No. 2402

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GUST FONDAHN,

Appellant,

vs.

SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,

Appellee.

APOSTLES ON APPEAL

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

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Index of Printed Transcript of Record

	Page
Amended Libel	26
Assignment of Error	51
Certificate of Clerk U. S. District Court to Apostles, etc.	56
Cost Bond on Appeal	52
Exceptions to Libel	10
Exceptions to Amended Libel	33
Final Order	47
Libel	4
Names and Addresses of Counsel	1
Notice of Appeal	48
Opinion—Exceptions to Libel Sustained	13
Opinion on Exceptions to Amended Libel	36
Order	55
Petition on Appeal and Order Allowing Same	49
Statement	2
Stipulation	54

In the District Court of the United States for the Western District of Washington.
Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

NAMES AND ADDRESSES OF COUNSEL

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Proctor for Libelant and Appellant.

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Proctors for Respondent and Appellee.

In the District Court of the United States for the Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

STATEMENT.

TIME OF COMMENCEMENT OF SUIT.

August 29, 1913.

NAMES OF PARTIES.

Gust Fondahn, Libelant.

Schooner "C. S. Holmes," her tackle, apparel and furniture, Respondent.

DATES WHEN PLEADINGS WERE FILED

Libel, August 29, 1913.

Exceptions to Libel, September 22, 1913.

Amended Libel, filed January 12, 1914.

Exceptions to Amended Libel, filed January 10, 1914.

ISSUANCE OF PROCESS AND SERVICE THEREOF.

Upon the filing in said cause of the original libel on the 29th day of August, 1913, a Monition was duly issued out of and under the seal of this Court, directed to the Marshal of the United States for the Western District of Washington, commanding said Marshal to admonish Claimant to appear at the Court Room of said District Court, in the City of Seattle, on the 18th day of September, 1913, then and there to answer the said libel and to make its allegations in that behalf. On the 6th day of September, 1913, said monition was duly returned by said Marshal into the office of the Clerk of said Court, showing service thereof by said Marshal, and that he released said Schooner on Notice of Bonding issued September 6, 1913.

OPINION.

Opinion on Exceptions to libel sustained, filed December 31, 1913.

OPINION.

Opinion on Exceptions to Amended Libel. Exceptions to First and Second Cause of Action Sustained, filed February 13, 1914.

FINAL ORDER.

Final Order, filed February 21, 1914.

NOTICE OF APPEAL.

Notice of Appeal, filed February 21, 1914.

In the United States District Court for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN, Libelant.
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent.
No. 2539.

LIBEL.

To the Honorable Judges of the Above Entitled Court:

The libel of Gust Fondahn, of Port Townsend, Washington, late seaman of the American Schooner C. S. Holmes, whereof R. D. Trudgett, now is or late was master, against the said ship, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause for damage for personal injuries, civil and maritime, showeth:

I.

That during the month of December, 1912, the libelant signed articles as an able seaman to make a trip on board the Schooner, C. S. Holmes, from San Francisco, California, to Everett, Washington, and return; that while on said voyage and while performing his duty as a seaman, on the 3rd day of January, 1913, at about the hour of

eight o'clock in the afternoon while the said schooner was being towed near Cape Flattery, the Captain of said schooner gave orders for the libelant to go forward and let go the tow line or sprig; that in pursuance of said order the libelant went forward and commenced to release the wire tow line or sprig, reaching from said schooner to the tug boat, in the presence of the captain and the rest of the crew; that in order to release the same it became necessary for the libelant to have assistance; that the Captain with the rest of the crew standing near by, negligently failed to insist upon giving libelant assistance; that libelant alone was unable to prevent said tow line or sprig from springing and the end of the same struck libelant with great force and violence causing a compound fracture of the right arm and injuring his back; that at the time plaintiff was injured as aforesaid the Captain of said schooner ordered the same to turn back to Port Angeles, at which port she arrived at three o'clock the next morning; that before landing at Port Angeles, this libelant requested the Captain to be taken to Port Townsend; that said Captain informed libelant that it would be too much expense to said schooner and that a marine doctor was located at Port Angeles; that after waiting some four hours at Port Angeles on board said ship, libelant, against his wish, was taken ashore where the Captain took him to a private doctor and repre-

sented to said doctor that he would be paid for his services through the marine hospital; that said doctor took charge of the case and immediately thereafter the Captain of said schooner informed the doctor that he, the libelant, was in the doctor's hands and off of his own; that about eleven o'clock that same forenoon, this libelant was chloroformed by the doctor and an attempt was made to set the bones broken; that by reason of the carelessness and negligence of the Captain of said ship in turning this libelant, against his desire, over to an inexperienced, incompetent, and unwilling doctor, the work was done in an unskillful and wholly improper manner.

II.

That after remaining at Port Angeles three days the said doctor requested this libelant to put on his clothes, informing him that the representations, made by the Captain to the doctor, regarding his pay, were false and he had better go to Port Townsend to the marine hospital; that libelant was unable to move or be moved and after remaining there several days longer, without proper attention he finally went to Port Townsend to the marine hospital; that at the time of arriving at Port Townsend, through the negligence and incompetency of said doctor at Port Angeles, the libelant's arm had become swollen and sore and he was

threatened with blood poison; that it was thought impossible by the doctor in charge at said marine hospital to set said bones before treatment was had to reduce the soreness and swelling; that after several days an attempt was made by the physicians and surgeons in said marine hospital at Port Townsend to set the bones, but owing to the fact that the ends had become infected and lost their power to knit, the work was unsuccessful and as a result of the treatment received as aforesaid the bones so broken will never knit together but will be a source of great annoyance, pain and suffering to libelant and said arm will always be entirely useless; that during all the time herein mentioned the libelant has suffered excruciating pain, humiliation and inconvenience, at times despairing of his life.

III.

That he was prior to said injuries an able-bodied, healthy person of the age of forty-five years, capable of and was earning the sum of $45.00 per month and subsistence; that libelant will be to great expense in securing medical and surgical treatment for a long time to come. That ever since said injuries he has been and is now wholly incapacitated and as he believes will ever be so; that by reason of the matters set forth herein, libelant

has been damaged by the respondent in the sum of fourteen thousand dollars.

IV.

That said ship is now in Winslow Bay, and within the admiralty and maritime jurisdiction of this Honorable Court.

V.

That all and singular the premises are true and within the admiralty and maritime jurisprudence of this Honorable Court.

WHEREFORE, this libelant prays that process of attachment in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Schooner C. S. Holmes, her tackle, apparel and furniture; and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters aforesaid; and that the said ship may be condemned and sold to pay the same, and that the said court will grant to this libelant such other and further relief as in law and justice he may be entitled to receive.

DANIEL LANDON,
Proctor for Libelant..

STATE OF WASHINGTON, }
County of King. } ss.

Gust Fondahn, being first duly sworn, on oath, deposes and says: that he is the libelant named in the foregoing libel; that he has read the same, knows the contents thereof, and believes the same to be true.

GUST FONDAHN,

Subscribed and sworn to before me this 17th day of June, 1913.

DAN LANDON,
Notary Public in and for the
(Seal) State of Washington, residing
at Seattle.

Indorsed: Libel. Filed in the United States District Court, Western District of Washington, August 29, 1913. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN,
Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,
Respondent.
No. 2539.

EXCEPTIONS TO LIBEL.

The exceptions of George E. Billings, the Claimant, as agent for and on behalf of the owners of the Schooner "C. S. Holmes" to the libel and complaint of Gust Fondahn against said schooner, alleges as follows:

I.

That as appears from the libel, this is an action brought by libelant in rem against the Schooner Holmes to recover damages in the sum of fourteen thousand ($14,000.00) dollars, for personal injuries sustained at sea by being struck on the arm with the end of a tow-line which he was casting off the schooner, by reason, as alleged in the libel, of the Captain negligently failing to insist upon giving libelant assistance, and for damages alleged to have been sustained through improper treatment of such

injuries by a physician at Port Angeles, to which port the Captain put back to obtain medical and surgical attendance for libelant; that said cause of action is not a maritime cause of action, enforcible in a proceeding in rem, and is not within the jurisdiction of this Honorable Court.

II.

That this action, instituted by a seaman in rem against a vessel to recover damages for personal injuries sustained by him aboard a seaworthy vessel at sea is not an admiralty and maritime cause of action and is not within the jurisdiction of this Honorable Court.

III.

That this action, instituted by a seaman in rem against a vessel to recover damages for improper treatment of personal injuries sustained by him at sea, by a physician at a port to which the vessel put to obtain medical and surgical attendance for him, is not an admiralty and maritime cause of action, and is not within the jurisdiction of this Honorable Court.

IV.

That libelant has no cause of action against the vessel for damages alleged to have resulted from

improper treatment of personal injuries sustained as alleged in the libel, by a physician at a port to which the vessel put back to obtain medical and surgical attendance for him, as alleged in the libel.

Wherefore, Claimant prays that the libel may be hence dismissed.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Claimant.

Copy of within Exceptions received and due service thereof acknowledged this 22d day of September, 1913.

DAN LANDON,
Attorney for Libelant.

Indorsed: Exceptions to Libel. Filed in the U. S. District Court, Western Dist. of Washington, Sept. 22, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

United States District Court. Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent.

No. 2539.
Filed Dec. , 1913

Daniel Landon, for Libelant.

Ballinger, Battle, Hulbert & Shorts, for Claimant.

NETERER, District Judge.

The Libelant seeks damages for personal injuries sustained on board the Schooner "C. S. Holmes," and for negligence of the master in furnishing medical treatment thereafter. The libel alleges that in December, 1912, libelant signed articles as an able seaman for a voyage from San Francisco, California, to Everett, Washington, and return, and that:

> "While on said voyage * * * on the 3rd day of January, 1913, at about the hour of eight o'clock in the afternoon while the said schooner was being towed near Cape Flattery, the Cap-

tain of said schooner gave orders for the libelant to go forward and let go the tow line or sprig; that in pursuance of said order the libelant went forward and commenced to release the wire tow line or sprig reaching from said schooner to the tug boat in the presence of the Captain and the rest of the crew; that in order to release the same it became necessary for the libelant to have assistance; that the Captain, with the rest of the crew standing near by, negligently failed to insist upon giving libelant assistance; that libelant alone was unable to prevent said tow line or sprig from springing, and the end of the same struck libelant with great force and violence, causing a compound fracture of the right arm and injuring his back."

Then follows the allegations of negligence in the furnishing of medical treatment, which will be discussed later.

The Claimant filed exceptions to the libel, the second paragraph of which reads as follows

> "That this action, instituted by a seaman in rem against a vessel to recover damages for personal injuries sustained by him aboard a seaworthy vessel at sea is not an admiralty and maritime cause of action, and is not within the jurisdiction of this Honorable Court."

It will be seen that the negligence alleged is that "the Captain with the rest of the crew negligently failed to insist upon giving libelant assist-

ance." The issue raised by the exception is whether for such negligence the vessel is liable.

The members of the crew, "except perhaps the master," must be considered fellow servants.

The Osceola, 189 U. S. 158.

Is the master a fellow servant of the other members of the crew?

> "To put it most favorably for the libelant, the question was reserved in the Osceola, 189, U. S. 158."
>
> *The Bunker Hill*, 198 Fed. 587.

In the *Governor Ames*, 56 Fed. 327, Judge Hanford held that there could be no recovery for the negligence of the officers of a vessel, where the owner had furnished proper equipment, and a sufficient crew, and many authorities may be cited in support of such a holding.

> 25 Am. & Eng. Enc. of Law;
> *The City of Alexandria*, 17 Fed. 390.
> *The Bunker Hill*, 198, Fed. 587.

The true rule is that stated by Judge Ross in *Olson v. Oregon Coal & Navigation Co.*, 104 Fed. 574, 576 (C. C. A.):

> "It is undoubtedly true that the master represents the owner in respect to the personal duties and obligations which the latter owes to

> seamen, such, for instance, as the maintenance of the ship and her apparel in a safe and seaworthy condition, procuring repairs and supplies, the supplying of the crew with sufficient food and with medical attendance and care in case of injury and sickness, and for his neglect in any of those particulars the owner is liable."

In that case the owner was held not liable for the negligence of the master in leaving the hatch open, on the ground "that it was no more than negligence in the ordinary navigation of the ship, in which common employment all of the members of the ship's company were engaged."

In this case the negligence being predicated upon the fact that the captain and the rest of the crew were standing near by and negligently failed to insist upon giving libelant assistance, it must be conceded for the purposes of the allegation that the owners had furnished a sufficient crew. Having furnished such a crew, were the owners bound to see, as various exigencies arose in the navigation of the ship requiring that assistance be given to one of the members of the crew, that the other members should go to his aid? To do so would make each member of the crew the personal represntative of the owner, and overthrow every decision that has ever been written on the question. It not being the duty of the owner to see that such assistance

was given libelant, the master cannot be said to have been the representative of the owner with respect to such duty, and for his negligence in such respect the vessel cannot be proceeded against in rem.

The allegations of the complaint in reference to negligence in furnishing medical treatment are as follows:

> "that at the time libelant was injured as aforesaid the Captain of said schooner ordered the same to turn back to Port Angeles at which port she arrived at three o'clock the next morning; that before landing at Port Angeles, this libelant requested the captain to be taken to Port Townsend; that said Captain informed libelant that it would be too much expense to said schooner and that a marine doctor was located at Port Angeles; that after visiting some four hours at Port Angeles on board of said ship, libelant, against his wish, was taken ashore where the captain took him to a private doctor and represented to said doctor that he would be paid for his services through the marine hospital; that said doctor took charge of the case and immediately thereafter the Captain of said schooner informed the doctor that he, the libelant, was in the doctor's hands and off his own; that about eleven o'clock of that same forenoon, this libelant was chloroformed by the doctor and an attempt was made to set the bones broken; that by reason of the carelessness and negligence of the Captain of said ship

in turning this libelant, against his desire, over to an inexperienced, incompetent, and unwilling doctor, the work was done in an unskillful and wholly improper manner.

"That after remaining at Port Angeles three days the said doctor requested this libelant to put on his clothes, informing him that the representations, made by the Captain to the doctor, regarding his pay, were false and he had better go to Port Townsend to the marine hospital; that libelant was unable to move or be moved and after remaining there several days longer without proper attention he finally went to Port Townsend to the marine hospital; that at the time of arriving at Port Townsend, through the negligence and incompetency of said doctor at Port Angeles, the libelant's arm had become swollen and sore and he was threatened with blood poison; that it was thought impossible by the doctor in charge at said marine hospital to set said bones before treatment was had to reduce the soreness and swelling; that after several days an attempt was made by the physicians and surgeons in said marine hospital at Port Townsend to set the bones, but owing to the fact that the ends had become infected and lost their power to knit, the work was unsuccessful and as a result of the treatment received as aforesaid the bones so broken will never knit together, but will be a source of annoyance, pain and suffering to libelant, and said arm will always be entirely useless; that during all the times herein mentioned the libelant has suffered excruciating pain, humiliation and inconvenience, at times despairing of his life."

The fourth paragraph of the exceptions is as follows

> "That libelant has no cause of action against the vessel for damages alleged to have resulted from improper treatment of personal injuries sustained as alleged in the libel, by a physician at a port to which the vessel put back to obtain medical and surgical attendance for him, as alleged in the libel."

It is the duty of the owner to furnish an injured seaman with proper medical care, and the master represents the owner with respect to this duty, and the owner is liable for the negligence of the master in that regard.

The Iroquois, 194 U. S. 241;
The Osceola, 189 U. S. 158;
The Fullerton, 167 Fed. 1;
The Sarnia, 137 Fed. 952;
The Troop, 118 Fed. 789;
Id. 128 Fed. 837 (C. C. A.);
The Scotland, 42 Fed. 925;
The M. E. Luckenbach, 174 Fed. 264.

Where the master employs a physician, is the owner liable in all events for the negligence of that physician, or is he liable only where the master fails to exercise reasonable care in selecting the physician? No case in admiralty which decides that question has been found; it must be determined upon reason and

analogy, having regard to the nature and character of the duty imposed.

The duty of an owner to select a competent physician is analogous to the duty of an employer to select competent fellow servants; both are duties imposed by law. It is well settled that the master is held only to the exercise of ordinary and reasonable care in the employment of a fellow servant, and is not an insurer of the competency of such servant.

26 Cyc. 1295.

The owner's duty is also analogous to the duty of an employer to furnish medical attendance in extraordinary cases when it is imperatively demanded or to that of one who collects fees from his employees and undertakes to furnish medical treatment, without making a profit therefrom.

> "The master who conducts a hospital for the use of his injured employees, not for the purpose of gain but for charitable purposes merely, is not liable to a servant for injuries caused by the negligence of the physicians or attendants, unless reasonable care was not used in their selection. This is true although the expenses of running the hospital are provided for out of moneys retained from the monthly wages of a company's employees, there being, however, no intention on the part of the company to make any profit. But where in consideration of a reduction in the rate of wages of

all the men employed, and the consequent profit to be made by the company, the latter binds itself to furnish medical treatment to such of them as may get hurt or become sick while in its service, the company should bear the loss of improper treatment, since the law implies in such cases an undertaking to give proper treatment."

20 Am. & Eng. Encyc. of Law, 54.

"It is well settled that a master has performed his entire duty in respect to furnishing medical attention to a servant injured while at work, when he employs a person of ordinary competency and skill in the profession; and, having done so, he cannot be made liable for the carelessness of his duties. So, too, where a hospital is maintained by a master for the sole purpose of relieving injured servants, without any intention of profit to himself, he is not liable to his servants for the malpractice of the physician employed, if ordinary care was exercised in selecting him, although the hospital is supported by the contributions of the servants."

26 Cyr. 1082.

The owner's duty cannot be analogous to the obligation of the employer who makes a profit in furnishing medical attendance, for the shipowner makes no profit, and is not required to keep a physician on board the vessel. The duty is one which arises out of or is governed by the circum-

stances of each particular case, and it is only for the negligence of the owner himself, or the owner's representatives, the master, that the vessel can be held. The master is not negligent when he exercises reasonable care in selecting and employs a regularly licensed physician, believing him to be competent, and entrusts the injured seaman to his care, in the belief that such physician will render careful and competent treatment.

The libel does not allege that the master knew of the incompetency of the physician, or that he should have known of such incompetency and failed to exercise reasonable diligence in selecting him. The libel alleges that the master represented to the doctor that he would be paid for his services through the marine hospital, and that three days thereafter the doctor informed libelant that the master's representations were false. There is no allegation that these representations were untrue, or that the doctor manifested any unwillingness to the master to accept such terms of employment; nor are the doctor's statements binding upon the master of the vessel. The libel also alleges that the master took libelant to Port Angeles to a private doctor when libelant had requested to be taken to Port Townsend to the marine hospital. This cannot of itself constitute negligence, since it is manifest that an in-

jured seaman cannot in every instance have the choice of physicians, regardless of expediency or expense. The master's duty to the owner requires that he should take such matters into consideration, and while the humane duty to the seaman should have the greater weight, the master connot be said to be negligent when he exercises reasonable diligence in employing a physician whom he believes to be competent to attend to the seaman's injuries. For all that appears in the libel the master may have believed that the libelant would receive treatment as much calculated to effect a cure from the physician in question as from the marine hospital. Where there is no negligence of the master, the physician's negligence cannot be imputed to him or to the owner, and the vessel cannot be proceeded against in rem.

The owner is liable for the expenses of effecting the cure of a seaman injured in his employ, so far as a cure is possible by ordinary medical means, and this liability exists even where the owner has not been negligent, and may be enforced in rem, and is not relieved by the negligence of the seaman, provided he has not been grossly negligent.

The Osceola, 189 U. S. 158;
The New York, 204 Fed. 764;
The City of Alexandria, 17 Fed. 390.

But the libelant is not seeking to enforce this liability by asking the recovery of expenses necessarily incurred or to be incurred in effecting a cure; there is no allegation in the libel which can be so construed. The third paragraph of the libel reads as follows

> "That he was prior to said injuries an able-bodied, healthy person of the age of forty-five years, capable of and was earning the sum of $45.00 per month and subsistence; that libelant will be to great expense in securing medical and surgical treatment for a long time to come. That ever since said injuries he has been and is now wholly incapacitated and, as he believes, will ever be so; that by reason of the matters set forth herein, libelant has been damaged by the respondent in the sum of fourteen thousand dollars."

It is manifest that the allegation "that libelant will be to great expense in securing medical and surgical treatment for a long time to come," is set forth merely as an element of the damages caused by the negligence of the physician, and such prospective expenses are sought to be recovered on that theory alone. The liability of the owner to pay for medical treatment, and his liability to pay damages, of which medical treatment is an element, are two different things. The first liability exists from the fact of injury, the second arises only where the owner is

at fault either in causing the injury or its treatment. Even conceding that the owner is liable for expenses to be incurred, there is no allegation which bring libelant within such theory. The liability of the owner in only for expenses in affecting a cure so far as possible, by ordinary medical means; and this does not include extraordinary medical treatment, or treatment which extends after a cure has been as nearly affected as is possible in a particular case.

The Kenilworh, 144 Fed. 376;
The Nyack, 199 Fed. 383.

The exceptions are sustained.

JEREMIAH NETERER,
Judge.

Indorsed: Exceptions to libel sustained. Filed in the United States District Court, Western District of Washington, Dec. 31, 1913. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the United States District Court for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN,
Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,
Respondent.
No. 2539.

AMENDED LIBEL.

To the Honorable Judges of the Above Entitled Court:

The amended libel of Gust Fondahn, of Port Townsend, Washington, late seaman of the American Schooner C. S. Holmes, whereof Harry Thompson, now is or late was master, against the said ship, her tackle, engines, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause for damages for personal injuries and wages, civil and maritime, showeth:

I.

That during the month of December, 1912, the libelant signed articles as an able seaman to make a trip on board the Schooner C. S. Holmes from

San Francisco, California, to Everett, Washington, and return, at forty-five dollars per month.

II.

That while on the return voyage and while performing his duty as a seaman, on the third of January, 1913, in the afternoon a heavy storm arose and the ship sought shelter in Neah Bay. A tug was sent out to look at the condition of the weather, and came back and reported that it was not fit for any vessel to go out on account of the mountain of sea running at twelve o'clock noon. With the weather conditions unchanged the Steamer Goliah gave the said "C. S. Holmes" a steel cable of five inches thickness, which was taken on board and made fast on the forward end of the said ship by being placed three times around a square bit; and by order of the Captain of the said ship "C. S. Holmes" the steamer Goliah towed her to sea, it taking the steamer seven hours to tow the "C. S. Holmes" a distance of eight miles.

III.

That at about seven o'clock and while weather conditions were unchanged the said steamer blew her whistle to let go the wire; the captain of the "Holmes" gave general orders for everybody to go forward and take hold of the wire; the crew held

back; when they received the orders the second time everybody went forward, but none went to the wire except the libelant; the Captain was standing about four feet above the libelant where he could see everything going on, libelant being in a position where he could not see the condition of the wire; libelant inquired of the Captain how the wire was on the bow, and he was told by the Captain that the wire was slack and that everything was all right and to let go; and libelant let go the lashings and went away as quickly as possible to avoid danger. The wire was tight and sprang back and hit libelant, causing compound fracture of libelant's right arm, paralyzing and bruising his side.

IV.

That the Captain gave orders to go back to Port Angeles; libelant requested to be taken to Port Townsend to the marine hospital, but was informed that it would cost $100 to do so, and that there was a marine doctor at Port Angeles, and so refused; they arrived at Port Angeles at three o'clock in the morning; the libelant again requested to be taken to Port Townsend to the marine hospital, and the Captain again refused; at about seven or eight o'clock the Captain took libelant to Dr. Taylor, wrote out a permit, gave it to the said doctor, informing him at the same time that it was

good for all expenses incurred; the said doctor asked the Captain to explain the permit; the Captain then told him, "I have nothing to explain; the man is in your care now and he is out of my hands," at the same time laughing at the doctor in a manner that would indicate that he had knowingly deceived him. The Captain knew all the time that there was no marine doctor at Port Angeles, and that the permit was valueless for any purpose other than to be used for admission at the Port Townsend marine hospital. The Captain deliberately put libelant off at Port Angeles for the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief, at the same time he knew or should have known that libelant needed prompt and permanent attention on account of the condition of his injuries.

V.

That the libelant was taken to the office of the doctor and in the presence of the Captain an attempt was made by the then unwilling doctor to fix him up temporarily, which was not successful, and two days later while libelant was still in a helpless condition the doctor requested the libelant to leave; libellant was unable to move; he received no more attention or treatment for six days longer, when with considerable effort he made his way to

Port Townsend; during the time he was at Port Townsend blood poison set in, and after two months' treatment at the marine hospital at Port Townsend an attempt was made to set the bones, but the ends of the bones so broken had commenced to decay by reason of treatment being neglected when injured and the arm was in such condition that the plates used to hold the bones together broke loose and the bones are still continuing to decay.

VI.

That by reason of the treatment being delayed as aforesaid the bones will never knit together, but will continue to be a source of great annoyance, pain and suffering to the libelant; that during all the times herein mentioned the libelant has suffered excruciating pain, humiliation and inconvenience, at times despairing of his life.

VII.

That prior to said injuries libelant was an able-bodied man of the age of forty-five years, capable of and was earning the sum of forty-five dollars and subsistence; that libelant will be put to great expense in securing medical and surgical treatment during his entire life; that ever since said injuries he has been and now is wholly incapacitated and he believes will ever be so.

VIII.

That libelant has paid the sum of thirty dollars to said doctor at Port Townsend for the services so received.

IX.

That libelant was paid his wages up to the time he was injured; that he is entitled under the circumstances herein set out to one month's pay in addition to said sum.

X.

That by reason of the injuries received as aforesaid the libelant is damaged in the sum of $4000.

That by reason of the failure of respondent to provide libelant proper medical and surgical treatment he is damaged in the sum of $10,000.

That libelant is entitled to the return of the $30 paid by him for medical treatment.

That he is further entitled to $45 for wages.

XI.

That the vessel was at the time this libel issued lying at Winslow, in the waters of Puget Sound in Kitsap County, Washington.

XII.

That all and singular the said premises are

true and within the admiralty and maritime jurisprudence of the United States and this honorable Court.

Wherefore this libelant prays that process issue in due form of law according to the course of this honorable Court in causes of admiralty and maritime jurisprudence against the said schooner that the said ship may be condemned and sold, and that the Court be pleased to grant to this libelant such other and further relief as in law and justice he may be entitled to.

DANIEL LANDON,
Proctor for Libelant.

STATE OF WASHINGTON, }
County of King } ss.

Gust Fondahn, being first duly sworn, on oath says that he is the libellant in the above entitled action; that he has read the foregoing amended libel, knows the contents thereof and believes the same to be true.

GUST FONDAHN.

Subscribed and sworn to before me this 7th day of January, 1914.

DANIEL LANDON,
(Seal.) Notary Public for the State of Washington, residing at Seattle.

Service of the amended libel by delivery of a copy to the undersigned is hereby acknowledged this 9th day of January, 1914.

BALLINGER, BATTLE, HULBERT & SHORTS.

Indorsed: Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 12, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

EXCEPTIONS OF GEORGE E. BILLINGS, THE CLAIMANT, AS AGENT FOR AND ON BEHALF OF THE OWNERS OF THE SCHOONER "C. S. HOLMES," TO THE AMENDED LIBEL OF GUST FONDAHN AGAINST SAID SCHOONER.

To the Honorable Jeremiah E. Neterer, Judge of the Above Entitled Court:

Comes now the said claimant, by his proctors of record, and excepts to the said amended libel:

I.

For the reason that said libel purports to set forth several causes of action, but that the said several causes are not segregated or separately stated, or stated in such manner that claimant can answer or except to the same distinctly and separately.

If the Court denies the foregoing exception, and holds that said amended libel sets forth in such manner that claimant can answer or except to the same distinctly and separately four purported causes of action, as follows, to-wit:

(1) An action *in rem* by libelant, a seaman, to recover damages for personal injuries sustained by him at sea, aboard a seaworthy vessel;

(2) An action *in rem* by libelant, a seaman, to recover damages for an alleged breach of the owner's duty, under the maritime law, to furnish the seaman injured aboard a seaworthy vessel at sea, with proper medical care;

(3) An action *in rem* by libelant, a seaman, to recover wages;

(4) An action *in rem* by libelant, a seaman, to recover money paid by him for medical treatment of personal injuries sustained by him aboard a seaworthy vessel at sea;

Then claimant excepts

II.

To all such allegations in said amended libel as are allegations of facts purporting to constitute such first purported cause of action, for the reason that such a cause is not an admiralty and maritime cause of action, and is not within the jurisdiction of this Honorable Court, and for the reason that said amended libel does not allege facts sufficient to constitute such cause of action.

III.

To all such allegations in said amended libel as are allegations of facts purporting to constitute such second purported cause of action, on the ground that such amended libel does not allege facts sufficient to constitute such a cause of action.

IV.

To all such allegations in said amended libel as are allegations purporting to constitute such third purported cause of action, for the reason that said amended libel does not allege facts sufficient to constitute such a cause of action.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Claimant.

Copy of within Exceptions received and due service thereof acknowledged this 10th day of January, 1914.

DANIEL LANDON,
Attorney for Libelant.

Indorsed: Exceptions to Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 10, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

United States District Court, Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent.

No. 2539.
Filed Feb. , 1914

ON EXCEPTIONS TO AMENDED LIBEL. EXCEPTIONS TO FIRST AND SECOND CAUSES OF ACTION SUSTAINED.

Daniel Landon, for Libelant.

Ballinger, Battle, Hurlbert & Shorts, for Claimant.

NETERER, District Judge.

This is an action in rem in which libelant seeks recovery of damages for personal injuries, damages for negligence in furnishing medical treatment, expenses of medical treatment, and wages. The matter was heretofore considered by the court upon exceptions to the libel, which were sustained, 208 Fed.— An amended libel has been filed, and the matter is now before the court on the claimant's exceptions to the amended libel.

The amended libel, after alleging the employment of libelant as a seaman on board the "C. S. Holmes," recites:

> "That while on the return voyage and while performing his duty as a seaman, on the third of January, 1913, in the afternoon, a heavy storm arose and the ship sought shelter in Neah Bay. A tug was sent out to look at the condition of the weather, and came back and reported that it was not fit for any vessel to go out on account of the mountain of sea running at twelve o'clock noon. With the weather conditions unchanged the Steamer Goliah gave the said "C. S. Holmes" a steel cable of five inches thickness which was taken on board and made fast on the forward end of the said ship by being placed three times around a square bit; and by order of the captain of the said ship "C. S. Holmes," the steamer Goliah towed her to sea, it taking the steamer seven hours to tow the "C. S. Holmes" a distance of eight miles."

"That at about seven o'clock and while weather conditions were unchanged the said steamer blew her whistle to let go the wire; the Captain of the "Holmes" gave general orders for everybody to go forward and take hold of the wire; the crew held back; when they received the orders the second time everybody went forward, but none went to the wire except the libelant; the Captain standing about four feet above the libelant where he could see everything going on; libelant being in a position where he could not see the condition of the wire, libelant inquired of the Captain how the wire was on the bow, and he was told by the Captain that the wire was slack and that everything was all right and to let go; and libelant let go the lashings and went away as quickly as possible to avoid danger. The wire was tight and sprang back and hit libelant, causing a compound fracture of libelant's right arm, paralyzing and bruising his side."

To the cause of action above alleged the claimant excepts as follows:

"Claimant excepts to all such allegations in said amended libel as are allegations of facts purporting to constitute such first purported cause of action, for the reason that such a cause is not an admiralty and maritime cause of action, and is not within the jurisdiction of this honorable court, and for the reason that said amended libel does not allege facts sufficient to constitute such cause of action."

By reference to the former opinion, it will be seen that the negligence upon which the libelant there relied was "that the Captain with the rest of the crew standing near by negligently failed to insist upon giving libelant assistance." The negligence here relied upon is that "libelant inquired of the Captain how the wire was on the bow, and he was told by the Captain that the wire was slack and that everything was all right and to let go; and libelant let go * * * The wire was tight and sprang back and hit libelant."

The former ground of negligence was held insufficient to charge the owners or the vessel under the rule laid down by the Circuit Court of Appeals of the Ninth Circuit in *Olson v. Oregon Coal & Nav. Co.*, 104 Fed. 574. The question now to be determined is whether the latter ground of negligence is sufficient to charge the vessel.

Libelant relies upon *Keating v. Pacific Steam Whaling Co.*, 21 Wash. 415. The negligence there charged, however, was an unsafe appliance for towing, which might be sufficient to bring the case within the rule laid down in the *Olson* case, *supra*. The defendant nevertheless contended that plaintiff might have been ordered to do the work in a safe manner, and the failure of the mate to order him to do it in such a manner was negligence of the

mate in a detail of navigation, for which the owner would not be liable, citing *Quinn v. New Jersey Lighterage Co.*, 23 Fed. 363; *The Queen*, 40 Fed. 694. The court meets this contention with the general statement that the mate and Captain are not fellow servants of an ordinary seaman, and cites *Chicago, etc., Ry. Co. v. Ross*, 112 U. S. 377, and *The Transfer No.* 4 and *the Car Float No.* 16, 61 Fed. 364.

Libelant contends that the holding of the state Court should govern. Jurisdiction in admiralty cases being exclusively vested in the United States District Court by Art. 3, Sec. 2, of the Constitution, and Secs. 24 and 256 of the Judicial Code, this contention cannot be sustained. It was expressly so held in *Workman v. New York City*, 179 U. S. 552. In the absence of a holding of the Supreme Court of the United States, this court must be governed by the holdings of the Circuit Court of Appeals for the Ninth Circuit.

Quinn v. New Jersey Lighterage Co., and *The Queen, supra*, were both considered and approved in the Olson case. Each state that the rule in *Chicago, etc., Railway Co. v. Ross* does not operate to charge the owner with negligence in respect to the details of navigation. Not only is this so, but *The Transfer, etc.*, 61 Fed. 364, which the Wash-

ington Supreme Court cites in support of its holding, is based expressly upon *Chicago, etc., Ry. Co. v. Ross, supra*, which was overruled by the Supreme Court in the case of *New England Railroad Co. v. Conroy*, 175 U. S. 323. Referring to this case, Judge Ross, in the *Olson* case, *supra*, at page 576, says:

> "In the recent case of *Railroad Co. v. Conroy*, 175 U. S. 323, 20 Sup. Ct. 85, 44 L. Ed. 181, where the case of *Railroad Co. v. Ross*, 112 U. S. 377, 5 Sup. Ct. 184, 28 L. Ed. 787, was finally and squarely overruled, the Supreme Court announces the true rule to be, both upon principle and authority, 'That the employer is not liable for an injury to one employee occasioned by the negligence of another engaged in the same general undertaking; that it is not necessary that the servants should be engaged in the same operation or particular work; that it is enough to bring the case within the general rule of exemption if they are in the employment of the same master, engaged in the same common enterprise, both employed to perform duties tending to accomplish the same general purposes; or, in other words, if the services of each in his particular sphere or department are directed to the accomplishment of the same general end."

The negligence here complained of was in a mere detail in the navigation of the ship; it was not with respect to any duty which the owner personally owed to the libelant. For such negligence

of any member of the crew, whether seaman or Captain, the owner is not liable, and the vessel cannot be proceeded against in rem.

Olson v. Oregon Coal & Nav. Co., 104 Fed. 574;

The Queen, 40 Fed. 694;

Quinn v. Lighterage Co., 23 Fed. 363;

The Governor Ames, 55 Fed. 327;

The Bunker Hill, 198 Fed. 587.

The City of Alexandria, 17 Fed. 390;

The C. S. Holmes, filed Dec. 31, 1913, 208 Fed. —.

The libel further alleges:

"That the Captain gave orders to go back to Port Angeles; libelant requested to be taken to Port Townsend to the marine hospital, but was informed that it would cost $100 to do so, and that there was a marine doctor at Port Angeles and so refused; they arrived at Port Angeles at three o'clock in the morning; the libelant again requested to be taken to Port Townsend to the marine hospital and the captain took libelant to Dr. Taylor, wrote out a permit, gave it to the said doctor, informing him at the same time that it was good for all expenses incurred; the said doctor asked the Captain to explain the permit; the Captain then told him, 'I have nothing to explain; the man is in your care now and he is out of my hands,' at the same time laughing at the doctor in a manner which would indicate that he had know-

ingly deceived him. The Captain knew all the time that there was no marine doctor at Port Angeles, and that the permit was valueless for any purpose other than to be used for admission at the Port Townsend marine hospital. The Captain deliberately put libelant off at Port Angeles for the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief; at the same time he knew or should have known that libelant needed prompt and permanent attention on account of the condition of his injuries."

"That the libelant was taken to the office of the doctor and in the presence of the Captain an attempt was made by the then unwilling doctor to fix him up temporarily, which was not successful, and two days later while libelant was still in a helpless condition the doctor requested the libelant to leave; libelant was unable to move; he received no more attention or treatment for six days longer, when with considerable of effort he made his way to Port Townsend; during the time he was at Port Angles blood poison set in, and after two months treatment at the marine hospital at Port Townsend an attempt was made to set the bones, but the ends of the bones so broken had commenced to decay by reason of treatment being neglected when injured and the arm was in such condition that the plates used to hold the bones together broke loose and the bones are still continuing to decay."

Claimant excepts to the above cause of action, as follows:

"To all such allegations in said amended libel as are allegations of facts purporting to constitute such second purported cause of action, on the ground that such amended libel does not allege facts sufficient to constitute such a cause of action."

In the former opinion in this case it was held that the owner is liable for the negligence of a physician employed by the Captain only when the master is negligent in employing him. The duty was there held analagous to that of selecting a competent fellow servant, where the master is held liable only when he knew or should have known of the incompetency of the fellow servant.

26 Cyc. 1295; 1298.

It was stated that the mere act of not going to Port Townsend to take libelant to the marine hospital would not be negligence. The question then remains whether in the employment of this particular physician there was such negligence as to charge the owner. It is nowhere alleged that the master knew of the physician's incompetence, nor are any facts alleged sufficient to charge him with knowledge. It is alleged that the master gave the physician a permit to the marine hospital, telling him that it was good for all expenses, when the Captain knew that it was valueless for any other

purpose than admission to the hospital. It is then alleged that "in the presence of the Captain an attempt was made by the then *unwilling* doctor to fix him up temporarily." Only by the most liberal inference can the missing links between the representations of the master and the malpractice be supplied. It can be only by reading into the libel allegations that the *unwillingness* caused the malpractice, and that the unwillingness was caused by the falsity of the representations. The word "unwilling," as applied to the doctor, expresses a conclusion as to a state of mind, and no words or acts of the doctor are alleged which manifested to the master such a state of mind. It is evident that the physician accepted the employment and undertook to minister to libelant. Even had he done so gratuitously, there rested upon him "the same degree of care and skill and the same measure of duty" as would have rested upon him had he received compensation.

22 Am. & Eng. Enc. Law, 801.

Here he had not only the liability of his patient, but that of the owners and the vessel as well, upon which to rely.

The Osceola, 189 U. S. 158.
The New York, 204 Fed. 764;
The City of Alexandria, 17 Fed. 390.

A misrepresentation as to the method of payment, under such circumstances, cannot be reasonably anticipated to result in malpractice. It is not such negligence or fault as will charge the vessel. The other allegations are merely of conclusions, from which no implication of negligence is necessarily drawn, and are to be disregarded.

Strauss v. Fox, 34 S. C. R. 42;

Jackson v. Chicago, Mil. & St. Paul Ry., filed in this Court Feb. 2, 1914.

The claimant admits that libelant is entitled to the $30 alleged to have been paid for medical treatment, provided he can prove he has paid such sum; and that he is entitled to wages to the end of his voyage, if he can prove that he has not been paid the same.

The exceptions to the first and second causes of action are sustained.

JEREMIAH NETERER,
Judge.

Indorsed: On exceptions to amended libel. Exceptions to first and second cause of action sustained. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 13, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In The United States District Court for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

FINAL ORDER.

This matter coming on regularly to be heard upon the exceptions of Claimant herein to the amended libel, the Court having heretofore rendered its decision.

It is ordered that Claimant's exceptions to the first and second causes of actions be sustained.

That all other exceptions are overruled.

Libelant excepts to the Court's ruling on said exceptions sustained, which exceptions are allowed.

Done in open Court this 21st day of February, 1914.

JEREMIAH NETERER,
Judge.

Service of the within Order by delivery of a copy to the undersigned is hereby acknowledged this 19th day of February, 1914.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Claimant.

Indorsed: Final Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In The United States District Court for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN,
Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,
Respondent.
No. 2539.

NOTICE OF APPEAL.

Sirs: Take notice that the libelant above named hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree, entered herein February 21, 1914.

Yours respectfully,
DANIEL LANDON,
Proctor for Libelant and Appelant.

To Ballinger, Battle, Hulbert & Shorts,
Proctors for Respondent and Appellee.

FRANK L. CROSBY,
Clerk of the United States District Court for the Western District of Washington; Northern Division. In Admiralty.
(Seal)

Service of the within Notice of Appeal by delivery of a copy to the undersigned is hereby acknowledged this 19th day of Feb., 1914.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Claimant.

Indorsed: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In The United States District Court for the Western District of Washington. Northern Division. In Admiralty.

GUST FONDAHN,
Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,
Respondent.
No. 2539.

PETITION ON APPEAL, WITH ALLOWANCE INDORSED.

To the Honorable Jeremiah Neterer, the above named Libelant conceiving himself aggrieved by the order and decree made and entered by the above named Court wherein and whereby among other things, it was and is ordered that claimant's exceptions to the first and second causes of action stated in the amended libel herein be sustained, the said libelant does hereby appeal from said order, and prays that libelant's petition for his said appeal be allowed and that a transcript of the record, proceedings and papers namely: the libel, exceptions to the libel, the Court's opinion on exceptions to the libel, the amended libel, the exceptions to the amended libel, and the Court's opinion on the exceptions to the amended libel, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

DANIEL LANDON,
Proctor for Libelant.

ORDER.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Dated Feb. 21, 1914.

JEREMIAH NETERER,
Judge.

Service of the within Petition on Appeal by delivery of a copy to the undersigned is hereby acknowledged this 20th day of Feb., 1914.

BALLINGER, BATTLE, HULBERT & SHORTS,
Attorneys for Claimant.

Indorsed: Petition on Appeal with Allowance

Indorsed: Filed in the U. S. District Court, Western District of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In The United States District Court for the Western District of Washington. Northern Division.

GUST FONDAHN,
Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture,
Respondent.
No. 2539.

ASSIGNMENT OF ERROR IN ADMIRALTY.

First, the Court erred in sustaining claimant's exceptions to libelant's first cause of action as set forth in his amended libel.

Second, that the Court erred in sustaining claimant's exceptions to libelant's second cause of action as set forth in his amended action.

DANIEL LANDON,
Proctor for Libelant.

Service of the within Assignment of Error by delivery of a copy to the undersigned is hereby acknowledged this 20th day of Feb., 1914.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Claimant.

Indorsed: Assignment of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In The United States District Court for the Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

COST BOND ON APPEAL.

Know All Men by These Presents, That we, Gust Fondahn, Libelant in the above entitled action, as principal, and the Kansas City Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, and authorized to transact business as surety in the State of Washington, as surety, are held and firmly bound unto the Schooner "C. S. Holmes," in the sum of two hundred fifty ($250.00) dollars, lawful money of the United States, to be paid to the said Schooner "C. S. Holmes," for the payment of which sum well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of February, A. D. 1914.

Whereas, the above bounden Principal, Gust Fondahn, as Appellant, has prosecuted an appeal

to the United States Circuit of the United States, bearing date of 21st day of Feb., 1914, in a suit wherein Gust Fondahn is Libelant against the Schooner "C. S. Holmes," her tackle, apparel, etc.

Now, therefore, the condition of this obligation is such that if the above named appellant, Gust Fondahn, shall prosecute said appeal with effect, and pay all costs which may be awarded against him, as such appellant, if the appeal is not sustained, then this obligation shall be null and void; otherwise to remain in full force and effect.

In testimony whereof, witness our hands and seals the day and year first above written.

GUST FONDAHN, Principal.

(Seal) THE KANSAS CITY CASUALTY COMPANY, by H. E. Orr Company, Inc., Its Attorney-in-fact.

By H. E. ORR, President. (Seal)

Attest: Geo. W. Farlin, Secretary.

The above bond approved this 21st day of February, A. D. 1914.

JEREMIAH NETERER,
Judge.

Indorsed: Cost bond on appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In The United States District Court for the Western District of Washington. Northern Division.
In Admiralty.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent.
No. 2539.

STIPULATION.

It is hereby stipulated by and between the proctors for libelant and respondent that the record on appeal shall contain only the libel and amended libel, the claimant's exceptions to the libel and amended libel, the Court's opinions on the exceptions to the libel and intervening libel, Final Order, Notice of Appeal, Petition on Appeal with allowance indorsed, Assignment of Error and Cost Bond on Appeal.

DANIEL LANDON,
Proctor for Libelant.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Respondent.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In The District Court of the United States for the Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent.
No. 2539.

ORDER.

It appearing to the Court herein that the libelant has heretofore, to-wit, on the 21st day of February, 1914, served and filed his Notice of Appeal to the Circuit Court of Appeals, for Ninth Circuit, that the printed record is not completed and that it will take some time to finish same, and for good cause being shown, it is hereby ordered that the libelant have thirty days' extension to complete same.

Done in open Court this 24th day of March, 1914.

JEREMIAH NETERER,
Judge.

O. K.—Ballinger, Battle, Hulbert & Shorts,
Proctors for Respondent.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, March 24, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In The United States District Court for the Western District of Washington. Northern Division.

GUST FONDAHN, Libelant,
vs.
SCHOONER "C. S. HOLMES," her tackle, apparel and furniture, Respondent. } No. 2539.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA, } ss.
Western District of Washington.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 57 printed pages, numbered from 1 to 57 inclusive, to be a full, true, correct and complete copy of so much of the record and proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the Final Order of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the libelant for the preparation, printing and certification of the printed Transcript of Record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905,) for making transcript of the record for printing purposes—102 folios at 30 cents per folio	$30.60
Certificate of Clerk to Transcript of record—3 folios	.90
Seal to said certificate	.40

STATEMENT OF COST OF PRINTING SAID TRANSCRIPT OF RECORD.

Printer's fee (Sec. 1, Act of February 13, 1911)	$75.00

I hereby certify that the above cost for preparing, certifying and printing above record, amounting to $106.90, has been paid to me by Daniel Landon, Esq., Proctor for Libelant.

In witness whereof I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 1st day of April, 1914.

(Seal) FRANK L. CROSBY, Clerk.