

ready to discharge cargo. "Their duration is fixed by the use of quick dispatch." This is the written contract. In *Thacher v. Gas-Light Co.*, 2 Low. 361, the words of the charter-party were, "and quick dispatch discharging." Following Mr. Justice CLIFFORD in the case of *Davis v. Wallace*, 3 Cliff. 123, the court held that an agreement for quick dispatch overrides any customary mode of discharging vessels by which they take their turn at the wharf. This case also held that when a charter-party named a wharf for discharge it was a warranty that there would be a berth there. *Bjorkquist v. Certain Steel Rail Crop Ends*, 3 Fed. Rep. 717, is a case very much like that under discussion. It is a case in this circuit, and it decides that under a charter providing for quick dispatch in discharging the charterer was liable for demurrage when the vessel, from the crowded condition of the port, was delayed in procuring a berth. These cases commend themselves to the judgment of the court. If the delay had been occasioned by circumstances beyond the control of respondents, these would have been taken into the account. They would not have been held to the precise moment of the report. But the schooner was kept out of her berth two days and more, because it was in use by respondents, presumably for their advantage. I am of the opinion that the custom of the port, assuming that this be properly found, does not enter into this contract. Omit the part of a day, and prepare a decree giving libellant two days' demurrage, with costs.

THE ROBERT AND MINNIE.

UNITED STATES *v.* THE ROBERT AND MINNIE.

(District Court, S. D. California. July 6, 1891.)

NEUTRALITY LAWS—VIOLATION—FORFEITURE.

Rev. St. U. S. § 5283, provides for the forfeiture of every vessel which, within the limits of the United States, is fitted out and armed, or attempted to be so, to be employed in the service of any foreign prince, state, or people to commit hostilities against the subjects, citizens, or property of a prince, state, or people with which the United States are at peace. *Held*, that under this section no forfeiture can be claimed of a vessel which is only employed to transport arms and munitions of war to a vessel fitting out to pursue the forbidden warlike enterprises.

In Admiralty.

George J. Davis, Stephen M. White, and Page & Eells, for claimants.
Willoughby Cole, U. S. Atty., and *Alexander Campbell*, Sp. Asst. U. S. Atty.

Ross, J. The question in this case may be disposed of in a few words. The proceeding is under section 5283 of the Revised Statutes, for the condemnation of the schooner Robert and Minnie, her tackle, apparel, and furniture. The section referred to provides for the forfeiture of every vessel, her tackle, apparel, and furniture, that, within the lim-

its of the United States, is fitted out and armed, or attempted to be fitted out and armed, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace. It is plain that, in order to entitle the government to a decree of forfeiture as against the schooner Robert and Minnie, *she* must have been fitted out and armed, or attempted to be fitted out and armed, with the intent stated, to cruise or commit hostilities against the subjects, citizens, or property of a foreign prince or state, or of a colony, district, or people, with whom the United States are at peace. The specific acts charged against the schooner in question in the libel of information are that, on the 21st of April last, within the limits of the United States, to-wit, at the port of San Francisco, one George A. Burt, and other persons to the district attorney unknown, placed and caused to be placed upon said schooner large quantities of arms and munitions of war, viz., 10,000 rifles, 10,000 bayonets, 10,000 muskets, and 500,000 rounds of ammunition therefor, and transported the same on said schooner to an anchorage within this judicial district, near the island of San Clemente, and there, on the 9th day of May, delivered said arms and munitions of war to and on board of a certain steam-ship called the "Itata," which was then and there a war-ship in the possession and under the control of certain citizens of the republic of Chili, known as the "Congressional Party," and who were then and there, in said republic, organized and banded together in great numbers in armed rebellion and attempted revolution, and carrying on war against the republic of Chili, and the government thereof, with which the United States then were and now are at peace; said arms and munitions of war to be used by said insurgents, and by said ship, Itata, in carrying on war against the citizens and property of the republic of Chili. While these facts might afford good ground for the seizure and forfeiture of the Itata, they constitute no ground for the seizure or forfeiture of the schooner Robert and Minnie. *U. S. v. Carondelet*, 37 Fed. Rep. 799. No fact is alleged tending to show any intent on the part of the schooner to cruise or commit hostilities against the republic of Chili, or the government thereof, nor, indeed, tending to show that the schooner itself ever was fitted out or armed, or attempted to be fitted out or armed, within the meaning of the statute in question. On the contrary, the specific acts alleged show that the schooner was used only for the purpose of transporting the arms and munitions of war to the war-ship Itata; in other words, to fit out and arm the Itata to cruise and commit the prohibited hostilities. While such acts, as already said, might constitute good ground for the seizure and forfeiture of the Itata, they wholly fail to bring the schooner within the provisions of section 5283 of the Revised Statutes; and that is the only question involved in the present case. Exceptions sustained. The government not desiring to amend, the libel is dismissed.

THE BELLEVUE.

DIXON v. THE BELLEVUE.

(District Court, E. D. South Carolina. July, 1891.)

SHIPPING—LIABILITY OF VESSEL FOR SUPPLIES—EVIDENCE.

In a libel against a vessel for supplies and advances made in a foreign port, evidence that the supplies were given and the money advanced in good faith, on the order of the master, is sufficient *prima facie* proof that such supplies and advances were necessary. Following *The Grapeshot*, 9 Wall. 141.

In Admiralty. Libel *in rem* for supplies and advances.

Trenholm & Rhett, for libellant.

G. W. McCormack and *C. W. Dingle*, for respondent.

SIMONTON, J. The Bellevue belongs to the port of Charleston. She traded between Savannah and Beaufort, S. C., carrying passengers and freight. Libellant is a merchant of Savannah, and at the request of the master furnished the steamer with coal, and on two occasions with cash advances. The account filed with the libel shows on the debit side the items for coal and the two of cash advanced. On the credit side are seven items cash. The balance due on the account is \$276.30. Of the two items cash advanced, the first was paid by a draft on the agent of the steamer at Beaufort, drawn by the master. The last has not been paid. There is nothing in the testimony showing how the cash credits were paid, whether in money, by the master, or by draft, except in one instance; that is, the credit of \$105. On this point it appears that the master applied to the libellant asking that he cash a draft of \$105 on his agent at Beaufort. Out of this he proposed to pay libellant \$50 on account, and to use the \$55 in paying bills of the steamer. This draft, as we see, was paid. Claimant disputes the other item of cash advanced, \$77.15, of date 21st April, 1891. For this the master had drawn on the same agent in favor of libellant, and the draft was dishonored. The position taken by the claimant is this: In order to charge the vessel with supplies furnished or cash advanced to the master in a foreign port, the *onus* is on the creditor of showing that the supplies or advances were necessary. In the present case, all the libellant has shown is that the master stated "that the boat owed several little bills that he wanted to pay." The law on this point is stated by CHASE, C. J., in *The Grapeshot*, 9 Wall. 141, confirmed in *The Lulu*, 10 Wall. 199, and cases cited in note. These are thus laid down: (1) Liens for repairs and supplies, whether implied or express, can be enforced in admiralty only upon proof made by the creditor that the repairs or supplies were necessary, or believed, upon due inquiry and credible representation, to be necessary. (2) Where proof is made of necessity for the repairs or supplies, or for funds raised to pay for them by the master, and of credit given to the ship, a presumption will arise, conclusive in the absence of evidence to the contrary, of necessity for credit. (3) Necessity for repairs and supplies is