

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.

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### THE THERESINA.<sup>1</sup>

#### 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.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.

The evidence forbids a conclusion that the accident which befell the libelant was caused by negligence on the part of the owner of the ship. The scuttle through which the libelant fell was properly constructed, and such scuttles are common in the between-decks of steamers. The cover provided for this scuttle was a proper cover, sufficient to bear any weight, and so fitted as to be secure when in place. On the morning in question, cargo had been trucked over this cover in safety before the accident, and after the accident the cover, which remained unbroken, was put back in place, where it has since proved safe and sufficient.

The condition and character of the cover compels the inference that the cause of the accident was a temporary misplacement of the cover, which permitted the cover to tilt under the libelant's weight. How the cover came to be misplaced does not appear. No witness saw it misplaced, or knew of its misplacement. If any inference is to be drawn as to the cause of the misplacement, it is that the cover was disturbed in its place by some one of the trucks which, in the morning in question, had been hauled over it by fellow-workmen of the libelant. I am unable, therefore, to see how the libelant can recover against the ship. If the cover of the scuttle had broken under the libelant's weight, as is charged in the libel, a different case would have been presented. But the cover was not faulty in construction. It did not break, but simply tilted, and then because it had been disturbed in its place by some unknown person.

The libel must be dismissed, with costs.

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THE FRED. W. CHASE.

THE CITY OF ATLANTA.

(District Court, D. South Carolina. 1887.)

**COLLISION—STEAMER AND VESSEL IN TOW—REV. ST. § 4233, RULE 21.**

A tug-boat with a schooner in tow, connected by a tow-line 300 feet long, was passing through a narrow channel during a violent and sudden gale. A steam-ship was at the same time approaching from the opposite direction. The tug and tow were moving at the rate of three miles an hour, and the steam-ship at four miles an hour. The course of the steamer was south, a little west; and the schooner was off her port bow heading north north-east, sagging north. No collision was at first anticipated, but when the steamer came within 150 feet of the schooner the relative positions of the two changed, and they approached each other almost bows on, probably by reason of the schooner sheering. The steamer, when at said distance, reversed her engines, but, notwithstanding this, struck the schooner, which became a total loss. The steamer was uninjured. Neither the tug-boat nor the schooner took any action to escape the collision, but kept on their course until it happened. *Held*, that as the steam-ship did not stop and reverse in sufficient time, as required by rule 21, and offered no evidence to explain why she did not observe the rule, she is presumed to be in fault. *Held, also*, that the tug and tow were in law one vessel, a steamer, governed by the same rule 21, and that as they kept their course, and did not explain why they did so, they are also in fault and the loss should be divided.