

tail construction. An examination into the prior state of the art forbids any such broad construction of this claim as the complainant contends for. In the Hanlon patent of July 7, 1868, there is found adjustable mechanism for the seat and the cranks of a velocipede, and that patent says, after describing these devices, that "the handles may, if desired, be also made extensible." In the McCleave patent of April 13, 1869, the handle in connection with the frame of the machine is raised and lowered for the purpose of adjusting the distance of the crank from the seat to the size of the rider. The use of a dovetail seat with a slide and set screw for the purpose of adjustability appears to be old in other branches of the art. In the old milling machine what was known as the "back rest" or "back center" was constructed after this form. In view of the prior state of the art the Illston patent must be limited to the forms of devices therein described.

The defenses to this suit are non-infringement, and want of patentability. In the defendants' device the handle bar is connected with a spindle which slides in a socket upon the head of the machine, and is fastened at any desired place by a set screw. I question, in view of what was old and well known, whether there is anything patentable in the defendants' device; but, however this may be, it is perfectly clear to my mind that the defendants' device is no infringement of the first claim of the Illston patent. Although argued with much force by complainant's counsel, it would be going beyond all sound rules in the construction of patents to so construe the first claim of the Illston patent as to cover the defendants' mechanism, not only because of the position which that patent occupies in the art, but also because the defendants' device is different in construction. The spindle, socket, and set screw which make the defendants' handle adjustable are not the dovetail grooved seat on the face of the head, with its slide carrying the handle bar, of the Illston patent. Taking the Illston patent to mean what it says, and construing it in the light of the prior state of the art, I am clearly of opinion that no case of infringement has been made out.

It is unnecessary to consider the second ground of defense.

Bill dismissed.

THE DAVIDSON.

(District Court, E. D. Wisconsin. January, 1880.)

SEAMEN—SALVORS—PRIORITY OF LIENS.

It is the duty of seamen to remain by the wreck of a vessel so long as their personal safety will permit, and save as much as possible from the vessel; and when they have done so the fragments of the vessel, and the outfit saved, constitute a fund pledged for payment of their wages, superior to the claim of the salvors.

In Admiralty. Libel by seamen for wages. Intervention by salvors. Decree for libelants.

The facts in this case, as shown by the pleadings, were these: On the 15th day of October, 1879, the schooner Davidson left Chicago on a voyage to northern ports on Lake Michigan. The libelants shipped on board as seamen. On the next day the vessel was stranded on Pilot Island reef. On request for assistance from the master, Wolf & Davidson, of Milwaukee, dispatched the tug Leviathan with steam pump and other apparatus to the relief of the vessel. Efforts were made to get the vessel off, and were continued until November 26th, but unsuccessfully. From the time the vessel was stranded until exertions to relieve her were abandoned, libelants continued on board. On the 25th day of November, the master of the tug, being convinced that the vessel could not be relieved, deemed it advisable to save her outfit, consisting of boats, tackle, rigging, apparel, and furniture, and ceased his efforts in behalf of the vessel. Thereupon the master and crew of the tug, with the assistance of the crew of the vessel, removed the vessel's outfit to the tug, and brought it, together with the master and crew of the vessel, to the port of Milwaukee. Libelants were then discharged, but were not paid their wages, and thereupon libeled the outfit. Decree was rendered in their favor, the outfit sold, and the proceeds were paid into the registry of the court. Thereupon the owners of the tug intervened by petition, as salvors, insisting that their claim for salvage service was prior to that of the seamen, and asked for payment as having the prior right to the proceeds of sale.

Markhams & Smith, for seamen.

M. C. Krause, for salvors.

DYER, District Judge. The seamen were not discharged from the obligation of their contract of service by the happening of disaster to the vessel. It was their duty, so long as their personal safety permitted, to remain by the wreck, and save as much as possible, and upon compliance with this obligation the fragments of the vessel constituted a fund pledged for payment of their wages; but upon abandonment by them of the wreck the contract between them and the owner of the vessel would be dissolved, and they would then lose their privilege against the vessel, and their claim for wages. As libelants remained by the wreck, and did not abandon it until the outfit was removed, their right to wages and their lien continued in force. Under the circumstances of the case the wages earned while they remained on board, and until the vessel was finally abandoned, did not constitute antecedent wages, in a sense which would postpone them to the claim of the salvors, and the proceeds of the outfit must be first applied to payment of their demands, although it would have been otherwise had they abandoned the wreck before the salvage service was begun.

ERQUIT v. NEW YORK & CUBA MAIL S. S. CO.

(District Court, S. D. New York. April 18, 1892.)

SHIPPING—NEGLIGENCE—IMPROPER HATCH COVER—PERSONAL INJURIES.

Owing to the warping of their supports in hot weather, the hatch covers of a ship did not fit tightly over the hatch, which fact was unknown to libellant, who had recently shipped as sailor on such ship. In consequence of such defect, as libellant was, under orders, covering the hatch, one of the covers fell, precipitating libellant into the hold. *Held*, that the ship was liable for his injuries.

In Admiralty. Libel for personal injuries.

Alexander & Ash, for libellant.

Charles C. Nadel and *Mr. Moore*, for respondent.

BROWN, District Judge. On the 28th of September, 1891, about 5 o'clock p. m., as the libellant, who was an able seaman on the steamship *City of Washington*, at Tampico, was putting on the hatch covers for the night upon the main deck, with three other seamen, under the direction of the boatswain, he fell through the hatch into the lower hold and sustained some injuries, for which the above libel was filed.

The hatch was covered by means of 9 covers, 3 rows of 3 covers each. Two strong-backs, consisting of beams 15 feet long by 6 inches wide and 12 inches deep, ran lengthwise of the ship to serve as the interior supports of the hatch covers. The 3 covers on the port side were first put in place, then the 2 forward covers in the middle row. To sustain these covers a ledge, or rest, was cut in the strong-backs about an inch and a half wide, upon which the covers were designed to rest. The libellant had stepped upon the middle cover of the second row, and had taken hold of the ring of the aft cover to put it in place in that row, when the port side of the middle cover fell in underneath the libellant, and the cover went down with him into the hold, while the other cover followed on top of him. The libellant claims that the middle cover on which he was standing was apparently put in the proper place; but that the port beam, or strong-back, had been warped and bowed to port in the middle, so that the port edge of the central cover did not get proper support and fell in under his weight.

The respondents contend that the accident could not have happened in that way. They gave evidence tending to show that there could not possibly have been less than half an inch of support for the cover upon the port ledge, if the cover was down in its proper place, even if the cover was shoved over to starboard to the utmost limit possible. They also gave evidence tending to show that the starboard beam or strong-back was warped or bowed to port, to the same extent as the port strong-back, so as not to increase the space between those two beams. They contend, therefore, that the cause of the accident was that the middle cover was not put down in place. Other evidence shows, however, that the spaces for the covers were affected considerably by wet or dry weather. Not infrequently when wet, the covers on the port