

Case No. 16,027. UNITED STATES V. THE PENNSYLVANIA CANAL BOAT NOS. 68 AND 69.

[30 Leg. Int. 249; 18 Int. Rev. Rec. 56; 8 Am. Law Rev. 162.]¹

District Court, D. Maryland.

July 12, 1873.

SHIPPING—TONNAGE DUES, ETC.

A canal boat is not a ship or vessel within the meaning of the act of congress of February 18th, 1793 [1 Stat. 305].

In admiralty.

GILES, District Judge. This case is submitted to me on libel and answer. The libel was filed for a decree for the sale of the said canal boat to pay certain tonnage dues and light money claimed to be due to the United States by virtue of the 6th section of the act of congress of 18th February, 1793. That section provides, that, after the last day of May next, every ship or vessel of twenty tons or upwards (other than such as are registered) found trading between district and district, or between different places in the same district, or carrying on the fishery, without being enrolled or licensed, or if less than twenty tons, and not less than five tons, without a license, in manner as is provided by this act, such ship or vessel, if laden with goods the growth or manufacture of the United States only, (distilled spirits excepted,) or in ballast, shall pay the same fees and tonnage in every port of the United States at which she may cruise, as ships or vessels not belonging to a citizen or citizens of the United States, &c, &c. The answer states, that this canal boat hath no motive power attached thereto, hath no masts or sails, and is only moved by some power external to itself. And from a drawing filed in the case, it appears that this boat hath no permanent deck, but only a narrow plank running around inside the bulwarks, just sufficient for a man to walk on. The question is, is such a boat, a ship or vessel within the true meaning of the act of 1793? And I am of opinion that it is not. The general provisions of that act in reference to the enrollment or licensing of vessels, Showing what is requisite for such enrollment, negatives the idea that congress could have intended its provisions to have embraced canal boats such as this. Nor does the language of the act warrant such an interpretation. Nor is the act of 1793 extended to include such boats by the provisions of the act of July 20th, 1846 [9 Stat. 38]. That act provides "that persons employed in navigating canal boats without masts or steam power, now by law required to be registered and licensed, or enrolled and licensed, shall not be required to pay any marine hospital tax," &c, &c. It excepts from the payment of such dues, persons navigating the canal boats therein described, if they were required to be registered or enrolled, but does not enact that such should be the case. It is at most, only a legislative interpretation of the provisions of the act of 1793. A boat navigated by oars might still be bound to pay the dues mentioned, so far as this law of 1846 extends. But in this case the canal boat

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has no oars, no sails, and no steam power, and is merely a box to carry goods, drawn by and attached to a steam vessel that is enrolled and licensed. When congress wished to include such a craft they used appropriate language to do so. The act of July 18th, 1866 [14 Stat. 178], to prevent smuggling, provides, "that for the purposes of this act, the term 'vessel,' whenever hereinafter used, shall be held to include every description of water-craft, raft vehicle, and contrivance used, or capable of being used, as a means or auxiliary of transportation on or by water," &c., &c. In arriving at the conclusion I have, I am gratified to know, that I am sustained by a decision of the learned district judge of the Eastern district of Pennsylvania, (Judge Cadwalader), made last year in *U. S. v. The Ohio* [Case No. 15,915]. I will therefore sign a decree dismissing the libel filed in this case.

¹ [Reprinted from 30 Leg. Int. 249, by permission. 8 Am. Law Rev. 162, contains only a partial report.]