

THE CAROLINA.

MCKENNA v. THE CAROLINA.

(Circuit Court, E. D. New York. July 9, 1887.)

1. MARITIME LIENS—MACHINERY FOR DISCHARGE OF CARGO—DAMAGES.

A lien arises against a vessel for damages occasioned by failure to provide safe machinery for the discharge of her cargo.

2. SAME—PERSONAL INJURIES.

As a hogshead was being hoisted from the hold of the steam-ship Carolina, a guy-rope, belonging to the ship, and used for the hoisting, parted, and the fall of the hogshead injured libellant. The officers of the ship knew of the insufficiency of the rope. No fault could be attributed to libellant. Held, that he was entitled to damages against the ship.

Anson Beebe Stewart, for appellee.

Wheeler & Cortis, for appellant.

The decree of the district court in the above case (30 Fed. Rep. 199) affirmed, without opinion.

THE CEPHALONIA.

FOOTE v. THE CEPHALONIA.

FELTY v. CUNARD S. S. Co., Limited.

GREENE, Adm'r, etc., v. CUNARD S. S. Co., Limited.

(Circuit Court, E. D. New York. July 15, 1887.)

COLLISION—STEAMER AND TUG—OVERTAKING VESSEL.

The tug Glen Island, while proceeding down the bay of New York, was overtaken and run down by the steam-ship Cephalonia, of the Cunard Line. The tug was sunk, and several lives were lost. Prior to the collision the tug did not alter her course. On suit brought against the steam-ship to recover for the loss of life and property, held, that the Cephalonia, as the overtaking vessel, was bound to have avoided the tug; that the fact that she blew whistles in time to enable the tug to get out of her way was no excuse for the collision; and that she was solely responsible for the collision.

Butler, Stillman & Hubbard and *Hyland & Zabriskie*, for libellants.

Carpenter & Mosher, for Oliver Greene.

Owen & Gray, for Cunard S. S. Co., Limited.

The decree of the district court in the above cases (29 Fed. Rep. 332) affirmed; but entry of the decree in the case of *Greene v. Cunard S. S. Co.* suspended, to await the decision of an appeal taken by the respondent in the suit of *Felty v. Cunard S. S. Co.*, provided such appeal be taken and perfected within 30 days after the entry of a decree in this court in said suit.

SHERWOOD v. ROUNDTREE.

(Circuit Court, S. D. Georgia, W. D. August, 1887.)

1. USURY—WHAT IS—COMMISSIONS.

R., having applied to D. & M., agents of the C. B. Co., for a loan of \$2,000, was made to sign an application for a loan of \$2,500. The application also contained a statement expressly constituting D & M. agents of R. in the transaction, and authorizing them to retain \$500 as "commission." Subsequently, R. gave a note for \$2,500 at 8 per cent., payable to S. at the office of the C. B. Co. R. only received \$2,000; the other \$500 being divided between D. & M. and the C. B. Co. *Held*, in a suit by S., that the retention of the \$500 as commission was clearly usurious, under Code Ga. § 2057, forbidding any one to "reserve, charge, or take for any loan or advance of money * * * any rate of interest greater than eight per cent. per annum, either directly or indirectly, by way of commission for advances, discount, exchange, or by any contract or contrivance or device whatever."¹

2. SAME—AGENCY.

The evidence showing that D. & M. were the regular agents of the C. B. Co., and that the latter received a portion of the usurious commission, the court will not suffer the statutes to be evaded by the fact that R. authorized D. & M. to act as her agents in the transaction.

3. SAME.

While authority to make a usurious loan will not be presumed where the agency is special, and limited to a single transaction, it will be presumed where the agency is general. *A fortiori* will it be presumed where it constitutes a great and comprehensive business, and where the courts have rendered decisions making manifest and public the nature of the business.

4. SAME—NOTICE.

The fact that S. was accustomed to lend money habitually through the agency of the C. B. Co. was sufficient to charge him with notice of the character of the contracts made by that firm or its agents.

5. SAME.

Where there is a regular business of lending money, with an elaborate system, one who lends money by such system will be chargeable with knowledge of all the facts which he could have learned by inquiry. The case of *Call v. Palmer*, 116 U. S. 98, 6 Sup. Ct. Rep. 801, distinguished.

6. SAME—COURT AND JURY.

When the commission retained for services in negotiating a loan is so large as to be usurious on its face, it is the duty of the court, in the absence of explanatory proof, to say so. It is not, in the federal courts, a question for the jury.

Suit on Promissory Note. Plea of usury. Motion for new trial.

William E. Simmons and *Duncan & Miller*, for plaintiff.

A. C. Riley and *Davis & Hardeman*, for defendant.

SPEER, J. The plaintiff brought suit to recover the face value of the following promissory note:

\$2,500.

FORT VALLEY, GA., December 28, 1883.

On the first day of December, 1888, I promise to pay to J. K. O. Sherwood, or order, at the office of the Corbin Banking Company, New York city, twenty-five hundred dollars, with interest from this date at the rate of 8 per cent. per annum, payable annually, as per five interest notes hereto attached, value

¹Upon the question as to when a commission charged by an agent for negotiating a loan, in addition to the legal rate of interest, is usury, see *Haldeman v. Insurance Co.*, (Ill.) 11 N. E. Rep. 526; *Mackey v. Winkler*, (Minn.) 29 N. W. Rep. 337, and note.