

voyage which was on the permanent deck, especially the salt; also that the bales of bags were of such size that they could not all have been stowed on the permanent deck; and that, with reference to the trim of the ship, it was necessary to stow a part of them as they were stowed with reference to the bleaching powders. Most of this evidence is not of a character properly called newly discovered, since it was plainly discovered by the claimants before the trial.

But the motion must be denied, because the case has been carefully tried in this court, at great expense to the parties, and if it should now be heard over again the claimants will have no greater benefit from this further testimony than they will have on a trial in the circuit court on appeal, to which they are entitled as matter of right; and after a rehearing here the decision would not be final. No doubt one of the reasons for giving a new trial in the circuit court is to give the parties an opportunity to produce, upon a second trial, any evidence which was overlooked upon the first trial, or, in other ways, to strengthen their case. If the decision on the facts in this court were final, there would be some ground for this application; but, with the right of the claimants on appeal to supply all the deficiencies that they may have discovered from the experience of the trial in this court, it would be most unreasonable to subject the libellant to the further delay and expense of a new trial here, which may not be final.

2. The testimony referred to, as having possibly been overlooked by the court, was not overlooked. It was carefully considered. It is the testimony of William McRae, the chief officer of the bark, that the storage of the cargo as it was stowed had reference to the trim of the ship. One point determined by the court was that as it appeared that the bales of bags injured sustained that injury from their stowage with reference to the bleaching powders, and as it also appeared that if stowed further away they would not have been injured, it was incumbent on the ship to show that the proper trim of the ship made it necessary to stow them in this dangerous

proximity to the bleaching powders; and the court observed, "There is no testimony on the subject."

The testimony of the chief officer was simply that the stowage, as it was, had reference to the trim. This was doubtless true. The stowage of every ship must have reference to the trim of the ship, but upon the particular question as to whether, safely to the ship and the rest of the cargo, a different mode of stowage could have been adopted which would have been, in this respect, safer for the bags, neither he nor any other witness gave any testimony.

For these reasons the motion must be denied.

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DENT *v.* RADMANN.

JANSSEN *v.* PATTERSON and others.

*District Court, E. D. New York.* March 9, 1880.

**ATTACHMENT—ATTACHABLE CREDIT—CONDITIONAL LIABILITY.**—The difference between the charter money and the freight list of a steamer, payable upon the performance of the voyage and the collection of the freight according to the bills of lading, is not an attachable credit until the performance of these conditions.

**SAME—ANSWER OF GARNISHEE—PAYMENT OF DEBT INTO COURT.**—The answer of the garnishee, admitting an indebtedness for this difference of freight, is not conclusive as between two attaching creditors, upon the impounding of the amount of the debt after its payment into the registry of the court, in a proceeding *in rem* to try the title to the fund.

**PAYMENT OF FUND—PROOF OF CLAIMANT.**—In disposing of a fund in its registry it is competent for a court of admiralty to require proof of the right of a claimant to any part of the same.

In Admiralty.

*Butler, Stillman & Hubbard*, for Dent, Patterson and others.

*Beebe, Wilcox & Hobbs*, for Radmann and Janssen.

BENEDICT, J. In order to a correct understanding of the questions presented in the above entitled causes it will be necessary to state with some detail the proceedings had therein.

The first action was commenced by John Dent, Jr., to

recover of Carl Radmann damages for the non-fulfilment by Radmann of a charter of the steamer Croft, owned by Dent.

Dent's libel was filed December 7, 1877, and after statement of the cause of action, and that the damages amounted to \$4,945.42, it avers that Radmann then had credits and effects in the hands of William Patterson, John Doe and Richard Roe, owners of the steamship Blagden, then within this district. The libel prayed for process in due form of law against Radmann, and that, in case he should not be found, his goods and chattels be attached; and, if sufficient goods and chattels should not be found, that his credits and effects be attached in the hands of William Patterson, John Doe and Richard Roe, owners of the steamship Blagden, garnishees. Upon the filing of this libel, process as prayed for was issued, upon which the marshal made due return that he had been unable to find the defendant Radmann, or to attach his goods and chattels, and accordingly had, on the seventh day of December, attached his credits and effects in the hands of William Patterson. On the eleventh of December Patterson entered his appearance in Dent's action, as garnishee, and filed an answer, wherein he states that the owners of the steamship Blagden are indebted to Radmann in the sum of £355, 19s. 6d., under a charter of that steamship, being the difference between the amount of the charter and the freight list furnished to said steamer by the said Radmann, and also in the sum of \$396.22, for address commission and freight brokerage on the said cargo. Upon this statement the said garnishee submitted himself as to the further disposition of said money to the orders of this court. Thereupon, on motion of the proctors for Dent, it was ordered that the said garnishee pay into the registry of this court the amount of money admitted by his answer to be due from the owners of the steamship Blagden to the respondent Radmann, upon the charter referred to, which order was complied with on the same day. Subsequently, and on the fourteenth day of December, Dent caused to be issued in his action an *alias* process against Radmann, upon which, on the seventeenth