

ed, and that, by such misconduct and breach of duty, the Master has forfeited his right (if any) to wages altogether.

This answer renders it necessary to ascertain what was the agreement under which Mr. Fairbanks has acted as Master, and what was the effect of his refusal (which he admits) to deliver the cargo to the holder of the Bill of Lading as regards his personal claim.

There are two facts which are not and cannot be questioned, to which Mr. Burchardt's answer has not adverted: one is, that the ship, of which he claims to be the sole owner, was sold by this Court more than a month before his answer was filed; another is, that he is himself a member of the firm of Messrs. Cater & Co., of Liverpool, who have been prominent actors in the transaction relating to the non-delivery of the cargo.

It has been proved that Captain Fairbanks was sole owner of the "Joseph Dexter," until the 19th September, 1868, he agreed with Messrs. Salter & Twining to sell to them 32-64ths of that vessel on the terms that they were to advance the money requisite for her outfit, Captain Fairbanks being accountable to them for his share of it, and that he was to superintend the outfit, command the vessel, and navigate her to Ireland with a cargo of timber, which Salter & Twining were to furnish. The vessel and cargo were to be sold in Great Britain, and a certificate of sale was to be given to Messrs. Cater & Co., or one of their firm, to enable them to make title to the purchaser of the ship, the accounts were then to be settled by the respective part owners, and the expected profits of the adventure divided accordingly.

The 32-64ths were consequently assigned to Salter & Twining on 21st September last; the vessel was fitted out; they paid part of the expenditure in cash, and gave their notes of hand for the remainder, and they furnished part of the timber for the cargo; the rest of it was furnished by Captain Fairbanks himself, (it does not appear how much,) and it is admitted by Salter & Twining, in their letter to Cater & Co. of the 24th November last, (to which I shall hereafter revert,) that Capt. Fairbanks was jointly interested in it with themselves.

The answer asserts that Captain Fairbanks did not commence work in the vessel on the 21st September, nor until he joined her on the 10th November, but he has shewn that he superintended the outfit from the former date, and that is the proper duty of a Master. (The Chieftain, Brown, 1 L., p. 104.) So that if entitled to wages at all he will be entitled from the 21st September. He states that in order to secure Salter & Twining in his share of the outfit, he executed the mortgage since assigned to Mr. Burchardt. But he asserts that the amount of his liability for the outfit has never been ascertained; that when he signed the mortgage a blank