, or his order; and by the common law, owners were responsible for damage to goods on board, to the full extent of the loss. There are commonly three bills of lading; one for the freighter, another for the consignee, factor, or agent abroad, and one is usually kept by the captain for his own use. It is the document and title of the goods sent; and, as such, if it be to order, or assigns, is transferable in the market.

8. *What is the effect of an indorsement of the bill of lading?*—207.

The indorsement and delivery of it transfer the property in the goods from the time of delivery. The *bona fide* holder of the bill of lading, indorsed by the consignee, is entitled to the goods, if he purchased it for a valuable consideration.

9. *What are the obligations of the master of a chartered ship during the voyage?*—209.

When the voyage is ready, he is bound to sail as soon as wind and tide will permit; but he ought not to set out in very tempestuous weather. He is bound, likewise, to proceed to the port of delivery without delay, and without any unnecessary deviation from the direct and usual course. If he covenants to go to a loading port, by a given time, he must do it, or abide the

forfeiture; and if he be forced out of his regular course, he must regain it with as little delay as possible.

10. *What cause will justify a deviation?*—209-212.

Nothing but some necessary cause, as to avoid a storm, or pirates, or enemies, or to procure requisite supplies or repairs, or to relieve a ship in distress. In cases of necessity, as where the ship is wrecked, or otherwise disabled in the course of the voyage, and can not be repaired, or not, under the circumstances, without too great delay and expense, the master may procure another competent vessel to carry on the cargo and save his freight. His duty is to act, in the port of necessity, for the best interest of all concerned, and he has full powers and discretion adequate to the trust, and requisite for the safe delivery of the cargo at the port of destination.

11. *What is the master's duty during the voyage?*—213.

He is bound to take all possible care of the cargo, and is chargeable with the most exact diligence.

12. *What if the ship be captured during the voyage?*—213.

The master is bound to render his exertions to rescue the property from condemnation, by interposing his neutral claims, and exhibiting all the documents in his power for the protection of the cargo.

13. *What is the rule as to the delivery of the goods at the port of destination?*—215.

The general rule is, that delivery at the wharf (when there are no special directions to the contrary) discharges the master. But the reasonable qualification of the rule is, that there must be a delivery at the wharf to some person authorized to receive the goods, or due previous notice must have been given to the consignee of the time and place of delivery; and the master can not discharge himself by leaving them naked and exposed on the wharf. His responsibility will continue until there is actual delivery, or something equivalent thereto, unless the owner of the goods or his agent had previously assumed charge of them; or at least, until the consignee has had notice of the place and

time of delivery, and the goods have been duly separated and designated for his use.

14. *What causes will excuse the ship-owner and master for the non-delivery of the cargo?*—216.

They are liable as common carriers, in all the strictness and extent of the common law, and can only be excused by events falling within one of the expressions, "act of God, and public enemies," or some cause expressly provided for in the charter party.

15. *What are meant by perils of the sea?*—216.

They denote natural accidents peculiar to that element, which do not happen by the intervention of man, nor are to be prevented by human prudence. A *casus fortuitus* was defined by the civil law to be, *quod damno fatali contingit, cuius diligentissimo possit contingere*. It is a loss happening in spite of all human effort and sagacity. The case of a ship captured and plundered by pirates, is the only exception to this rule, and that has been adjudged to be a peril of the sea.

16. *Has the liability of ship-owners been recently limited by act of Congress?*—217, note.

Yes; by an act passed March 3, 1851, ship-owners are not liable for loss by reason of fire on board their vessel, unless the fire was caused by their design or neglect. Nor are they accountable as carriers for any platina or other precious metals, or any bank bills, unless they be notified in writing by the owners of such articles of their value, and the same be entered on the bill of lading; and then, not beyond the value so notified and entered. The amount of their liability for loss is limited to the value of their interest in the vessel, unless the loss occurred with their knowledge or privity. This act does not extend to canal boats, barges, or lighters, nor to any vessel used in rivers or inland navigation.

17. *What are the duties of the shipper?*—218.

To use the ship in a lawful manner, and for the purpose for which it was let.

18. *What is meant by freight?*—219.

In the common acceptance of the term, it means the price for the actual transportation of goods by sea from one place to another; but, in its more extensive sense, it is applied to all rewards or compensation paid for the use of ships. As a general rule, the delivery of the goods at the place of destination, according to the charter party, is a condition precedent to entitle the owner of the vessel to his freight.

19. *What is meant by dead freight?*—219.

If the merchant agrees to furnish a return cargo, and he furnishes none, and lets the ship return in ballast, he must make compensation to the amount of the freight; and this is sometimes termed dead freight, in contradistinction to freight due for the actual carriage of goods.

20. *What is the rule as to the owner's lien for freight?*—220-222.

If there be no express agreement in the case, the master is not bound to part with the goods until the freight be paid, but if he refuses to deliver the goods for other causes than non-payment of freight, he can not avail himself of the want of tender. When the regulations of the revenue require the goods to be landed and deposited in a public warehouse, the master may enter them in his own name, and preserve the lien. The ship-owner's lien for freight is gone when the charterer is constituted owner, and takes exclusive possession for the voyage, or when payment of the freight is, by agreement, postponed beyond the time, or at variance with the time and place, for the delivery of the goods. But without a plain intent to the contrary, the ship-owner will not be presumed to have relinquished his lien on the cargo for the freight, notwithstanding he has chartered the vessel to another. But if, instead of letting the use of the ship to freight, the vessel itself be let to hire, with the right to appoint the master, then the charterer becomes owner for the voyage, and the general owner has no lien on the cargo, for the hire of the ship. If the goods by the bill of lading, were to be delivered to B, or his assigns, he or they paying freight, and the assignee receives the goods, he is responsible to the master for

freight, under the implied undertaking to pay it. So, if the master delivers the goods without payment of freight, he may sue the consignee to whom the goods were delivered. If he can not recover his freight of the consignee, he still has his remedy over on the charter party against the shipper, and the condition precedent to the delivery, inserted in the bill of lading, was intended only for the master's benefit.

21. *What if a ship be prohibited by the government of the country from entering at the port of delivery, and the cargo be brought back?—222, 223.*

If the prohibition took place after the commencement of the voyage, and the cargo be brought back, the freight for the outward voyage has been held to have been earned. Nothing can be more just, observes Valin, than that the outward freight should be allowed in such a case, since the interruption proceeds from an extraordinary cause, independent of the ordinary maritime perils. The case of a blockade or interdiction of commerce with the port of discharge, after the commencement of the voyage, is held to be different; for in that case the voyage is deemed to be broken up, and the charter party dissolved; and if the cargo, by reason of that obstacle, be brought back, no freight is due. The same principle applies, if the voyage be broken up by capture on the passage. On the other hand, an embargo, detaining the vessel at the port of departure, or in the course of the voyage, does not, of itself, work a dissolution of the contract. It is requisite that the ship break ground, to give an inception to freight.

22. *What if the goods become so diminished in value, during the voyage, as not to be worth the freight?—224, 225.*

The consignee is bound to take the goods and pay the freight. The ship-owner performs his engagement when he carries and delivers the goods. The right to his freight then becomes absolute. It may impair the remedy which his lien afforded, but it does not affect his personal demand against the shipper.

23. *What about the freight, if part of a cargo of live stock die during the voyage?—225, 226.*

If there be no fault on the part of the master or crew, and no express agreement, the general rule is, that freight is to be paid for all put on board; otherwise, if the agreement was to pay for the transportation of the stock.

24. *In what cases does the question of ratable freight arise?—227–229.*

1. When the ship has performed the whole voyage, and has brought only a part of her cargo to the place of destination. 2. When the ship has not performed her whole voyage, and the goods have been delivered to the merchant at a place short of the port of delivery. In the case of a general ship, or one chartered for freight, to be paid according to the quantity of goods, freight is due for what the ship delivers. But if the ship be chartered at a specific sum for the voyage, the stipulated voyage must be actually performed. A partial performance is not sufficient, nor can a partial payment of freight be claimed except in special cases. Apportionment of freight usually happens, when the ship is forced into a port short of her destination, and can not finish the voyage. If, however, the merchant accepts the goods at the intermediate port, the general rule of the marine law is, that freight is to be paid according to the proportion of the voyage performed, and the law will imply such a contract; and it is now settled in the English and American law, that freight, *pro rata itineris*, is due, when the ship, by inevitable necessity, is forced into a port short of her destination, and is unable to prosecute the voyage, and the goods are there voluntarily accepted by the owner. Such an acceptance constitutes the basis of the rule for a *pro rata* freight.

25. *How is the amount of ratable freight ascertained?—230.*

In this country, by calculating how much of the voyage had been performed when the goods arrived at the port of necessity.

26. *How is a loss by collision adjusted?—230.*

When the fact is clear, that a fault has been committed by

one party, or that he was wanting in due skill or care, and the loss was the consequence thereof, the party in fault must pay all the damages.

27. *What are the nautical rules by which want of care may be ascertained?*—230, 231.

In most cases they are as follows. The vessel that has the wind free, or is sailing before or with the wind, must get out of the way of the vessel that is close-hauled, or sailing by or against it. The vessel on the starboard tack has a right to keep her wind, and the vessel on the larboard tack is bound to give way to the other, or bear up or heave about to avoid danger, or be answerable for the consequences. The vessel to windward is to keep away, when both vessels are going the same course in a narrow channel, and there is danger of running afoul of each other. But in the case of a steam vessel, which has greater power, and is more under command, she is bound to give way to a vessel with sails. Where a collision occurs without fault on either side, or with fault on both sides, neither party can sue the other.

28. *What is meant by general average?*—232.

General, gross, or extraordinary average, means a contribution made by all parties concerned, toward a loss sustained by some of the parties in interest, for the benefit of all; and it is called general, or gross average, because it falls upon the gross amount of the ship cargo, and freight.

29. *What constitutes the ground of a general average?*—233, 234.

That goods must not be swept away by the violence of the waves, for then the loss falls entirely upon the merchant, or his insurer, but they must be intentionally sacrificed by the mind and agency of man, for the safety of the ship and the residue of the cargo. The *jettison* must be made for sufficient cause, and not from groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of the storm, or is laboring upon the rocks and shallows, or is closely pursued by pirates or enemies; and then, if the ship and the

residue of the cargo be saved, by means of the sacrifice, nothing can be more reasonable than that the property saved should bear its proportion of the loss. As a general rule, the crew are not authorized to make a *jettison* without the order of the master. To avoid an absolute shipwreck, it may sometimes be necessary to run the vessel on shore in a place which appears to be the least dangerous; and that will form a case of general average.

30. *What should be thrown overboard first?*—234.

The captain must begin the *jettison* with things the least necessary, the most weighty, and of least value. Nothing but the greatest extremity would excuse the master who should commence the *jettison* with money, and other precious parts of the cargo.

31. *What things are the proper subjects for a general average?*—235-238.

If a ship be injured by perils of the sea, and be obliged to go into port to refit, the wages and provisions of the crew, during the detention, are not the subject of a general average; but the other necessary expenses of going into port, and of preparing for refitting the ship, by unloading, warehousing, and re-loading the cargo, are general average. The cost of the repairs, so far as they accrue to the ship alone as a benefit, and would have been necessary in that port, on account of the ship alone, are not average. The wages and provisions of the crew, during capture and detention for adjudication, are the subject of general average; while, in the case of an embargo, they are chargeable exclusively upon the freight. If part of the cargo be voluntarily delivered up to a pirate, or an enemy, by way of ransom or contribution, and to induce him to spare the vessel and the residue of the goods, the property saved must contribute to the loss, as being the price of safety to the rest. If masts, cable and other equipments of the vessel be cut away, to save her in a case of extremity, their value must be made good by contribution.

All casual and inevitable damage and loss, as distinguished from that which is purposely incurred, are the subject of particular and not of general average.

32. *What goods are subject to contribution, in cases of general average?*—240-242.

The general doctrine is, that all merchandise, of whatever kind or weight, or to whomsoever belonging, contributes. The contribution is made, not on account of incumbrance to the ship, but of safety obtained, and, therefore, bullion and jewels put on board as merchandise, contribute according to their full value. Wearing apparel and things taken on board for private use do not contribute, in case of general average. The common rule, according to Magens, is, that what articles pay freight must contribute, and what pay no freight pay no average. Instruments of defense and provisions do not contribute, nor do wages of seamen contribute, except in the single instance of the ransom of the ship. Goods sold for the necessities of the ship are the subject of general average.

33. *What is the general rule for settling general average?*—242.

That the goods sacrificed, as well as the goods saved, are to be valued at the clear net price they would have yielded, after deducting freight, at the port of discharge. The value of the vessel lost is estimated according to her value at the port of departure, making a reasonable allowance for wear and tear on the voyage up to the time of the disaster.

34. *What is meant by salvage?*—245.

The compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict, or re-capture.

35. *What amount is usually allowed for salvage?*—245, n.—246.

The courts are liberal in the allowance of salvage in meritorious cases, as a reward for the service, and as an incentive to effort; and the allowance used to fluctuate between one half, one third, and one fourth of the net proceeds of the property saved, but adequate remuneration, in view of all the circumstances, is the true rule. In general, neither the master, nor a passenger, seaman, or pilot, is entitled to compensation, in the way of salvage, for the ordinary assistance he may afford a ves-

sel in distress. Yet, if the ship has been abandoned so as to discharge a seaman from his contract, and he subsequently contributes to the preservation of the vessel, he will be entitled to salvage.

36. *What will work a dissolution of the contract of affreightment, without a performance?*—248, 249.

If the voyage becomes unlawful, or impossible to be performed, or if it be broken up, either before or after it has actually commenced, by war or interdiction of commerce with the place of destination, the contract is dissolved. But a temporary impediment of the voyage does not work a dissolution of the charter party, and an embargo has been held to be such a temporary restraint, though it be indefinite as to time.

LECTURE XLVIII.

OF THE LAW OF MARINE INSURANCE.

1. *What is marine insurance?*—253, n. 1.

It is a contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils, or sea risks, to which his ship, freight, and cargo, or other interest, or some of them, may be exposed, during a certain voyage, or a fixed period of time.

2. *Who may be insured?*—253.

All persons whether aliens or natives, except alien enemies.

3. *Who may be insurers?*—256, 257, n. (b).

Any individuals, or companies, or partnerships, may lawfully become insurers. In New York and other States, marine insurance, or lending on *respondentia* or *bottomry*, effected within the State, is prohibited to all persons and companies residing in any foreign country, acting by agent here. Persons and associa-