

true state of affairs, and though there is reason to believe that Salter & Twining were indebted to them in a considerable sum, there is nothing to shew that Captain Fairbanks knew anything of the dealings between the firms or ever authorized Salter & Twining to pledge any property of his to Cater & Co. His refusal to deliver the cargo is, however, treated as an act of such misconduct as would justify this Court in holding that his wages are forfeited altogether. In support of that proposition, the "Thomas Worthington," 6, Notes of Cases, 570, has been cited; this was a case in which the master of a ship, in contravention of his owners order to keep their interests in view, executed a charter party at Bahia for a voyage to Europe, and in anticipation of the voyage received £600 on account of the freight, which he paid over to the agents of the owners. The owners having become bankrupt, their assignee relied on this payment as a forfeiture, as amounting to collusion and fraud. But the Court did not deem it a forfeiture. Dr. Lushington, in his judgment, said it was a serious question how far any conduct merely erroneous, and not tainted with guilty intention, could entail upon the master a forfeiture of his whole wages, and said he was not aware of any authority in any Court, or of any case, to that effect. It is a difficult question how far a master ought or ought not to follow the directions of his owners' agents. But Cater & Co. were not merely agents of Salter & Twining. They were as distinctly apprised of Mr. Fairbanks' position as an owner as were Salter & Twining themselves. Grant that Mr. Fairbanks would have shewn greater discretion had he trusted Cater & Co., and submitted to their directions; am I to visit him with the consequence of that want of discretion when there was neither *mala fides* collusion, negligence, or incapacity. It is unquestionable that certain misconduct may operate as a forfeiture of wages, whether of a mere seaman or a master; but in the "Camilla," Swabey, 314, Dr. Lushington states his opinion that neither error, nor want of seamanship, nor improper refusal to sign a bottoming bond, could be admitted as evidence in bar or even in reduction of a master's claim for wages. And the same principal or mere error of judgment on the master's part would not work a forfeiture of his wages, was recognized in the "Atlantic." (Lush. 566.) I cannot, therefore, hold that there has been any forfeiture of the wages to which Captain Fairbanks may be entitled, even assuming that he acted without reason, and in utter mistake, in refusing to give up the cargo; a question which I am not at present called on to decide, and on which I offer no opinion.

I am, therefore, bound to say, that whether Mr. Burchardt is to be deemed merely an agent of Salter & Twining, or beneficially entitled to their share of the proceeds, or to any part of it, that share is liable to one-half the master's wages from 21st September,