

**The Schooner Freeman Vs. Buckingham**

**The Schooner Freeman Vs. Buckingham**

**SooperKanoon Citation :** [sooperkanoon.com/80581](http://sooperkanoon.com/80581)

**Court :** US Supreme Court

**Decided On :** 1855

**Appeal No. :** 59 U.S. 182

**Appellant :** The Schooner Freeman

**Respondent :** Buckingham

**Judgement :**

The Schooner Freeman v. Buckingham - 59 U.S. 182 (1855)

U.S. Supreme Court The Schooner Freeman v. Buckingham, 59 U.S. 182 (1855)

**The Schooner Freeman v. Buckingham**

**59 U.S. 182**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE NORTHERN DISTRICT OF NEW YORK*

## **SYLLABUS**

Under the admiralty law of the United States, contracts of affreightment, entered into with the master in good faith and within the scope of his apparent authority as master bind the vessel to the merchandise for the performance of such contracts,

wholly irrespective of the ownership of the vessel and whether the master be the agent of the general or the special owner.

If the general owner has allowed a third person to have the entire control, management, and employment of the vessel and thus become owner *pro hac vice*, the general owner must be deemed to consent that the special owner or his master may create liens binding on the interest of the general owner in the vessel as security for the performance of such contracts of affreightment.

Page 59 U. S. 183

But no such implication arises in reference to bills of lading for property not shipped, designed to be instruments of fraud, and they create no lien on the interest of the general owner, although the special owner was the perpetrator of the fraud.

Though in such a case the special owner would be estopped, in favor of a *bona fide* holder of the bill of lading, from proving that no property was shipped, yet the general owner is not estopped.

The case is stated in the opinion of the Court.

Page 59 U. S. 187

MR. JUSTICE CURTIS delivered the opinion of the Court.

The appellees filed their libel in the district court alleging that they are the consignees named in two bills of lading, signed by the master of the Schooner *Freeman*, which certify that certain quantities of flour had been shipped on board the schooner by S. Holmes and Company at Cleveland, in the State of Ohio, to be carried to Buffalo, in the State of New York, and there safely delivered -- dangers of navigation excepted -- to an agent named in the bills of lading, to be by him forwarded to the libellants in the City of New York. That though this merchandise was thus consigned to the libellants for account of the shipper, yet, on receipt of

the bills of lading and on the faith thereof, the libellants made advances to the shippers. That thirteen hundred and sixty barrels of the flour mentioned in the bills of lading were not delivered at Buffalo, though the delivery was not prevented by any danger of navigation.

In accordance with the prayer of the libel, the schooner was arrested, and the appellant intervened as claimant.

It appeared that a short time before these bills of lading were

Page 59 U. S. 188

signed, the claimant, being the sole owner of the schooner, contracted with John Holmes to sell it to him for the sum of \$4,000, payable by installments of \$500 at different dates; that by the contract, John Holmes was to take possession of the vessel, and if he should make all the agreed payments, the claimant was to convey to him; that only one installment had become payable and had been paid when the vessel was arrested; that the vessel was delivered to John Holmes under this contract, and he allowed his son, Sylvanus Holmes, to have the entire control and management of the schooner, which was in his employment, and victualed and manned by him, and commanded by a master whom he appointed, at the time the bills of lading in question were signed.

It further appeared that Sylvanus Holmes transacted business under the style of S. Holmes and Company; that the flour mentioned in these bills of lading as having been shipped by him, and which the master failed to deliver, never was in fact shipped -- nor, so far as appeared, had Sylvanus Holmes any such flour, and that he induced the master to sign the bills of lading by fraud and imposition, intending to use them -- as he did use them -- as instruments to impose on the libellants and obtain advances on the faith thereof.

To state succinctly the legal relations of these parties, it may be said, that the claimant was the general owner of the vessel; that Sylvanus Holmes was owner *pro hac vice*; that the libellants are holders of the bills of lading, for a valuable consideration parted with, in good faith, on the credit of the bills of lading; but that

the bills of lading themselves are not real contracts of affreightment, but only false pretenses of such contracts, and the question is whether they can operate, under the maritime law, to create a lien, binding the interest of the claimant in the vessel.

Under the maritime law of the United States, the vessel is bound to the cargo, and the cargo to the vessel, for the performance of a contract of affreightment; but the law creates no lien on a vessel as a security for the performance of a contract to transport cargo until some lawful contract of affreightment is made and a cargo shipped under it.

In this case, there was no cargo to which the ship could be bound, and there was no contract made for the performance of which the ship could stand as security.

But the real question is whether, in favor of a *bona fide* holder of such bills of lading procured from the master by the fraud of an owner *pro hac vice*, the general owner is estopped to show the truth, as undoubtedly the special owner would be. This question does not appear to have been made in the court below,

Page 59 U. S. 189

the distinction between the special and general owner not having been insisted on. So large a part of the carrying trade of this country is carried on in vessels of which the masters or other persons are owners *pro hac vice*, and the practice of taking security by way of mortgage of vessels has become so common, while at the same time the confidence placed in bills of lading as the representatives of property is so great and so important to commerce that the relative rights of the holders of such documents, and of the general owners and mortgagees of vessels, which are involved in this case, are subjects of magnitude, and the case has received the attentive consideration of the court.

The first and most obvious view which presents itself is that the claimant in this case is not personally liable on these bills of lading. The master who signed them was not his agent, and they created no contract between him and the consignor or consignee or any third person who might become their holder. Abbot on Shipping 42 and note, 57 and note. And it has been laid down by the High Court of

Admiralty in England, *The Druid*, 1 Wm.Rob. 399, that

"In all causes of action which may arise during the ownership of the persons whose ship is proceeded against, I apprehend that no suit could ever be maintained against a ship where the owners were not themselves personally liable or where their personal liability had not been given up, as in bottomry bonds by taking a lien on the vessel. The liability of the ship and the responsibility of the owners in such cases are convertible terms; the ship is not liable if the owners are not responsible, and, *vice versa*, no responsibility can attach on the owners if the ship is exempt and not liable to be proceeded against."

*See also The Bold Buccleugh*, 2 Eng.Law & Eq. 537.

Though this language is broad enough to cover all cases, whether of contract or tort, it should be observed that the case before the court was one of willful tort by the master, and that there was no occasion to advert to any distinction between a general and special owner or to consider whether the interest of the former in the vessel could be bound by the act of the latter or of the master appointed by him.

We are of opinion that under our admiralty law, contracts of affreightment, entered into with the master in good faith and within the scope of his apparent authority as master, bind the vessel to the merchandise for the performance of such contracts wholly irrespective of the ownership of the vessel and whether the master be the agent of the general or the special owner.

In the case of *The Phebe*, Ware 263, Judge Ware has traced the power of the master to bind the vessel by contracts of affreightment to the maritime usages of the middle ages. So

Page 59 U. S. 190

far as respects such contracts made by the master in the usual course of the employment of the vessel and entered into with a party who has no notice of any restriction upon that apparent authority, those maritime usages may safely be considered to make part of our law, though we should hesitate to declare that their

effect has not been modified by our own commercial law, which has recognized interests and rights unknown to the commercial world when those usages obtained. And we desire to be understood as not intending to say that all contracts made by a master within the usual scope of his employment, which, by the ancient maritime law, would have created liens on the vessel, will now do so in such manner as to bind the interests in the vessel of parties whom he does not represent as agent. For the ground on which we rest the authority of a master, who is either special owner or agent of the special owner, is that when the general owner entrusts the special owner with the entire control and employment of the ship, it is a just and reasonable implication of law that the general owner assents to the creation of liens binding upon his interest in the vessel as security for the performance of contracts of affreightment made in the course of the lawful employment of the vessel. The general owner must be taken to know that the purpose for which the vessel is hired, when not employed to carry cargo belonging to the hirer, is to carry cargo of third persons, and that bills of lading, or charter parties, must, in the invariable regular course of that business, be made for the performance of which the law confers a lien on the vessel.

He should be considered as contemplating and consenting that what is uniformly done may be done effectually, and he should not be allowed to say that he did not expect or agree that third persons who have shipped merchandise and taken bills of lading therefor would thereby acquire a lien on the vessel which he has placed under the control of another for the very purpose of enabling him to make such contracts to which the law attaches the lien. See *The Cassius*, 2 Story 93; *Webb v. Pierce*, 1 Curtis 107.

But if this be the ground upon which the interest of the general owner is subjected to liens by the act of those who are not so his agents as to bind him personally, this ground wholly fails in the case at bar.

There can be no implication that the general owner consented that false pretenses of contracts having the semblance of bills of lading should be created as instruments of fraud, or that if so created they should in any manner affect him or his property. They do not grow out of any employment of the vessel, and there is

as little privity or connection between him or his vessel

Page 59 U. S. 191

and such simulated bills of lading as there would be between him and any other fraud or forgery which the master or special owner might commit.

Nor can the general owner be estopped from showing the real character of the transaction by the fact that the libellants advanced money on the faith of the bills of lading, because this change in the libellant's condition was not induced by the act of the claimant or of anyone acting within the scope of an authority which the claimant had conferred. Even if the master had been appointed by the claimant, a willful fraud committed by him on a third person by signing false bills of lading would not be within his agency. If the signer of a bill of lading was not the master of the vessel, no one would suppose the vessel bound, and the reason is because the bill is signed by one not in privity with the owner. But the same reason applies to a signature made by a master out of the course of his employment. The taker assumes the risk not only of the genuineness of the signature and of the fact that the signer was master of the vessel, but also of the apparent authority of the master to issue the bill of lading. We say the "apparent authority" because any secret instructions by the owner inconsistent with the authority with which the master appears to be clothed would not affect third persons. But the master of a vessel has no more an apparent unlimited authority to sign bills of lading than he has to sign bills of sale of the ship. He has an apparent authority, if the ship be a general one, to sign bills of lading for cargo actually shipped, and he has also authority to sign a bill of sale of the ship when, in case of disaster, his power of sale arises. But the authority in each case arises out of and depends upon a particular state of facts. It is not an unlimited authority in the one case more than in the other, and his act in either case does not bind the owner, even in favor of an innocent purchaser, if the facts upon which his power depended did not exist, and it is incumbent upon those who are about to change their condition upon the faith of his authority to ascertain the existence of all the facts upon which his authority depends.

Though the law on this point seems to have been considered in Westminster Hall not to have been settled when the eighth edition of Abbot on Shipping was published in 1849, Ab. on Sh. 325, we take it to be now settled by the cases of *Grant v. Norway*, 2 Eng.Law & Eq. 337; *Hubbersty v. Ward*, 18 *id.* 551; and *Coleman v. Riches*, 29 *id.* 323.

The same law was much earlier laid down in *Walter v. Brewer*, 11 Mass. 99.

But the case at bar is much stronger in favor of the claimant, because the master was not appointed by him and the signature

Page 59 U. S. 192

of the bills of lading was obtained by the fraud of the special owner.

In *Gracie v. Palmer*, 8 Wheat. 605, the question came before this Court whether the charterer and the master could, by a contract made with a shipper who acted in good faith, destroy the lien of the owner on the goods shipped for the freight due under the charter party. It was held they could not, and the decision is placed upon the ground of want of authority to do the act. It was admitted by the Court that the charterer and master might impose on a shipper in a foreign part by making him believe the charterer was owner and the master his agent. But it was considered that so far as respected the owner, the risk of loss from such imposition lay on the shipper. So in this case even if the special owner and the master had combined to issue these simulated bills of lading, they could not create a lien on the interest of the general owner of the vessel. Upon the actual posture of the facts, the master having been defrauded by the special owner into signing the bills of lading, it would be difficult to distinguish them, so far as respects the rights of the claimant, from bills forged by the special owner. On these grounds, we are of opinion that upon the facts as they appear from the evidence in the record, the maritime law gives no lien on the schooner, that the claimant is not estopped from alleging and proving those facts, and consequently that the decree of the court below must be

*Reversed and the cause remanded with directions to dismiss the libel with costs.*

