

"It is true such policy was issued, and that the cargo has been lost by the perils of the sea; but it would not have been lost if the vessel had been seaworthy. There was an implied warranty that the vessel was seaworthy, and it was not so. There has been a breach of such warranty, and you are therefore not entitled to recover."

The ship is *prima facie* to be deemed seaworthy. 1 Pritch. Adm. Dig. p. 994, § 1311.

Her unseaworthiness is a matter of defense, and it devolves upon the insurer to plead it, and the *onus* is on him to prove it. Id. p. 994, § 1308; Id. p. 995, § 1313. The law presumes the ship to be seaworthy, and libellant need not in his pleading allege any matter of fact which the law presumes in his favor, or as to which the burden of proof lies on the other side. 2 Pritch. Adm. Dig. p. 1591, § 1213.

It has been held by the supreme court of Alabama that, in an action on a policy of marine insurance, a complaint which fully complies with all the requisites of the prescribed form in the Code is sufficient. This form does not contain an allegation of the seaworthiness of the vessel, and, if this is sufficient in a suit at common law, what more can be required by the simple rules of pleading that obtain in courts of admiralty, which pay so little regard to technical rules of pleading? *Phoenix Ins. Co. v. Moog*, 78 Ala. 284; 2 Pritch. Adm. Dig. p. 1590, § 1201, and footnote 394.

The exceptions are overruled.

THE ROB ROY.

(District Court, W. D. Tennessee. March 26, 1887.)

MARITIME LIENS — SEAMEN'S WAGES — SET-OFF — PAYMENTS IN CHARGES FOR WHISKY AND TOBACCO.

Where a settlement was made with one of the crew, and excessive charges were made for whisky and tobacco furnished at the bar of the boat, *held*, that a court of admiralty would not sanction the settlement or the charges, but would reduce the set-off to a reasonable allowance for these articles.

In Admiralty.

Hu C. Anderson, for libellant.

H. C. Warriner, for claimant.

HAMMOND, J., (*orally*.) This man was under the protection of the master, and his wages cannot be paid in chips and whetstones. The master will not be permitted to keep a store or bar, and tempt the crew to indulge in whisky and tobacco, or other like articles, at whatever price, and to whatever extent; they may be induced to spend their wages with the boat or bar. If this were permitted, the owner or master could very readily absorb the wages, and, by extravagant prices and abundant sales, compel the crew to work for less than their contract wages. The con-

tract for wages and settlements made are subject to the supervision of the court, and it will not tolerate such practices. It is true allowances of grog are made for seamen, and we do not proceed upon any temperance theories of prohibition, as suggested by counsel; but these allowances are usually a part of the supplies furnished to the seaman, like his food; and it is quite another thing to carry a bar, and tempt the improvident and intemperate seaman to indulge his appetite for the profit of the master, the owner, or the bar-keeper, to say nothing of the danger to safe navigation by such practices, and the morals of it. The court will protect the seaman, against the master and owners, from the reduction of his wages, or their wasteful expenditure under such temptations. Only a reasonable allowance can be credited, and I will credit that amount which this libellant has expressed a willingness to allow, although I think that extravagant; but the proof is very unsatisfactory, and I do not know how otherwise to determine it. The claimant here was himself substantially the master, and the bar belonged to him. He had a traveling theater or variety show afloat with the boat, and the character of the enterprise was calculated to allure this already intemperate mate to indulge freely and waste his money. No court of admiralty should sanction such charges, and I am almost inclined to disallow them altogether; but forbear to go that far, as we are not engaged in any punishment or discipline of the master in this proceeding, but only in enforcing a contract between the parties.

BURDETT and another v. WILLIAMS and others.

(District Court, D. Connecticut. May 4, 1887.)

1. INFANT—CONTRACTS—AVOIDANCE—MISREPRESENTATION OF AGE—ESTOPPEL.
A minor's fraudulent misrepresentation to a shipping commissioner for a vessel that he is of age, does not estop him from avoiding his written contract for compensation, and recovering pay on a *quantum meruit*.¹

¹An infant who secures and retains personal property of an adult, who has acted in good faith and exercised care and diligence, on a contract obtained by a false representation that he is of full age, is liable for the value of the property on account of his fraud. *Rice v. Boyer*, (Ind.) 9 N. E. Rep. 420. In such a case, the fraud justifies the rescission of the sale; and if the infant has disposed of the goods, his vendor can replevy them, unless the infant's vendee can show that he was a *bona fide* purchaser. *Neff v. Landis*, (Pa.) 1 Atl. Rep. 177. But in an action in the nature of *assumpsit* to recover the value of goods, not necessities, sold and delivered to an infant, he is not estopped to set up his infancy as a defense by the fact that, at the time of the sale, he represented himself to be of age, and the goods were sold to him on the faith of such representations. *Conrad v. Lane*, (Minn.) 4 N. W. Rep. 695. The officer taking the acknowledgment of a deed is not an agent of the vendee so as to render a representation in a minor's presence to the officer taking the acknowledgment of a deed of which she was a grantor, that she is of age, the grantee not being present, a false representation of her age to the grantee, that will estop her from avoiding the contract and suing to set aside the deed; neither is there any presumption that the grantee took the property on the implied representation that she was of age. *Vogelsang v. Null*, (Tex.) 38 W. Rep. 451.