

by a cleat at the bottom, which, by the negligent act of the master, had been removed. In descending the ladder, it slipped, and libelant was thrown upon the wharf, and injured. The learned judge used the following language:

"I am clear in my opinion that a court of admiralty has no jurisdiction of this case. It has never been doubted since the case of *The Plymouth*, 3 Wall. 20, that, to enable us to take cognizance of a maritime tort, the injury must have been consummated, and the damage received, upon the water. The mere fact that the wrongful act was done upon the ship is insufficient. Subsequent adjudications have in no wise tended to limit or qualify this rule."

On appeal to the circuit court the case was affirmed by Mr. Justice Brewer.

The fact that in the present case the libelant was a seaman, employed on the *Mary Garrett*, can, it seems to me, make no difference in the application of the principle involved, because the test of the jurisdiction of the court as a court of admiralty is not whether the injured party was or was not a seaman employed on a particular vessel from which the cause of injury is alleged to have emanated, but the test, and the only one, is as to the locality of the damage or injury. It is claimed, however, that in this particular case the court has jurisdiction over the tort, for the reason that the libelant is not only suing for damages, but also for loss of wages. It is to be observed in this connection that the action is brought primarily for damages suffered from the personal injury set out in the amended libel, and that the claim for wages is made incidentally, not as growing out of the contract of employment existing between the claimant and libelant, but as additional damages alleged to have resulted from the personal injury sustained. The libelant is therefore, in my opinion, in no better position. It follows that the exceptions to the jurisdiction of this court should be sustained, and the libel dismissed.

THE MEDEA.

THE IDLEWILD.

WILLIAMS v. THE MEDEA et al.

HANDRAN v. SAME.

(District Court, S. D. New York. October 22, 1894.)

SHIPPING—TUG AND TOW—COLLISION—PIERS AND SLIPS—OBSTRUCTION—USAGE.

The tug *M.*, about noon of July 1st, tied up a fleet of canal boats, consisting of several tiers of three or four boats in a tier, at the end of the Red Star Line pier, Jersey City, in the ebb tide, for the purposes of removal and distribution to their various destinations, in accordance with the usage of many years; and no city ordinance forbade this practice. That pier is about 108 feet longer than the piers below it. The day was mild, and the westerly wind set the end of the tow still further away from the piers below. The steamtug *Idlewild* soon afterwards, in removing another vessel from the end of one of the piers below the Red Star pier, collided with and damaged two boats in the end tow. *Held*, that thus tying up at the pier above under circumstances

and for the purposes stated was not an unlawful obstruction of the slips below; and the *Medea* was acquitted of fault, and the *Idlewild* held for lack of sufficient care.

Libels were filed in this case by James N. Williams and Annie M. Handran, respectively, against the steamtugs *Medea* and *Idlewild*. The libelants were the owners of two canal boats, which had been damaged by collision.

Hyland & Zabriskie, for libelants.

Robinson, Biddle & Ward and Mr. Hough, for the *Medea*.

Wing, Shoudy & Putnam and Mr. Burlingham, for the *Idlewild*.

BROWN, District Judge. Considering the usage of many years, and that no existing regulation is shown to have been violated, I think the *Medea* was not in fault for tying the top of the tow at the Red Star Line pier, for the distribution of the various boats as usual; and that the difference in length between the Red Star pier and the piers below, viz., about 108 feet, left, in mild weather, and with a west wind, a reasonable provision for the exit of boats between the tow and the slips below. The passage by the *Medea* without difficulty, though more heavily incumbered than the *Idlewild*, while the *Idlewild* and *Coxsackie* were still at the end of the wharf, seems to me a very conclusive corroboration of the above; and shows that the collision, though slight, is due only to the lack of necessary care by the *Idlewild*, or perhaps the lack of necessary experience on the part of the young man who alone in the wheelhouse was managing the wheel and the signals.

I must, therefore, hold the *Idlewild*, and exempt the *Medea*.

The damages are so small that they ought to be agreed upon, without the expense of two references.

THE HATTIE PALMER.

HAWKINS v. THE HATTIE PALMER.

(District Court, S. D. New York. October 22, 1894.)

SHIPPING—NONDELIVERY OF FREIGHT—CONVERSION.

The steamer *H. P.*, making daily trips between New York and New Rochelle, took some barrels of freight for delivery at City Island. On touching there, no person being in readiness to receive the barrels as usual, or to pay freight, the steamer retained the goods on board, and sent word to the consignee, whose place of business was about 200 yards from the landing, to come for them the next day, which notice was received by the consignee. The next day, no one appearing, the goods were still retained on board, and on the following day the steamer was arrested on this libel for conversion. The wharf was not a safe place to leave the goods unattended, and the vessel was always ready to deliver the goods on payment of freight. *Held*, no conversion, and the libel dismissed, with costs.

This was a libel for the alleged conversion of goods which had been shipped upon the steamer *Hattie Palmer*.