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Assignment of Errors

Title of Cause.

The Plaintiff and Appellant alleging that there is error upon the trial and in the finding and judgment in this Cause respectfully shows:

First — That there was error in the decision of the Court ordering and directing an amendment of the Plaintiff's petition as to the party plaintiff.

For that the motion to amend was made by the Defendant after the answer had been made and after the testimony of the witnesses Furber and Packering had been given.

Second — That there was error in the finding of the Court "that the defendant did not cause the said S.S. 'New York' to deviate from her voyage and abandon the same"

In that the fact found is against the Evidence. For the evidence shows that after the arrival of the Ship at Nagasaki the Defendant by the action of his Agents refused to permit the ship to sail from that Port and to proceed on her voyage according to the terms of the Charter Party.

Third — That there was error in the findings of the Court "that after said S.S. 'New York' had made her voyage in pursuance of said Charter Party and agreement from Yokohama to Nagasaki and was ready to continue her voyage to Formosa according to the conditions of said Charter Party and agreement

the said Plaintiff prevented the further prosecution by said S.S. 'New York' of her voyage under said Charter Party and agreement and abandoned the same and ordered said S.S. 'New York' to be discharged of her Cargo and surrendered to the defendants;

In that the fact found that Plaintiff prevented the prosecution of the voyage is not sustained by the evidence. For all the evidence on that allegation is the testimony of Witness Center that he heard read an extract from a letter received by the Minister for the U.S. from the minister for Foreign Affairs; and the copy of letter produced by Witness Stevens (Exhibit Q). That letter speaks of "instructions" forwarded to the authorities. No copy of such instructions are enclosed in the letter and their terms are not distinctly set forth. There is no evidence except this letter (sent to a party, a stranger to this action) that instructions were issued or sent; no evidence what the terms of the instructions referred to were, or how they were directed or sent; and there is absolutely no evidence whatever that any such instructions as alleged, reached or even came to the notice of the persons who represented and acted for the Plaintiff at Nagasaki where the ship then was; or that such instructions or orders as alleged were in any way whatever acted upon by those Agents. On the other hand the evidence does show clearly that no such orders were acted on by the Agents of Plaintiff - but that the Plaintiff by its agents at Nagasaki repeatedly applied to the Defendants Agent to permit the ship to proceed

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according to the terms of the Charter Party. This is shown
by the testimony of the witnesses Tillman and Le Gendre
and by the telegrams from Tillman Agent at
Nagasaki to Consul Agent at Yokohama (Exhibit "H"
"I" and "K") and by the letter sent by Le Gendre to the
Agent of defendant at Nagasaki (Exhibit "L")

And
Secondly that the "discharge of the Cargo" from the
"New York" referred to in the said finding was only
commenced on the 1st May as a necessary consequence
of the refusal of the defendant to permit the Ship to
proceed, which had been declared six days previous
to the said 1st May, and that there was no surrender
of the Ship, or order of surrender thereof as recited
in said finding, and could have been none - the
said Ship having been from first to last while under
the Charter Party in the possession and under the
complete control of the defendant, (as to who is deemed
in possession of a Ship under Charter Party see Parsons
on Shipping and Admiralty Vol. 1. Book 1. Section II
Page 278. American Edition 1869.)

Fourthly There was error in the judgment of the Court
"That the plaintiff has no cause of action in the
premises against the defendant and that the plaintiffs
petition herein be and the same is hereby dismissed"

In that
such judgment is contrary to the evidence and ought to be
in favor of the plaintiff for the damage sustained.

Yas. Ishaw
July 15th 1874

Wm. Hill
Counsel for Plaintiff & Appellant