

into the United States, and landing or attempting to land them; but in this case the only persons whom it is claimed were guilty of any attempt to violate the law are persons who were trespassers and wrong-doers against the owner of the vessel. They were not put in charge of the vessel by him in the capacity of master. The vessel had no master. It cannot be claimed that a thief in possession of a vessel is the master of it. He may be in full physical, manual possession and control of it, and have power over it, until the law gets hold of him and deprives him of that power, but he is not the master of the vessel in the sense in which that title is applied to an officer of a vessel in the statutes of the United States. This case does not come within the letter or spirit of any law of the United States under which a forfeiture can be claimed, and I think, as counsel has contended here, that if congress had made a law that would apply to this case it would be unconstitutional as depriving a person of his property without compensation, and in a case in which no punishment or penalty could be rightfully inflicted upon him, he having violated no law. The decree will be in favor of the claimants. Counsel may prepare findings and a decree. The court will find the allegations of the libel to be true as far as they allege the bringing and attempting to land in the United States of Chinese persons, and all the affirmative allegations of the answer to be true.

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THE EMMA KATE ROSS.<sup>1</sup>

GEIN v. THE EMMA KATE ROSS.

(District Court, E. D. New York. October 2, 1890.)

**COLLISION—SAILING VESSEL AND TOW—CROSSING COURSES—FAULT.**

The tug E. K. R., with two heavy mud-scows astern on a hawser, came down the North river, about 500 feet off the New York piers. A lighter, having her mainsail hoisted, but with the peak dropped and with her jib furled, came out from the piers in tow of a tug, ahead of the E. K. R., and crossing her course. The wind at the time was fresh from the south-west. When the lighter came ahead of the tow, she cast off her tug, the momentum carrying her past the course of the tow. She thereupon attempted to shape her course to Hoboken, but was carried by the wind against the foremost scow. *Held*, that the collision was the fault of the lighter.

In Admiralty. Suit for damages by collision.

*Carpenter & Mosher*, for libellant.

*R. D. Benedict*, for claimant.

BENEDICT, J. This is an action to recover for injuries to the lighter Union, caused by a collision between that lighter and a mud-scow, at the time in tow of the tug Emma Kate Ross. The tug was proceeding

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

down the North river, having in tow astern two mud-scows loaded. The lighter came out of the slip at pier 6 in tow of a tug, the wind blowing freshly from the south-west. When the lighter was about ahead of the tow, she cast off her tug, and was carried by her momentum across the course of the tow; but, while endeavoring to get upon her course, was struck by the leading scow in tow of the Ross. The faults charged upon the tug are—*First*, in taking the scows in tow astern on a hawser; *second* in taking the scows astern by a hawser so arranged as to render it impossible for the tug to control the course of the scow; *third*, in not keeping out of the way of the lighter, as required by law of a steam-vessel approaching a vessel under sail.

In regard to the first charge of negligence, I find that it is not negligence to tow mud-scows astern in the harbor of New York in ordinary wind and tide.

In regard to the second charge, the evidence shows that the scows were connected to the tug by a hawser attached to a bridle, and, further, that by using a bridle the course of scows towed astern can be controlled by the tug. I therefore hold it not to be negligence to tow mud-scows in this harbor by a hawser attached to a bridle under ordinary circumstances of wind and tide.

In support of the third charge, it is contended by the libellant that the proof shows that the collision was caused by the scow swinging out of the course of the tug and against the lighter, then outside of the tow. But the weight of the evidence is the other way. The lighter came out of the slip and under the bow of the tow, having her mainsail up, with the peak lowered, and no jib; the wind at the time blowing fresh from the south-west. When about abreast of the tow the steam-tug let go the lighter, and the lighter then, under the impulse given by the tug, passed outside of the course of the tow. The master of the lighter then put his helm up, and afterwards down, in an effort to get his lighter upon her course, but, owing to the condition of his sails, was unable to do so in time to avoid being carried by the wind down upon the scow, then moving slowly down the river in tow of the Ross. If it was not possible for the lighter, after having dropped her tug, to get under way without being driven by the wind upon the course of the tow, it was fault in the lighter to drop her tug when she did. If it was possible for the lighter to continue to move out from the tow it was fault not to do so. It is impossible to believe that the collision was caused by the heavy scow swinging out into the river and into the lighter, as claimed by the libellant. The libel must be dismissed.

AMERICAN FERTILIZING CO. v. BOARD OF AGRICULTURE OF NORTH CAROLINA *et al.*

(Circuit Court, E. D. North Carolina. August 14, 1890.)

1. CIRCUIT COURT—JURISDICTION—AMOUNT IN CONTROVERSY.

In a suit to enjoin the enforcement of a state tax, claimed to be unconstitutional, the subject of controversy is not limited to \$500, the tax imposed for a single year; nor can it be determined, on a motion to dissolve the temporary injunction, that the damages will be less than \$2,000, the sum required to give the court jurisdiction, where plaintiff asks to be relieved from threatened penalties and interference with its business, the damage to result from which it places at \$10,000.

2. CONSTITUTIONAL LAW—TAXATION—DUTIES ON IMPORTS—INSPECTION LAWS.

Code N. C. § 2190, as amended by Act March 7, 1877, § 8, declares that no commercial fertilizers shall be sold or offered for sale until the manufacturer or importer obtain a license from the treasurer of the state, for which shall be paid a privilege tax of \$500 per annum for each separate brand. Sections 22 and 23 appropriate the revenues arising from the tax to an industrial association and other purposes. *Held*, that the statute is void, in that it violates Const. U. S. art. 1, § 10, providing that "no state shall, without the consent of congress, lay any imposts or duties on imports, \* \* \* except what may be absolutely necessary for executing its inspection laws," and is also an interference with interstate commerce.

3. SAME—PRIVILEGES OF CITIZENS.

The act is not unconstitutional as abridging the privileges and immunities of the citizens of other states.

In Equity.

Before BOND and SEYMOUR, JJ.

SEYMOUR, J. The plaintiff, a citizen and resident of Virginia, brings this suit against the board of agriculture of North Carolina, to perpetually enjoin the latter from enforcing against it the state tax on fertilizers. The act in litigation (Code, § 2190, amended and re-enacted in the statute of March 7, 1877) provides, in section 8 of the last-mentioned statute, as well as in the act which it amends, brought forward in the Code, that no commercial fertilizers shall be sold or offered for sale until the manufacturer or importer obtain a license from the treasurer of the state, for which shall be paid a privilege tax of \$500 per annum for each separate brand. The plaintiff alleges that it is engaged in the manufacture and sale of commercial fertilizers; that it has a large and profitable business in North Carolina, amounting annually to over \$25,000; that it has on hand in the state more than \$2,000 worth of fertilizers; that defendants have, under the pretext that they are subject to forfeiture for non-payment of such tax, seized a car-load of its fertilizers, and that they threaten that they will seize all fertilizers which plaintiff has shipped, or shall ship, into the state; and will prosecute its agents for misdemeanor in selling its fertilizer without having obtained the license required by the statutes above cited. Plaintiff further avers that, unless defendants are restrained, its business will be entirely destroyed, and it will be damaged in a sum exceeding \$2,000, and that its goods in excess of \$2,000 will be seized by defendants under the provisions of such legislation. Defendants by their answer admit the seizure of the fertilizer, as alleged in the complaint, and aver that the cause of such seizure is the failure and refusal of plaintiff to pay a license tax of \$500, as required by the laws of the state. They