SEAGER v. NEW YORK & C. MAIL STEAMSHIP CO.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

1 DEMURRAGE — DELIVERY OF CARGO—CUSTOMARY DISPATCH—WHARF FACILITIES.

A charterer who is bound to furnish facilities for discharging "with customary dispatch" is not liable for demurrage when the delay is caused by want of space on the dock, caused solely by the ship's attempting, without orders from the charterer, to keep separate the bales belonging to different consignees. 55 Fed. Rep. 324, affirmed.

2. SHIPPING — DISCHARGING CARGO — EXPENSE OF PILING — USAGE OF PORT—CHARTER PARTY.

The custom of the port of New York, requiring a vessel discharging hemp to pile the bales on the dock for one-half its width and the length of the vessel, is not inconsistent with a clause of a charter party providing that "cargo shall be received and delivered alongside of the vessel * * * within reach of her tackles," and the charterer is not liable to the vessel for the expense of such piling. 55 Fed. Rep. 324, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by John C. Seager against the New York & Cuba Mail Steamship Company for demurrage and for extra compensation for handling freight. The court below dismissed the bill. See 55 Fed. Rep. 324, for the opinion of Judge Brown, in which the facts are fully stated. Libelant appeals. Affirmed.

J. P. Kirlin and E. B. Convers, for appellant.

Geo. H. Balkam, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. 1. Without expressing an opinion as to the precise meaning to be given to the clause in this charter party providing that the vessel "discharge with customary dispatch," we concur with the district judge in his conclusions that whatever delay there was for which demurrage is claimed "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;" that no such instructions were given by the charterers, and that for delay consequent upon such attempt they are not chargeable.

2. As to the claim for expense of piling, we do not think the custom of the port, which was abundantly proved, requiring the vessel to pile the hemp on the dock for one-half its width and the length of the vessel, is inconsistent with the printed clause of the charter party providing that "cargo shall be received and delivered alongside of the vessel * * * within reach of her tackles."

The decree of the district court is therefore affirmed, with costs.

BRIGHAM et al. v. C. C. THOMPSON LUMBER CO.

(Circuit Court, W. D. Wisconsin. May 15, 1893.)

REMOVAL OF CAUSES—LIMITATION—EFFECT OF AMENDED PETITION.

A cause was remanded to a state court because of the failure of the petition for removal to show the requisite jurisdictional facts, after which further proceedings were had in the state court, and more than six months after the expiration of the time in which a removal might originally have been had, an amended petition was filed, and an order for removal made. *Held*, that the amended petition did not relate back to the filing of the original petition so as to bring the application within the limitation, and that an order to remand must be granted. Freeman v. Butler, 39 Fed. Rep. 4, disapproved.

At Law. Action by E. K. Brigham and others against the C. C. Thompson Lumber Company. Heard on plaintiff's motion to remand to state court. Motion granted.

Lamoreux, Gleason, Shea & Wright, (George G. Green, of counsel,) for plaintiffs.

Dockery & Kingston, and McDonald & Barnard, (Hayden & Start, of counsel,) for defendant.

BUNN, District Judge. This is a motion to remand the cause back to the circuit court of Bayfield county, Wis., whence it originated. It was begun in that court on September 24, 1892. The summons and complaint were served, and the time to answer the complaint expired on October 14, 1892. On October 12th, two days before the time to answer expired, the defendant filed a petition and bond, and applied for a removal of the cause to this court. An order for the removal was made by the state court, and a copy of the record was filed in this court on October 17, 1892. On November 1st an answer to the complaint was filed by the defendant in this court, and on November 21st a reply by the plaintiffs. On December 8, 1892, a motion by the plaintiffs was made to remand the cause to the state court, and the same was so remanded, on the ground that the requisite jurisdictional facts were not alleged in the petition to entitle the defendant to a removal. The diverse citizenship of the parties was not set out, nor did it appear anywhere in the record. On April 8, 1893, four months after the case was sent back to the state court, and after further proceedings were had by the parties in that court, and six months after the time for removal had expired, a second or amended petition was filed by the defendant in the state court for a removal of the cause to this court, and an order was made for the removal. The cause comes up now on a second motion to remand to the state court, and the question is whether, under these circumstances, a removal of the cause to this court has been effected.

This court had supposed that the rule was fairly well settled in this circuit that the right of removal depended upon the defendant's filing a proper petition alleging all the necessary jurisdictional facts, accompanied by a proper bond, within the time prescribed