

EIGHT HUNDRED AND FORTY-ONE TONS OF IRON ORE.<sup>1</sup>

(District Court, E. D. New York. July 9, 1885.)

## ADMIRALTY PRACTICE—SUPPLEMENTAL LIBEL—CHARTER PARTY—DEMURRAGE ARISING AFTER FILING LIBEL.

A libel having been filed claiming freight and demurrage under a charter party, the libelant thereafter filed a supplemental libel, setting up the same and additional facts, and claiming the same freight and demurrage, and additional demurrage. *Held*, that, as this additional demurrage arose from the breach of the charter party set up in the original libel, there was no reason why such demurrage should not be recovered in this action, although such demurrage occurred after the filing of the original libel; and that the practice pursued, if not strictly regular, in this case tended to save trouble and expense.

## In Admiralty.

See opinion in the same case on exceptions to the supplemental libel and motion to strike out the supplemental libel. 15 Fed. Rep. 615.

*Ulo, Ruebsamen & Hubbe*, for libelant, Aniello Basile, master of the bark *Giulia*.

*Benedict, Taft & Benedict*, for claimant, D. W. R. Read.

BENEDICT, J. Considering that only a part of the cargo was seized at the time of issuing process upon the original libel, and that the freight on such cargo was then due the libelant, and considering, also, that subsequent to the filing of the original libel the claimant received cargo under the charter party set up in the libel, and considering also that claimant had paid into court in this cause all that is due for freight under the charter party set out in the libel, leaving due only a balance of demurrage, and that this demurrage may be awarded as part of the damage arising from the breach of the charter party set forth in the original libel, no reason is discovered why this unpaid demurrage may not be recovered in this action, notwithstanding the fact that the said detention occurred after the filing of the original libel. No injustice can result to the claimant from this course. The practice pursued, if not strictly regular, has in this case wronged no one, but, on the contrary, tended to save trouble and expense. It is concluded, therefore, that the libelant may have a decree in this action for the amount due and unpaid upon the charter party, including therein 12 days' demurrage at the rate of \$61.84 per day, and deducting the amount of the freight and six days' demurrage, the whole freight and six days' demurrage having been paid into court herein, and the same drawn out by the libelant, as the evidence is understood.

<sup>1</sup>Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

WEIL, Trustee, and others v. CALHOUN, as Ordinary, and another.<sup>1</sup>*(Circuit Court, N. D. Georgia. December 16, 1885.)***1. CIRCUIT COURT—JURISDICTION—CITIZENSHIP.**

The fact that one of several parties plaintiff is a citizen and resident in another state does not give this court jurisdiction of a bill filed against a citizen and resident of Georgia.

**2. SAME—FEDERAL QUESTION.**

A charge in a bill that a certain act of the legislature of Georgia was about to be declared of force, by reason of a popular vote of the county of Fulton, in pursuance of the statute, which statute prohibited the sale of intoxicating liquors in the counties adopting it; and that some of the plaintiffs were large liquor dealers and dealers in foreign wines and wines of other states, and had large stocks on hand, and had license and good-will, which in the liquor business is of large value; and that another plaintiff was interested in a chartered brewery, authorized by its charter to make and sell beer; and that the putting and declaring such law of force would materially damage their business, impair thus the contract in the brewery charter, and interfere with their right to sell liquors in the adjoining states; and charging also that the act of the legislature, while it prohibited, if sustained by a popular vote, the sale of spirituous liquors generally, yet contained a proviso exempting domestic wines from the operation of the act,—presents a federal question, under the act of congress of 1875, and the circuit court of the United States have jurisdiction to hear and determine such federal questions.

**3. INJUNCTIONS—STAY OF PROCEEDINGS IN STATE COURT.**

The act of congress (section 721 of the Revised Statutes) prohibiting the courts of the United States from granting injunctions to stay proceedings in any court of a state, etc., does not cover the case of a bill filed praying an injunction against the ordinary of a county, who, in addition to his ordinary duties as a probate judge, is clothed by a special statute with the duty of counting the votes and examining the returns of a county election on a local option law, and declaring the result.

**4. CONSTITUTIONAL LAW—STATE LOCAL OPTION LAW EXEMPTING FROM ITS PROVISIONS DOMESTIC WINES.**

The act of the legislature of Georgia known as the "Local Option Law," exempts from its provisions domestic wines, though it prohibits the sale of spirituous liquors, including wines. *Held*, that it is not competent for a legislature of a state thus to discriminate between wines made in Georgia and the wines of other states and foreign wines.

**5. SAME—ACT VOID IN PART.**

Whether this clause—this discrimination—makes the whole act void, the court does not expressly decide, but inclines to the opinion that the proviso making the exemption is void, and the whole act good.<sup>2</sup>

**6. SAME—CONSTITUTIONALITY OF LOCAL OPTION LAWS.**

It is competent for the legislature of Georgia to pass a law to take effect only on the happening of a certain event; and an act prohibiting the sale of spirituous liquors in the state, excepting certain counties from the operation of the act, and providing that the law should only go into effect in any county after the people, by a popular vote, had so decided, is within the legislative discretion, and is not delegating the powers of the legislature to the people of the counties.

**7. ELECTION—USE OF THREE BOXES AT POLLING PLACES.**

At an election in Atlanta, Georgia, it was evident that there were not sufficient polling places in two of the militia districts composing the city of Atlanta for the people to vote at a certain election, and the managers and the ordinary and other county officers, on the advice of many citizens of both parties, adopted a scheme to facilitate the voting, by having at each polling

<sup>1</sup> Reported by Walter B. Hill, Esq., of the Macon bar.

<sup>2</sup> See *State v. Stucker*, (Iowa,) 2 N. W. Rep. 483; *Marshalltown City v. Bloom*, (Iowa,) 12 N. W. Rep. 266; *Webber v. Virginia*, 103 U. S. 344; *Word v. Maryland*, 12 Wall. 418; *Walton v. Murrain*, 91 U. S. 275.