

battery in question; or, if that could not be done, then the amount of the pecuniary loss to the claimant arising from the inability to use the battery further. On the latter question, the value of the battery for practical use in the condition it was in when further use was prohibited, would be an important question; and on this point, according to the claimant's evidence, its value would seem to be small; partly from its failure to accomplish what was needed for his vessel, and partly from the damage or depreciation it sustained from its use during the season of 1891. Some time in September, 1891, as I understand, the yacht was taken to Newburgh, laid up for the winter, and the battery there taken out of her. Of the 376 cells, 117, as I understand from the captain, were bad. No defects were pointed out in the other parts of the work supplied. The evidence, as it stands, is insufficient to enable me to form any satisfactory judgment as to what is the damage to the claimant from the loss of the future use of the battery, arising from the final adjudication in the patent case. The fact, however, that no prohibition to use the battery was served on the claimant until after this libel was filed, nor until shortly before the answer and the cross libel were interposed, and long after the battery had been taken out of the yacht, suggests the surmise that this formal notice may have been voluntarily obtained by the claimant for the purposes of this suit.

A proper disposition of the matter for the present will, I think, be to suspend its further hearing, allowing to the libelant 30 days' time in which to procure, if it can, from the legal patentee a license to the claimant for the uninterrupted use of the battery; and if that be obtained and deposited in the court for the use of the claimant, then that the libelant have a decree for the balance of the contract price, with interest to November, 1891, when notice of the prohibition was served. If such license is not obtained within 30 days, that it then be referred to a commissioner to ascertain the value of the future use of the battery of which the claimant has been deprived; and that the amount, as thus determined, be allowed as an offset against the balance of the contract price and interest as above stated.

THE DESTROYER.

ALLEN et al. v. THE DESTROYER.¹

(District Court, S. D. New York. April 20, 1893.)

SEAMEN'S WAGES—SERVICES NOT RENDERED IN NAVIGATING VESSEL.

To entitle one to a lien for wages against a vessel it is not necessary that the services be rendered in navigation alone. Hence, when engineers were employed on a submarine torpedo boat, partly in moving her about, but mainly in operating her machinery for throwing projectiles, which was her sole business, it was held that they had a lien for balance of wages, though the government was at the time experimenting with the boat, and was allowing the men a daily compensation.

¹Reported by E. G. Benedict, Esq., of the New York bar.

In Admiralty. Libel by Edward Allen and Henry Allen against the steamer Destroyer for wages. Decree for libelants.

Alexander & Ash, for libelants.
T. Darlington, for claimant.

BROWN, District Judge. The above libel was filed to recover a balance of wages between February and December, 1892, on the steamer Destroyer. The steamer was built as a fighting vessel for the purpose of discharging submarine torpedoes; and during the time for which the wages in question are claimed, naval officers were making experiments for the purpose of enabling the government to determine whether it should take the steamer upon an option for which it had contracted. The libelants were the engineer and assistant engineer of the boat; and their services were necessary, both in operating the machinery for navigation, which, however, was but slight, as the vessel was moved but little during these experiments, and also in working the machinery for the discharge of the projectiles.

During the period of these experiments \$3.50 per day was allowed and paid to each man by the government for the use of their services. The libelants had refused, however, to work the boat during these experiments at those wages, and an additional sum had been promised them, namely, \$1 per day more to Edward Allen, and 50 cents per day more to Henry. The respondent claims that there was no lien on the vessel for the wages of the men, and that it was agreed that Mr. Lassoo personally should be alone responsible for the extra amount.

The balances claimed are not extra wages. The men were not in the direct service or employment of the government; though the government, for the use of the men's services, allowed and paid \$3.50, which is credited upon their wages agreed on.

I think the men are entitled to the lien claimed. The vessel was a completed one. The services of the men were rendered on board the vessel, and directly for her benefit and for the benefit of the owners. The services were, moreover, rendered in the special business of the ship, namely, in moving her about, so far as moving was desired, but mainly in operating her machinery for throwing projectiles, which is her sole business. To entitle the men to a lien upon the ship for wages, it is not necessary that their services be rendered in navigation alone. All, save the master, who do service on board in the business of the ship have an equal lien. On the steamers of the present day, for instance, none of the men engaged in the steward's department usually have any duties of navigation. But they have a lien for wages, because they render a service to the ship and in her business. The services of the libelants were directly in the business of the ship, and in the interest of the owners, viz. to make the experiments successful, and the vessel acceptable to the government. One of the principal points in dispute, therefore, namely, whether the Ericsson Coast Defense Company, or Mr. Lassoo, personally,

agreed that the wages should be \$4.50 and \$4 respectively, is immaterial. The company was not the owner of the vessel, but had built her for the owners. Mr. Lassoo was the executor of one of the principal owners. Whether the arrangement for the amount of wages was made by the one or the other, the employment of the men was equally upon the authority and consent of the owners and for their benefit; and that is all that is needful to entitle the libelants to a lien. The evidence leaves no doubt, however, that the men's services were not rendered upon any personal credit of Mr. Lassoo. Decree for the libelants, with interest and costs.

MORSE et al. v. THE CHARLES RUNYON.

(Circuit Court of Appeals, Second Circuit. June 12, 1893.)

TOWAGE—LEAVING TOW AT UNSAFE BERTH—EVIDENCE.

A tug, being turned back by heavy weather, left a canal boat at a pier to which the master objected as unsafe. At low water the canal boat broke in two, and sank, and not because of any unsoundness. The water was 30 feet deep at the end of the pier, and shoaled rapidly towards the shore. The testimony as to the depth of the water at the bow of the boat was conflicting. *Held*, that the fact of the boat's breaking under such circumstances was sufficient to turn the scale in favor of libelants' claim that the bow grounded in shoal water, and the tug was responsible for the damages. 46 Fed. Rep. 813, affirmed.

Appeal from the District Court of the United States for the Eastern District of New York.

In Admiralty. Libel by James W. Morse and Frank Van Buren against the steam tug Charles Runyon to recover damages for the loss of a tow. There was a decree for libelants in the court below, (46 Fed. Rep. 813,) and the claimants appeal. Affirmed.

Stewart & Macklin, for libelants.

Charles M. Hough, for claimants.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal from a decree of the district court for the eastern district of New York, which adjudged that the libelants recover, of the claimants of the steam tug Charles Runyon, damages for neglect in respect to the boat Thomas Dobie and her cargo. The following facts were found by the district judge:

"On the 31st day of March, 1889, a contract was made by the owners of the tug Charles Runyon to tow the canal boat Thomas Dobie, loaded with a cargo of coal, from Port Johnson to Barren island. The tug started in the morning with the canal boat, but after she passed Norton point the weather proved so heavy that the tug deemed it prudent to go no further. She accordingly turned back with the canal boat, and taking the canal boat to the north side of the American cotton docks, on Staten island, left her there, alongside of the north side of pier 1. The place where the canal boat was left was not a regular slip. It had never been excavated for a slip, but was simply part of the land used by the lighthouse station at Staten island, which adjoins pier 1 of the cotton docks. At the time the canal boat was left at that pier the master of the canal boat objected to the place as unsafe. The wind was then high. During the after-