

vessel, and continued for some time after her arrival; and also that some time was lost by reason of storms that prevailed during the laying days of the vessel.

The question presented in this case, and the only real issue raised in it, was considered and passed on in the case of *Paterson v. Dakin*, 31 Fed. Rep. 682. The facts of the two cases are about identical. I have seen no reason to change the views expressed in *Paterson v. Dakin*, and I cite the opinion in that case to sustain the conclusion reached by me in this one,—that under the exceptions in the charter-party, and on the other proof in the case, the defendant is not liable for the demurrage claimed. The proctors for libelants have referred to the case of *Grant v. Coverdale*, L. R. 9 App. Cas. 470, as holding a different view from that expressed in *Paterson v. Dakin*. I have carefully examined the case of *Grant v. Coverdale*, and I think that it is clearly distinguishable from the case at bar. In the one case the charter-party provides that "time to commence from the vessel being ready to load and unload, and ten days on demurrage over and above the said lay-days at £40 a day, (except in case of hands striking work or frosts or floods or any other unavoidable accidents preventing the loading, in which case owner to have the option of employing the steamer in some short voyage trade,)" etc. There the exception is limited to accidents preventing the "loading,"—the actual putting on board of the cargo,—the very act of loading. As said by a member of the court: "The exception applies only where the accident prevents the loading, and not where it prevents or retards the transit or conveyance of the cargo to the place of loading." There the shipper took on himself all the risks consequent upon delay in transit. In the other case (the one now before the court) the charter-party provides that 27 working days are to be allowed in which to deliver cargo at the port of loading, which is understood to mean "actual delivery of cargo along-side;" and that in the computation of the days allowed for delivering the cargo shall be excluded any time lost by reason of drought, floods, storms, or any extraordinary occurrence beyond the control of the charterers. The exception here applies where the accident or extraordinary occurrence prevents the delivering the cargo,—where such occurrence prevents or retards the transit or conveyance of the cargo to the place of loading. It is apparent that this exception was put in the contract for the benefit and protection of the charterer, and that he took on himself no risks consequent upon delay in transit or conveyance caused by drought, floods, storms, or any extraordinary occurrence beyond his control. In *Hudson v. Ede*, 8 Best & S. 631, "the charterer was bound to load in 30 days, detention by ice excepted; and detention in the river Danube many miles above the port excused him, though the port itself was free; it being usual to rely on the river for transportation." In that case the court say that the exception in a charter-party, whereby a certain number of lay-days is allowed to the charterer, but detention by ice is not to be reckoned as such, applies where the ice not only renders access to the ship impracticable in the port itself, but blocks up a river by means of which alone the in-

tended cargo can be conveyed to the port. *Hudson v. Ede, supra*, affirmed in L. R. 3 Q. B. 412; *Eleven Hundred Tons of Coal*, 12 Fed. Rep. 185. As I am of opinion that the issue must be found for the defendant, there will be an order entered dismissing the libel at libelants' cost.

THE MASCOTTE.¹

CARTER *et al.* v. THE MASCOTTE, (two cases.)

(District Court, S. D. New York. October 31, 1891.)

1. CARRIERS—DAMAGE TO CARGO—UNEXPLAINED DAMAGE.

Under the ordinary bill of lading, the burden being on the carrier to show that damage to cargo arises from an excepted peril, the carrier is liable when he has received cargo in good condition, and delivered it damaged, and is unable to explain how the damage occurred.

2. SAME—PLACE OF DELIVERY—TEA CARGOES—CUSTOM.

Tea cargoes consigned to the "port of New York" are, by custom, discharged on the New York side of the East river. It has also been customary, when there is difficulty in procuring a berth in New York, for the ship to give notice thereof to the consignees of the tea, that they may have opportunity of finding the ship a berth in New York. The ship *Mascotte*, with tea and other cargo, arrived in the port of New York and was entered at the custom-house at 10 o'clock Monday, and could have begun to discharge 48 hours after. At half past 1 on Wednesday, no berth having been found for her in New York by her agents, she was sent to Brooklyn; two consignees of other parts of the cargo of same tea assenting thereto. Shortly afterwards her agents were notified of a berth in New York. No notice of her inability to find a berth in New York was given to the principal consignees of the tea. *Held*, that the ship should bear the extra expense to the consignees of tea caused by transporting the cargo from Brooklyn to New York. The Port Adelaide, 38 Fed. Rep. 753.

In Admiralty. Suit to recover for damage to cargo and extra expense caused by ship's docking in Brooklyn.

Owen, Gray & Sturges, for libelants.

Convers & Kirlin, for claimants.

BROWN, J. 1. As respects the claim for damage to tea caused by oil, the bill of lading, as well as the master's testimony, shows that the chests were received on board in good condition. Some of the chests on delivery were, beyond doubt, oil-stained and defaced. All that the claimants can do to exonerate the ship has doubtless been done; but, after all, the evidence shows nothing more than that they cannot explain how the stains and defacing occurred. It negatives certain causes that might, under some circumstances, have produced the damage; but this is not, I think, sufficient to release the ship from her legal obligation. The ship has possession and control of the goods from the time they are delivered into her custody. If the goods are received in good condition, as this bill of lading shows they were, she warrants their delivery in like

¹Reported by Edward G. Benedict, Esq., of the New York bar.