

THE CRAIGENDORAN.¹
THE CLANDON.
BARTLETT AND OTHERS *v.* THE CRAIGENDORAN.
SAME *v.* THE CLANDON.

District Court, E. D. New York.

May 27, 1887.

1. WHARFAGE—HOW COMPUTED—TONNAGE OF VESSEL—REGISTERED TONNAGE.

The wharfage act of 1877 of the state of New York (Laws 1877, c. 315) regulates the rates of wharfage in New York and Brooklyn by the tonnage of the vessel. *Held*, that the tonnage so taken to calculate the wharfage is the registered, not the gross, tonnage.

2. SAME—BRITISH VESSELS.

The rule is the same for British vessels; the secretary of the treasury having by the treasury regulations of 1884, art. 182, directed that their tonnage shall be determined by reference to their certificate of registry.

In Admiralty.

Goodrich, Beady & Goodrich, for libellant.

Whitehead, Parker & Dexter, for claimants.

Butler, Stillman & Hubbard, for the Clandon.

BENEDICT, J. This is an action to recover wharfage for the use of a wharf in the city of Brooklyn. The rates of wharfage chargeable for the use of wharves in the city of Brooklyn and the city of New York are regulated by a statute of the state, enacted in 1877. The provision in the laws of the state now, and at the time in the libel mentioned, in

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force, is as follows (chapter 315, Laws 1877:) "It shall be lawful to charge and receive, within the cities of New York and Brooklyn and Long Island City, wharfage and dockage at the following rates, namely: * * * From any vessel of two hundred tons burden and under, two cents per ton; and from every vessel over two hundred tons burden, two cents per ton for the first two hundred tons and one cent per ton for any additional ton." Under this statute, the question has arisen whether the tonnage of the ship so taken for the purpose of calculating her wharfage is the tonnage of the ship ascertained by measuring her in the manner prescribed by the laws of the United States in force at the time of the passage of the state law of 1877, or the tonnage ascertained by measuring her in the manner prescribed by the laws of the United States in force at the time of using the wharf.

This question is not free from difficulty; but on reflection, and upon considering the force of the expression of the supreme court, where it is said, "Evidently the word 'tonnage,' in commercial designation, means the number of tons burden the ship will carry as estimated and ascertained by the official admeasurement and computation prescribed by the public authority," and mindful of the fact that the measuring of a ship for the purpose of fixing her tonnage is required by law to be made by an officer of the United States, and that the method of measuring to be pursued by such officer is prescribed by law, and that the tonnage of the ship must be inserted in her register or enrollment, and the tonnage there stated must be that tonnage, and no other, which is ascertained by the officer, from a measurement made in the manner prescribed by law at the time of her registry or enrollment, and that consequently the only legal tonnage of the ship is the tonnage stated in her registry or enrollment, I am of the opinion that the words "tons burden," as used in the wharfage act of 1877, above quoted, should be held to mean the registered tonnage of the ship, and not her gross tonnage. No method by which to ascertain the tonnage of a ship for the purpose of calculating her wharfage is provided by the state statute, and all ships are required by law to carry a register in which the tonnage is stated. The fair presumption is that it was the intention of the statute that reference to the ship's register should be made for the purpose of calculating her wharfage, and not to leave the tonnage to be a matter of private calculation and open to dispute.

In this instance the vessel is a British vessel; but that fact makes no difference, for, under the statute of 1882, the secretary of the treasury is authorized to direct that the tonnage of foreign vessels be that described in their certificates of registry or other national papers: and, by article 182 of the treasury regulations of 1884, the secretary has directed that the tonnage of vessels of Great Britain shall be determined by reference to their certificate of registry.

In accordance with these views, the wharfage recoverable in this case must be calculated on the registered tonnage of the ship, which is admitted to be 943 tons, at the rate of two cents per ton for the first 200 tons and one cent per ton for every additional ton.

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¹ Reported by Edward G. Benedict, Esq., of the New York bar.

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