

THE MALTA.<sup>1</sup>

## THE MALTA v. SEVEN HUNDRED TONS OF CHALK.

(District Court, E. D. Pennsylvania. January 31, 1888.)

## SHIPPING—DEMURRAGE—ATTACHMENTS.

A claim against the cargo for demurrage will be allowed for delay caused by the issuing of attachments under conflicting claims to it.

## In Admiralty.

*Charles Gibbons, Jr.*, for libelant.

*Adams & Edmunds*, for respondent.

BUTLER, J. There is no dispute about the freight claimed. The libelant is clearly entitled to demurrage. She is not in any way responsible for the delay. She had a lien for the freight and demurrage on the cargo, and was not interested in the dispute over it. She had a right to hold it until paid. The parties claiming the cargo having chosen to dispute about it, and thus create delay, they must bear the consequence. To cast the loss on the libelant would be grossly unjust. She was not blamable for refusing to discharge on a filthy wharf at the marshal's request. Had she so discharged she would have incurred risk of liability for damage, as well as risk of losing her proper charges, by injuring the merchandise to which she must look for payment. The sum claimed for delay, however, is too great. How much should be allowed per day, the evidence does not render certain. The number of days properly chargeable I find to be 16. Starting with October 11th, seven days are allowed for unloading the chalk. As the vessel was not docked until after 9 o'clock in the morning, a full day's work could not be done on that day. The intervening Sunday must be thrown out, and one day allowed for unloading the cement. This leaves 16 days for which the respondent is liable—the unloading of the entire cargo having been completed by the fourth of November, inclusive. What rate of compensation per day should be allowed must be referred to a commissioner, unless the parties can agree respecting it.

<sup>1</sup>Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

## STEIN v. BIENVILLE WATER-SUPPLY CO.

(Circuit Court, S. D. Alabama. March 7, 1888.)

**1. CONSTITUTIONAL LAW—MONOPOLIES AND PRIVILEGES—WATER COMPANIES.**

The city of Mobile, having acquired by purchase or forfeiture the franchises and plants of two water companies chartered, respectively, in 1820 and 1837, entered into a contract in 1840 with one S., whereby, in consideration of certain covenants contained in the agreement, he was granted "the sole privilege of supplying the city of Mobile with water from the Three-Mile creek for twenty years" from the date of the contract. He was also invested with whatever rights and privileges the city had derived from the defunct companies. The creek referred to was the most accessible source for the city's water supply, and the city had, when the contract was made, certain water-works at that point, which it had acquired from one of the old corporations. The company of 1820 was chartered for 40 years, and for the purpose, clearly expressed in the act, of conducting water "from Three-Mile creek" for use in Mobile. The company of 1837 was incorporated upon the repeal of the charter of 1820, and was invested for about 20 years with the exclusive franchises conferred by that charter. The city then bought out the corporation of 1837, and made the contract with S., which the legislature confirmed in 1841, vesting in S. the privileges under the acts of 1820 and 1837, so far as consistent with the contract of 1840. *Held*, that the exclusive privilege of supplying the city with water was confined to water taken from the Three-Mile creek, and that the grant in 1837 to another corporation of the exclusive right of conducting and bringing water into the city from any point other than Three-Mile creek did not legally "impair" the obligation of the contract of 1840.<sup>1</sup>

**2. SAME—POLICE POWERS.**

In granting an exclusive franchise to supply water to one of its cities and its inhabitants, the legislature of the state does not part with the police power and duty of protecting the public health.<sup>1</sup>

**3. WATER COMPANIES—CHARTERS AND FRANCHISES—CONSTRUCTION.**

The preamble of a statute incorporating a water company, recited, among other things, "that certain individuals have agreed to associate themselves together for the purpose of conducting a supply of water from a creek called 'Three-Mile Creek,' for the use of \* \* \* the city of Mobile." It then provided that the said corporation "shall have and enjoy the exclusive right and privilege of conducting and bringing water for the supply of said city for the space of 40 years," provided the water was brought from said creek within three years from the date of the act, and in the manner therein prescribed. *Held*, that the exclusive privilege of supplying water to the city was confined to water drawn from the Three-Mile creek.

**4. SAME—CONSTITUTIONAL LAW—IMPAIRING OBLIGATION OF CONTRACT.**

Where the exclusive right of supplying a city with water is confined to water drawn from a certain source, the right of using the streets free of charge for the purpose of laying pipes, etc., for the conveyance of such water, granted in the enabling statute, is not impaired by a subsequent grant of eminent domain to another company drawing its supply from a different source.

**5. SAME—DURATION OF FRANCHISE.**

A contract between the city of Mobile and one S. provided that S., his executors or assigns, should have the exclusive right for 20 years of supplying the city with water drawn from a certain source, and, until the city should redeem the plant, S. should have quiet possession of it, without let or hindrance from the city or from any one claiming under it. *Held*, that the franchise did not expire with the 20 years, but that it remained a monopoly in the hands of S.'s executor, (S. having died,) until the city redeemed the plant as provided in the contract.

<sup>1</sup>See note at end of case.