

THE ANJER HEAD.<sup>1</sup>UNITED STATES *v.* THE ANJER HEAD.

(District Court, D. New Jersey. December 8, 1890.)

## ILLEGAL DUMPING—LIABILITY OF VESSEL—ACT OF JUNE 29, 1888.

When an employe on board of a steam-ship threw overboard a single scuttle of ashes in a place prohibited by the statute of June 29, 1888, (25 St. at Large, p. 209,) entitled "An act to prevent obstructive and injurious deposits within the harbor of New York, by dumping or otherwise, and to punish and prevent such offenses," and there was no proof of orders by any one in authority, it was held that the steam-ship was not used or employed in a violation of the law, in the sense of the statute, and was not liable *in rem* to the penalties therein prescribed.

In Admiralty. Suit to recover a penalty.

*George S. Duryea*, U. S. Atty., and *H. W. Hayes*, Asst. U. S. Atty., for the United States.

*Convers & Kirlin*, (*Mr. Kirlin*, of counsel,) for claimant.

GREEN, J. The first exception taken by the claimants to the libel is well founded, and is sustained. The allegation of the libel is that, while the steam-ship *Anjer Head* was in New York harbor, some one on board of her did deposit in the tidal waters of the harbor ashes and cinders, contrary to the statute in such case made and provided. The facts, as admitted, are that an employe on board the steam-ship did throw overboard a single scuttle of ashes at the place named. Such employe was undoubtedly technically guilty of violating the statute. But these proceedings are not against him, but are brought against the steam-ship, being based upon the last clause of section 4 of the statute referred to in the libel. That clause reads as follows: "Any boat or vessel used or employed in violating any provisions of this act shall be liable," etc. The emphatic words in this clause are "used" and "employed." Practically, they are synonymous, and they mean "to make use of," "to put to a purpose." The clause in question, then, renders every boat or vessel "put to the purpose" of violating the provisions of this statute liable to the penalties. It is quite evident that the *Anjer Head* was not so engaged in such violation. To be put to such or to any purpose necessarily requires antecedent determination on the part of her master or owners, or of some one with sufficient authority that she shall perform such purpose. A vessel can only be used or employed by or with the consent of the person who has the legal right to use and employ. There is no pretense that there was any such use or employment in this case.

Libel is dismissed.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

THE BOMBAY.<sup>1</sup>UNITED STATES *v.* THE BOMBAY.

(District Court, E. D. New York. June 4, 1891.)

## ILLEGAL DUMPING—LIABILITY OF VESSEL—ACT OF JUNE 29, 1888.

Under the statute of June 29, 1888, (25 St. at Large, p. 209,) entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses," a steam-ship from which ashes are dumped in an unlawful place, by firemen presumably acting under orders from some superior officer, is liable as having herself violated the law.

In Admiralty. Suit to recover a penalty.

*Jesse Johnson*, U. S. Dist. Atty.

*Convers & Kirlin*, (*Mr. Kirlin*, of counsel,) for the Bombay.

BENEDICT, J. This is a proceeding *in rem* to charge the steam-ship Bombay with a fine for dumping ashes in the lower bay of the harbor of New York. It is taken under the statute of the United States passed June 29, 1888, (25 St. at Large, p. 209,) entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses." The libel in the first article charges that on the 8th day of October, 1889, the master of the steamer Bombay, being on board and in command of her, did unlawfully deposit ashes and cinders in the tidal waters of the harbor of New York, in violation of the provisions of the statute above referred to. In the second article the libel charges that the ashes and cinders deposited as aforesaid were brought and carried to said place where they were dumped in and by the steam-ship Bombay, and the said steamer was then and there used and employed in violating the provisions of the statute aforesaid. By the second section of the statute referred to it is made a misdemeanor, punishable by fine and imprisonment, for any person to be engaged in, or aiding or abetting, or otherwise instigating, the deposit or discharge of ashes or cinders in the tidal waters of the harbor of New York; and the last clause of the fourth section of the statute declares that "any boat or vessel used or employed in violating any provision of this act shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against summarily, by way of libel, in any district court of the United States having jurisdiction thereof." The answer raises two issues: *First*, whether the violation of the act set forth in the libel was committed by the master of the steam-ship, or authorized or instigated by him, as charged; *second*, whether the steamer was used or employed in that violation, within the meaning of the statute.

It appears in evidence that while the steamer Bombay was proceeding through the harbor of New York on a voyage from New York to Baltimore, in the pursuit of her calling, which was that of a common carrier

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.