

the Michigan decision by the assertion that the question of the invalidity of the reissue, as such, was not presented to the court. It is true that nothing was said by the court on the subject in the oral opinion delivered, but to argue from this that the defense was not urged is to proceed without sufficient foundation. If presumption is to be indulged in it would seem to lead to a contrary conclusion.

As before stated the defense was pleaded in the answer in the Michigan case. The struggle there was genuine and bitter. The defendants' case was conducted by an able patent lawyer thoroughly conversant with the doctrine of the supreme court regarding reissues. To assert that the attention of the court was not called to the point that the claims relied upon did not appear at all in the original patent, is, in the circumstances, to assert an almost unthinkable proposition. The other defenses were before the court in the Michigan case and were there overruled.

There are some new features in the proof, but as now presented there is too much doubt about the new evidence both on the facts and the law to justify the court in refusing relief to the complainant. The equities are strongly with the complainant. The injury done to the defendants by granting the writ will be as nothing compared to the injury done the complainant by withholding it. Motion granted.

THE HATTIE PALMER.

HAWKINS v. DAVIS.

(Circuit Court of Appeals, Second Circuit. May 28, 1895.)

SHIPPING—NONDELIVERY OF FREIGHT—CONVERSION.

A steamer making daily trips between New York and New Rochelle took some barrels of freight for delivery at City Island. On touching there, no person was in readiness to receive the same or pay the charges, and the steamer retained the goods on board, sending word to the consignee, whose place was about 200 yards from the landing, to have some one ready to receive the goods on the following day. This notice was received, but no one appearing on the steamer's return the next day, the goods were still retained on board. The next day the consignee arrested her on the libel for conversion. The wharf was not a safe place to leave the goods, and the vessel was all ready to deliver them on payment of the freight. *Held*, that there was no conversion, and the libel was properly dismissed with costs. 63 Fed. 1015, affirmed.

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

This was a libel by John P. Hawkins against the steamboat Hattie Palmer (Charles W. Davis, claimant) to recover damages for the alleged conversion of three barrels of kerosene, one barrel of gasoline, and two cases of copper paint. The Hattie Palmer was a small passenger and freight steamboat plying between New York and New Rochelle, and the articles in question were shipped on her for delivery at City Island. On touching there, no one was on hand to receive the goods or pay the freight, and the goods were retained

on board; the master sending word to the consignee, whose place of business was but a short distance from the wharf, to have some one ready to receive the articles on the next day. On that day there was still no one to receive the goods, and they remained on board for still another day. The next day the consignee filed this libel, and caused the arrest of the steamboat, alleging a conversion of the goods. The district court dismissed the libel (63 Fed. 1015), and the libelant appeals.

George A. Black, for appellant.

Convers & Kirlin (J. Parker Kirlin, of counsel), for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The facts of this case are essentially as stated in the opinion of the district judge. In his haste to punish the appellee, the libelant brought his suit before there had been any conversion of the goods by the carrier. *Robinson v. Austin*, 2 Gray, 564; *Clark v. Masters*, 1 Bosw. 177, 185; *One Thousand Two Hundred and Sixty-Five Vitrified Pipes*, 14 Blatchf. 274, Fed. Cas. No. 10,536; *Everett v. Coffin*, 6 Wend. 603; Ang. Carr. § 400. Under the averments of the libel, it may be that at the time when the suit was actually commenced, although not when the libel was verified, there was a cause of action for trivial damages, in favor of the libelant, for breach of contract by the carrier to deliver the goods within a reasonable time; but no damages were proved, and the cause was tried in the court below, as it has been argued in this court, upon the theory of a conversion. Had nominal damages been awarded, costs should have been, as they were, imposed upon the libelant. Courts of admiralty, like courts of equity, should visit costs upon suitors who resort to their jurisdiction merely to gratify a taste for vexatious litigation. *Chapman v. Publishing Co.*, 128 Mass. 478; *Allen v. Demarest*, 41 N. J. Eq. 162, 2 Atl. 655; *Moore v. Lyttle*, 4 Johns. Ch. 183; Ben. Adm. (3d Ed.) § 550. The decree of the district court should be affirmed, with costs, and it is so ordered.

THE CENTURION.

BREGARO v. THE CENTURION.

AMERICAN SUGAR REFINING CO. v. SAME.

(Circuit Court of Appeals, Second Circuit. May 28, 1895.)

1. SHIPPING—DAMAGE TO CARGO—STOWAGE OF MOLASSES.

The between decks, when perfectly tight and strong, is not an improper place for the stowage of liquids, such as molasses.

2. SAME.

A steamship bound from West India ports to New York had sugar stowed in her hold, with hogsheads of molasses in the between decks above it. The between decks were of steel, and perfectly tight and strong, and the cargo was stowed by an experienced stevedore under the supervision of the supercargo. On the voyage severe squalls were encountered, heaving the ship temporarily at an angle of 45 deg., washing the deck cargo adrift, and giving her a list to starboard of over three feet. Some of the casks of molasses were broken, and their contents ran down the scupper pipes into the bilges of the hold beneath, and the bilges and sluiceways became choked with molasses, so that it flowed over the bottom of the hold, and caused the sugar in the hogsheads to be dissolved. *Held*, upon the evidence, that the cargo was properly stowed; that the peril encountered by the ship was sufficient to create damage to a properly stowed cargo; and that the ship and her owners were exempt from liability under an exception in the bill of lading of damage arising from perils of the sea. 57 Fed. 412, reversed.

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

These were libels by Jose Bregaro and by the American Sugar Refining Company against the steamship Centurion, John Blumer & Co. claimants, to recover for damage to cargo. On petition of the claimants, the New York & Porto Rico Steamship Company, to which the ship was under charter at the time of the damage, was cited in to answer therefor. The district court found that the loss was caused by negligent stowage, and entered a decree against both the ship and the charterers, to be collected in the first instance from the latter, as they were bound by the charter to indemnify the owners. 57 Fed. 412. The charterers and owners appeal.

J. Parker Kirlin, for the Centurion, appellant.

Geo. A. Black, for the New York & Porto Rico Steamship Company, appellant.

Wm. W. MacFarland, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. Jose Bregaro shipped on board the steamship Centurion, at Ponce, Porto Rico, 250 casks of molasses, and his agent shipped on the same steamer, at Arroyo, 465 hogsheads of sugar, for transportation to New York. The bills of lading exempted the ship and its owners from liability for damage arising from perils of the sea. When the cargo was discharged in New York,