that the subsequent refusal to accept the vessels when tendered, was only because the company then found itself in a straitened financial condition. Its refusal to accept the vessels may have been prudent; but that in no way absolved the company from its liability to make good the actual damages which the libelants have thereby sustained.

Charters of vessels have long been held to be maritime contracts; damages for the breach of such contracts are, therefore, recoverable in this court, as a court of admiralty. Ben. Adm. § 287.

Decrees in each case for the libelants, with costs; with an order of reference to ascertain the damages, if not agreed upon.

THE BATTLER.

(District Court, E. D. Pennsylvania. November 14, 1893.)

No. 115.

1. SHIPPING—LIMITATION OF LIABILITY—INTEREST.
   Owners who surrender a vessel for the purpose of limiting liability cannot be required to add interest on her appraised value from the time the liability was incurred, although they have long delayed the surrender.
2. SAME—GIVING BOND FOR VALUE.
   Where the owners, instead of turning over the vessel herself, or paying her appraised value into court, elect to give a bond therefor, they may be required to provide for interest until such time as the money is paid.

In Admiralty. Petition by the owners of the steam tug Battler for limitation of liability in respect to the loss of the barges Tonawanda and Wallace. A libel against the tug was sustained, June 2, 1893. See The Battler, 55 Fed. Rep. 1006.

J. Rodman Paul and N. Dubois Miller, for owner of the Battler.
Henry Flanders and Edward F. Pugh, for owners of barges sunk.
John F. Lewis, for Western Assurance Co.

BUTLER, District Judge. The compensation earned by towage and salvage services is not "freight." The claim to have interest added to the appraised value of the vessel from time of the sinking of the barges Tonawanda and Wallace to this date, cannot be sustained. No case is found in which such a claim was allowed, or made. In The City of Norwich, 118 U. S. 492, [6 Sup. Ct. Rep. 1150,] and The Benefactor, 103 U. S. 239, there was equal reason for such a claim. The terms of the statute and the rules prescribed in pursuance of it, seem to forbid the demand. Assuming that the owners have not forfeited their rights by delay, as I do at present, (the question not being raised,) they are entitled to a discharge on turning over the vessel, or paying her value into court. It is proper, however, that they should provide for the payment of interest on her value until such time as the money is paid, if they prefer to give bond, instead of paying it at present. I have no doubt of the court's power to require this. It was so decided in Re Harris, by the circuit court of appeals (2d Circuit, 57 Fed. Rep. 243.) The petitioners must therefore either turn over the vessel, pay in her appraised value, or enter into stipulation to pay it with interest, at such time as it may be required.

SMITH & DAVIS MANUF'G CO. v. MELLON.

(Circuit Court of Appeals, Eighth Circuit. October 30, 1893.)

No. 186.

1. APPEAL—OBJECTIONS NOT RAISED BELOW.
The objection that the defense, to a suit for infringement of a patent, of prior public use, was not well pleaded, in that the answer failed to allege that such use was "in this country," as the statute provides, (Rev. St. § 4920, cl. 5,) cannot be raised for the first time on appeal.

2. PATENTS—ABANDONMENT—PRIOR PUBLIC USE.
The advertising and sale by a manufacturer of an invention, to test the market, and to see how it would sell, is a trader's and not an inventor's experiment, and such use will not carve an exception out of the statute making prior public use a defense to a suit for infringement. (Rev. St. § 4920, cl. 5.)

3. SAME.
Where the only difference between an invention of a spring bed consisting of a bank of wire springs fastened together at top and bottom by a series of lateral and crosswise tie rods and hooks, as manufactured and sold by the inventor more than two years prior to his application for letters patent, and that as claimed in his specifications, was in "a more desirable means of locking the tie loops," to which means he did "not desire to be confined," prior public use is a good defense to a suit for infringement. 52 Fed. 149, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

In Equity. Bill by the Smith & Davis Manufacturing Company against Peter H. Mellon for infringement of letters patent. Bill dismissed. 52 Fed. 149. Complainant appeals. Affirmed.

William M. Eccles, for appellant.

George H. Knight, for appellee.

Before BREWER, Circuit Justice, and SANBORN, Circuit Judge.

BREWER, Circuit Justice. This case is before us on an appeal from a decree of the circuit court of the United States for the eastern district of Missouri, dismissing the plaintiff's bill. The suit was one for the infringement of a patent, that patent being No. 269,242, dated December 19, 1882, issued to John G. Smith, and by him assigned to complainant, and was for an improvement in spring beds. The ground on which the circuit court dismissed the bill was that the invention covered by the patent had been in public use and on sale for more than two years prior to the date of the application, and that for this reason the patent was void. 52 Fed. 149. Counsel for the appellant insists that this defense was not properly presented by the pleadings, and, therefore, that all testimony tending to support it should be ignored; further, that the only use disclosed by the testimony was an experimental one, and therefore not such as to avoid the patent; and, finally, that the precise invention for which the patent was obtained was not in use or on sale prior to the application for the patent.

With reference to the first of these propositions but a word is necessary. The statute (Rev. St. § 4920, cl. 5) provides for, among