

suit in equity in the circuit court for this district, between different parties, brought for an alleged infringement of the McDonald patent. In the extract read to the jury Judge Colt gave his views upon the questions of law and fact involved in the case before him, and found expressly, as a matter of fact, that the gist of the McDonald invention, as described in claims 1 and 2, was the separation and adjustment of the rolls held together by spring pressure by means of a treadle and levers. The first and second claims were for combinations of feed rolls, supporting roll, and other mechanism, and the mechanical effect of these combinations, as well as the relations of the various elements to each other, and whether there was a substantial identity between them and the prior patents introduced in evidence, or with the machine used by the defendants, involved questions of fact to be considered and passed upon by the jury. Upon these issues the finding of another tribunal in a case between other parties was not competent evidence, and should not have been called to the attention of the jury. The presiding judge was careful to state that the jury were not to be controlled in their judgment by the opinion of Judge Colt, but were to consider his language as a statement of law only, and were to find the facts for themselves; but, in spite of these cautionary words, we think the jury were more than likely to give to the views of Judge Colt upon the issues before them a decisive effect in making up their verdict.

Other exceptions were taken by the defendants to the rulings of the court below, but as they do not present questions of importance, and may not arise on the second trial, we have not thought it necessary to consider them.

Judgment reversed, and case remanded to the circuit court, with directions to set aside the verdict and to order a new trial.

SEAGAR v. NEW YORK & C. MAIL STEAMSHIP CO.¹

(District Court, S. D. New York. June 21, 1892.)

1. SHIPPING—DELIVERY OF CARGO—CUSTOMARY FACILITIES—WHARF FACILITIES.
The contract in a charter party to discharge with "customary dispatch" is fulfilled if the vessel is afforded the customary facilities for speedy discharge; and hence, when charterers furnish ample dock room for a vessel, but the latter, either through misapprehension on the part of her stevedore, or acting under direction of the consignees of the cargo, given without the knowledge of the charterers, so discharge her cargo as to block the dock, and thus occasion delay, the charterers are not liable for demurrage.
2. SAME — "DELIVERY WITHIN REACH OF SHIP'S TACKLES" — VESSEL'S DUTY AFTER DELIVERY ON WHARF.
The clause in a charter that goods are to be delivered "alongside and within reach of the ship's tackles" does not necessarily require the consignee to receive the goods directly from the tackles, and determines nothing as to what may be required of the ship after the goods have been dropped from the tackles. The deposit of certain goods in tiers on the wharf has long been the ordinary practice; hence, where a vessel, after

¹For opinion on appeal, see 55 Fed. Rep. 880.

discharging bales of hemp, voluntarily piled them in tiers, and there was no evidence that such piling was excessive or unreasonable, or beyond the ordinary practice, *hekl*, that there was no implied contract on the part of the charterer to reimburse the ship for such labor.

In Admiralty. Libel for demurrage and for extra compensation for handling freight. Dismissed.

Convers & Kirlin, for libelant.

Carter & Ledyard, for respondents.

BROWN, District Judge. The contract in the charter party to discharge with "customary dispatch" is fulfilled if the vessel is afforded the customary facilities for speedy discharge. Steamship Co. v. Dempsey, [1892] 1 Q. B. 854. In the present case there were but two consignees of the hemp cargo, though the three bills of lading specified numerous lots of different marks and numbers. All the hemp, however, was directed by orders from the receivers to the same storehouse. The evidence shows that the customary mode of handling cargoes of hemp is that the bales are not removed until all have been discharged; to place together the bales that are for the same consignee; to separate the lots going to different consignees; and to pile such as are deliverable to the same consignee on top of each other, in two or three tiers.

In the present case abundant space was furnished to the ship by the respondents, the charterers, for the discharge of the whole cargo on the dock in the customary manner. The blocking of the dock and consequent delay arose solely from the ship's attempt to keep separate, not merely the bales belonging to the different consignees, but the different lots of the same consignee, according to the different marks. These lots were mostly of so few bales as not to admit of piling; and their separation required also much additional space for the passages between them. Had the bales consigned to the same consignee been placed together and piled in the usual manner, there would have been abundance of room for the complete discharge of the cargo upon the dock without blocking or delay.

It is contended that orders were given by the receivers at the dock to keep separate the different lots. I do not think this claim is fairly established. The separation made by the ship's stevedore seems to have been made through misapprehension and mistake; and, on the Friday before the days for which the demurrage is claimed, this misapprehension was corrected by instructions that only Thebaud's consignment was to be kept separate; and there was abundant room for this.

Even if the transferees of the cargo had given instructions that all these separate lots were to be kept distinct, such instructions were without the knowledge or authority of the charterers, who are the respondents in this action. Such instructions would have been in excess of the rights of the two consignees and receivers of the goods. It was no part of the ship's duty to obey such instructions except upon her own contract for extra compensation and such arrangements as respects facilities for discharge as she might make.

The charterers could not be bound by such instructions given without their knowledge or consent, nor were they required to provide the additional facilities for discharge which such unusual separation of lots might necessitate.

The consignees of the goods were not the agents of the charterers. The latter were bound under the agreement for "customary dispatch" to furnish sufficient space for discharge in the customary manner. If, on the request of the receivers of the goods, the ship undertook a different mode of discharge for their convenience, she must look to them, not to the charterers, for compensation or indemnity.

2. A claim is also made for extra handling in piling some of the bales, on the ground that the charter only required the ship to deliver "alongside and within reach of the ship's tackles," and that such piling was an extra service for the benefit of the charterers, for which the ship is entitled to compensation either upon an implied promise to pay, or as for a substituted expense, which saved the charterer a larger charge for demurrage.

If the obligation of the charterer to receive "within reach of the ship's tackles" were in any way incompatible with "customary dispatch," or with the customary facilities in discharging, and with the duty which, as the evidence shows, the custom would impose upon the ship to do more or less of piling within the allotted space on the dock, then the written provision, which required of the charterer only "customary dispatch," would probably be held to control the printed form, "within reach of the vessel's tackles," because the written parts are the "immediate terms selected by the parties" to express their intention. *Insurance Co. v. Bowring*, 1 U. S. App. 183, 193, 1 C. C. A. 583, 50 Fed. Rep. 613.

But there is no necessary incompatibility between these terms of the charter, and none should be raised by construction. To deliver within reach of the ship's tackles is a very different thing from requiring a merchant to receive the goods directly from the ship's tackles, as in the case of *The Santee*, 7 Blatchf. 186, or at the very point where the tackles may drop them without any further handling by the ship. In the absence of a special contract, something more than this is required of the ship, not merely by immemorial practice, but by the law itself. The legal duty of the ship to keep separate the consignments of goods going to different consignees is incompatible with the latter construction of this clause. On the argument, also, it was admitted that the vessel had other handling to do after dropping the bales from the tackles. The object of the provision for "delivery alongside and within reach of the ship's tackles" is to secure a certain convenience to the ship by not requiring her to carry the goods for deposit beyond a certain easily determinable limit of space, viz. the reach of her tackles, as a measure of distance. This is the practical construction which usage has placed on the phrase. It has nothing to do with the ship's obligation within those limits, and determines nothing as to how much may be required of her after the goods are dropped from her tackles. The deposit of goods in tiers more or less upon the docks and wharves

has been the ordinary practice from time immemorial as respects a great variety of goods. What is or is not a reasonable handling, in this regard, within a space not beyond the reach of the ship's tackles, is a matter properly falling within the scope of the custom and practice of merchants to determine. These customs, as well as those relating to "customary dispatch" at the port of destination, so far as they are lawful and reasonable, are presumably within the intent of both parties to the charter and form a part of their contract. *Smith v. Pine Lumber*, 2 Fed. Rep. 396; *Lindsay v. Cusimano*, 10 Fed. Rep. 302, 12 Fed. Rep. 504. Here the allotted space was "within reach of the ship's tackles." There is no evidence that the piling done or expected was either excessive or unreasonable, or beyond the ordinary practice. It was not incompatible with the provisions of the charter; and having been done voluntarily by the ship, and in accordance with the custom, there is no implied promise or duty of the charterer to reimburse her. Even departures from the charter provisions, when voluntarily adopted, and without objection, may be treated as a waiver of the literal provisions of the formal parts of the charter. *Arreco v. Pope*, 36 Fed. Rep. 606. On the former grounds, however, the libel should be dismissed; but under the circumstances of mistake, as indicated, without costs.

THE GOVERNOR AMES.

PAULSON v. THE GOVERNOR AMES.

(District Court, D. Washington, N. D. March 31, 1891.)

1. SEAMEN—NEGLIGENCE—PERSONAL INJURIES.

The maritime law gives a seaman no right to recover damages for permanent disabilities caused by the negligence of the ship's officers, but he is entitled, on the other hand, irrespective of any negligence on his own part or on the part of fellow seamen, to recover wages to the end of the voyage, and to be cured at the ship's expense, so far as cure is possible. *The City of Alexandria*, 17 Fed. Rep. 396, followed.

2. SAME—DEFECTIVE SHIPPING ARTICLES.

Nor is his right of recovery affected by the fact that the shipping articles signed by him did not conform to the requirement of the laws of the United States. The master cannot be permitted to take advantage of his own neglect in that regard.

In Admiralty. Libel in rem, against the schooner *Governor Ames*, by John Paulson, a seaman, to recover damages for a personal injury suffered while stowing cargo. Decree that libellant recover the amount of wages which he would have earned by completing the voyage for which he had engaged to serve.

W. V. Rinehart, Jr., for libellant.

John M. Gearin, for claimant.

HANFORD, District Judge. From the evidence in this case I find that the libellant was hired at San Francisco to serve as an able seaman, on board the schooner *Governor Ames*, for a voyage from San Francisco to Puget sound, thence to Australia, and return