

SKANTZE *et al.* v. KEYSER.

(Circuit Court of Appeals, Fifth Circuit. June 20, 1892.)

No. 37.

Appeal from the United States District Court for the Southern Division of the Southern District of Mississippi.

In Admiralty. Libel by Carl Alfred Skantze and others, owners of the Norwegian bark Arab Steed, against W. S. Keyser, for demurrage. Libel dismissed. Libelants appeal. Reversed.

J. D. Rouse and Wm. Grant, for appellants.

E. H. McCaleb and John C. Avery, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge. On the 25th day of October, 1889, the Norwegian bark Arab Steed, then lying at Buenos Ayres, was chartered by W. S. Keyser, of Pensacola, to take a cargo of sawn pitch pine timber or boards or plank to any port in the United Kingdom of Great Britain. The charter contained the usual general clauses, and, in addition, the following special stipulations, which are the subject of dispute in this case: "Seventeen working days are to be allowed the said merchants in which to deliver the cargo at port of loading, which is understood to mean 'actual delivery of cargo alongside,' and not to complete loading. 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. Demurrage to be paid for each working day beyond the days allowed for loading at £9 per day, and the charterers may keep the ship on demurrage ten days." The libel avers that the vessel arrived at Ship island January 6, 1890, and was ready to receive cargo on the 10th, and that the lay days expired February 1st, which is admitted by the answer. It is also averred in the libel and admitted by the answer that delivery of cargo did not commence until March 3, 1890, and was not completed until the 27th. As excuse for this delay, defendant alleges "that it is expressly stipulated and agreed in the charter that in the computation of the days allowed for delivering cargo shall be excluded any time lost by reason of drought, storms, floods, or any extraordinary occurrence beyond the control of the charterers. And respondent alleges that, at the time said vessel reported for cargo under the terms of said charter party, there was an unusual drought, general and extensive, prevailing throughout the whole section of the country from which timber is obtained for the loading of ships at Ship island, Moss point, and other points in that vicinity, which drought continued a long while, and prevented this respondent from obtaining cargo for the loading of said vessel, notwithstanding he had made arrangements for procuring cargo for her, and would have procured same for her in ample time to have delivered it to her within the period of seventeen working days, but for said drought. And this defendant further alleges that, on various days during the time the said vessel remained at Ship island in readiness for cargo, storms prevailed, which rendered it impossible for timber to be delivered to her except at great risk and hazard. And * * * that, excluding the time lost by reason of said drought and storms, he delivered the cargo to said vessel within the period required by the terms of said charter."

It will be seen that the case is very similar to that of *Sorensen v. Keyser*, 52 Fed. Rep. 163, (just decided.) The differences are that a lesser number of

working days were allowed within which to load the vessel, a lesser rate of demurrage, and that the cargo to be furnished was sawn pitch pine timber, in which last respect the case is still stronger than that of *Sorensen v. Keyser*, as it is clear that the charterers had not only to procure the timber, and have the same floated to the place for storage, but the timber was additionally to be passed through the mills prior to shipment. From the demurrage days claimed, and ordinarily expiring on February 1st, we deduct January 10th, 11th, 13th, and 14th as stormy days, leaving 36 days for which demurrage is due, at £9 per day.

For the reasons given in *Sorensen v. Keyser*, it is ordered that the decree of the district court appealed from be and the same is hereby reversed; that this cause be remanded to the district court, with instructions to enter a decree in favor of libelants for the sum of \$1,576.58, and costs, together with the costs of this appeal.

WOLD *et al.* v. KEYSER.

(Circuit Court of Appeals, Fifth Circuit. June 20, 1892.)

No. 88.

Appeal from the United States District Court for the Southern Division of the Southern District of Mississippi.

In Admiralty. Libel by Hermann Wold and others, owners of the bark Foldin, against W. S. Keyser, for demurrage. Libel dismissed. Libelants appeal. Reversed.

J. D. Rouse and *Wm. Grant*, for appellants.

E. H. McCaleb and *J. C. Avery*, for appellee.

Before PARDEE and MCCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge. On the 14th of November, 1889, the Norwegian bark Foldin, then lying at Stettin, was chartered to W. S. Keyser to take a cargo of hewn or sawn pitch pine timber from Ship island to the port of Liverpool. The charter contained the usual general clauses, together with the following special clause, which is the subject of dispute in this case, viz.: "Twenty-two running days, Sundays and holidays excepted, are to be allowed * * * in which to load the ship at port of loading. * * * In the computation of the days allowed for delivering the cargo shall be excluded any time lost by reason of floods, droughts, storms, or any extraordinary occurrence beyond the control of the charterers. Demurrage to be paid for each working day beyond the days allowed for loading at £12 per day, and the charterers may keep the ship on demurrage ten days." The libel alleges, and the answer admits, that the vessel arrived and was ready to receive cargo on the 21st day of January, 1890, and that the lay days in due course expired February 15, 1890, at which date no cargo had been furnished. Delivery of cargo did not begin until February 20th, and the loading was not completed until March 27, 1890. As an excuse for this delay the defendant alleges in his answer "that, at the time the said bark reported for cargo under the terms of said charter, there was an unusual, general, and extensive drought prevailing throughout the whole section of country from which timber is obtained for the loading of ships at Ship island, Moss point, and other points in