

THE NETTIE WOODWARD.

WESTERN TRANSIT Co. *et al.*, Intervening, v. THE NETTIE WOODWARD.

(District Court, E. D. Michigan. April 30, 1893.)

MARITIME LIENS—PRIORITY—MARITIME TORT—SEAMAN'S WAGES.

The maritime lien for damages arising from collision takes precedence of the lien for seaman's wages accruing prior to the collision. *The John G. Stevens*, 40 Fed. Rep. 331, and *The F. H. Stanwood*, 49 Fed. Rep. 577, followed.

In Admiralty. On petitions for distribution of proceeds of sale of the schooner *Nettie Woodward*.

Statement by SWAN, District Judge:

The questions in this case arise upon petitions for distribution of the proceeds of sale of the schooner *Nettie Woodward*, which was condemned and sold under the process and order of this court at the suit of the original libellant. The proceeds in the registry of the court are insufficient to pay the decree awarded against the vessel. The Western Transit Company holds a decree for damages resulting to its steamer *Commodore* from a collision in the St. Clair river, for which the schooner was adjudged solely in fault, and asks that its decree may be declared a lien upon the proceeds of sale paramount to those of the intervenors, who are the master and crew of the schooner, and in whose favor decrees for wages accruing prior to the collision have been entered. The master and seamen unite in a petition praying priority of payment of their decrees over that for the damages caused by the collision. The *Nettie Woodward* is a Canadian vessel, and, under the laws of the dominion of Canada, the master is given a lien for wages co-ordinate with that of the crew.

W. E. Leonard, for claimant Phillip Cross.

Moore & Canfield, for Western Transit Co.

SWAN, District Judge. The authorities upon the subject have been so ably and exhaustively reviewed in the opinion of Mr. Justice BLATCHFORD in *The John G. Stevens and R. S. Carter*, 40 Fed. Rep. 331, and later in that of Judge JENKINS in the court of appeals for the seventh circuit in the case of *The F. H. Stanwood*, 49 Fed. Rep. 577, that nothing remains to be said upon it. With their reasoning and conclusions I fully concur. In accordance therewith, the order upon these petitions will be that the decree of the Western Transit Company for damages suffered by the collision be first paid out of the fund in the registry before payment of the decrees in favor of the intervenors. The costs taxed in favor of the original libellant are secured by the stipulation filed, and are recoverable from the stipulators, and for these execution will issue if necessary. In view of the nationality of the crew and the vessel, the rule applied works no injustice, since it gives the seamen's claims the same relative rank, as against that for the collision, as is accorded by the settled principles of the English admiralty courts.

THE HADJE.

(Circuit Court, E. D. New York. June 28, 1881.)

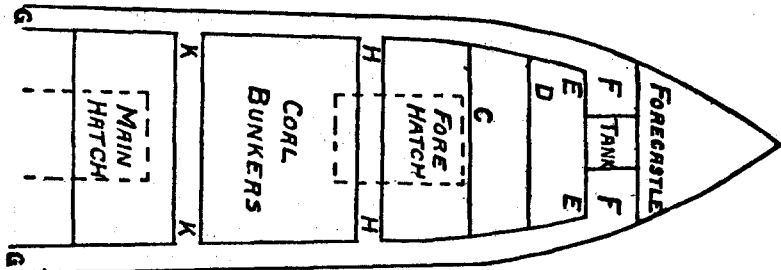
ADMIRALTY—NEGLIGENCE—PERSONAL INJURIES.

It is not negligence to allow the between-deck beams of a vessel to remain uncovered with a permanent deck, and to use them as a place for the temporary storage of loose planks; and a longshoreman, who unnecessarily, and with fair notice, attempts to walk over such loose planks while executing an order of the stevedore, cannot recover against the ship for an injury occasioned there.

In Admiralty. Libel *in rem* for personal injuries. Dismissed.

This was a suit in admiralty *in rem*, brought in the district court. That court dismissed the libel, and the libelant appealed to this court. (1 Fed. Rep. 89.) This court found the following facts:

“The Hadje was an ocean steamer, about 200 feet in length, and built with two decks. The upper or main deck was close-laid and caulked. The other deck consisted of transverse beams, which, at the time of the accident herein-after mentioned, were from 7 to 10 feet apart, and of various dimensions. These beams were about 10 feet above the bottom of the hold, and 7½ feet below the main deck. On these beams loose planks were sometimes laid for the purpose of separating different classes of cargo, and relieving the lower tiers of cargo from undue pressure. For about three years before December, 1877, the Hadje had been engaged in trade between Montreal and the West Indies. Early in December, 1877, she came to New York, to run upon a different route, and in preparing for that route went to a ship-yard, where extra transverse beams were fitted in her. These extra beams were of wood, and in putting them in all the loose planks in the vessel were thrown into the lower hold. On the 7th of December, 1877, the repairs being completed, the master of the Hadje ordered the planks to be taken from the hold, and placed on the between-deck beams, to make room for the cargo in the hold. Aft of the coal-bunker the planks were laid on the between-deck beams, with a view to separating the cargo carried in the between-decks from the cargo carried in the hold. Forward of the coal-bunker no cargo was to be carried in the between-decks, and the planks were put on the beams merely to get them out of the way. Most of the planks were Quebec deals. All the Quebec deals were of a uniform length of 12 feet, though there were some other planks mixed with them of different lengths. The arrangement of the between-decks of the Hadje, from the main hatch forward, was as shown in the accompanying diagram.



H, H, and K, K, were beams running across the vessel, each 2 feet wide. They were on the same level with the other between-deck beams. A stringer of iron, G, G, 1 foot 9 inches wide in parts, and 2 feet wide in other parts, v.50F.no.2—15