

THE IDA MEYER.¹

TAYLOR v. THE IDA MEYER.

(District Court, E. D. New York. May 19, 1887.)

SEAMAN'S WAGES—CANAL BOATMAN—LIEN—STEAM-BOAT.

Libelant was employed to work on claimant's canal-boats. These canal-boats were propelled by claimant's steam-boat, and libelant did some slight work on her. This action was brought against the steam-boat to recover for services rendered generally by the libelant. *Held*, that the relation between the canal-boats and the steam-boat was not such as to make the canal-boats a part of the steam-boat, and to charge the steam-boat with a lien for labor performed on the canal-boats.

In Admiralty

A. B. Stewart, for libelant.

Hyland & Zabriskie, for claimants.

BENEDICT, J. This is an action to enforce a lien for wages against the steam canal-boat *Ida Meyer*. The evidence shows that the claimant owned the steam canal-boat *Ida Meyer*, and also two canal-boats. The canal-boats were employed by the claimant in the freight business, and, when on the Erie canal, they were towed by the steam-boat, instead of being towed by horses. The libelant was employed to work for the claimant as a hand on the canal-boats. When the engagement was made, no reference was made to the *Ida Meyer*, nor did the libelant engage to perform any duty on board the *Ida Meyer*. The substantial parts of the service sued for were performed on board the canal-boats, although there is evidence that the libelant did for a short time steer the steam-boat. The services performed on board the steam-boat were, however, too insignificant to demand notice here. The decision of the case depends on the question whether the relation between the canal-boats and the steam-boat was such as to make the canal-boats a part of the steam-boat, so as to charge the steam-boat with a lien for labor performed on the canal-boats. This position the libelant is forced to take because of the provision in section 4251 of the Revised Statutes, where it is enacted that "no canal-boat, registered or licensed, which is required to be registered and 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 in navigating the same." In support of this position, reference is made to the following authorities: *Amis v. The Louisa*, 9 Mo. 629; *Gliem v. The Belmont*, 11 Mo. 112; *The Kentucky v. Brooks*, 1 G. Greene, 398; *The Dick Keys*, 1 Biss. 408; and *The Sydney*, 27 Fed. Rep. 119.

I find in none of these cases authority that will justify me in deciding that the steam-boat proceeded against is subject to lien for the wages of

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

the libellant, earned by services rendered on board the canal-boats, in pursuance of an employment to work on such boats. And on principle it seems to me that such a decision cannot be made. The canal-boats which, when on the canal, were towed by the *Ida Meyer*, were not appurtenant to the steam-boat in any just sense. The steam-boat was rather appurtenant to the canal-boats; and it seems to me easier to say that the canal-boats were navigated by the hands of the steam-boat, than to say that the hands of the canal-boat navigated the steam-boat.

The libel is dismissed, and with costs.

THE THERESINA.¹

LLOYD *v.* THE THERESINA.

(*District Court, E. D. New York. May 27, 1887.*)

NEGLIGENCE—WHAT AMOUNTS TO—SCUTTLE IN DECK—MISPLACED COVER.

Libellant, a stevedore, stepped on the cover of a scuttle in the deck of a ship, when the cover tilted, precipitating libellant through the scuttle into the hold, causing injury for which this suit was brought. The evidence indicated that the scuttle was a proper one, of a kind in common use, and that the accident was probably due to a temporary misplacement of the cover, the cause of which did not appear. *Held*, that no negligence in the ship-owner was proved, and libellant could not recover.

In Admiralty.

Libel to recover damages for personal injuries, received on board the steam-ship *Theresina*.

Wm. H. Duryea, for libellant.

Owen & Gray, for claimants.

BENEDICT, J. The libellant was a stevedore at work upon the cargo of the ship in the between-decks. This deck was so constructed that a portion of it, in some places, could, as occasion required, be taken up for the purpose of reaching the lower hold just below it. That is to say, there were several scuttles left in the deck, and to these were fitted covers. These scuttles had no coamings, and the covers when in place were flush with the deck. They were without rings or hinges. They rested on stanchions, and were kept in place by being driven down tight between the permanent planks of the adjacent deck. One of these scuttles was near where the libellant was at work, and about half way between the wings and the hatch. The libellant, having occasion to move for a passing hand-truck, stepped on the cover of this scuttle. The cover tilted, and allowed him to fall through the scuttle into the hold below. The fall caused injuries for which this suit is brought against the ship.

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