

dor of the patented article, of damages for an infringement of the letters patent, does not exonerate the user, except when actual damages, and not merely nominal damages, have been paid. The only question presented, therefore, in this case, is whether the complainant has received from Cleverly actual damages for the infringement of its letters patent. It seems very plain to me that the privilege of examining Cleverly's books is not to be regarded as a consideration in the light of actual damages. It must be assumed that complainant's patents are valid. If they are not this whole discussion is immaterial, and it is not entitled to a decree, howsoever the injunction between it and Cleverly may be regarded. The whole contention of the defendant assumes the rightful validity of these patents; otherwise, there would be no occasion for its existence. Upon that assumption, it clearly had such right of examination, without being under any obligation to make any payment therefor.

Neither is the effect of the decree as a settlement of disputed claims to be regarded as a consideration. If complainant's patents were valid, it was its right to have these claims settled without dispute or cost. The only question is whether the money consideration paid must be regarded as actual damages. It appears pretty satisfactorily that the total amount of taxable costs was but \$88.28, so that the complainant has received, in excess of such costs, something like \$261. This, plainly, is a larger sum than mere nominal damages; but actual damages are not necessarily the converse of nominal damages. It is evident, from the transaction, that the complainant, to establish its rights under the law, has been subjected, not simply to the costs taxable under the rules, but to the usual and ordinary expenses of carrying on such litigation. I am of the opinion that I should take judicial notice of the fact that such expenses, under the circumstances set forth, would exceed the sum of \$261. There is, therefore, in fact, nothing left to compensate the complainant for the damages it has suffered by reason of the infringement. It follows that the defense set up is insufficient, and that the complainant is entitled to a decree.

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THE GEORGE URBAN, JR., et al.

(District Court, N. D. New York. December 3, 1895.)

**CANAL-BOAT—LIBEL FOR WAGES**

Rev. St. § 4251, providing that a canal-boat, without masts or steam power, shall not be liable for an employé's wages, is not rendered inapplicable by the fact that the boat is, upon the trip in question, towed through the canal by a steam yacht.

This was a libel against the George Urban, Jr., and the Thomas Chester.

Ingram & Mitchell, for libelants.

Cook & Laskey, for claimant.

COXE, District Judge. Section 4251, Rev. St. U. S., provides that "no canal-boat, without masts or steam-power, which is re-

quired to be registered, licensed, or enrolled and licensed, shall be subject to be libeled in any of the United States courts for the wages of any person who may be employed on board thereof, or in navigating the same." That the boats in controversy are canal-boats without masts or steam-power seems beyond dispute. Prior to the trip in question they had been towed through the Erie Canal by mules and horses. On this occasion they were towed by a steam pleasure yacht at the end of a 200-foot hawser. The character of the boat is not changed by the means of propulsion selected by her. She does not cease to be a canal-boat because she is towed through the canal by a steam yacht. The statute has reference to the boat itself and not to the tow boat. That this must be the proper construction is made plain by the amending act of 1874 (18 Stat. 31), which provides that the enrollment act shall not extend to canal-boats, "excepting only such as are provided with sails or propelling machinery of their own." If the libelants are right in their contention that the propelling force outside of and disconnected from the boat determines her character it must follow that a tug which temporarily employs horse power to pull her through a narrow canal, will, for the time being, be a canal-boat without steam-power and, therefore, exempt from being libeled for mariners' wages.

The sole question is, has the libeled canal-boat sails, or propelling machinery, or, what is the same thing, steam-power or masts of her own? If she has not it matters little that some other boat has masts and steam-power. If the boats in question are not canal-boats it is difficult to perceive to what boats the statute refers. As the libeled boats are clearly covered by the statute it follows that this court has no jurisdiction of the action. This conclusion is reached with regret, for the libelants have rendered valuable services for which they should be paid.

The libel is dismissed.

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ROBINSON et al. v. FRANKLIN SUGAR REFINING CO.

(District Court, E. D. Pennsylvania. November 15, 1895.)

No. 43.

SHIPPING—DAMAGE TO CARGO—IMPROPER STOWAGE—STEVEDORES APPOINTED BY CHARTERERS.

Where sugar carried in a chartered ship was improperly stowed upon the "ceiling" of the hold, without the interposition of a loose floor or other dunnage, held, that the ship was liable for resulting damage, notwithstanding that the stevedores, who stowed the cargo, were appointed by the charterers under a provision in the charter party. It was the duty of the ship to see that the hold was fitted to receive the cargo, and her failure to provide dunnage was a breach of this duty.

This was a libel by Joseph Robinson & Sons, owners of the steamship Ixia, against the Franklin Sugar Refining Company, to recover a balance of freight alleged to be due upon a cargo of sugar.