

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.

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

claimed on taxation before the clerk and disallowed. The proctor "now moves the court to allow the *usual costs* to libellant and libellant's proctor." The "*usual*" costs in summary cases were allowed and taxed by the clerk. What I suppose the motion is intended to effect is a special allowance of proctor's costs under the rule above stated. To justify the court in doing this, something should appear in the case to distinguish it from ordinary summary proceedings. I do not find anything to so distinguish it. It was the libellant's privilege to have the testimony heard in court, instead of having it taken before a commissioner, but he elected to pursue the latter course. Whether this was more burdensome than hearing in court would have been, I do not know, nor is it important.

The motion must be dismissed.

THE UMBRIA.

CUNARD STEAMSHIP CO., Limited, v. COATES. SAME v. DOLLARD.

(Circuit Court of Appeals, Second Circuit. December 13, 1892.)

Nos. 49, 51.

1. INTEREST—AFFIRMANCE OF DECREE.

When a decree for libellant, which included interest, is affirmed, he, when appellee, is entitled to interest on the whole decree, unless special circumstances induce the court to disallow it. *Deems v. Canal Line*, 14 Blatchf. 474, disapproved. *The Blenheim*, 18 Fed. 47, followed.

2. ADMIRALTY—APPEAL—COSTS.

On a libel against one vessel for damages to the cargo of another by collision and a decree against her, if the decree is reversed on appeal by claimant on the ground that both vessels were in fault, appellant is entitled to costs.

Motions to modify order for mandate. Denied.

For report of the decision on the appeals, see 59 Fed. 489.

PER CURIAM. In these cases we conclude that, upon an affirmation by this court on an appeal from a decree of the district court in favor of the libellant, the libellant, when appellee, is entitled to interest on the whole decree, in the absence of special circumstances to induce the court to disallow interest. We adopt the rule followed in *The Blenheim*, 18 Fed. 47, and disapprove that followed in *Deems v. Canal Line*, 14 Blatchf. 474, believing the doctrine of *The Blenheim* to be founded on better reason.

As to costs, the appellant was put to the necessity of an appeal to secure a proper modification of the decree. If the libellants had made the *Iberia* a party, and insisted upon a decree against her as well as the *Umbria*, such as they would have been entitled to according to *The Alabama and Game Cock*, 92 U. S. 695, they could urge with reason that they should not be charged with the costs of the *Umbria's* appeal. Not having done so, there is no good reason why the appellant shall be required to bear the costs of a necessary appeal.

The motions to modify the order for a mandate are denied, except as to the clerical error in the *Dollard* case.