which the barge was towed was reasonably proper at the time. This is evidenced from the fact that other vessels, immediately before and after the accident, passed up and down by the sunken barge in safety, and that soundings immediately thereafter showed sufficient depth of water. Without entering into a consideration of the seaworthiness of the barge, which might or might not have contributed to the disaster, it is clear to the court that there was no act of negligence, within the rules of law, by means of which the respondent can be held liable.

THE NORMAN.*

(*District Court, E. D. Pennsylvania.* June 15, 1883.)

DEMURRAGE—CHARTER—VIS MAJOR.

Where the charter contained no express stipulation for demurrage, but provided that the cargo should be discharged in 2 days of 24 hours each, (Sundays and holidays excepted,) by cranes and winches and necessary power to be provided by the vessel, and, by agreement, horse and whip were substituted, by which 4 days were required to discharge, and the vessel having been detained 11 days, a libel was brought for 9 days' demurrage.

Held, under the circumstances, that respondent should be allowed four days for discharging, and one Sunday and also one day for delay, occasioned by ice in the harbor, and that the libelant should recover damages for five days' delay.

Hearing on Libel, Answer, and Depositions.

This was a libel for 9 days' demurrage, at $89.60 per day. The charter contained no express stipulation for demurrage, but provided that the vessel should be discharged of her cargo of iron in 2 days of 24 hours each, (Sundays and holidays excepted,) by cranes and winches and necessary power to be furnished by the vessel.

By agreement the vessel was discharged into lighters by horse and whip, and it appeared that 4 days of 10 hours each were required to discharge in this manner, and that the vessel had been detained in all 11 days.

The respondent claimed that the condition of the weather was such that the vessel could not have been sooner discharged by the means furnished, and claimed that, in the absence of an express stipulation in the charter, the measure of damages, if any, should be the actual loss sustained by libelant; that no actual loss had

*Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

been sustained by libelant, because the vessel, if unloaded during the time claimed for, could not have gone out on account of the ice in the harbor; but that, in any case, the amount should not exceed $12 per day, the rate of hire provided by the charter.

Alfred Driver and *J. Warren Coulston*, for libelant, cited:

The M. S. Bacon, 3 FED. REP. 344; *The Rebecca*, 4 FED. REP. 337, 342; S. C. 8 Weekly Notes Cas. 328.

R. C. McMurtrie, for respondent.

BUTLER, J. It is quite clear the libelant was unnecessarily detained, in unloading. Her failure to furnish cranes and winches, discharged the respondent from his undertaking (virtually) to unload in two days. He was entitled to as much time as was reasonably necessary under the circumstances. The ice was an obstruction calculated to impede the work and increase the time required for its performance, but it was not a justification for all the time occupied. Without discussing the testimony it is sufficient to say I am satisfied that an allowance of four days for the work (in the absence of cranes and winches) and an additional day for the hindrance in getting to and from the vessel, resulting from ice, is a reasonable estimate of the time required to discharge the cargo. This leaves the respondent liable to account in damages for the balance of time, five days, occupied,—one Sunday intervening. The extent of the damages must be ascertained by a commissioner.

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* ATTORNEY GENERAL MCCARTNEY *v.* ILLINOIS CENT. R. Co. and others.

(Circuit Court, N. D. Illinois. 1883.)

1. REMOVAL OF CAUSE — CASE ARISING UNDER CONSTITUTION AND LAWS OF UNITED STATES—SEPARABLE CONTROVERSY.

The attorney general of the state of Illinois filed an information in chancery in the state court, in behalf of the people of that state, against the Illinois Central Railway Company, the city of Chicago, and the United States, averring that the state of Illinois was admitted into the Union as one of the states carved out of the north-west territory, ceded to the United States by the state of Virginia, and that by virtue of the act of cession and the performance of its conditions the state of Illinois acquired as well the jurisdiction over, as the soil of, the bed of Lake Michigan within its boundaries, and the right, title, and authority into and over the same absolutely and completely, subject only to the right of the United States to regulate commerce on said lake; that in 1869 an act was passed by the state legislature granting part of the land submerged by Lake Michigan to the Illinois Central Railroad Company; that in 1873 this act was repealed; and praying that the title of the state to this land be established. The answer of the railroad company claimed that the act of 1873 was in violation of section 10, art. 1, of the federal constitution, and of its fourteenth amendment; and the answer of the city admitted the title of the state to the land. *Held*, that the case was one arising under the constitution and laws of the United States, and was removable from the state court, under the act of 1875, notwithstanding some of the questions might be determined without reference to the federal constitution or laws of congress, and that the federal questions upon which the decision of the cause mainly depended, were raised by the defendant company and not by the state, which instituted the suit. *Held, also*, that whether the city is a proper party or not, there is in the suit a separable controversy between the state and the railroad company, which could be fully determined between them without the presence of the city as a party. *Held, further*, that if the city was a proper party, she was in interest on the side of the state in its controversy with the railroad company, and her failure to join in the petition for removal was, therefore, immaterial.

2. SAME—AUTHORITY TO ENTER APPEARANCE OF UNITED STATES.

Whether any officer of the United States has authority to enter the appearance of the government as a defendant in such a case, *quære*.

In Equity.

This information in chancery was filed March 1, 1883, in the circuit court of Cook county, by the attorney general of the state, in behalf of the people of Illinois, against the Illinois Central Railroad Company, the city of Chicago, and the United States of America. On the tenth day of April, 1883, the railroad company, having previously answered, filed in the state court its petition, accompanied by the required bond, for the removal of the cause into this court. The present hearing is upon a motion in behalf of the state to remand the