

as master or vice principal, but as an ordinary seaman, or, at most, as the foreman of a gang performing ordinary seamen's work. The case is within the rule laid down in *Quinn v. Lighterage Co.*, 23 Blatchf. 209, 23 Fed. 363, and clearly distinguishable from the cases cited by the appellant: *Peterson v. The Chandos*, 4 Fed. 645; *Daub v. Railway Co.*, 18 Fed. 625; *The Sachem*, 42 Fed. 66; *The Titan*, 23 Fed. 413; and *McCullough's Adm'x v. Steamboat Co.*, 20 U. S. App. 570, 9 C. C. A. 521, and 61 Fed. 364.

We concur, also, in the finding of the district court that there is no evidence that the shackle was insufficient. Its breaking seems to have been the result, not the cause, of the accident. The decree of the district court is affirmed, with costs.

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THE ALLERTON.

COLUMBIA & WILLAMETTE RIVER OPPOSITION STEVEDORE CO. v.  
R. W. LEYLAND & CO.

(District Court, D. Oregon. March 15, 1899.)

Nos. 4,401, 4,402.

1. ADMIRALTY JURISDICTION—CONTRACT FOR STEVEDORES' SERVICES.

A contract for stevedores' services is maritime.

2. MARITIME LIENS—BREACH OF CONTRACT FOR STEVEDORES' SERVICES.

An action in rem will not lie for breach of a contract for stevedores' services, to be rendered generally for the term of one year to the owners of the vessel sought to be attached, where no services were rendered such vessel, to give the libellant the right to a lien thereon.

These are two libels by the Columbia & Willamette River Opposition Stevedore Company for breach of contract,—one against R. W. Leyland & Co., and the other against the ship Allerton and the same respondents.

George E. Chamberlain, for libellant.

James Gleason, for claimant of the Allerton and defendant.

BELLINGER, District Judge. There are two of these cases. One is a libel in personam, as well as in rem, for damages for a breach of a contract for stevedores' services. The other is a libel in personam for a breach of the same contract. The contract was entered into on February 17, 1898, between Leyland & Co. and the libellants for such stevedoring services as might be required by the ships owned by Leyland & Co. at Portland and Astoria during the continuance of the contract, which was for one year. The ships Allerton and Otterspool, owned by said company, arrived at Portland in September and December, respectively, in ballast, for wheat cargoes; and although the libellants were ready and willing to perform the services required of them by their contract in unloading and loading these vessels, and offered so to do, yet said Leyland & Co. refused to permit them to perform such services. Whereupon they bring their libels in this court, and pray that warrants may

issue for the arrest of said vessels, and for an attachment of the property of said owners.

Held:

1. The contract for stevedores' services is maritime.
2. No services having been rendered either of the vessels in question, and the contract for services being without reference to either of these vessels, no maritime lien exists upon either of them, and actions in rem will not lie. The remedy of libelants is by actions in personam against the owners. The libelants having no right to proceed in rem, the question of joinder of such a proceeding with an action in personam is immaterial. The exception in the case of the Allerton as to such joinder, and to so much of the libel in that case as constitutes a proceeding in rem, is allowed. The remaining exceptions are overruled.

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THE MARY A. TRYON.

(District Court, S. D. New York. March 22, 1899.)

LIEN FOR TOWAGE—CHARTERED BOAT.

A boat cannot be subjected to a lien for towage services rendered under a contract with a charterer in the usual course of his business, the tower having knowledge that it was chartered, unless by a previous understanding to that effect with the owner.

In Admiralty. Lien for towage. Chartered boat.

Benedict & Benedict, for libelant.

James J. Macklin, for claimant.

BROWN, District Judge. The libelant seeks to recover \$295 for towages of the canal boat Tryon on the Hudson river in the months of August, September and October, 1895.

The evidence shows that the boat was chartered by the claimant to John Scott, who was engaged in the ice business, and who was running a number of chartered boats, all of which were towed during that season by the libelant under a contract for towage made in the spring with the libelant's agent; that the libelant knew that the boats were chartered; and that the bills for towages were rendered by the libelant to Scott monthly, pursuant to the contract, charging the towages against him, and specifying the amounts for towing each boat respectively. In August, on account of the previous monthly bills not being satisfactorily paid, one Quigly, who had chartered a boat to Scott, was notified by the libelant that it would look to the owners of the boats for the payment of the towages, and he was requested to notify the other owners of the boats that Scott was running to that effect. This was before claimant's boat was hired. Quigly thereupon withdrew his boat from Scott's employ, and introduced Scott to the claimant, who thereafter on the 19th of August let the Tryon to Scott at the rate of \$4 a day, including the service of a man on board as caretaker. Quigly testifies that when he introduced the matter to the claimant, he told him that the Cornell Company had notified him that they would look to the owners for the