

MITCHELL v. KELSEY.

[N. Y. Daily Times. August 2, 1862.]

District Court, S. D. New York.

PRACTICE IN ADMIRALTY—STALE
CLAIM—INTEREST.

[In a suit upon stale claims not resting upon express contract, a court of admiralty in rendering a decree for libelant may refuse interest.]

[This was a libel by Andrew C. Mitchell against Charles Kelsey and others, owners of the bark Philena. The case was referred to the commissioner. Exceptions were taken to the commissioner's report. These exceptions were overruled. Case No. 9,663. It is now heard upon libelant's motion to confirm the report as a whole.]

Beebe, Dean & Donohue, for the motion.

Benedict, Burr & Benedict, for defendant.

BETTS, District Judge. This was an action brought by the master of a vessel to recover for his services on the vessel as master, miscellaneous supplies furnished by him for necessities, and an indefinite claim of commissions thereon. The suit was not commenced until a lapse of some years, and it did not appear that any of the charges, except for the wages, rested on any particular contract. The interlocutory decree was made directing a reference to a commissioner to ascertain the amount due. Upon the coming in of the report, the defendant excepted to various items, and among them to \$1,683 allowed as interest. Upon the hearing of the exceptions the court disallowed this latter sum, and the libelants now moved for a modification of the order, and that they be allowed to recover the whole amount reported.

Held, that under the circumstances of this case the court would not allow the interest, and the motion to confirm the report as to that item must be denied.

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