

THE HADJE.

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

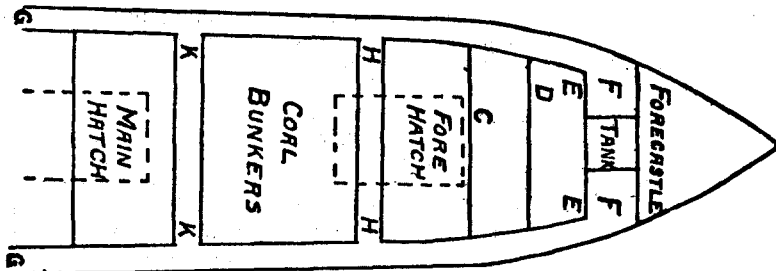
ADMIRALTY—NEGLIGENCE—PERSONAL INJURIES.

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

extended around the vessel on the same level, and could be and was used to walk forward and aft upon, in the between-decks. The space between H, H, and K, K, was filled with coal, inclosed between bulk-heads. The coal was about level with the top of the between-deck beams. F, F, were small decks, on the same level with the between-decks beams, on which dunnage was commonly stowed. The forward hatch of the main deck was 15 feet 8 inches in length and 6 feet in width, and the forward part of the forward hatch was nearly on a line with the between-decks beam, C. The main hatch was 23 feet in length by 12 feet in width, and the forward end of it commenced 2 feet from the said coal-bunker. Loose planks were laid on the between-decks beams, (except under the hatch,) extending from H, H, to C. From the center of H, H, to the center of C, was 10 feet 9 inches. Other planks were laid irregularly from C, over D, towards E. Most of these planks were Quebec deals. The beam, C, was 3 inches wide. From the center of C to the center of D was 7 feet 9 inches. D was a beam 9 inches wide. From the center of D to the tank was 7 feet 4 inches. The after-end of the tank was flush with the after-end of the decks F, F. From the center of C to E was 15 feet 1 inch. The Quebec deals fell about 3 feet short of reaching E.

"The libellant was a longshoreman, and on the 8th of December, 1877, was employed by the owners of the Hadje to assist in the stowage of the cargo of the vessel. He was working under the direction of a foreman stevedore, but was paid directly by the owners of the vessel. The vessel was afloat in the port of New York, lying at pier 12, North river. About 2 o'clock in the afternoon of the 8th of December, while at work in the lower hold, near the main hatch, the libellant was ordered by the foreman stevedore to go forward and get some dunnage. The dunnage was stowed on the little deck, F, on the starboard side. He went forward from the main hatch in the between-decks, starting from the port side near the main hatch, and, while attempting to reach the dunnage by walking on the loose planks, he stepped on the unsupported ends of some Quebec deals, between D and E, and fell with the deals into the lower hold, sustaining injuries. The proper and usual way of going fore and aft in the between-decks of the Hadje was over the stringer G, G, running along the side of the vessel, and the proper and usual way of crossing from one side of the vessel to the other was on the cross-beams H, H, and K, K. At the time of the accident the covers were off of the main hatch and the fore hatch of the main deck, and the between-decks was well lighted. The planks forward of the coal-bunker had not been laid for the purpose of forming a deck, or affording support, or means of access to the forward part of the vessel. They had been laid there irregularly, for the purpose of getting them out of the way of the cargo which was being stowed in the lower hold. The libellant had, some 18 months before, worked on the Hadje, at which time he noticed that she had no planking in her between-decks. For 2 years continuously, prior to this accident, he had been working upon other steamers of the line to which the Hadje belonged, three of them on which he so worked having had, at the times he so worked on them, open between-decks, like that of the Hadje; and he had frequently laid loose planks in the between-decks of said vessels, while stowing cargo there. The planks forward of the coal-bunker, in the between-decks of the Hadje, were not, and did not appear to be, regularly laid. They were, to the eye, loose and irregular. The danger of attempting to walk upon them was apparent. There was no occasion for the libellant to go upon them. They were not laid to walk on, nor held out as places to walk on. There were safe places laid for the libellant to walk on."

James McKee, for libellant.

Thomas E. Stillman and *Wilhelmus Mynderse*, for claimant.

BLANCHFORD, Circuit Judge. Having found substantially the foregoing facts, the district court held that it was not negligence to allow the between-deck beams of the vessel to be uncovered by a deck, or to use such beams for the stowage of loose planks for a temporary purpose, or to leave the ends of the loose deals unsupported at the place where the libellant fell; that the deals were not so placed as to justify the libellant in believing that he was proceeding upon a deck; and that the libellant used the deals for a purpose for which they were not intended, without necessity, and with fair notice, from the manner in which they lay, that they were not intended to be so used. In these views I concur, and it is not necessary further to enlarge upon them. The libel must be dismissed, with costs in both courts.

STEBBINS *et al.* *v.* FIVE MUD-SCOWS.

(District Court, S. D. New York. April 1, 1892.)

1. SALVAGE—ELEMENTS OF—PREVENTION OF DAMAGE TO PROPERTY OF OTHERS.

When a vessel has gone adrift through negligence, and is drifting towards other vessels, which she is likely to injure, the saving of her owners from liability to pay any such damage as was likely to arise, and which the owners would be called on to pay, should be taken into account in determining the amount of a salvage award.

2. SAME—AWARD.

Seven hundred and fifty dollars salvage awarded a tug worth \$15,000 for picking up five scows worth \$30,000, which had negligently got adrift in the Harlem river, and were liable, by collisions, to injure other property.

In Admiralty. Libel for salvage.

Wilcox, Adams & Green, for libellant.

A. A. Wray, for claimant.

BROWN, District Judge. On May 26, 1891, five loaded mud-scows broke adrift from the bulk-head where they were moored, between 115th and 116th streets, Harlem river, between 6 o'clock and 7 p. m., and went drifting upwards with the slow current at the beginning of the flood-tide. Some little time afterwards, estimated by two or three of the witnesses to be half an hour, a powerful steam-tug, the Archibald Watt, going up the river to lay up for the night, discovered the scows adrift between 117th and 118th streets, made fast to them, and towed them back to the bulk-head at 114th street, where they were tied up a little after 9 p. m. The scows were worth \$6,000 each, in all \$30,000; the Watt, \$15,000. No special difficulty or danger attended the work, excepting that the channel of the river was very narrow; the scows were more or less kinked up, and very heavy; and the handling of them was attended with some danger to vessels going up and down the river in so narrow a channel. The small tug Curtis was going up the Harlem at the same time with the Watt; her pilot saw the scows adrift and made