

of men shipped on board or other circumstances render it probable that she is intended to be employed "to cruise or commit hostilities," or, in other words, engage in naval warfare, against the subjects or property of a friendly power. It is not an infraction of international obligation to permit an armed vessel to sail or munitions of war to be sent from a neutral country to a belligerent port, for sale as articles of commerce; and neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerents, articles which are contraband of war. It is the right of the other belligerent power to seize and capture such property in transit; but the right of the neutral state to sell and transport, and of the hostile power to seize, are conflicting rights, and neither can impute misconduct to the other. The penalty which affects contraband merchandise is not extended to the vessel which carries it, unless ship and cargo belong to the same owner, or the owner of the ship is privy to the contraband carriage; and ordinarily the punishment of the ship is satisfied by visiting upon her the loss of time, freight, and expenses which she incurs in consequence of her complicity. On the other hand, it is the duty of every government to prevent the fitting out, arming, or equipping of vessels which it has reasonable ground to believe are intended to engage in naval warfare with a power with which it is at peace. These are familiar rules of international obligation, in the light of which the particular statute is to be read. It is intended to prevent the departure from our ports of any vessel intended to carry on war, when the vessel has been specially adapted, wholly or in part, within this jurisdiction, to warlike use. There was not a particle of evidence brought to the attention of the collector tending to show that the vessel was intended to be employed in acts of war. It is not enough that it was the purpose of her intended voyage to transport arms and munitions of war for the use of the insurrectionary party in Venezuela. *The Florida*, 4 Ben. 452, Fed. Cas. No. 4,887; *The Carondelet*, 37 Fed. 799; *The Conserva*, 38 Fed. 431; *U. S. v. Trumbull*, 48 Fed. 99.

There was no error prejudicial to the defendant in the rulings of the trial judge. Indeed, if, instead of submitting the question of probable cause to the jury, he had ruled, as matter of law, that the evidence did not make out a case of probable cause, we think he would have been justified in doing so. The judgment is affirmed.

HARRISON et al. v. SMITH.

(Circuit Court of Appeals, Third Circuit. April 26, 1895.)

No. 8.

DEMURRAGE—DISCHARGE OF CARGO—"CUSTOMARY QUICK DISPATCH"—METHOD OF WEIGHING.

"Customary quick dispatch" at the port of Philadelphia, in unloading a cargo of sugar, requires the use of platform scales for weighing, and is not complied with by the use of the tedious method of weighing on "sticks." 50 Fed. 565, affirmed.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

This was a libel by George Smith, master of the steamship Black Prince, against Charles C. Harrison and others, trading as Harrison, Frazier & Co., to recover demurrage because of alleged failure to receive cargo with "customary quick dispatch." The district court rendered a decree for the libelant. 50 Fed. 565. Respondents appeal.

G. Heide Norris and Henry R. Edmunds, for appellants.
Horace L. Cheyney and John F. Lewis, for appellee.

Before ACHESON, Circuit Judge, and GREEN and BUFFINGTON, District Judges.

ACHESON, Circuit Judge. The steamship Black Prince was chartered to carry a cargo of sugar from Cuba to the port of Philadelphia, under a charter party which provided that the vessel was "to be discharged with customary quick dispatch at port of discharge." The charter stipulated that for each day's detention the vessel should receive a specified sum, and it gave the charterers the right to designate the wharf where the discharge should take place, and to name the stevedore. The vessel, with a cargo of 14,533 bags of sugar, weighing about 2,000 tons, arrived at the port of Philadelphia on Saturday, March 8, 1890, and was entered at the customhouse, and notice of her arrival duly given about 3 o'clock on the afternoon of the same day. The vessel was not ordered to a berth until 3 o'clock on the afternoon of the following Monday, March 10th. By 6 o'clock the same afternoon the vessel was moored at the wharf to which she was ordered, with all necessary preparations made to discharge from four hatches. The discharge of cargo did not begin until 1 o'clock on Tuesday afternoon, March 11th, and was not completed until Thursday, March 20th, at noon. The commissioner to whom the case was referred to fix the demurrage, and whose conclusions the court below approved, reported:

"A careful consideration of the evidence convinces the commissioner that at least 5,000 bags each day could have been discharged from this vessel from one hatch by the use of platform scales, and with ordinary energy and diligence."

Upon that basis it was held that the discharge of cargo should have been completed by the close of Thursday, March 13th, and demurrage was decreed against the appellants for all detention beyond that date.

Instead of using platform scales, the appellants weighed the sugar, as it was taken from the vessel, on "sticks," which was a very tedious method, and the discharge was only from one hatch at a time. The owners of the ship, it is to be noted, had no interest whatever in the weighing of the sugar. That was a matter between the appellants and the United States government. Now, the stipulation here, it will be perceived, was not to give the vessel simply ordinary dispatch or customary dispatch. Something more

was intended and provided for. The agreement was that the vessel should "be discharged with customary quick dispatch at port of discharge." The stipulation contemplated haste, and, if the sugar was to be weighed as taken from the vessel, required the resort to such well-known, approved, and commonly practiced method of weighing at the port of discharge as would secure to the vessel ordinary quick dispatch. The learned district judge found as a fact that customary quick dispatch at the port of Philadelphia, in the discharge of sugar, where the cargo is to be weighed as delivered, is such dispatch as can only be afforded by the use of platform scales in weighing. The evidence fully justifies that finding. At the date of this charter party, and for at least two years previously, it was the almost universal practice at the port of Philadelphia to weigh sugar as discharged from vessels on platform scales, and not more than one cargo in twenty was weighed on sticks. The testimony of the experienced witnesses examined in this case quite satisfies us that the appellants did not give to the *Black Prince* the customary quick dispatch for which her owners had contracted.

The amount of demurrage allowed seems to us to be entirely reasonable, under the evidence.

We find no error in this record, and therefore the decree of the district court is affirmed.

THE TIMOR.

NELSON et al. v. NORDLINGER et al.

(Circuit Court of Appeals, Second Circuit. April 22, 1895.)

No. 121.

SHIPPING—DAMAGE TO CARGO BY RATS—BILL OF LADING.

A cargo of beans in sacks was shipped from Fiume, Austria, to New York, under a bill of lading containing exceptions of damage from vermin. On arrival at New York the cargo was found to have been badly damaged by rats. The vessel was of iron, and it was shown that her holds were thoroughly scrubbed before her arrival at Fiume, and that no rats were discoverable; that there were no hiding places for them; and that they came on board at Fiume, without the knowledge of the officers. It appeared further that the character of Fiume as a seaport frequented by rats is well known. The vessel had five cats during the voyage, which had abundant access to the cargo, and the testimony showed that, if the cats proved active and vigilant, this was an adequate number. *Held*, that the injury was within the excepted clause, and that the evidence failed to show that the damage was attributable to the neglect of the vessel to exercise ordinary and reasonable precautions. 46 Fed. 859, reversed.

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

This was a libel by Jacob D. Nordlinger and others against Nelson, Donkin, and others, owners of the ship *Timor*, to recover damage for injuries caused by rats to a cargo of beans. The district court entered a decree for libelants. 46 Fed. 859. The cause was then