

THE MAY.

{5 Biss. 449.}<sup>1</sup>

District Court, E. D. Wisconsin.

Oct., 1873.<sup>2</sup>

PENALTIES—STEAM

VESSEL—INSPECTION—SEIZURE OF VESSEL.

A libel of information against a steam vessel, to recover the penalty for not being inspected according to the act of congress to provide for the better security of life on board of vessels propelled in whole or in part by steam, cannot be sustained, if a subsisting seizure of the vessel at the time the libel is brought is not alleged, and which is to be proven at the hearing.

{Cited in *The Paolina S.*, 11 Fed. 173.}

The libel of information, brought by the district attorney in this case, charges that the steam tug *May* had been employed in towing lumber on the *Oconto* river into *Green Bay* in this state, without having been inspected in conformity with the eleventh section of the act of congress, entitled, "An act to provide for the better security of life on board of vessels propelled in whole or in part by steam, and for other purposes," (10 Stat. 440, approved Feb. 28, 1871), and that by reason thereof the owner or owners and master of said steam tug became liable to pay to the United States the sum of five hundred dollars; that for the payment of said sum of five hundred dollars, the said steam tug became 1213 liable to be seized and proceeded against summarily by way of libel, and for the recovery of which this civil and maritime action is instituted. The objection to the prosecution of this libel of information was the omission of an allegation of a seizure. The first section of the act under which the libel of information is brought provides, that "if any such vessel, 'propelled in whole or in part by steam,' shall be navigated without complying with the

terms of the act, the owner or owners thereof shall forfeit and pay to the United States the sum of five hundred dollars for each offense, one half for the use of the informer, and for which sum the steamboat or vessel so engaged shall be liable and may be seized and proceeded against by way of libel.”

Levi Hubbell, U. S. Dist. Atty., for United States.  
Finches, Lynde & Miller, for respondents.

MILLER, District Judge. By a long course of judicial decisions, it must be regarded as definitely settled that there must be in all cases under the revenue and navigation laws a subsisting seizure at the time the libel or information is brought See Conk. 252255, and cases cited, and many others. See Conk. Prac. (4th Ed.) 231. These decisions are pursuant to section 9 of the act to establish the judicial courts of the United States, approved September 24, 1789 (1 Stat. 73, 76), investing the district courts with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost navigation, or trade of the United States, where seizures are made on waters navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas. By the section under which this libel is brought it will be observed that the owner of the vessel shall forfeit and pay the penalty, and for the recovery thereof the vessel shall be liable and may be seized and proceeded against by way of libel. The remedy here prescribed for a breach of the law is by seizure and libel.

This libel of information cannot be further prosecuted unless it be amended by alleging a seizure by the proper officer, and which must be proven as alleged.

NOTE. On appeal to the circuit court, Judge Drummond affirmed the above case. Opinion delivered October term, 1874 [Case No. 9,330]. The

present statute for the regulation of steam vessels comprises title 52 of the Revision of 1874, p. 857. The section of that act providing for the penalty is as follows (section 4499): "If any vessel, propelled in whole or in part by steam, be navigated without complying with the terms of this title, the owner shall be liable to the United States in a penalty of five hundred dollars for each offense, one-half for the use of the informer, for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense."

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<sup>2</sup> [Affirmed in Case No. 9,330.]

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