DOCUMENT No. 137

MARITIME LAW ASSOCIATION OF THE UNITED STATES

ANNUAL MEETING, MAY 20, 1927.

APPENDIX IX.

Interest on Decrees in Admiralty.

May 9th, 1927.

Dear Mr. Deming:

I am enclosing a short brief relating to an amendment to the rule of the Supreme Court so that money decrees in Admiralty shall bear interest as do decrees in Chancery. All of the Circuit Courts of Appeal follow the rule of the Supreme Court, except the Court in the Sixth Circuit.

I have sent my brief with a letter to Chief Justice Taft and informed him that I am sending a copy of it to the Maritime Law Association, and asking to have it endorse the amendment, and if it does to ask to have it adopted by the other eight Circuits.

Will you be kind enough to present the matter of the amendment to the coming annual meeting of the Association, as I shall not be able to be present at the meeting? If I can be of any further service in promoting the amendment of the rule, let me know.

I will also call the attention of the Circuit Court of Appeals of the Seventh Circuit to the proposed amendment and to what I am doing in connection with its adoption by the Supreme Court. I think the Supreme Court should lead in this matter, so that the Circuit Courts might follow its action, if the rule be amended, and have it uniform in all of the Federal Courts.

Very truly yours,

C. E. KREMER.

Interest on Decrees in Admiralty.

Section 966, Revised Statutes of the United States under the Act of August 23rd, 1842, C. 188, Sec. 8, 5 Stat. 518, provided:

S. 1605 (R. S. S. 966) Interest on Judgments:

> "Interest shall be allowed on all judgments in civil causes, recovered in a Circuit or District Court, and may be levied by the Marshal under process of execution thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment at such rate as is allowed by law on judgments recovered in the courts of such State."

In the case of the *New York,* 6 C. C. A. (1901), 108 Fed. 102, 109, it was held that this did not include decrees in admiralty.

> Perkins v. Fourniquet, 14 How. 328, 331.
> Hagerman v. Moran, 9 C. C. A. (1896), 75 Fed. 97, 99.

In order to provide interest on decrees in admiralty the Court made a rule which provides: "In cases of admiralty, damages and interest may be allowed if specially directed by the Court."

When the Nine Circuit Courts of Appeal were organized all of them included in their rules the foregoing rule of the Supreme Court. These rules are now in existence in all of the Circuits except the Sixth, which provides "when a judgment or decree of the District Court at law, equity, bankruptcy or admiralty, requiring the payment of money is affirmed, by this Court, interest thereon from its date and until payment shall be calculated and levied at the same rate borne by similar judgments and decrees in the State where such District Court sits."

This amended rule was doubtlessly passed when the Court had before it the case of the *New York,* 6 C. C. A. (1901), 108 Fed. 102, and the question of the rate of interest in the State of Michigan was under consideration and in dispute.

The case of the *New York* was affirmed by the Supreme Court in 189 U. S. 363.

The Courts have decided in all cases of decrees in admiralty that unless under the Rules of the Supreme Court, and the rules of the various Courts of Appeal, interest is expressly allowed, no interest can be recovered on a decree in the District Court even though the District Court in its decision allowed interest on the damages in controversy and made it a part of the decree.

> *The Raymond,* 36 Fed. 336 (S. D. N. Y. 1887).
> *The Glen Ochiel,* 128 Fed. 963 (D. Del. 1904).
> Dyer v. Michigan Navigation Co., 118 U. S. 507.
> Hagerman v. Moran, 75 Fed. 101 (9 C. C. A. 1896).
> Hemmingway v. Fisher, 61 U. S. 255.

I know of no good reason why a decree in admiralty for the payment of money should not draw interest in the same way as do judgments in courts of law as provided by the Act of Congress of 1842.

This Act should be amended to include decrees in chancery and in admiralty, so that persons obtaining such decrees in any Court of the United States, whether it be at law, in equity, in bankruptcy or in admiralty, could recover interest upon such judgments and decrees until they are paid.

Until Congress legislates, the Supreme Court is authorized to provide by rule for interest on decrees in chancery and admiralty. Therefore, the rules of the Supreme Court and the rules of the Circuit Courts of Appeal (except the Sixth Circuit), supply the omission from the Act of Congress of decrees by the rules which state:

> Sec. 1. When a judgment for the payment of money is affirmed by this Court the interest thereon shall be calculated and levied from the date of the judgment below until the same is paid and at the same rate that similar judgments bear interest in the Courts of the State where such judgment was rendered.
>
> Sec. 3. The same rule shall be applied to decrees for the payment of money in cases of equity unless otherwise stated by this Court.

It will be observed that interest is allowed on decrees for the payment of money in law and chancery cases. Why should

the rule not include decrees in admiralty? Instead, the 4th Section now provides:

> "In cases of admiralty, damages and interest may be allowed if expressly directed by the Court."

Why should the rules discriminate against decrees in admiralty?

In admiralty interest on claims arising out of breach of contract is a matter of right, but the allowance of interest on damages in cases of collision or other unliquidated damages is always within the discretion of the Court, or may be allowed or disallowed by the District Court, or on appeal, by the Circuit Court of Appeals, or by the Supreme Court.

The Scotland, 118 U. S. 507.
The Maggie J. Smith, 123 U. S. 349.
The Albert Dumois, 177 U. S. 240.

We all know that there is a trial *de novo* in the Circuit Court of Appeals in admiralty cases. The Court, therefore, has a right to modify the decree of the District Court in any manner that it may choose, and deny interest, even though such is provided for in the decree in the District Court.

The Court of Appeals controls the question of costs as well as interest and there is no reason why interest should not be allowed by Statute or by rule upon a decree in admiralty as is provided by rule as a matter of course upon a decree in chancery.

The Rate of Interest.

Considerable discussion is found in connection with this subject as to what the rate of interest should be in admiralty cases. Some people contended that the rate should be uniform in all the Courts of Admiralty throughout the United States, and the rate of six per cent was allowed in numerous cases as such a rate of interest, although in some States the legal rate of interest was as high as ten per cent per annum.

In the case of the *Oregon,* 89 Fed. 520 (D. Ore. 1896) (since decided in the Supreme Court), Judge Bellinger allowed six per cent and quotes Judge Blatchford's decision in the *Aleppo,* Fed. Cas. 158, in which he allowed six per cent. and states that the

rate ought to be uniform and not follow the laws of the States and that the Supreme Court in Hemmingway v. Fisher, 20 Haw. 258, adopted six per cent as the proper rate.

In the *North Star,* 62 Fed. 71-87 (6 C. C. A. 1894), C. J. Taft modified the decree of District Judge Brown by not allowing interest on the damages awarded the libelant in the District Court, declaring that this was permissible in such a case, because the trial in the Court of Appeals was a trial *de novo.* Same case in District Court, 44 Fed. 492.

Judge Lowell in the *Blenheim,* 18 Fed. 47 (D. Mass. 1883), awarded interest on appeal although the point was made that it amounted to awarding interest on interest. See Cambria S. S. Co. v. Pittsburgh S. S. Co., 212 Fed. 674.

The Supreme Court evidently had in mind a uniform rate of interest when it prepared the Admiralty Rules, because it provided in Rule 11 for interest in cases of the giving of a stipulation, with interest at the rate of six per cent.

Again under Rule 51 in cases of the limitation of liability of a vessel owner, the giving of a stipulation for the release of the vessel libeled is provided, and this stipulation must contain the clause "for the payment of interest at six per cent" with no reference whatever to the payment of a different rate if the legal rate of interest in the State where the Court is sitting should be different.

It is evident to me that the present situation of interest on decrees in admiralty has not been called to the attention of the Court; otherwise, admiralty decrees would have been put on the same footing with decrees in chancery. My own judgment is that it would be better to provide for a uniform rate of interest in all of the Admiralty Courts of the United States at six per cent, rather than to have different rates of interest in accordance with the legal rate in the State in which the Court is sitting, as now provided by the Act of Congress and the rule in force in the Sixth Circuit. If it is not desirable to have a uniform rate, then the rules should be amended to conform to the rule now in force in the Sixth Circuit.

I have found no form of a decree in the District Court in any of the text books on Admiralty that provides for interest until the decree is paid. I do not recall having seen a single decree in which there was such a provision and if the Court of Appeals, when affirming a decree, does not grant interest, the

successful litigant receives the amount of the decree in the District Court without interest.

In numerous cases in admiralty against municipalities arising out of collisions between vessels and bridges, water work cribs and other municipal improvements, cases are brought and decrees are entered in favor of the libelant and in such cases the decree against the municipality cannot be collected by execution no matter how long the libelant must wait before the municipality has funds with which to pay the decree. It is in such cases, if interest is not provided for in the decree, or by special direction under the rule, that the successful libelant suffers a loss.

I therefore appeal to the Court to change the rules so that a decree in admiralty may stand on an equality with a decree in chancery.

Respectfully submitted,

C. E. KREMER.

May 1927.