

Tracey was without fault. There must be a decree for the libellant, with costs, and it is referred to a master, to be appointed by the court, (unless the parties agree upon the person,) to take proofs as to the libellant's damages, and report, with his opinion thereon, to the court.

As to the steam-boat Connecticut, as to which the libel was dismissed upon the hearing of the cause, I think she was censurable, though not legally in fault, and is not entitled to costs.

Upon the trial of the cause a motion was made, upon the petition of one of the owners of the Sears, to limit the liability of the owners, which, by understanding between counsel for the parties, was to be considered in connection with the proofs taken upon the trial of the cause, and decided if the main question should be found against the Sears. It appears from the proofs, and there are no allegations in the petition inconsistent with the fact, that the Sears was employed in river navigation upon the Hudson river, and not elsewhere. The provisions of the statutes for limiting the liability of the owners of vessels do not apply to the owners of any vessel used in rivers or inland navigation. Rev. St. § 4289. It was held by Judge Drummond (*The War Eagle*, 6 Biss. 364) that a vessel employed on the upper Mississippi was within the excepted class; and, while much might be said in favor of the position that section 4289 refers only to such rivers as are inland, as distinguished from public navigable waters, that decision must be recognized as controlling here, both because its reasoning is satisfactory and as an authority it is entitled to high respect.

The prayer of the petition must be denied.

THE JULIA SHERWOOD.

(District Court, E. D. New York. July 25, 1881.)

1. EXCEPTIONS TO LIBEL—LIEN UNDER THE LAWS OF NEW YORK.

Exceptions being filed to a libel claiming a lien upon a vessel for repairs and supplies in the port of New York, under the statute of the state, alleging that no facts were stated sufficient to constitute a cause of action, that no lien existed, and that the cause of action was not one of admiralty and maritime jurisdiction: *Held*, that the exceptions were not well taken; that the filing of specifications was not a necessary averment where it appeared that the vessel had not left the port; and that the statement of the libel that the work was done on a domestic vessel, in her home port, at the request of the owner, and the claim was sought to be enforced within a month, were sufficient to create a lien under the statute of the state of New York which may be enforced in the admiralty.

Tunis G. Bergen, for libellant.

Samuel B. Caldwell, for claimant.

BENEDICT, D. J. The exception to the libel is not well taken. Upon the facts stated in the libel a lien upon the canal-boat was created by virtue of the statute of the state where the materials were supplied. It was not necessary to aver that a specification of the claim has been filed. The filing of a specification is only necessary in case the vessel leaves the port, and by this libel it does not appear that the vessel ever left the port.

The libellant is entitled to a decree, upon the exceptions, for the amount claimed, with leave to the claimant to answer on payment of costs.

THE MAMIE.

(Circuit Court, E. D. Michigan. August 13, 1881.)

I. LIMITED LIABILITY ACT—STEAM PLEASURE YACHT.

A steam pleasure yacht, running in and out of the port of Detroit, is to be treated as a barge, within the exception in section 4289, Rev. St., and her owners are not entitled to the benefit of the provisions for limitation of liability.

In Admiralty. Appeal by owners from a decree of the district court dismissing their petition for limitation of liability.

The contents of the petition and plea, with the testimony and opinion of District Judge Brown, are given in the report of the case in the district court, 5 FED. REP. 813.

H. H. Swan and *F. H. Canfield*, for appellants.

Alfred Russell, for appellees.

BAXTER, C. J. The decision of Judge Brown is correct. The *Mamie*, the vessel mentioned in the pleadings, not only comes within the spirit of the statute, (section 4289 of the Revised Statutes,) excepting canal-boats, barges, and lighters from the preceding sections, limiting the liability of owners of vessels, but is a "barge" within the meaning of the statute.

There are other questions in the case worthy of consideration, but as a determination of them is not necessary to a decision of the case, and as my judgment would not settle them, but only add to the conflict of authorities already existing, I shall forbear to express any opinion touching the questions made.

The libel will be dismissed, and a decree to that effect will be entered during my next visit to Detroit in September.