

did so from what apparently seems to be sound business principles, in good faith, and with a view to place their business and that of the port upon an equal footing with that of other ports; and the refusal of the association and combination to yield cannot be attributable to them, and clearly falls within the meaning and intent of the exception on account of strikes. Other days for which exemption is claimed are classed with those for which a decree was directed to be entered in the case of *Wood v. Keyser*, heretofore decided; and for days lost, over the stipulated lay days, for these reasons, a decree may be entered in this cause.

THE CRAMP.

O'BRIEN v. THE CRAMP.

(District Court, E. D. Pennsylvania. January 3, 1898.)

No. 54.

SEAMEN'S WAGES—REFUSAL TO HANDLE CARGO—SHIPPING ARTICLES.

There is no custom exempting the crew from the duty of handling cargo when it consists of ice, in the absence of an express stipulation in the shipping articles.

This was a libel in rem by O'Brien and others against the Cramp to recover seamen's wages.

Jos. Hill Brinton, for libellant.

Horace L. Cheyney, for respondent.

BUTLER, District Judge. It is to be regretted that the libelants did not accept the money paid into court on their account. It seems to be all they are justly entitled to. Had they been suing at their own expense it is probable they would have accepted it. Unnecessary litigation at the public expense, which not unfrequently occurs, should be discouraged. The libelants, according to the libel and answer, were discharged from service because they refused to "handle cargo." It is the duty of the crew, generally, to perform this service. The articles signed, which are the evidence of the contract, are in the usual terms, and silent respecting the service in question. Without more, it is clear that the libelants were subject to the service. They testify, however, that it was distinctly agreed before they signed or when they signed that they were not to "handle cargo." They support each other in this statement. The statement, however, is not consistent with their conduct afterwards, or with the statements of the libel. They did not pretend to a recollection of such an agreement until called to testify, but thought the articles did not specify this service, and were uncertain about that. To justify a qualification of the articles respecting the subject the testimony should be clear. The written evidence of the contract should prevail except when fraud or mistake is shown. The evidence does not satisfy me that by custom the crew is exempt

from the duty to "handle cargo" where it consists of ice, unless such duty is expressly mentioned in the articles.

I need not decide whether the respondent's offer, or tender, before the commissioner, was sufficient to relieve him of subsequent costs. What he paid into court, the libelants were entitled to take out; it could only be paid in for them, and it is only because of such an unconditional tender that he is relieved as respects future costs. The libel is sustained to the extent of the money paid into court, and to this extent only.

A decree may be prepared accordingly.

THE ILLINOIS.

BALANO v. THE ILLINOIS.

(District Court, E. D. Pennsylvania. January 3, 1898.)

COLLISION—DAMAGES—INTEREST.

In determining the amount of the damage award, the value of the injury done to the vessel is to be ascertained, and then an amount equal to interest thereon to the time of the trial may be added, not strictly as interest, but as part of the damage compensation.

This was a libel in rem by the owners of the schooner Mabel Jordan against the steamship Illinois to recover damages for a collision. The owners of the Illinois also brought in the tug Gladisfen as a co-respondent. In the district court it was held that the Illinois alone was in fault (65 Fed. 123), and the cause was referred to a commissioner to report the amount of damages. The commissioner having now filed his report, the hearing is upon exceptions thereto.

John F. Lewis, for libelants.

N. Dubois Miller, for respondent.

BUTLER, District Judge. After careful reading of the commissioner's report and the briefs of counsel in support of their exceptions, I am satisfied that the exceptions should be dismissed. The commissioner's findings relate to matters determinable by the evidence, and in my judgment they do the parties substantial justice. The evidence respecting the numerous disputed items is conflicting, and the commissioner's duty was a difficult one. A different conclusion than that reached by him, respecting some of them, might possibly be sustained by the evidence as reported, but the commissioner, who saw and heard the witnesses, is best qualified to estimate the value of their testimony, and I have found nothing that would justify me in differing from him.

As respects the allowance for demurrage, I think the evidence of the vessel's actual earning capacity is sufficient to answer the claim based on the charter; and in this respect the case resembles that of *The Redruth* (recently decided here) [26 C. C. A. 338, 81 Fed. 227]. As