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. 33.

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

the vicinity, which drought continued for a long time, and prevented this respondent from obtaining cargo for the loading of said vessel, notwithstanding he had made arrangements for procuring same in ample time to have loaded her within the period of twenty-two running days, but for said drought and storms."

This case also is similar to that of *Sorensen* v. *Keyser*, 52 Fed. Rep. 163, (just decided.) The differences are that the lay days for loading cargo are described as "running days, Sundays and legal holidays excepted," instead of working days, a lesser rate of demurrage, and that the cargo to be furnished was to be hewn or sawn pitch pine timber. From the demurrage days claimed, and ordinarily expiring on February 1st, we deduct February 8th, as a stormy day, leaving 35 days for which demurrage is due at £12 per day.

For the reason given in *Sorensen* v. *Keyser*, it is ordered that the decree of the district court appealed from be and the same is hereby reversed; and that this cause be remanded to the district court, with instructions to enter a decree in favor of libelants in the sum of $2,043.72, and costs, together with the costs of this appeal.

MARK *et al.* v. HOME INS. CO. OF NEW YORK. SAME v. ORIENT INS. CO. OF HARTFORD, CONN. SAME v. BRITISH-AMERICA INS. CO. OF TORONTO, CANADA.

(*District Court, S. D. New York.* July 28, 1892.)

MARINE INSURANCE—FIRE—RIDER—CONSTRUCTION—EXCEPTION OF PARTICULAR TRIP.

An insurance policy insured a vessel against fire on "all inland waters as far south as Norfolk, Va." Afterwards a rider was attached to the policy, giving permission to the tug to go as far south as Charleston, "but not to cover on trips either way between Norfolk and Charleston." On her way from Norfolk to Charleston, and while north of Norfolk, the tug caught fire and was burned. *Held* that, being at the time on a trip between Norfolk and Charleston, the wording of the rider prevented any recovery on the policy, even if the loss occurred on "inland waters."

In Admiralty. Libel on policies of marine insurance. Libel dismissed.

Benedict & Benedict, for libelant.

Carpenter & Mosher, for respondents.

BROWN, District Judge. In or about January, 1890, the respondents issued policies of marine insurance by which they insured the libelant for one year against loss by fire, etc., on the tug D. L. Flanagan, in the "bays and harbor of New York, East and North or Hudson rivers, waters of New Jersey, Long Island sound and shores, and as far as New Bedford, *and all inland waters as far south as Norfolk, Virginia*, and all waters adjacent, connecting, or tributary to any of the above waters." The description of the waters and places privileged to be used was in print, except the above clause in italics, which was in writing.

On June 12, 1890, a rider was attached to the policy as follows:

"Permission is hereby given the tug D. L. Flanagan to use port and harbor of Charleston, and to go as far as the jetties at Charleston, but not to cover on trips either way between Norfolk and Charleston."