

dent of this kind she might not sink immediately, but would float a greater or less time, according to the extent of her injury.

Again, it is urged with great earnestness by the claimant that the theory of the libelant involves an impossibility, because it proves that the tug and tow crossed the ledge twice,—once in approaching Point Judith, and again in turning back; that this is impossible from the fact that the first passage was over the south end of the ledge, where the water is more shallow, and where the Manhattan would have struck. It is, however, by no means to be concluded from the evidence that the tug and barges passed over the ledge twice. It is true that most of the witnesses on Point Judith say that the tug came down on a range with the southerly end of the ledge, but they could not, from their position, tell how far to the east the tug came before turning. Again, the tug was in advance of the tow, and it may be she crossed twice. The probability is that the turn was made just after the ledge was reached by the tug, or, possibly, the tug and tow came down just south of the ledge and then turned back upon it. However this may be, there is nothing which makes the theory of the libelant, that the Manhattan, in some way, in turning, struck the ledge, either impossible or improbable upon the evidence. By the great weight of testimony the tug and tow were located at the time of the accident where Squid's ledge lies.

In our opinion, the libelant has made out a case of negligence by a clear preponderance of testimony, which makes the question of the burden of proof raised on the argument immaterial. Under these circumstances a decree should be entered in favor of the libelant. *The Mohler*, 21 Wall. 230; *The Lady Pike*, Id. 1; *The Brooklyn*, 2 Ben. 547; *The Deer*, 4 Ben. 352.

THE MODOC.

(District Court, W. D. Pennsylvania. October Term, 1883.)

SEAMEN'S WAGES—LIBEL BY MINOR SONS OF A DECEASED PART OWNER—ALLOWANCE REFUSED.

The minor sons of a deceased part owner of a boat libeled her for wages for their services upon her during their father's life-time, when the boat was run by him, the other owner taking no part in her running. The libelants gave evidence to show that there was an understanding between their father and themselves that they were to receive wages, but in fact none of them had been emancipated, and they were supported by their father. When he died he had in his hands earnings of the boat unaccounted for in excess of these wages claims. The surviving owner, who took defense, had no knowledge of the arrangement between the father and his infant sons, and its enforcement against the boat would have prejudiced him. *Held*, that the claims must be disallowed, and the libels dismissed.

In Admiralty.

Morton Hunter, for libelants.

Barton & Sons, for respondents.

ACHESON, J. The libelants, who are minor children of Capt. J. A. Moore, deceased, and respectively of the ages of 19, 16, and 15 years, suing in the name of W. D. Thomas, their next friend, have filed libels against the steam-tug *Modoc* for wages. Their father was half owner of the boat, and her master, and by him she was run; his co-owner, R. B. Kendall, taking no part in her running. The entire business of the boat, which was that of towing, was transacted by Capt. Moore. He put the libelants on the boat, and for a period of about eight months, and until his death, two of the libelants worked on her as deck hands and one acted as steward. Capt. Moore's death left the financial condition of the boat in this plight, viz.: He had collected for towing \$3,528.95, and had disbursed \$2,114.17, the balance in his hands being \$1,414.78, no part of which has been accounted for, while the boat proved to be incumbered with liens of his creation for supplies, etc., to the amount of \$1,098.87, which Kendall, the surviving owner, has been compelled to pay. When Capt. Moore died he had about him \$425, which sum it is morally certain (though this is not positively shown) was the boat's money. This fund his widow, who is now a principal witness for the libelants, took possession of and treated as her husband's individual money. Furthermore, it appears that the original cost of the *Modoc* was \$2,300, of which Kendall paid not only his own half, but also \$920 of Capt. Moore's share. The united claims of these libelants are \$546.80, and, if sustained, it is certain that they must be paid out of Mr. Kendall's own pocket. Of these claims he had no knowledge during Capt. Moore's life-time, the libels being filed after his death.

In view of the foregoing facts this attempt of Capt. Moore's family to charge the *Modoc* strikes me as most ungracious, and deserving of no favor. Must these demands be sustained as valid liens? The libelants, as we have seen, were all infants, and none of them had been emancipated by their father. When not on the boat, they all lived with their father as one family, they paying no boarding, it is shown. Presumably they were supplied by him with clothing and other necessities. He was, then, entitled to their services; and their earnings, although for maritime services, were legally his. *Plummer v. Webb*, 4 Mason, 380. The libelants endeavor to remove this legal obstacle out of their way, and their mother testifies that she heard her husband repeatedly say to the libelants "that he intended to let their wages stand for an interest in the boat,—he did not want to make any use of it for himself; that he wanted to let it stand that the boys could get an interest in the boat for themselves." The libelants severally testify that their father often told them during their service on the boat that when they earned and got their money they could do with it what they pleased; that they were to have it to do what they liked,—either to take an interest in the boat or otherwise

use it. And Thomas Donovan testifies that on one occasion, when the libelants were complaining of late work, their father said to them, "If you don't do it I will have to get some others who will, as I have to pay you the same as any one else;" and that at other times, when the boys were indulging in "a little growl," their father would say "that their money was in the office, the same as mine, whenever they wanted it;" and this witness adds that Capt. Moore told him "he did not want the boys' wages; that he would pay them the same as me, and that they could do what they liked with it." But, if all this be true, what does it amount to? What have we here but expressions of the father's intentions in respect to the earnings of his sons? Those earnings were none the less his after these declarations than they were before. An express promise by the father, under the circumstances of this case, to pay these infants their wages while in his employ upon the boat, would have lacked the element of consideration, and, it seems to me, could not have been enforced against him. Much less should the alleged understanding be enforced in this proceeding *in rem* to the prejudice of the surviving owner of the boat, who was in total ignorance of such arrangement. *Kauffelt v. Moderwell*, 21 Pa. St. 222, 224. When Capt. Moore died he had in his hands of the boat's moneys over \$1,400, which were applicable to the wages earned by his infant sons, and the justice of the case requires, at least as between Kendall and the libelants, that their wages should be treated as paid. *Id.*

I have not overlooked the fact that in the boat's time-book, as kept by Capt. Moore, accounts with the libelants, respectively, appear, similar to the other hands' accounts. But this was necessary for proper settlements between the owners of the boat, and is not at all inconsistent with the father's claim to the earnings of his infant sons.

Let a decree be drawn dismissing the original and intervening libels, with costs.

DORIAN, Adm'x, v. CITY OF SHREVEPORT.¹

(Circuit Court, W. D. Louisiana. May, 1884.)

JURISDICTION OF UNITED STATES COURT—OBLIGATION OF CONTRACT—REPEAL OF LAW AN IMPAIRMENT, WITHIN THE MEANING OF THE CONSTITUTION.

A petition that alleges the repeal of laws which were constituent and material parts of the obligation of the contract of certain bonds at the time of their issue, presents a case within the jurisdiction of a federal court.

Matter of Jurisdiction.

Hicks & Hicks, for plaintiff.

W. A. Seay, City Atty., for defendant.

BOARMAN, J. The plaintiff, administering the succession of James Dorian, sues the city for a sum of money which she claims that the defendant corporation owes said succession, because in A. D. 1870 the city contracted with Robson & Baer to do certain work on the streets; that, the work having been performed and accepted, an obligation arises out of the said contract, binding the city to pay for the work; and that the money, or a part of it, which the city obligated itself to pay Robson & Baer, is in law due plaintiff, because plaintiff holds three certain city bonds for \$1,000 each, payable 10 years after date, which were given to the said contractors by the defendant in settling with them for the said work. All the parties to the suit are citizens of Louisiana; and the plaintiff, having set up the above demand against the defendant, alleges, in order to show jurisdiction in this court, that the obligation of the contract between Robson & Baer and the city has been violated and impaired, contrary to the prohibitions in the constitution of the United States, in this: that at the time the said contract was entered into certain laws, which she recites in the petition, were vital and constituent part of said contract; that these laws, after the rights under the contract had accrued, were repealed, and plaintiff's rights and remedies impaired, denied, and taken away, in violation of said constitution. It is not deemed important to recite here the laws, the repeal of which, it is alleged, impaired the said obligation.

If the public work was performed as alleged, and the obligation is a subsisting one, this statement of the case, together with the charge as to the jurisdictional facts, shows—if the plaintiff is competent to sue—a suit in which there is involved a constitutional question; but it is not at all clear that this plaintiff, under those allegations of her petition which set forth the demand which she makes in consequence of her being the holder of the particular bonds that were given by the city to Robson & Baer, in settlement for said public work, presents a suit which she is competent in law to maintain. The allegations in

¹ We are indebted to Talbot Stillman, Esq., of the Monroe, Louisiana, bar, for this opinion.