

Case No. 4,947. FORSHAY v. DU FAIS.
[N. Y. Times, Jan. 29, 1855.]

District Court, S. D. New York.

Jan. 26, 1835.

DEMURRAGE—EFFECT OF USAGE.

[A usage by which vessels, after reporting themselves to the consignee, allow two or three days for a sale of the cargo, and, if directed to another wharf, go there at their own expense, will not deprive a vessel of the right to demurrage, where her cargo was sold before arrival, and she gave immediate notice of readiness to discharge, and no objection was made, but she was detained for over a week.]

[In admiralty. Libel by David Forshay, master and owner of the schooner Eliza Jane, against F. Du Fais, for freight and demurrage.]

FORSHAY v. DU FAIS.

Benedict, Scoville & Benedict, for libelant.

Bowdoin, Barlow & Larocque, for respondent.

Before INGERSOLL, District Judge.

This was a suit brought by the master and owner of the schooner Eliza Jane, to recover the freight upon a cargo of grain brought from Norfolk to this port, and consigned to the defendant, and demurrage for delay in unloading the vessel. The freight had been paid into court by the defendant, leaving the question of the demurrage the only one before the court. Evidence was given by the libelant that the vessel arrived here on Sunday, the 12th of August last, and notice was given on Monday morning to the defendant; that the vessel lay at the wharf until Thursday, when she was ordered to another wharf, and was not finally unloaded until the Monday following; and that the vessel could have been discharged in one day. A witness was then examined for the defendant, who testified that there was a usage in the trade for vessels arriving from the South with grain to report themselves to the consignee—then to allow two or three days for the cargo to be sold, and, when directed, to go to another wharf, at the expense of the vessel, and unload there.

Judge INGERSOLL. said that even if such a usage were proved, it would not alter this case, as the testimony was that this cargo had been sold before the arrival of the vessel; and that after a vessel had arrived in a proper place, and was ready to discharge, and notice was given of such readiness, and no objection made by the consignee, it would not follow, from such a usage, that where a consignee did then delay the vessel, he was not bound to pay a demurrage. A decree was accordingly rendered that the libelant recover demurrage for six days' detention, with a reference to a commissioner to ascertain and compute the amount.