of a pipe to convey the air into the reservoir above the oil would infringe the second claim of the Mack patent, and I do not think such a construction of the claim is allowable. The decree originally entered dismissing complainant's bill will therefore be affirmed, and it is so ordered.

THE HAVILAH.

PRATT *v.* THE HAVILAH.

COOMBS *et al.* *v.* SAME.

(Circuit Court of Appeals, Second Circuit. October 31, 1891.)

CIRCUIT COURT OF APPEALS—ADMIRALTY APPEALS.

Act Cong. Feb. 16, 1875, "to facilitate the disposition of cases in the supreme court," provides that after the passage thereof the circuit courts in deciding admiralty causes shall make separate findings of fact and of law, and that, on appeal to the supreme court, the review shall be limited to questions of law apparent on the record or presented by a bill of exceptions. *Held*, that although the act establishing the circuit court of appeals (Act Cong. March 3, 1891) declares that "all provisions of law now in force regulating the methods and system of appeals and writs of error" shall regulate appeals and writs of error to that court, yet the act of 1875 does not apply to appeals in admiralty from the existing circuit courts to that court, and the same may be heard without separate findings of fact and of law, and without bills of exceptions, as in appeals from the district to the circuit courts.

Appeal from the circuit court of the United States for the southern district of New York.

Libel by Edwin N. Pratt, as master, etc., of the schooner Helen Augusta, against the brig Havilah, her tackle, etc. Decree below for libelant. Lincoln Coombs and others, claimants, appeal. Heard on motion to dismiss the appeal. Motion overruled.

Henry Arden, for the motion.

Robert D. Benedict, opposed.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. This is an appeal from a decree of the circuit court affirming a decree of the district court for the southern district of New York in an admiralty cause. 33 Fed. Rep. 875. The cause was heard by the circuit court subsequent to July 1, 1891. A motion has been made to dismiss the appeal. The motion proceeds upon the ground that no findings of fact were made by the circuit court upon the decision of the cause; that no exceptions appear in the record; and that this court, in reviewing appeals in admiralty, is limited to a determination of the questions of law arising upon the record, and to such rulings of the court below, excepted to at the time, as are presented by a bill of exceptions. Prior to the act of February 16, 1875, "to facilitate the disposition of

cases in the supreme court and for other purposes,"[1] neither special findings of facts nor exceptions were a necessary part of the record upon an appeal in an admiralty cause, and the hearing in the supreme court and in the circuit court was a trial *de novo*. It was the purpose of that act to relieve the supreme court from the necessity of deciding questions of fact in admiralty causes, and the provisions whereby findings of facts and conclusions of law were required to be separately stated by the circuit courts had no application to cases which could not, because the amount in controversy was insufficient, be reviewed by the supreme court. *Vitrified Pipes*, 14 Blatchf. 279; *Richards* v. *Hansen*, 1 Fed. Rep. 67. Obviously that act does not apply to an appeal to the circuit court of appeals. The eleventh section of the act of March 3, 1891, establishing the circuit court of appeals, provides that "all provisions of law now in force regulating the methods and system of review through appeals or writs of error shall regulate the methods and system of appeals and writs of error provided for in this act in respect of the circuit courts of appeals." By the act appeals in admiralty henceforth lie direct from the district court to the court of appeals, and no method or system of review by findings or bill of exceptions was in force for the review by appeals in admiralty from the district court when the act was passed. It would be unreasonable to hold that congress intended a different practice to apply to the limited number of cases where appeal lies from the circuit court to the circuit court of appeals (solely because they were pending and undecided when the act was passed) from that which would apply to appeals in admiralty from the district court. As the act of 1875 provided a method and system of review, through appeals, only for such cases in the circuit court as went to the supreme court, there seems no good reason for extending the general language of the eleventh section of the new act to cover cases in the circuit court which are not to go to that tribunal.

[1] The act of 1875 provides, among other things, "that the circuit courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. * * * The review of the judgments and decrees entered upon such findings by the supreme court upon appeal shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the circuit court, excepted to at the time, as may be presented by a bill of exceptions prepared as in actions at law."

The River Mersey.

North American Dredging & Improvement Co. *v.* The River Mersey.

(*District Court, S. D. New York.* January 8, 1892.)

1. Admiralty—Practice—Submitting Cause on Pleadings.
Upon the submission of the cause on the pleadings, averments of new matter in the answer, or matters alleged in the libel and denied generally, must be wholly disregarded, as unproved, except in so far as they may be admissions against interest.

2. Derelicts at Sea—Dangerous Obstructions—Destruction of by Other Vessels—Master's Personal Tort.
A scow in tow of a steamer on a voyage from Charleston to Nicaragua having broken adrift off Fortune island in July, 1890, was drifting in the track of steamers going up and down the coast for over three weeks, when she was taken in tow by the defendant steamer, and on the following day set fire to for the purpose of destruction. The libelants, according to the libel, had notice from time to time during this interval of the whereabouts of the scow, but gave no evidence that they made any efforts to rescue her, or that they intended to do so. *Held*, that the inference from these facts was that the scow was abandoned by the owners, to be dealt with by other vessels that might meet her as prudence should dictate; that by the nature of the vessel she was an obstruction dangerous to navigation; and there being no evidence of her value, or that she was worth salvage, *held*, that there was no presumption, in the absence of evidence, that the act of the master of the River Mersey in destroying this obstruction was either tortious or negligent; but that it was presumptively a beneficial service in the public interest, for the safety of life and property at sea,—a work similar to that in which the public vessels of maritime nations, including our own, are more or less engaged. *Held, also*, that the master's act, if tortious, was a personal tort, and not being done for the benefit of the ship, or in the course of navigating the ship, or within the scope of his powers as representative of the owners, neither the owners nor their property were liable.

In Admiralty. Libel by the North American Dredging & Improvement Company against the steam-ship River Mersey to recover for the destruction of a scow, the property of libelant.

Wheeler, Cortis & Godkin, for libelant.

Convers & Kirlin, for claimants.

Brown, J. The above libel was filed to recover for alleged damages to the libelant for setting on fire a scow belonging to the libelant, which was adrift at sea. The scow was one of four which, while on a voyage from Charleston to Nicaragua in tow of the steamer G. W. Jones, broke adrift on the 14th day of July, 1890, when about off Fortune island, one of the West Indies. No evidence was introduced on either side in support of the allegations of the libel or answer. The case was submitted upon the pleadings. The answer admits that the scow was picked up on the 6th of August, about 3 P. M., and taken in tow until noon of the following day. The scow had then been drifting to the north-eastward for a little over three weeks. The libel alleged "that the libelant, on or about the 16th of July, 1890, received notice that said scow had gone adrift; that at various times thereafter the libelant received from incoming steamers and other vessels notice of the whereabouts of the said scow, and kept itself generally informed both of the position and condition thereof; that about the 7th or 8th of August, 1890, the libelant received