steamer. If the charter were the respondents' voluntary act, it was not unlawful as respects the libelants, nor any breach of the implied terms of the bill of lading. The respondents were not bound, under the alternative provisions of this bill of lading, to keep all their vessels in use on this line. These various alternative provisions seem to me clearly to indicate that they were to have the right to substitute other steamers, whatever might be the cause that should prevent any of their vessels from sailing on the sailing days, even though that cause were a diversion to other employments upon some special occasion on which the respondents' interest might make it expedient to employ their ships.

Again, the evidence shows that the customary mode of business in regard to the transhipment of goods on through bills of lading in London at this time was to require diligence in the dispatch of goods; and if there was likelihood, through any irregularities in the sailing of the steamers, of a detention above a week in the usual time of sailing, to forward the goods by some other line. The testimony on the part of the respondents shows that this usage was regarded as obligatory. In construing bills of lading, as in construing other commercial instruments, it is the right and duty of the court to look not only to the language employed, but to the subject-matter, and to the surrounding circumstances, in order to determine the proper effect of the language used, by putting itself, so far as possible, in the place of the contracting parties. It has regard, therefore, to all the prevailing usages and customs of business. *Mobile & M. Ry. Co.* v. *Jurey*, 111 U. S. 584, 592; S. C. 4 Sup. Ct. Rep. 566; *Nash* v. *Towne*, 5 Wall. 689, 699; *Robinson* v. *U. S.* 13 Wall, 363; *Hostetter* v. *Gray*, 11 FED. REP. 179. The forwarding of goods, also, with reasonable dispatch is at the present day a recognized obligation of common carriers. The various provisions of the bill of lading seem everywhere to imply a recognition of this obligation, and to be drawn with reference to it. In the light of this obligation, and of the proved usages of business, the provisions of this bill of lading are consistent; and, as it seems to me, they required the respondents to do precisely what they did do, in this case, namely, to ship the goods by some other steamer of at least equal rating, on or about the time when the next following steamer of their own line, after the arrival of these goods in London, would have sailed, had she not been prevented from pursuing her ordinary voyage through her charter to the British government. Under the provisions of the bill of lading alone, and more emphatically in connection with the usage proved, the respondents would have been guilty of a dereliction of duty, and would have been, as I think, responsible for any damages that might have happened to these goods, had they been detained in London until the sailing of the Canada some two weeks after they were forwarded by the City of London. *Broadwell* v. *Butler*, 6 McLean, 296; 1 Newb. 171; *Dorris* v. *Copelin*, 5 Amer. Law Reg. (N. S.) 492.

It is, doubtless, essential to the interests of the shipper that the carrier's contract shall be strictly construed in regard to the transhipment of goods, according to the provisions of the bill of lading. The shipper has a right to rely upon these provisions, in effecting insurance upon his goods; and any change of vessel contrary to the provisions of the bill of lading will, ordinarily, invalidate policies of insurance effected under it. But these considerations are not applicable to bills of lading in which the substitution of other vessels is clearly provided for, and still less in circumstances where the known usages of trade also demand a transfer to some other vessel, for the purpose of expediting the delivery of the goods. In such cases, the shipper has full notice of the liability to a change of vessel; he contracts in reference to it, and he must therefore protect his insurable interests accordingly. *Red Wing Mills* v. *Mercantile Ins. Co.* 19 FED. REP. 115; *Crosswell* v. *Mercantile Mut. Ins. Co.* 19 FED. REP. 24.

The libel should therefore be dismissed, with costs.

SNYDER *v.* A FLOATING DRY-DOCK, etc.

(*District Court, D. New Jersey.* December 19, 1884.)

ADMIRALTY JURISDICTION—ACTION TO RECOVER POSSESSION OF DRY-DOCK.

A suit to recover the possession and delivery of a floating dry-dock with a floating pump, which is not a vessel, or constructed or used in navigation or commerce, cannot be maintained in admiralty.

In Admiralty. Libel *in rem.*

J. A. Hyland, for libelant.

Anson B. Stewart, for respondent.

NIXON, J. This suit is *in rem*, and is in the nature of a possessory action to recover the possession and delivery to the libelant of a floating dry-dock and floating pump, alleged in the libel to be her property. Her right of ownership is not denied in the answer, but the respondent, Thomas W. Mabb, claims that he has a lien upon the structure for wharfage, and has the right to retain the possession until his demand is paid. The answer also raises the question of jurisdiction, and denies the right of the libelant to maintain such a suit in the admiralty. It must be conceded that the thing libeled is not a vessel constructed or used for the business of navigation or commerce. It is called a dry-dock, and is a structure capable of being elevated or depressed in the water by pumping out or pumping in water, and is used by being sunk under vessels, and then pumped out whereby the inclosed vessel is raised to a position where it can be inspected and repaired, thus saving the necessity of running the vessel on land by a marine railway, as is usually done for such purposes.