

pond would be that derived from the juices of the cooked meat, which, as he states in the specification, passes into the sugar, and converts it into a syrup of meat, which is absorbed by the dried fruits. The most satisfactory criterion afforded by the description to determine when the compound is sufficiently free from moisture to answer the terms of the claim is found in the fact that no free liquid is used in preparing it, and the only moisture present is what is produced by the juices of the cooked meats and dried fruits.

It seems very clear that the condensed mince meat made by the defendants is not compounded dry, within the meaning of the claim. It is made by adding to the ingredients described in the patent 140 pounds of boiled cider to each 1,000 or 1,200 pounds of the compound. This is an addition in volume of about 12 or 14 gallons of liquid, and is more than the other ingredients will absorb. When packed, it is a sensibly moist product, which will wet paper, and destroy paper boxes, and for this reason it is wrapped in a waxed paper, to prevent the moisture from injuring the outer package.

The bill is dismissed, with costs.

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THE ETHEL.

HODGKINS v. WELSH et al.

(District Court, E. D. Pennsylvania. January 19, 1894.)

No. 74 of 1893.

SHIPPING—SHORTAGE OF CARGO—EVIDENCE.

In determining whether there is a shortage of cargo consisting of bags of sugar, both the consignee's output count and the intake count as shown by the bill of lading are controlled, when the deficiency alleged is only three bags, by proof that the hatches were sealed after the sugar was in, and opened only by the port wardens on the vessel's arrival, and that there was no opportunity for loss or abstraction.

In Admiralty. Libel by Frank M. Hodgkins, master of the bark Ethel, against S. & J. Welsh, to recover a balance of freight, which respondents assume to withhold because of shortage of cargo. Libel sustained.

Curtis Tilton, for libelant.

Richard C. McMurtoil, for respondents.

BUTLER, District Judge. The only question involved is one of fact. The respondents seek to have the value of three bags of sugar, (a part of the cargo,) \$41.40, deducted from the freight, on the ground that the delivery was short to this extent. The bill of lading acknowledges the receipt of 6,443 bags, and the respondent's output tally shows only 6,440 bags. If there was nothing more the claim would be allowed. While the ship is liable only for the cargo received the bill of lading has the force of a written receipt, and binds her until disproved. To discredit it and the respondent's output tally the libelant invites our attention to a dispute which existed respecting the intake count, and to a discrep-

ancy in the several output counts, and to the manner in which the respondents' output count was made. That there is danger of mistake in counting where so many items or packages are involved, even under the most favorable circumstances, is apparent. Under the circumstances attending the respondent's count the danger is greatly increased. Loading the scales while they were being unloaded, and estimating each load at six bags, might well lead to mistake. Extraordinary care would be required to avoid some commingling of the loads. If the case rested here it would not be free from doubt. The libelant has gone further, however, and produced evidence that he delivered the entire cargo taken in. If the evidence is sufficient to establish the fact it settles the controversy. I think it is sufficient. The master's testimony covers the entire ground—shows that the hatches were sealed up after the sugar was taken in, and were not opened until the port wardens unsealed them after the vessel was docked and the respondents called to receive their sugar—that no port was touched from the time she sailed until her arrival here, and that there was therefore no opportunity for the loss or abstraction of any part of the cargo. I regard this testimony as more reliable than either of the counts made, and therefore accept it as conclusive.

The libel is therefore sustained.

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#### THE ETHEL

HODGKINS v. WELSH et al.

(District Court, E. D. Pennsylvania. January 26, 1894.)

No. 74 of 1893.

#### ADMIRALTY—COSTS—PROCTOR'S FEE—SUMMARY PROCEEDINGS.

In summary proceedings, where the amount is less than \$50, and libelant's proctor takes the benefit of the rule of court dispensing with libelant's stipulation for costs, no proctor's fee can be taxed in his favor, except by special allowance by the court, on a showing of special circumstances; and the allowance will not be made merely because he had the testimony taken before a commissioner, instead of before the court, as he might have done.

In Admiralty. Libel by Frank M. Hodgkins, master of the bark Ethel, against S. & J. Welsh, to recover a balance of freight. The libel was heretofore sustained, (59 Fed. 473,) and the cause is now heard on motion for allowance of costs. Motion dismissed.

Curtis Tilton, for libelant.

Richard C. McMurtoil, for respondent.

BUTLER, District Judge. This was a summary proceeding, the amount being under \$50. The libelant's proctor so regarded it, and took the benefit of rule 72 which dispenses with the libelant's stipulation for costs. No proctor's costs were therefore taxable without special allowance by the court. Such costs were