

company, should be insufficient to pay them, that then they should be paid *pro rata*.

The parties to whom these drafts were given were directors and officers of the company, who must have known at the time of its embarrassed condition, and that the crew and provision men had not been paid. It appears also by the evidence of the captain, that he gave them with reluctance, if not under absolute coercion, and that they were given by him for money borrowed from the parties in whose favor they were drawn. Under the circumstances attending the drawing and direction for the payment of these drafts, I do not think they are entitled to any very great degree of favor, but yet it seems to me, they should not be wholly excluded from all participation in the fund out of which they were to be paid. It appears that there was at that time due the captain from the company, about \$2400, which accrued in the year 1846, for his pay and compensation in that year. The contract between him and the company, as disclosed by the proof, was, that for a fixed compensation the captain was to find the vessel in hands and provisions, and to pay generally the expense of navigating her, that the contract was duly performed by both parties until the year 1846, when the company failed to comply with its engagement to the captain, and the latter was consequently unable to pay the crew, &c.

I have already expressed the opinion, that the crew have a lien on the proceeds of the vessel, and that those who furnished the supplies, though they have no lien, are to be treated as creditors at large, and entitled to such dividend as may be fairly apportioned to them.

As, however, according to the contract between the company and the master, the latter was to pay the hands and the provision men, and as the sum due the captain from the company is the primary fund for that purpose, my opinion further is, that whatever fund may have been found to be due from the company to the captain when the drafts in question were given, should be apportioned *pro rata* between the crew, the provision men, and the holders of the drafts referred to—that for what-