

one side of defendant's wrapper is a figure like an ellipse, with a circle in which are the words "Ware Tobacco-Works, St. Paul, Minn." The colors used are yellow, red, and blue. The complainant, on a like side of his wrapper, has an ellipse with a circle in the center in which is a monogram of Wellman & Dwire Tobacco-Works. The colors used are yellow, red, blue, and white; and below the center in each are the words "Smoke and Chew," in letters of the same size and shape. The upper half of the letters used by complainant is red, and the lower half yellow. The upper half of the letters used by defendant is red, and the lower half yellow, except the "or" is all blue, the background of each is black, and both edges of the complainant's wrapper are dark blue, with vine tracings; in the defendant's, light blue, and on one edge two buckles, with words, "Selected Leaf;" on the other two buckles, and the words "Nothing Better." The sides next below on both wrappers are bounded by blue edges inclosed by red bands. While there are variations, the general effect of the wrappers is the same, and they are enough alike to enable the defendant company to deceive the public, who are purchasers, and interfere with complainant. Motion for injunction granted, and it is so ordered.

THE W. F. BROWN.

THE SUNNY SOUTH.

LAWRENCE v. THE W. F. BROWN and THE SUNNY SOUTH, (SMITH,
Intervenor.)

(District Court, E. D. Louisiana. May 9, 1891.)

1. ADMIRALTY—WAGES OF PERFORMERS IN FLOATING CIRCUS.

Libelants were performers in a show given in a float or tow at points on the Mississippi river. The tow was propelled by a former ferry-boat, licensed for the coastwise trade. Libelants' chief duty was to perform before the audience, though they also did subordinately some duties connected with running the vessel. The intervening libelant was engineer on the propelling boat or tug-boat. *Held*, that the service of the original libelants was land service, substantially over which the admiralty courts could not take jurisdiction. *Held, also*, that the service of the engineer was maritime, giving to him a maritime lien which could be enforced in a court of admiralty.

2. SAME—WAGES OF ENGINEER ON TUG-BOAT.

Services rendered by an engineer on the propelling tug-boat were strictly maritime, and his libel must be maintained.

In Admiralty. Libel for wages.

J. Hutchinson, for claimant.

J. D. Grace, for libelants.

BILLINGS, J. This case is submitted upon exceptions to the jurisdiction of the court as a court of admiralty over the cause, both as to the

libelants, and the intervening libelant, who has had a separate admiralty process and seizure. The libelants who joined in the original libel were employed by the claimant, under these circumstances: The claimant owned a floating house, in which was given an exhibition or circus show at points between Evansville, Ind., and New Orleans; the floating house being for the time moored to the shore, and the spectators—patrons—coming from the land. This floating house was a tow propelled by a former ferry-boat,—a stern-wheel steamer licensed for the coastwise trade, described as a ferry-boat. The original libelants were performers in this circus, hired by the claimant to perform in the exhibition, and also to aid in minor matters, as he should direct, in the conduct of the tug. But their substantial and chief employment was as performers in the floating show.

Two questions are presented: (1) Was the propelling boat a vessel engaged in commerce and navigation? I think she was. She went from point to point upon the navigable waters, subject to admiralty jurisdiction, for hundreds of miles. The place of employment was within admiralty jurisdiction. The nature of the employment was for that sort of intercourse, in connection with a business which made it commercial. It was, without doubt, service performed during navigation; so that, so far as the structure of the vessel and the nature of the claimant's business is concerned, the propelling boat was a tug-boat engaged in commerce and navigation. (2) The second question is, were the libelants and intervening libelants sailors,—mariners,—in that they were employed to navigate the vessel? The original libelants were not. Their chief substantive business or service was to perform before an audience, and thereby afford amusement and entertainment. The fact that they did subordinate some duties connected with running the vessel does not affect the character of their service and employment. It must be classed either as maritime or land service, and it is, for the purpose of such classification, land employment. The service of the intervening libelant was that of engineer upon the propelling vessel, and nothing else. He was exclusively a mariner. My conclusion is therefore that the employment and service of the libelants carried with it no admiralty lien, but that the intervening libelant has a lien which he can enforce in a court of admiralty. The libel must therefore be dismissed, and the intervening libel maintained. This can be done, as the intervening libelant prayed for and has a separate admiralty process.

THE PROGRESSO.¹

COFFIN v. THE PROGRESSO OR WELLS CITY.

(District Court, E. D. New York. May 21, 1891.)

ADMIRALTY JURISDICTION—SEAMAN'S WAGES—VESSEL WITHOUT NAME, REGISTER, OR DOCUMENTS.

A British vessel was sunk in the harbor of New York, and abandoned by her owners, and her register closed. She was raised and sold to American citizens, and, while without name or register or documents as a vessel, libellant was employed by her owner as mate. The owner claimed that he was to have been mate when the vessel was ready for sea. In the mean time he served about the wreck as it was being repaired. He was discharged before the vessel was documented, and before she went to sea. On suit brought *in rem* to recover his wages, it was contended that the wreck was not a vessel, in the sense that she could have officers or mariners, that the services were not maritime, and the court had no jurisdiction. *Held*, that the case was within the admiralty and maritime jurisdiction of the United States, and libellant was entitled to recover mate's wages.

In Admiralty. Suit to recover seaman's wages.

James Parker, for claimant.

E. G. Benedict, for libellant.

BENEDICT, J. This is an action *in rem* to enforce a lien for mate's wages against the steamer formerly known as the "Wells City," now known as the "Progresso." It is defended with the object, it is understood, of obtaining a decision upon a question of admiralty jurisdiction. The defense set up in the answer is that the steamer, while a British vessel registered under the name of "Wells City," was sunk in the harbor of New York, and was abandoned by her owner, and her register as a British vessel duly closed; that she was raised by the underwriters, and sold to the claimant, with the purpose to procure for her a register as a vessel of the United States, under the name "Progresso;" that at the time of hiring the libellant the vessel had no name or purpose as a vessel, and was not a vessel in the sense that she could have either officers or mariners, nor could either officers or mariners be shipped or hired as such on board of said hull; that when, on November 28th, the libellant was placed in charge of said hull, it was with the understanding that when said hull should be documented, and not until then, the libellant should be shipped as mate; wherefore it is denied that this is a cause of contract civil and maritime, or that it is a case within the admiralty and maritime jurisdiction of the United States. The proofs show that at the time of the rendition of the services in question the vessel was afloat in the Atlantic basin, undergoing repairs preparatory to a voyage to sea; that she had no American register, and was not in any way documented as an American vessel; and it is assumed, although not proved, that her British register had been closed. Up to the 25th day of November, one Captain McArthur was in charge of the ship, and was to go as first mate of the ship when she obtained her papers. On the 25th of November, McAr-

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