there is some conflict in the evidence, and even discordance in the ship's records. It is evident that neither the observations nor the records were made with exactness; and the register of the miles run, as given by the patent log, is still more inaccurate. The Lloyd's deep load-line is immaterial; for even assuming the correctness of the captain's testimony as to the amount of water ballast taken on the two voyages from Colon, viz., 200 tons, of which I have some doubt, still this would make the total tonnage of cargo, coal and ballast on leaving Colon from 80 to 100 tons less than the dead tonnage guarantied by the charter; so that on adding for a full cargo 8 to 10 inches more draft, we should have 16 feet 3 inches or upwards, as the expected draft for the guarantied capacity, even if the mean draft from Colon was 15 feet 9 inches; and this intended draft of 16 feet 9 inches for a full deep-load capacity accords both with the scale delivered by the agents to the charterers, and with her actual draft on the subsequent voyage to Spain. The defendants cannot appeal to the Lloyd's deep load-line as any excuse for non-compliance with the agreements and representations of the charter. The evidence indicates that the boilers and pipes were not in perfect condition, and that the chief engineer, for that reason, forbore "to drive the ship as in other trades." Whatever the reason, however, it seems to me clear that the ship did not make the guarantied speed under the agreed conditions; and that the libelants had the right both to terminate the charter, as they did, for this breach, and to recover such damages, if any, as arose from it.

4. The Lay-Up Clause: The language of this clause is not that of a mere option. Section 18 requires docking at least once in every four months, during which hire shall cease. I think the intent of section 28, declaring that the steamer "is to lay up for overhauling two weeks each year in winter, at time charterers designate," was to give the charterers the right to designate the two weeks in winter when the vessel should be off pay, so as to suit the exigencies of their business; that this was also for the further purpose of securing perfect efficiency of the steamer during the subsequent months when she would be wanted to make as quick speed as possible; that the need of such overhauling in winter is assumed by the charter, and that the charterers were bound under the charter to expect, and therefore had the right to count on, an overhauling at such time during the winter as they should designate, and upon a cessation of pay during this period; that the owners could not defeat the charterers' arrangements as to the time for this overhauling and cessation of pay, by the claim that overhauling was unnecessary; and that the evidence does not prove that overhauling was unnecessary, but rather indicates that the subsequent two or three weeks' work upon the ship could have been done at the time designated by the charterers, with improvement in her service.

A decree may be entered in accordance with this opinion, and an order of reference, if the damages are not agreed on.

PITTSBURGH, C. & ST. L. RY. CO. v. BALTIMORE & O. R. CO. et al.

(Circuit Court of Appeals, Sixth Circuit. May 8, 1894.)

No. 127.

1. APPEALABLE JUDGMENTS—INTERLOCUTORY DECREE FOR ACCOUNTING.
A decree determining the right of a complainant to an account, and settling the principles on which the account should be taken, is interlocutory merely, and no appeal lies therefrom.

2. JURISDICTION OF FEDERAL COURTS—DIVERSE CITIZENSHIP—PROPER PARTIES.
A contract between two corporations for the joint operation of part of a line of railroad owned by them provided that the local freight business should be done by one of them, which should receive a certain percentage of the earnings therefrom, the remainder to be divided equally; and that corporation subsequently leased its line for a certain percentage of the gross earnings thereof, including the proper proportion of the earnings of said part. Thereafter the lessee, claiming to be entitled to all the rights of its lessor under the contract, brought suit for an accounting of local freights carried on said part of the line by the successor of the other party to the contract, and made both such successor and the lessor parties defendant. *Held*, that the lessor was a proper, though not a necessary, party, and as its interests in the controversy were identical with complainant's, and it and the other defendant were corporations of the same state, a federal court had no jurisdiction, although complainant was a corporation of a different state.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This was a suit by the Baltimore & Ohio Railroad Company against the Pittsburgh, Cincinnati & St. Louis Railway Company and the Central Ohio Railroad Company, as reorganized, for an accounting. A decree for an accounting was granted, and, after a hearing on exceptions to the report of a special master thereon (55 Fed. 701), a final decree was rendered in favor of complainant and of said defendant the Central Ohio Railroad Company. The Pittsburgh, Cincinnati & St. Louis Railway Company appealed.

The Baltimore & Ohio Railroad Company, a corporation of the state of Maryland, filed its bill in the circuit court of the United States for the southern district of Ohio, September 30, 1886. The defendants thereto are the Pittsburgh, Cincinnati & St. Louis Railway Company and the Central Ohio Railroad Company, as reorganized, both being corporations of the state of Ohio. The object of the bill was to have an accounting as to the receipts from local freights earned on that part of the line jointly owned and operated between Newark and Columbus, Ohio, and known as the Newark & Columbus Division of each road. That division was originally owned by the Central Ohio Railroad Company, which company became insolvent, and was placed in the hands of a receiver. While thus in a receiver's hands, it, under a statute of Ohio, and with the approval of the court conducting the receivership, sold an undivided one-half interest in so much of its line as lay between Columbus and Newark to the Steubenville & Indiana Railroad Company. After this sale the presidents of the two companies entered into a written agreement as to the joint operation of the division so jointly owned. Subsequently the Central Ohio Railroad Company was reorganized under the laws of Ohio, under the name and style of the Central Ohio Railroad Company, as reorganized. Under the statute permitting this reorganization, the new company succeeded to all the property rights and contracts of the old company. In 1886 the Baltimore & Ohio Railroad Company, being the complainant corporation, leased the line of the Central Ohio Railroad Company, as reorganized, and succeeded to all its rights and liabilities. In 1868 the Steubenville & Indiana