

THE ELLA B.

District Court, N. D. New York. July 15, 1885.

ADMIRALTY JURISDICTION—TUG ENGAGED IN
TOWING SMALL CRAFT IN HARBOR OF
BUFFALO—LIBEL FOR SEAMEN'S WAGES.

A tug of less than five tons burden, whose chief occupation is the towing of canal-boats and other small craft about the harbor of Buffalo and adjacent waters, occasionally running out upon lake Erie and the Niagara river, is engaged in aiding commerce upon navigable waters of the United States, and within the admiralty jurisdiction.

In Admiralty.

Frank F. Williams, for libelant.

D. G. Jackson, for respondent.

COXE, J. This is an action to recover seaman's wages. The defenses are, want of jurisdiction and payment. The Ella B. is a tug of less than five tons burden. Her chief occupation has been, and is, the towing of canal-boats and other small craft about the harbor of Buffalo and the waters adjacent thereto. She has occasionally, in pursuing her vocation, been out upon Lake Erie and the Niagara river. Since the act of August 5, 1882, (22 St. at Large, 300,) she has not been enrolled.

It is contended by the respondent that, because of her diminutive size and the restricted theater of her operations, she is not within the admiralty jurisdiction of the court. This proposition cannot be maintained. She was engaged in aiding commerce upon navigable waters of the United States. This fact, irrespective of questions relating to the size and tonnage of the vessel, the absence of enrollment and license, and the circumscribed nature of her employment, is sufficient to give the court jurisdiction. *The B & C*, 18 FED. REP. 543; affirmed, *Ex parte Boyer*, 109 U. S. 629; S. C. 3 Sup. Ct. Rep. 434; *The Genesee Chief*, 12

How. 443; *The Eagle*, 8 Wall. 15; *The Hine v. Trevor*, 4 Wall. 555; *U. S. v. Burlington & H. C. F. Co.* 21 FED. REP. 331; *Endner v. Greco*, 3 FED. REP. 411; *The General Cass*, Brown, Adm. 334; *Malony v. Milwaukee*, 1 FED. REP. 611; *The Gate City*, 5 Biss. 200; *The Volunteer*, Brown, Adm. 159; *The Hezekiah Baldivin*, 8 Ben. 556; *The McChesney*, 8 Ben. 150; affirmed, 15 Blatchf. 183; *Murray v. The Nimick*, 2 FED. REP. 86; *The Florence*, 2 Flippin, 56. ⁵⁰⁹ With reference to the defense of payment it is thought that the testimony of the libelant, enforced as it is by dates and memoranda, is entitled to greater weight than the somewhat loose denial of the master of the tug. There should be a decree in favor of the libelant for the amount demanded in the libel, with interest and costs.

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