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A Selection of Cases and Other Authorities on the Law of Admiralty, Pt.3: The Reception and Modification of Maritime Law

Edwin D. Dickinson

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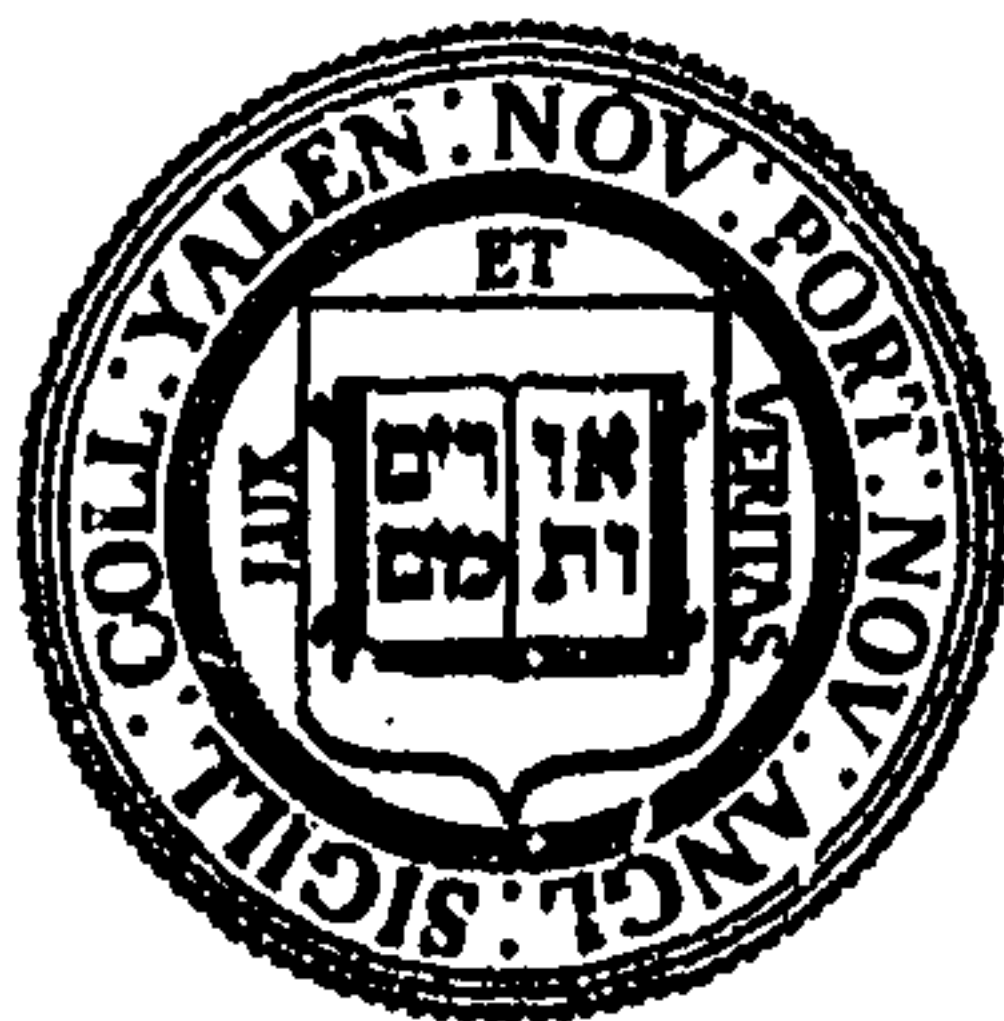
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A Selection of Cases and Other Authorities

on

THE LAW OF ADMIRALTY

By

Edwin D. Dickinson

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PREFACE

The following collection of cases and other authorities on the Law of Admiralty requires prefatory comment in at least two particulars.

In the first place, the collection is incomplete. It has been necessary to keep within rather definite limits of space. Within those limits it has seemed better to develop selected topics somewhat fully, leaving out others altogether, rather than to spread the collection out over as much of the field as one would like to include. In the result, the subjects of jurisdiction, the maritime lien, and the reception and modification of the maritime law have been treated at length. Average, salvage, insurance, collision, affreightment contracts, limited liability, the Harter Act, and other interesting and important topics have not been treated at all. It is planned to publish cases on additional topics in the substantive maritime law if the undertaking seems warranted after experience with the present collection.

In the second place, the collection is tentative. There are no footnotes and such materials as are usually thus included must be supplied by the instructor. The cases are so arranged that the order may be changed, new cases inserted, or old cases omitted without preparing new stencils for the rest of the book. It is planned to make revisions frequently. There is a special significance, therefore, in the somewhat platitudinous remark that criticisms and suggestions will be greatly appreciated.

E. D. D.

Ann Arbor
June 21, 1924.

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Part III.

The Reception and Modification of Maritime Law.

The Steamboat New York, her Tackle, Apparel, &c., Thomas C. Durant, Charles W. Durant, and Septimus Lathrop, Claimants and Appellants, v. Isaac P. Rea, Owner of the Brig Sarah Johanna.

Supreme Court of the United States, 1855.

18 Howard 223.

Mr. Justice Nelson delivered the opinion of the court.

This is an appeal in admiralty from a decree of the circuit court of the United States for the southern district of New York.

The libel was filed by the owner of the Brig Sarah Johanna against the steamboat, for a collision in the harbor of the city of New York. The brig was lying at anchor in the North River, off pier No. 6, nearer to the Jersey than the New York shore, her bow heading up the river, there being at the time a strong ebb-tide, and wind heavy from the northwest. The collision occurred between four and five o'clock in the morning of the 4th of November, 1850, - the river at this place being filled with vessels at anchor in the vicinity of the brig. The morning considerably dark.

The steamboat was passing down the North River to get round to her berth in the East River. She had in tow eleven heavily loaded barges and canal boats, the first tier being three abreast on each side of her, the other boats astern, towed by lines attached to this first tier. The steamer, with the tows, occupied a breadth of some three hundred feet, and from three hundred and fifty to four hundred feet in length, her bows projecting some sixty feet ahead of the tows. She entered this thicket of vessels, at anchor in the river, at a rate of speed from eight to ten miles an hour, and, as we have seen, with a strong ebb-tide and heavy northwest wind; and, while passing through them, the centre tow-boat of the tier on the starboard side struck the bow of the brig, smashing her timbers, cut-water, and bowsprit, and otherwise doing great damage to the vessel.

The captain of the steamboat admits that he saw the brig from three to five hundred feet off before the collision, but, as he could not stop his boat in less than within ten or fifteen of her lengths, the collision was inevitable. He admits, also, that it would have required all her power to have stopped within that distance, as it would have depended upon the way the tow-boats were managed. The rear tows were not so fastened, he observes, as to prevent their swinging, and could not have been. He gave orders instantly, on discerning the brig, to starboard the helm, and passed the same order to the tow-boats. This was undoubtedly the proper order at the time, under the circumstances, but with the rate of speed of the steamer, and encumbered as she was with her tows, it was unavailing.

Upon this statement of the facts in the case, it is manifest the steamer was grossly in fault in entering this crowd of vessels at anchor in the harbor, at the rate of speed with which she was moving, especially in the night time. A collision with some of them thus lying in her trail was the natural, if not inevitable, result. Lying at anchor, they were disabled from adopting any measure to get out of her way, and encumbered as she was with tows, she was not in a condition to adopt any prompt and effective manoeuvre to avoid the danger. The continuance of the speed, therefore, under the circumstances of wind and tide, and encumbrance and embarrassment of the tows, was the grossest carelessness and neglect of duty, without the semblance of excuse. Indeed, the term carelessness hardly expresses the degree of fault; under the circumstances, it seems almost to have been wilful, or what, in degree, should be regarded as equally criminal.

The steamboat was also in fault in not having a look-out at the time, properly stationed. The captain admits that no person was stationed on the deck as a look-out. He claims to have been on that duty himself, although he stood upon the upper deck, some fifteen feet above the water, and sixty feet from the bow of the steamer, and was at the time engaged in giving directions for the management of her and her tows.

We have had occasion frequently to lay down the rule, that it is the duty of steamboats traversing waters where sailing vessels are often met with, to have a trustworthy and constant look-out, stationed at a part of the vessel best adapted for that purpose, and whose whole business was to discern vessels ahead, or approaching, so as to give the earliest notice to those in charge of the navigation of the vessel; and that the omission, in case of a collision, would be *prima facie* evidence of fault on the part of the steamer. 12 How. 459; 10 lb. 585.

It is insisted, however, on the part of the steamboat, that the brig was also in fault, in not showing a light while lying at anchor. We have looked carefully into the evidence on this branch of the case, and are satisfied that the clear weight of it is in favor of the libellants, and that a proper light was kept constantly in the fore-rigging, some seventeen feet above the deck.

Again, it is claimed that, admitting the brig had a light sufficient, within the requirements of the admiralty rule, still, she was in fault in not showing a light, in conformity with the statutes of New York, which required it should be suspended in the rigging, at least twenty feet above deck. 1 Rev. Stats. p. 685, § 12; also Sess. Laws, 1839, p. 322.

This is a rule of navigation prescribed by the laws of New York, and is doubtless binding upon her own courts, but cannot regulate

the decisions of the federal courts, administering the general admiralty law. They can be governed only by the principles peculiar to that system, as generally recognized in maritime countries, modified by acts of congress independently of local legislation. The Johanna was a foreign ship, engaged in the general commerce of the country, not in the purely internal trade of a State. The Bark Chusan, 2 Story, 456.

We agree, an exception to this general principle is, the regulation of steamboats and other water-craft in the ports and harbors of the States, which is required for the accommodation and safety of vessels resorting thither in the pursuits of business and commerce. These are police regulations in aid and furtherance of commerce, enacted by the local authorities, who have a knowledge of the wants of the locality, and a deep interest in properly providing for them.

We are satisfied, the decree of the court below is right, and should be affirmed.

[The dissenting opinion of Mr. Justice Daniel is omitted.]

Ex parte McNiel.

Supreme Court of the United States, 1871.

13 Wallace 236.

Mr. Justice Swayne stated the case and delivered the opinion of the court.

Alexander Banter filed his libel in the District Court above named against the owners of the bark Maggie McNiel, wherein it was set forth that the libellant was a pilot of the port of New York, duly licensed under the laws of the State of New York, to pilot vessels by way of Hellgate, and that the respondents were the owners of the bark; that on the 27th day of February, 1870, the libellant, at a point on Long Island Sound, tendered his services and offered to the master of the bark to pilot her by way of Hellgate to the port of New York, and notwithstanding that the libellant was the first pilot so offering his services they were refused; that the bark was a registered vessel foreign to the port of New York, and drew more than thirteen feet of water, so that there became due to the libellant by reason of the premises the sum of twenty-three dollars; that payment has been demanded and refused, and that the premises are within the admiralty and maritime jurisdiction of the United States and of the court to which the libel was addressed.

Process was issued according to the prayer of the libel, and the respondents not being found the vessel was attached. Alexander McNiel intervened as claimant and answered the libel. The answer denies that the action is founded upon a contract civil and maritime. It admits that the bark was sailing under a register, and alleges that she was towed through Hellgate by a steam-tug, which had on board a duly licensed pilot, and that the master of the bark paid for the service. It insists that the cause of action set forth in the libel is not enforceable by the District Court and not within its jurisdiction. Testimony was taken, the cause proceeded to hearing, and the court gave judgment for the amount claimed by the libellant. The respondent applies for a writ of prohibition to restrain the District Court from enforcing the judgment.

The grounds relied upon are:

(1) That the District Court has no jurisdiction of the cause of action stated in the libel.

(2) That no lien existed on the vessel enforceable in a court of admiralty.

The statute of the State upon which the libel was founded is entitled "An act concerning the Pilots of the Channel of the East River, commonly called Hellgate, passed April 15th, 1847, as amended March 12th, 1860, March 14th, 1865, April 16th, 1868, and April 5th, 1871." It is a carefully digested system of regulations, covering

the whole subject of pilotage, and was designed to secure the appointment of qualified persons and to insure as far as possible the faithful performance of their duties. All appointments are required to be made upon the recommendation of the board of wardens of the port of New York to the governor, the nomination by him to the Senate of the State of the persons so recommended, and their confirmation by that body. Apprentices are required to serve three years, to be examined twice during the last year by the board of wardens, and to serve two years afterwards as deputies before they can be appointed pilots. The seventh section of the act provides that a pilot who shall first tender his services may demand from the master of any vessel of one hundred tons burden and upwards, navigating Hellgate, to whom the tender was made and by whom it was refused, half-pilotage, the amount to be ascertained according to the rules prescribed by the act. . . .

There is nothing new in provisions of the same character with the one here under consideration. They have obtained from an early period and are to be found in the laws of most commercial states. The obligation on the captain to take a pilot, or be responsible for the damages that might ensue, was prescribed in the Roman Law. Digest, Book 19, tit. 2, Edict of Ulpian, l, 110; in the Laws of Oleron, I, 232; in the Consulate de Mare, II, 250; and in the Maritime Law of Denmark, III, 262 (Pardessus). The Hanseatic ordinances, about 1457, required the captain to take a pilot under the penalty of a mark of gold. The maritime law of Sweden, about 1500, imposed a penalty for refusing a pilot of 150 thalers, one-third to go to the informer, one-third to the pilot who offered, and the residue to poor mariners. By the maritime code of the Pays Bas the captain was required to take a pilot under a penalty of 50 reals, and to be responsible for any loss to the vessel. By the maritime law of France, ordinance of Louis the XIV, 1681, corporal punishment was imposed for refusing to take a pilot, and the vessel was to pay 50 livres, to be applied to the use of the marine hospital and to repair damages from stranding. In England (3 George I, ch. 13), if a vessel were piloted by any but a licensed pilot, a penalty of £20 was to be collected for the use of superannuated pilots, or the widows of pilots. In the United States, provisions, more or less stringent, requiring the payment of a sum when no pilot is taken, are to be found in the statutes of ten of the States. The earliest of these statutes is that of Massachusetts of 1783, and the latest, to which our attention has been called, the statute of New York here under consideration. . . .

[In an omitted part of the opinion, the court considered and disapproved of the objection that the New York pilotage statute was an unconstitutional regulation of interstate and foreign commerce.]

The other objections taken to the judgment relate to the jurisdiction of the court. It is said there is no jurisdiction in admiralty to maintain a libel for a penalty. It was not a penalty

that was recovered. There was a tender of services upon which the law raised an implied promise to pay the amount specified in the statute. *Commonwealth v. Ricketson*, 5 Metcalf, 419; *Steamship Co. v. Joliffe*, 2 Wallace, 450; *Cooley v. The Board of Wardens*, 12 Howard, 312. Courts of admiralty have undoubted jurisdiction of all marine contracts and torts. *The Belfast*, 7 Wallace, 624; *Ins. Co. v. Dunham*, 11 Id. 29. That contracts relating to pilotage are within the sphere of the admiralty jurisdiction has not been controverted by the counsel for the petitioner. The question is not an open one in this court. *Hobart et al. v. Drohan et al.*, 10 Peters, 120.

It is urged further that a State law could not give jurisdiction to the District Court. That is true. A State law cannot give jurisdiction to any Federal court; but that is not a question in this case. A State law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our National jurisprudence. A party forfeits nothing by going into a Federal tribunal. Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper State tribunal of the same locality. *Robinson v. Campbell*, 3 Wheaton, 223; *United States v. Knight*, 14 Peters, 315; *Steamboat Orleans v. Phoebus*, 11 Id. 184; *Thompson v. Phillips*, 1 Baldwin, 272, 204; *Lorman v. Clarke*, 2 McLean, 568; *Ex parte Biddle*, 2 Mason, 472; *Johnston v. Vandyke*, 6 McLean, 423; *Prescott v. Nevers*, 4 Mason, 327; *Clark v. Sohler*, 1 Woodbury & Minott, 368. In no class of cases has the application of this principle been sustained by this court more frequently than in those of admiralty and maritime jurisdiction. *The St. Lawrence*, 1 Black, 522; *The General Smith*, 4 Wheaton, 438; *Peyroux v. Howard*, 7 Peters, 324; *Rules of Practice in Admiralty*, established by this court, Nos. 12 and 92.

Application for writ denied and petition dismissed.

The Lottawanna.

Supreme Court of the United States, 1874.

21 Wallace 558.

Appeal in Admiralty from the Circuit Court for the District of Louisiana.

The case was thus:

In the year 1819 this court, in *The General Smith*, 4 Wheaton, 443, decided (as the profession has generally understood), that in respect to repairs or necessities furnished to a ship in the port or State to which she belongs, no lien is implied unless it is recognized by the municipal law of the State; declaring the rule herein to be different from that where the repairs or necessities are furnished to a foreign ship; in which case it was admitted that the maritime law of the United States gives the party a lien on the ship itself for his security.

In view of this decision most or all of the States enacted laws giving a lien for the protection of material-men in such cases.

In the year 1833, in the case of *The Planter*, reported under the name of *Peyroux v. Howard*, 7 Peters, 324, the converse of the rule in *The General Smith* was laid down, and process against a vessel in her home port was used and supported, the State law giving a lien in the case.

In 1844, this court, acting in pursuance of acts of Congress which authorized it to adopt rules of practice in the courts of the United States in causes of admiralty and maritime jurisdiction, Acts of May 8th, 1792 (1 Stat. at Large 275), and of August 23d, 1842 (5 Id. 516), (and adhering to the practice declared as proper in the cases mentioned), adopted the following rule of practice:

"Rule XII.

"In all suits by material-men for supplies, repairs, or other necessities for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight in rem, or against the master and owner alone in personam; and the like proceeding in rem shall apply to cases of domestic ships, where by the local law a lien is given to material-men for supplies, repairs, and other necessities."

On the 1st of May, 1859, a new twelfth rule was adopted as a substitute for the one above given. It was thus:

"Rule XII.

"In all suits by material-men, for supplies or repairs, or other necessities for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship or freight in rem, or against the master or owner alone in personam. And the like proceedings in personam, but not in rem, shall apply in cases of domestic ships for supplies, repairs, or other necessities."

The reasons for the substitution of this latter rule for the former one are stated by Taney, C. J., in the case of The Steamer St. Lawrence, 1 Black, 529, to have been that in some cases the State laws giving liens, and the constructions put on them by State courts, were found not to harmonize with the principles and rules of the maritime code, and embarrassed the Federal courts in applying them.

In this state of things, William Doyle and another filed a libel in the District Court of the United States for the District of Louisiana, above mentioned, on the 10th day of June, 1871, against the steamer Lottawanna, of New Orleans, for mariners' wages. The vessel being seized, libels of intervention were afterwards filed by various parties, some for mariners' wages, some for salvage services, some for supplies, materials, and repairs furnished in the port of New Orleans, for the use of the steamer. On the 20th day of June, 1871, Catharine Rodd, administratrix, together with several commercial firms of the city of New Orleans, filed a libel of intervention by which they set up a mortgage on the vessel, given to them by the owner, on the 20th of May, 1871, and duly recorded in the custom-house on the 22d of May, to secure the payment of various promissory notes of the same date, given to said libellants by the said owner, and amounting to more than \$14,000.

The steamer, up to the 16th of May, had been engaged in the river trade on the Mississippi and Red Rivers between New Orleans and Jefferson, in Texas, and was laid up for repairs at New Orleans on that day. Most of the claims for wages and supplies arose before the date of the mortgage, although some arose afterwards. The steamer was sold for \$7500, and, after deducting expenses of sale, costs, salvage and wages of mariners (which were admitted to have preference), there remained a surplus of \$4644.42, which the District Court, by a decree rendered February 26th, 1872, and signed on the 1st of March following, decreed to be paid pro rata to the mortgage creditors, to the exclusion of the claims for repairs and supplies.

On the 6th of May, 1872, about two months after the decree was finally rendered, this court promulgated yet a third twelfth rule in admiralty. It was in these words:

"In all suits by material-men for supplies or repairs or other necessities, the libellant may proceed against the ship and freight in rem, or against the master or owner alone in personam."

In this state of things, on the 3d of June, 1872, the above-mentioned decree of the District Court was reversed by the Circuit Court, on appeal, and the surplus was decreed to be paid pro rata to the claimants for repairs and supplies, to the exclusion of the mortgage creditors; the amount not being sufficient to pay either class of creditors in full. From the latter decree an appeal was taken to this court.

The principal question presented by the appeal, therefore, was whether the furnishing to a vessel on her credit, at her home port, needful repairs and supplies created a maritime lien. If it did, such lien would take precedence of a mortgage given for the payment of money generally, and the decree must be affirmed. If it did not, the decree was to be reversed, unless the appellees could sustain themselves on some other ground. . . .

[The remainder of the statement of facts and the arguments of counsel are omitted.]

Mr. Justice Bradley delivered the opinion of the court.

The principal questions raised in this case were decided by this court adversely to the lien more than fifty years ago in the case of *The General Smith*, reported in 4 Wheaton, 438, and that decision has ever since been adhered to, except occasionally in some of the District Courts. A solemn judgment relied on so long by the commercial community as a rule of property and the law of the land, ought not to be overruled except for very cogent reasons. If, however, in the progress of investigation, and with the new lights that have been thrown upon the whole subject of maritime law and admiralty jurisdiction, a more rational view of the question demands an adverse ruling in order to preserve harmony and logical consistency in the general system, the court might, perhaps, if no evil consequences of a glaring character were likely to ensue, feel constrained to adopt it. But if no such necessity exists, we ought not to permit any consideration of mere expediency or love of scientific completeness, to draw us into a substantial change of the received law. The additional security which has been extended to bills of sale and mortgages on ships and vessels since the passage of the act for recording them in the custom-house; and the confidence with which purchasers and mortgagees have invested money therein under the existing course of decisions on this subject, have placed a large amount of property at undue hazard, if those decisions may lightly, or without grave cause, be disturbed.

The ground on which we are asked to overrule the judgment in the case of *The General Smith* is, that by the general maritime law, those who furnish necessary materials, repairs, and supplies to a vessel, upon her credit, have a lien on such a vessel therefor, as well when furnished in her home port as when furnished in a foreign port, and that the courts of admiralty are bound to give effect to that lien.

The proposition assumes that the general maritime law governs this case, and is binding on the courts of the United States.

But it is hardly necessary to argue that the maritime law is only so far operative as law in any country as it is adopted by the laws and usages of that country. In this respect it is like international law or the laws of war, which have the effect of law in no country any further than they are accepted and received as such; or, like the case of the civil law, which forms the basis of most European laws, but which has the force of law in each state only so far as it is adopted therein, and with such modifications as are deemed expedient. The adoption of the common law by the several States of this Union also presents an analogous case. It is the basis of all the State laws; but is modified as each sees fit. Perhaps the maritime law is more uniformly followed by commercial nations than the civil and common laws are by those who use them. But, like those laws, however fixed, definite, and beneficial the theoretical code of maritime law may be, it can have only so far the effect of law in any country as it is permitted to have. But the actual maritime law can hardly be said to have a fixed and definite form as to all the subjects which may be embraced within its scope. Whilst it is true that the great mass of maritime law is the same in all commercial countries, yet, in each country, peculiarities exist either as to some of the rules, or in the mode of enforcing them. Especially is this the case on the outside boundaries of the law, where it comes in contact with, or shades off into the local or municipal law of the particular country and affects only its own merchants or people in their relations to each other. Whereas, in matters affecting the stranger or foreigner, the commonly received law of the whole commercial world is more assiduously observed - as, in justice, it should be. No one doubts that every nation may adopt its own maritime code. France may adopt one; England another; the United States a third; still, the convenience of the commercial world, bound together, as it is, by mutual relations of trade and intercourse, demands that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. Hence the adoption by all commercial nations (our own included) of the general maritime law as the basis and groundwork of all their maritime regulations. But no nation regards itself as precluded from making occasional modifications suited to its locality and the genius of its own people and institutions, especially in matters that are of merely local and municipal consequence and do not affect other nations. It will be found, therefore, that the maritime codes of France, England, Sweden, and other countries, are not one and the same in every particular; but that whilst there is a general correspondence between them arising from the fact that each adopts the essential principles, and the great mass of the general maritime law, as the basis of its system, there are varying shades of difference corresponding to the respective territories, climate, and genius of the people of each country respectively. Each state

adopts the maritime law, not as a code having any independent or inherent force, *proprio vigore*, but as its own law, with such modifications and qualifications as it sees fit. Thus adopted and thus qualified in each case, it becomes the maritime law of the particular nation that adopts it. And without such voluntary adoption it would not be law. And thus it happens, that, from the general practice of commercial nations in making the same general law the basis and groundwork of their respective maritime systems, the great mass of maritime law which is thus received by these nations in common, comes to be the common maritime law of the world.

This account of the maritime law, if correct, plainly shows that in particular matters, especially such as approach a merely municipal character, the received maritime law may differ in different countries without affecting the general integrity of the system as a harmonious whole. The government of one country may be willing to give to its citizens, who supply a ship with provisions at her home port where the owner himself resides, a lien on the ship; whilst that of another country may take a contrary view as to the expediency of such a rule. The difference between them in a matter that concerns only their own citizens, in each case, cannot seriously affect the harmony and consistency of the common maritime law which each adopts and observes.

This view of the subject does not in the slightest degree detract from the proper authority and respect due to that venerable law of the sea, which has been the subject of such high encomiums from the ablest jurists of all countries; it merely places it upon the just and logical grounds upon which it is accepted, and with proper qualifications, received with the binding force of law in all countries.

The proposition, therefore, that by the general maritime law a lien is given in cases of the kind now under consideration, does not advance the argument a single step, unless it be shown to be in accordance with the maritime law as accepted and received in the United States. It certainly has not been the maritime law of England for more than two centuries past; and whether it is the maritime law of this country depends upon questions which are not answered by simply turning to the ordinary European treatises on maritime law, or the codes or ordinances of any particular country.

That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system or maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction." But by what criterion are we to ascertain the precise limits of the law thus adopted? The Constitution does not define it. It does not declare whether it was intended to embrace the entire maritime law as expounded in the

treatises, or only the limited and restricted system which was received in England, or lastly, such modification of both of these as was accepted and recognized as law in this country. Nor does the Constitution attempt to draw the boundary line between maritime law and local law; nor does it lay down any criterion for ascertaining that boundary. It assumes that the meaning of the phrase "admiralty and maritime jurisdiction" is well understood. It treats this matter as it does the cognate ones of common law and equity, when it speaks of "cases in law and equity", or of "suits at common law", without defining those terms, assuming them to be known and understood.

One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

The question is discussed with great felicity and judgment by Chief Justice Taney, delivering the opinion of the court in the case of *The St. Lawrence*, 1 Black 526, 527, where he says: "Judicial power, in all cases of admiralty and maritime jurisdiction, is delegated by the Constitution to the Federal government in general terms, and courts of this character had then been established in all commercial and maritime nations, differing, however, materially in different countries in the powers and duties confided to them; the extent of the jurisdiction conferred depending very much upon the character of the government in which they were created; and this circumstance, with the general terms of the grant, rendered it difficult to define the exact limits of its power in the United States. This difficulty was increased by the complex character of our government, where separate and distinct specified powers of sovereignty are exercised by the United States and a State independently of each other within the same territorial limits. And the reports of the decisions of the court will show that the subject has often been before it, and carefully considered, without being able to fix with precision its definite boundaries; but certainly no State law can enlarge it, nor can an act of Congress or rule of court make it broader than the judicial power may determine to be its true limits. And this boundary is to be ascertained by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument, and the purposes for which admiralty and maritime jurisdiction was granted to the Federal government."

Guided by these sound principles, this court has felt itself at liberty to recognize the admiralty jurisdiction as extending to localities and subjects which, by the jealousy of the common law,

were prohibited to it in England, but which fairly belong to it on every ground of reason when applied to the peculiar circumstances of this country, with its extended territories, its inland seas, and its navigable rivers, especially as the narrow restrictions of the English law had never prevailed on this side of the Atlantic, even in colonial times.

The question as to the true limits of maritime law and admiralty jurisdiction is undoubtedly, as Chief Justice Taney intimates, exclusively a judicial question, and no State law or act of Congress can make it broader, or (it may be added) narrower, than the judicial power may determine those limits to be. But what the law is within those limits, assuming the general maritime law to be the basis of the system, depends on what has been received as law in the maritime usages of this country, and on such legislation as may have been competent to affect it.

To ascertain, therefore, what the maritime law of this country is, it is not enough to read the French, German, Italian, and other foreign works on the subject, or the codes which they have framed; but we must have regard to our own legal history, constitution, legislation, usages, and adjudications as well. The decisions of this court illustrative of these sources, and giving construction to the laws and Constitution are especially to be considered; and when these fail us, we must resort to the principles by which they have been governed.

But we must always remember that the court cannot make the law, it can only declare it. If within its proper scope, any change is desired in its rules, other than those of procedure, it must be made by the legislative department. It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest portion of ground covered by the former. Under it Congress has regulated the registry, enrolment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of ship-owners for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime. And with regard to the question now under consideration, namely, the rights of material-men in reference to supplies and repairs furnished to a vessel in her home port, there does not seem to be any great reason to doubt that Congress might adopt a uniform rule for the whole country, though, of course, this will be a matter for consideration should the question ever be directly presented for adjudication. . . .

Be this, however, as it may, and whether the power of Congress is or is not sufficient to amend the law on this subject (if amendment is desirable), this court is bound to declare the law as it now stands. And according to the maritime law as accepted and received in this country, we feel bound to declare that no such lien exists as is claimed by the appellees in this case. The adjudications in this court before referred to, which it is unnecessary to review, are conclusive on the subject; and we see no sufficient ground for disturbing them.

This disposes of the principal question in the case.

But it is alleged by the appellees that by the law of Louisiana they have a privilege for their claims, giving them a lien on the vessel and her proceeds; and that the court was bound to enforce this lien in their behalf, though not strictly a maritime lien.

On examining the record, however, it appears that the appellees never caused their lien (if they had one) to be recorded according to the requirements of the State law. By the one hundred and twenty-third article of the constitution of Louisiana, adopted in 1869, it is declared that no "mortgage or privilege shall hereafter affect third parties, unless recorded in the parish where the property to be affected is situated." And an act of the legislature, passed since that time, adopts the very terms of the constitutional provision. And a further act provides that if the privilege be not in writing, the facts on which it is based must be stated in an affidavit, which must be recorded. Revised Civil Code, Articles 3273, 3274, 3093. None of these requisites having been performed, no lien can be claimed under the State law.

But if there were any doubt on this subject, the case of the appellees is met by another difficulty. The admiralty rule of 1859, which precluded the District Courts from entertaining proceedings in rem against domestic ships for supplies, repairs, or other necessities, was in force until May 6th, 1872, when the new rule was promulgated. Now, this case was commenced in the District Court a year previous to this, and final judgment in the District Court was rendered two months previous. It is true that the judgment of the Circuit Court, on appeal, was not rendered until the 3d day of June, 1872; but if the new rule had at that time been brought to the attention of the court, it could hardly have been applied to the case in its then position. All the proceedings had been based and shaped upon other grounds and theories, and not upon the existence of that rule. It would not have been just to the other parties to apply to them a rule which was not in existence when they were carrying on the litigation.

As to the recent change in the admiralty rule referred to, it is sufficient to say, that it was simply intended to remove all obstructions and embarrassments in the way of instituting proceedings

in rem in all cases where liens exist by law, and not to create any new lien, which, of course, this court could not do in any event, since a lien is a right of property, and not a mere matter of procedure.

Had the lien been perfected, and had the rule not stood in the way, the principles that have heretofore governed the practice of the District Courts exercising admiralty jurisdiction, and which have been repeatedly sanctioned by this court, would undoubtedly have authorized the material-men to file a libel against the vessel or its proceeds. *The General Smith*, 4 Wheaton, 438; *Peyroux v. Howard*, 7 Peters, 324; *The Orleans v. Phoebus*, 11 Id. 175; *The St. Lawrence*, 1 Black, 522. It seems to be settled in our jurisprudence that so long as Congress does not interpose to regulate the subject, the rights of material-men furnishing necessaries to a vessel in her home port may be regulated in each State by State legislation. State laws, it is true, cannot exclude the contract for furnishing such necessaries from the domain of admiralty jurisdiction, for it is a maritime contract, and they cannot alter the limits of that jurisdiction; nor can they confer it upon the State courts so as to enable them to proceed in rem for the enforcement of liens created by such State laws, for it is exclusively conferred upon the District Courts of the United States. They can only authorize the enforcement thereof by common-law remedies, or such remedies as are equivalent thereto. But the District Courts of the United States having jurisdiction of the contract as a maritime one, may enforce liens given for its security, even when created by the State laws. Cases supra. The practice may be somewhat anomalous, but it has existed from the origin of the government, and, perhaps, was originally superinduced by the fact that prior to the adoption of the Constitution, liens of this sort created by State laws had been enforced by the State courts of admiralty; and as those courts were immediately succeeded by the District Courts of the United States, and in several instances the judge of the State court was transferred to the District Court, it was natural, in the infancy of Federal legislation on commercial subjects, for the latter courts to entertain jurisdiction over the same classes of cases, in every respect as the State courts had done, without due regard to the new relations which the States had assumed towards the maritime law and admiralty jurisdiction. For example, in 1784, the legislature of Pennsylvania passed a law allowing persons concerned in building, repairing, fitting out, and furnishing vessels for a voyage, to sue in admiralty, as mariners sue for wages. Two cases, those of *The Collier*, and *The Enterprise*, arising under this law, and coming before the admiralty court of Pennsylvania, are reported in Judge Hopkinson's works. Volume 3, pp. 131, 171. No doubt other cases of the same kind occurred in the courts of other States.

But, whatever may have been the origin of the practice, and whether or not it was based on the soundest principles, it became firmly settled, and it is now too late to question its validity.

It is true that the inconveniences arising from the often intricate and conflicting State laws creating such liens, induced this court in December Term, 1858, to abrogate that portion of the twelfth admiralty rule of 1844 which allowed proceedings in rem against domestic ships for repairs and supplies furnished in the home port, and to allow proceedings in personam only in such cases. But we have now restored the rule of 1844, or, rather, we have made it general in its terms, giving to material-men in all cases their option to proceed either in rem or in personam. Of course this modification of the rule cannot avail where no lien exists; but where one does exist, no matter by what law, it removes all obstacles to a proceeding in rem, if credit is given to the vessel.

It would undoubtedly be far more satisfactory to have a uniform law regulating such liens, but until such a law be adopted (supposing Congress to have the power) the authority of the States to legislate on the subject seems to be conceded by the uniform course of decisions.

Indeed, there is quite an extensive field of border legislation on commercial subjects (generally local in character) which may be regulated by State laws until Congress interposes, and thereby excludes further State legislation. Pilotage is one of the subjects in this category. So far as Congress has interposed, its authority is supreme and exclusive; but where it has not done so, the matter is still left to the regulation of State laws. And yet this exercise by the States of the power to regulate pilotage has not withdrawn the subject, and, indeed, cannot withdraw it from the admiralty jurisdiction of the District Courts. *Cooley v. Port Wardens*, 12 Howard, 299; *Ex parte McNiell*, 13 Wallace, 236. And, of course, as before intimated, this jurisdiction of the State legislatures in such cases is subject to be terminated at any time by Congress assuming the control. In some cases this is not so desirable as in others, but in the one under consideration, if Congress has the power to intervene, it is greatly to be desired that it should do so. It would be better to have the subject regulated by the general maritime law of the country than by differing State laws. The evils arising from conflicting lien laws passed by the several States are forcibly set forth by Chief Justice Taney in the case of *The St. Lawrence*, before cited. It may be added that the existence of secret liens is not in accord with the spirit of our commercial usages, and a uniform law by which the liens in question should be required within a reasonable time to be placed on record in the custom-house like mortgages, and otherwise properly regulated, would be of great advantage to the business community.

But there is another mode in which the appellees, if they had a valid lien, could come into the District Court and claim the benefit thereof, namely, by a petition for the application of the surplus proceeds of the vessel to the payment of their debts, under the forty-third admiralty rule. The court has power to distribute

surplus proceeds to all those who can show a vested interest therein, in the order of their several priorities, no matter how their claims originated. *Schuchardt v. Babbidge*, 19 Howard, 239. The propriety of such a distribution in the admiralty has been questioned on the ground that the court would thereby draw to itself equity jurisdiction. *The Neptune*, 3 Knapp's Privy Council, 111. But it is a wholesome jurisdiction very commonly exercised by nearly all superior courts, to distribute a fund rightfully in its possession to those who are legally entitled to it; and there is no sound reason why admiralty courts should not do the same. If a case should be so complicated as to require the interposition of a court of equity, the District Court could refuse to act, and refer the parties to a more competent tribunal. See cases reviewed in 1 Conklin's Admiralty, pp. 48--66, 2d ed.

In this case the appellants themselves have no maritime lien, but merely a mortgage to secure an ordinary debt not founded on a maritime contract. They, therefore, have no standing in court, except under the forty-third admiralty rule, and in the manner above indicated. Their libel was inadmissible, even under the admiralty rule as recently modified. *The John Jay*, 17 Howard, 399. But before the final decree they filed a petition for the surplus proceeds, and, as there is no question in the case about fraudulent preference under the Bankrupt law, they are entitled to those proceeds towards satisfaction of their mortgage.

Decree Reversed, and the record Remanded, with instructions to enter a decree in favor of the appellants,

In conformity with this opinion.

[The dissenting opinion of Mr. Justice Clifford is omitted.]

Mr. Justice Field also dissented.

The J. E. Rumbell -- 1

The J. E. Rumbell.

Supreme Court of the United States, 1893.

148 United States 1.

[The statement of the case and the arguments of counsel are omitted. The facts are sufficiently stated in the opinion.]

Mr. Justice Gray, after stating the case, delivered the opinion of the court. . . .

In the admiralty and maritime law of the United States, as declared and established by the decisions of this court, the following propositions are no longer doubtful:

1st. For necessary repairs or supplies furnished to a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty. The *General Smith*, 4 Wheat. 438, 443; *The St. Jago de Cuba*, 9 Wheat. 409, 417; *The Virgin*, 8 Pet. 538, 550; *The Laura*, 19 How. 22; *The Grapeshot*, 9 Wall. 129; *The Lulu*, 10 Wall. 192; *The Kalorama*, 10 Wall. 204.

2d. For repairs or supplies in the home port of the vessel, no lien exists, or can be enforced in admiralty, under the general law, independently of local statute. The *General Smith*, and *The St. Jago de Cuba*, above cited; *The Lottawanna*, 21 Wall. 558; *The Edith*, 94 U.S. 518.

3d. Whenever the statute of a State gives a lien, to be enforced by process in rem against the vessel, for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and therefore may be enforced in admiralty in the courts of the United States. *The Planter*, 7 Pet. 324; *The St. Lawrence*, 1 Black, 522; *The Lottawanna*, 21 Wall. 558, 579, 580; Rule 12 in Admiralty, as amended in 1872, 13 Wall. xiv.

4th. This lien, in the nature of a maritime lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States, sitting in admiralty. *The Moses Taylor*, 4 Wall. 411; *The Hine*, 4 Wall. 555; *The Belfast*, 7 Wall. 624; *The Lottawanna*, 21 Wall. 558, 580; *Johnson v. Chicago Elevator Co.*, 119 U. S. 388, 397.

The fundamental reasons on which these propositions rest may be summed up thus: The admiralty and maritime jurisdiction is conferred on the courts of the United States by the Constitution, and cannot be enlarged or restricted by the legislation of a State. No State legislation, therefore, can bring within the admiralty

jurisdiction of the national courts a subject not maritime in its nature. But when a right, maritime in its nature, and to be enforced by process in the nature of admiralty process, has been given by the statute of a State, the admiralty courts of the United States have jurisdiction, and exclusive jurisdiction, to enforce that right according to their own rules of procedure. See, in addition to the cases above cited, *The Orleans*, 11 Pet. 175, 184; *Ex parte McNiel*, 13 Wall. 236, 243; *The Corsair*, 145 U.S. 335, 347.

The settled rules of jurisdiction and practice on this subject were stated by Mr. Justice Bradley in *The Lottawanna* as follows: "So long as Congress does not interpose to regulate the subject, the rights of material-men furnishing necessaries to a vessel in her home port may be regulated in each State by state legislation. State laws, it is true, cannot exclude the contract for furnishing such necessaries from the domain of admiralty jurisdiction, for it is a maritime contract, and they cannot alter the limits of that jurisdiction; nor can they confer it upon the state courts so as to enable them to proceed in rem for the enforcement of liens created by such state laws, for it is exclusively conferred upon the District Courts of the United States. They can only authorize the enforcement thereof by common law remedies, or such remedies as are equivalent thereto. But the District Courts of the United States, having jurisdiction of the contract as a maritime one, may enforce liens given for its security, even when created by the state laws." 21 Wall. 580.

By the Revised Statutes of Illinois of 1874, c. 12, § 1, every sailing vessel, steamboat or other water craft of above five tons burthen, used or intended to be used in navigating the waters of the State, or used in trade and commerce between ports and places within the State, or having her home port in the State, "shall be subject to a lien thereon" for all debts contracted by her owner or master on account of supplies and provisions furnished for her use, or of work done or services rendered on board of her "by any seaman, master or other employe thereof," or "of work done or materials furnished by mechanics, tradesmen or others, in or about the building, repairing, fitting, furnishing or equipping such craft," and also for sums due for wharfage, towage, or the like, or upon contracts of affreightment, and damages for injuries to persons or property. By §§ 3, 4, the lien may be enforced by a petition filed in a court of record in the county where the vessel is found, within five years, but cannot be enforced "as against or to the prejudice of any other creditor, or subsequent incumbrancer or bona fide purchaser", unless the petition is filed within nine months after the debt accrues or becomes due. By §§ 5-8, upon the filing of the petition, and of a bond from the petitioner to the owner of the vessel to prosecute the suit with effect, or, in case of failure to do so, to pay all costs and damages caused to the owner or other persons interested in the vessel by the wrongful suing out of the attachment, a writ of attachment is to issue to

the sheriff to seize and keep the vessel. By §§ 10, 11, notice is to be given to the owners in person, and by publication to all other persons interested, and they may intervene to protect their interests. By §§ 15-17, the vessel may be delivered up to the owner, or to any other person interested, upon his giving bond, or making a deposit of money. By § 19, the owner and other claimants are to file answers. By §§ 21-27, upon judgment for the petitioner, the vessel, if remaining in custody, is to be sold by the sheriff; and the proceeds (deducting certain costs) are to be applied, first, to the wages due to seamen, including the master, for certain periods, and then to all other claims, filed before the distribution, on which judgment has been rendered in favor of the claimant, and to any balance due to seamen; and any remnant is to be applied, first, to all other liens enforceable under the statute before distribution; second, to all mortgages or other incumbrances of the vessel by the owner, "in proportion to the interest they cover and priority"; third, to judgments at law or decrees in chancery against the owner; and any surplus to the owner.

It thus appears that, for all supplies or provisions furnished for the use of a vessel, or for work done and materials furnished in repairing her, in her home port, the statute gives a lien upon the vessel, to be enforced by proceedings in rem, analogous to such proceedings in admiralty.

In the present case, the District Court has found and adjudged that the sums claimed by the appellants for supplies, repairs and services were due to them. and the Circuit Court of Appeals has stated in its certificate that for these supplies, repairs and services there was a lien upon the vessel under the laws of the State of Illinois; and has certified to this court the single question "whether a claim arising upon a vessel mortgage is to be preferred to the claim for supplies and necessities furnished to a vessel in its home port in the State of Illinois subsequently to the date of the recording of the mortgage."

It must be assumed, therefore, for the purpose of deciding this question, that all the claims of the appellants for supplies and repairs were contracted under such circumstances that a lien upon the vessel for their payment existed under the statute of Illinois, and should be enforced in admiralty by the courts of the United States against the proceeds of the vessel, unless the mortgagees are entitled to priority in the distribution.

An ordinary mortgage of a vessel, whether made to secure the purchase money upon the sale thereof, or to raise money for general purposes, is not a maritime contract. A court of admiralty, therefore, has no jurisdiction of a libel to foreclose it, or to assert either title or right of possession under it. *The John Jay*, 17 How. 399; *The Eclipse*, 135 U. S. 599, 608. But it has jurisdiction, after a vessel has been sold by its order, and the proceeds have

been paid into the registry, to pass upon the claim of the mortgagee, as of any other person, to the fund and to determine the priority of the various claims, upon petitions such as were filed by the mortgagees and the material-men in this case. The Globe, 3 How. 568, 573; The Angelique, 19 How. 239; The Lottawanna, 21 Wall. 558, 582, 583; Rule 43 in Admiralty.

The appellees rely on section 4192 of the Revised Statutes of the United States, which substantially reenacts the act of July 29, 1850, c. 27, § 1, (9 Stat. 440), and is as follows: "No bill of sale, mortgage, hypothecation or conveyance of any vessel, or part of any vessel, of the United States shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof; unless such bill of sale, mortgage, hypothecation or conveyance is recorded in the office of the collector of the customs where such vessel is registered or enrolled. The lien by bottomry on any vessel, created during her voyage, by a loan of money or materials, necessary to repair or enable her to prosecute a voyage, shall not, however, lose its priority, or be in any way affected by the provisions of this section."

The appellees contend that no lien created by the legislature of a State can override a prior mortgage recorded under this act of Congress.

But that enactment is a mere registry act, intended to prevent mortgages and other conveyances of vessels from having any effect (which they might have had before) against persons other than the grantor or mortgagor, and those claiming under him, or having actual notice thereof, unless recorded as therein provided. White's Bank v. Smith, 7 Wall. 646; Aldrich v. Aetna Co., 8 Wall. 491. It manifests no intention to confer upon the mortgagee any new right, or to make the mortgage a maritime contract, or the lien created thereby a maritime lien, or in any way to interfere with maritime contracts or liens, or with the jurisdiction and procedure in admiralty. The only mention of any other lien on the vessel is of a bottomry bond, in the latter part of the section, originally inserted in the form of a proviso, and with the obvious purpose of precluding the possibility of construing such a bond to be an hypothecation, within the meaning of the previous clause, and therefore required to be recorded. And, as was well observed in The William T. Graves, 14 Blatchford, 189, 195 by Judge Johnson: "If this proviso be construed to mean that such a lien only is out of the purview of the statute, and that all other liens are postponed to that of a mortgagee, then the claims of salvors, and all those having other strictly maritime liens, would be thus postponed, to the subversion of the whole principle upon which efficacy is given to such claims and the overthrow of the best settled and most salutary principles of the maritime law. Indeed, any principle, upon which this statute can be expounded to give such a priority to a recorded mortgage, would also extend to bills of sale and other conveyances

recorded under the same law, and thus practically overthrow the whole scheme of maritime law upon the subject of maritime liens."

In *The Lottawanna*, the mortgage was preferred to the claim of the material-men in the home port, only because the latter had not recorded their lien as required by the law of the State to make it valid; and it was clearly implied in the opinion of the court, delivered by Mr. Justice Bradley, as well as distinctly asserted in the dissenting opinion of Mr. Justice Clifford, that their lien, if valid, would take precedence of the mortgage. 21 Wall. 578, 579, 582, 608. And, as already stated at the outset of this opinion, the same rule was laid down in the opinion of Mr. Justice Curtis in *The Kiersage*, 2 Curtis C. C. 421, approved by this court in *The Yankee Blade*, 19 How. 82.

The appellees rely on a line of cases in the courts of the United States held in Illinois, beginning with a decision of Judge Drummond in 1869, and upon similar cases in the Supreme Court of the State, as establishing, as a rule of property, that a mortgage takes precedence of a lien for supplies afterwards furnished to a vessel in her home port under the statute of Illinois. *The Grace Greenwood*, (1869) 2 Bissell, 131; *The Skylark*, (1870) 2 Bissell, 251; *The Kate Hinchman*, (1875) 6 Bissell, 367, and (1876) 7 Bissell, 238; *The Great West No. 2 v. Oberndorf*, (1870) 57 Illinois, 168; *The Hilton v. Miller*, (1871) 62 Illinois, 230.

But the question in controversy depends upon principles of general jurisprudence, and upon the true construction of an act of Congress, and arises in the courts of the United States exercising the admiralty and maritime jurisdiction exclusively vested in them by the Constitution. Upon such a question, neither the decisions of the highest court of a State, nor those of the Circuit and District Courts of the United States, can relieve this court from the duty of exercising its own judgment. *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 443; *Andrews v. Hovey*, 124 U.S. 694, 717.

Moreover, the rule preferring the lien for repairs or supplies in a home port to a prior mortgage was recognized, even in the Seventh Circuit, by Judge Dyer in the District Court of the United States for the Eastern District of Wisconsin in 1874, in *The J.A. Travis*, 7 Chicago Legal News, 275; and it appears to prevail in every other judicial circuit of the United States. It has been upheld in the First Circuit, by Mr. Justice Curtis in *The Kiersage*, (1855) 2 Curtis C. C. 421, already cited, and by Judge Lowell in *The Island City*, (1869) 1 Lowell, 375, 379; in the Second Circuit, by Judge Wallace, and by Judge Johnson on appeal, in *The William T. Graves*, (1876) 8 Benedict 568, and (1877) 14 Blatchford, 189; in

the Third Circuit, by Judge McCandless, and by Mr. Justice Grier on appeal, in *The Collier*, (1861) 2 Pittsburgh Rep. 304, 318, 320, and by Judge Acheson in *The Venture*, (1885) 26 Fed. Rep 285; and in the Fourth Circuit, by Judge Hughes in *The Raleigh*, (1876) 2 Hughes, 44, and by Judge Seymour in *Clyde v. Steam Transportation Co.*, (1888) 36 Fed. Rep. 501. In *The Marcelia Ann*, (1887) 34 Fed. Rep. 142, Judge Bond gave priority to the mortgage, because the statute of Maryland expressly so provided.

In the Fifth Circuit, Mr. Justice Woods, then Circuit Judge, while admitting that the lien of a mortgage duly recorded was inferior to all strictly maritime liens, yet held that it was superior to any subsequent lien for supplies in the home port, given by the legislation of a State. *The John T. Moore*, (1877) 3 Woods, 61; *The Bradish Johnson*, (1878) 3 Woods, 582. His ruling was followed by Judge Hill, who had previously decided otherwise in *The Emma*, (1876) 3 Central Law Journal, 285; and, with much doubt of its soundness, by Judge Pardee. *The Josephine Spangler*, (1881) 9 Fed. Rep. 773, and 11 Fed. Rep. 440; *The De Smet*, (1881) 10 Fed. Rep. 483. But in a very recent case, Mr. Justice Lamar, upon full consideration, and with the concurrence of Judge Pardee, overruled those decisions in a clear and convincing opinion. *The Madrid*, (1889) 40 Fed. Rep. 677.

In the Sixth Circuit, Judge Sherman, sitting in bankruptcy, held that a mortgage must be preferred to a subsequent lien for supplies under a state statute. *Scott's Case*, (1869) 1 Abbott, (U.S.) 336. But the opposite rule has since been recognized as clearly established in admiralty in that circuit by decisions of Judge Withey in *The St. Joseph*, (1869) Brown Adm. 202, and *The Alice Getty*, (1877) 2 Flippin, 18; of Judge Hammond in *The Illinois*, (1879) 2 Flippin, 383, 433; of Mr. Justice Brown, then District Judge, in *The City of Tawas*, (1880) 3 Fed. Rep. 170; of Judge Swing in *The Guiding Star*, (1881) 9 Fed. Rep. 521 and of Mr. Justice Matthews and Judge Baxter in the same case on appeal, (1883) 18 Fed. Rep. 263, 269.

The decisions in the Eighth Circuit, by Judge Thayer in *The Wyoming*, (1888) 35 Fed. Rep. 548; and in the Ninth Circuit, by Judge Hoffman in *The Harrison*, (1870) 1 Sawyer, 353, and *The Hiawatha*, (1878) 5 Sawyer, 160, and by Judge Deady in *The Canada*, (1881) 7 Sawyer, 173, are to the same effect.

According to the great preponderance of American authority, therefore, as well as upon settled principles, the lien created by the statute of a State, for repairs or supplies furnished to a vessel in her home port, has the like precedence over a prior mortgage, that is accorded to a lien for repairs or supplies in a foreign port under the general maritime law, as recognized and adopted in the United States. Each rests upon the furnishing of supplies to the ship, on the credit of the ship herself, to preserve

her existence and secure her usefulness, for the benefit of all having any title or interest in her. Each creates a jus in re, a right of property in the vessel, existing independently of possession, and arising as soon as the contract is made, and before the institution of judicial proceedings to enforce it. The contract in each case is maritime, and the lien which the law gives to secure it is maritime in its nature, and is enforced in admiralty by reason of its maritime nature only. The mortgage, on the other hand, is not a maritime contract, and constitutes no maritime lien, and the mortgagee can only share in the proceeds in the registry after all maritime liens have been satisfied.

It would seem to follow that any priority given by the statute of a State, or by decisions at common law or in equity, is immaterial; and that the admiralty courts of the United States, enforcing the lien because it is maritime in its nature, arising upon a maritime contract, must give it the rank to which it is entitled by the principles of the maritime and admiralty law.

As was forcibly said by Mr. Justice Matthews, in *The Guiding Star*, above cited, "In enforcing the statutory lien in maritime causes, admiralty courts do not adopt the statute itself, or the construction placed upon it by courts of common law or of equity, when they apply it. Everything required by the statute, as a condition on which the lien arises and vests, must, of course, be regarded by courts of admiralty; for they can only act in enforcing a lien when the statute has, according to its terms, conferred it; but beyond that the statute, as such, does not furnish the rule for governing the decision of the cause in admiralty, as between conflicting claims and liens. The maritime law treats the lien, because conferred upon a maritime contract by the statute, as if it had been conferred by itself, and consequently upon the same footing as all maritime liens; the order of payment between them being determinable upon its own principles." 18 Fed. Rep. 268.

It is unnecessary, however, in this case, to dwell upon that consideration, inasmuch as the lien in question is given precedence over mortgages, by the express terms of the statute of Illinois, as well as by the principles of the maritime law and the practice in admiralty. . . .

No question as to the lien of the master, or as to the comparative rank of various maritime liens inter sese, is presented by this case, in which the only question certified by the Circuit Court of Appeals, or within our jurisdiction to consider, as the case stands, is whether a claim arising under a mortgage of the vessel is to be preferred to the claim for supplies and necessaries furnished in her home port in the State of Illinois since the mortgage was recorded. This question must, for the reasons above stated, be

Answered in the negative.

The Roanoke.

Supreme Court of the United States, 1903.

189 United States 185.

This was a libel in rem for materials, and also for work and labor, alleged to have been furnished by the libellants King and Winge in the repair of the steamship Roanoke, to certain contractors with the owners, who had full charge of the alteration and repair of the steamship. An intervening libel was also filed by one Fraser for labor and material furnished under the same conditions.

The cases resulted in decrees for the libellants, from which the North American Transportation and Trading Company, owner of the steamship, appealed directly to this court, and the following facts were found:

"The North American Transportation and Trading Company appeared as claimant and owner and the vessel was released upon its stipulation.

"It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libellants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada, and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and, upon the Pacific coast since that time, employed between Seattle and the mouth of the Yukon in the summer, and between San Francisco and southern ports in the winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel, and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these unpaid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libellants was claimed under sections 5953 and 5954 of Ballinger's Code and Statutes of Washington¹ that such a lien was

¹"5953. All steamers, vessels, and boats, their tackle, apparel, and furniture, are liable,-- . . .

"3. For work done or material furnished in this State, for their construction, repair, or equipment, at the request of their respective owners, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in

in this instance void, being in violation of the eighth section of the first article of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States, was an illegal burden upon interstate commerce, and in violation also of the fourteenth article of the Constitution of the United States, as depriving claimant of its property without due process of law and without its equal protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

"To the intervening libel of Fraser the same answer was made.

"To each of these answers respectively the libellants and intervening libellant excepted as insufficient, and the whole of each, to constitute any answer or defence to the libel.

"The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libels."

[The arguments of counsel are omitted.]

Mr. Justice Brown, after making the foregoing statement, deliberated the opinion of the court. . . .

In this connection the following propositions may be considered as settled:

1. That by the maritime law, as administered in England and in this country, a lien is given for necessaries furnished a foreign
(Note¹ cont'd)

part of their construction, alteration, repair, or equipment; and every contractor, sub-contractor, builder, or person having charge, either in whole or in part, of the construction, alteration, repair, or equipment of any vessel shall be held to be the agent of the owner, for the purposes of this chapter; . . .

"Demands for these several causes constitute liens upon all steamers, vessels, and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

"5954. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any District Court of this Territory." 2 Ballinger's Code || 5953, 5954.

vessel upon the credit of such vessel; *The General Smith*, 4 Wheat. 438; *The Grapeshot*, 9 Wall. 129; Gen. Admiralty Rule 12, and that in this particular the several States of this Union are treated as foreign to each other. *The General Smith*, 4 Wheat. 438; *The Kalorama*, 10 Wall. 204, 212.

2. That no such lien is given for necessities furnished in the home port of the vessel, or in the port in which the vessel is owned, registered, enrolled or licensed, and the remedy in such case, though enforceable in the admiralty, is in personam only. *The Lottawanna*, 21 Wall. 558; *The Edith*, 94 U.S. 518. This is a distinct departure from the Continental system, which makes no account of the domicil of the vessel, and is a relic of the prohibitions of Westminster Hall against the Court of Admiralty, to the principle of which this court has steadily adhered.

3. That it is competent for the States to create liens for necessities furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessities. *The General Smith*, 4 Wheat. 438; *The Planter*, (*Peyroux v. Howard*), 7 Pet. 324; *The St. Lawrence*, 1 Black, 522; *The Lottawanna*, 21 Wall. 558; *The Belfast*, 7 Wall. 624; *The J. E. Rumbell*, 148 U.S. 1, 12. The right to extend these liens to foreign vessels in any case is open to grave doubt. *The Chusan*, 2 Story, 455; *The Lyndhurst*, 48 Fed. Rep. 839.

The question involved in this case, however, is whether the States may create such liens as against foreign vessels, (vessels owned in other States or countries), and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each State, which a vessel may visit in the course of a long voyage, to impose liens under wholly different circumstances and upon wholly different conditions. In the case under consideration the vessel was owned by an Illinois corporation, enjoying a high credit, and maintaining agencies at Seattle and at other places in Alaska and Canada. The Roanoke was an ocean-going vessel, registered at Chicago under the navigation laws of the United States, with the name "Chicago" painted on her stern, although she was engaged in trade upon the Pacific coast between Seattle and the mouth of the Yukon in summer, and between San Francisco and southern ports in winter. Neither the owner nor master nor other officers of the vessel had given an order for the material and labor set forth in the libel, which were furnished upon the order of a contractor, who, before the filing of the libel and without any knowledge by the owner of these unpaid claims, had been paid in full for these claims.

Although this court has never directly decided whether materials and labor furnished by workmen or sub-contractors constitute a lien upon a vessel - in other words, whether the contractor can be regarded as an agent of the vessel in the purchase of such labor and

materials - there is a general consensus of opinion in the state courts and in the inferior Federal courts that labor and materials furnished to a contractor do not constitute a lien upon the vessel, unless at least notice be given to the owner of such claim before the contractor has received the sum stipulated by his contract. *Smith v. The Steamer Eastern Railroad*, 1 Curtis, 253; *Southwick v. The Clyde*, 6 Blackf. 148; *Hubbell v. Denison*, 20 Wend. 181; *Burst v. Jackson*, 10 Barb. 219; *The Brig Whitaker*, 1 Sprague, 229; *The Whitaker*, 1 Sprague, 282; *Harper v. The New Brig*, Gilpin, 536; *Ames v. Swett*, 33 Maine, 479; *Squire v. One Hundred Tons of Iron*, 2 Ben. 21; *The Marquette*, Brown's Adm. 364.

The injustice of permitting such claims to be set up is plainly apparent. The master is the agent of the vessel and its owner in more than the ordinary sense. During the voyage he is in fact the alter ego of his principal. He is entrusted with an uncontrolled authority to provide for the crew, and for the preservation and repair of the ship. He engages the cargoes, receives the freight, hires and pays his crew, and is entrusted perhaps for years with the command and disposition of the vessel. With full authority to bind the vessel, his position is such that it is almost impossible for him to acquaint himself with the laws of each individual State he may visit, and he has a right to suppose that the general maritime law applies to him and his ship, wherever she may go, unhampered by laws which are mainly intended for local application, or for domestic vessels. Local laws, such as the one under consideration, ordinarily protect the ship by requiring notice of the claim to be filed in some public office, limiting the time to a few weeks or months within which the laborer or sub-contractor may proceed against her, requiring notice to be given of the claim, before the contractor himself has been paid, and limiting his recovery to the amount remaining unpaid at the time such notice is received. The statute of Washington, however, provides for an absolute lien upon the ship for work done or material furnished at the request of the contractor or sub-contractor, and makes no provision for the protection of the owner in case the contractor has been paid the full amount of his bill before notice of the claim of the sub-contractor is received. The finding in this case is that the contractor, who had agreed in consonance with the usual course of business, to make the repairs upon this vessel, had been paid in full by the claimant. The injustice of holding the ship under the circumstances is plainly manifest.

Not only is the statute in question obnoxious to the general maritime law in declaring every contractor and sub-contractor an agent of the owner, but it establishes a new order of priority in payment of liens, abolishes the ancient and equitable rule regarding "stale claims", and permits the assertion of a lien at any time within three years, regardless of the fact that the vessel may have been sold to a bona fide purchaser, not only without notice of the claim, but without the possibility of informing himself by a resort to the public records. It also gives, or at least creates the

presumption of, a lien, though the materials be furnished upon the order of the owner in person.

No opinion upon this subject can afford to ignore the admirable discussion of Mr. Justice Story in the case of *The Chusan*, 2 Story, 455, in which he refused to apply to a Massachusetts vessel a law of the State of New York, requiring a lien for supplies to be enforced before the vessel left the State:

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that State. . . . But in cases of foreign ships, and supplies furnished to them, the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is, in no sense governed, controlled, or limited by the local legislation. . . . For myself, I can only say, that during the whole of my judicial life, I have never, up to the present hour, heard a single doubt breathed upon the subject." To the same effect is *The Lyndhurst*, 48 Fed. Rep. 839; *The Kate*, 56 Fed. Rep. 614.

While no case involving this precise question seems to have arisen in this court, we have several times had occasion to hold that where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal Courts, as in cases of admiralty and maritime jurisdiction, it is not competent for States to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government. Cases arising in other branches of the law furnish apt analogies. . . .

Bearing in mind that exclusive jurisdiction of all admiralty and maritime cases is vested by the Constitution in the Federal courts, which are thereby made judges of the scope of such jurisdiction, subject, of course, to Congressional legislation, the statute of the State of Washington, in so far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defences to which they would otherwise have been entitled, is an unlawful interference with that jurisdiction, and to that extent is unconstitutional and void.

The decree of the District Court is therefore reversed, and the case remanded to that court with directions to dismiss the libels.

Mr. Justice Harlan concurred in the result.

The Harrisburg.

Supreme Court of the United States, 1886.

119 United States 199.

This is a suit in rem begun in the District Court of the United States for the Eastern District of Pennsylvania, on the 25th of February, 1882, against the Steamer Harrisburg, by the widow and child of Silas E. Rickards, deceased, to recover damages for his death caused by the negligence of the steamer in a collision with the schooner Marietta Tilton, on the 16th of May, 1877, about one hundred yards from the Cross Rip Light Ship, in a sound of the sea embraced between the coast of Massachusetts and the Islands of Martha's Vineyard and Nantucket, parts of the State of Massachusetts. The steamer was engaged at the time of the collision in the coasting trade, and belonged to the port of Philadelphia, where she was duly enrolled according to the laws of the United States. The deceased was first officer of the schooner, and a resident of Delaware, where his widow and child also resided when the suit was begun.

The statutes of Pennsylvania in force at the time of the collision provided that, "whenever death shall be occasioned by unlawful violence or negligence, and no suit for damages be brought by the party injured, during his or her life," "the husband, widow, children, or parents of the deceased, and no other relative", "may maintain an action for and recover damages for the death thus occasioned". "The action shall be brought within one year after the death, and not thereafter." Brightly's Purdon's Dig., 11th ed., - 1267, §§ 3, 4, 5; Act of April 15, 1851, § 18; Act of April 6, 1855, §§ 1, 2.

By a statute of Massachusetts relating to railroad corporations, it was provided that "if, by reason of the negligence or carelessness of a corporation, or of the unfitness or gross negligence of its servants or agents while engaged in its business, the life of any person, being in the exercise of due diligence, . . . is lost, the corporation shall be punished by a fine not exceeding five thousand nor less than five hundred dollars, to be recovered by indictment and paid to the executor or administrator for the use of the widow and children." . . . "Indictments against corporations for loss of life shall be prosecuted within one year from the injury causing the death." Mass. Gen. Stats. 1860, c. 63, §§ 97-99; Stat, 1874, c. 372, § 163.

No innocent parties had acquired rights to or in the steamer between the date of the collision and the bringing of the suit.

Upon this state of facts the Circuit Court gave judgment against the steamer in the sum of \$5100, for the following reasons:

"1. In the admiralty courts of the United States the death of a human being upon the high seas or waters navigable from the sea, caused by negligence, may be complained of as an injury, and the wrong redressed under the general maritime law.

"2. The right of the libellants does not depend upon the statute law of either the States of Massachusetts or Pennsylvania, and the limitation of one year in the statutes of these States does not bar this proceeding.

"3. Although an action in the State courts of either Massachusetts or Pennsylvania would be barred by the limitation expressed in the statutes of those States, the admiralty is not bound thereby, and in this case will not follow the period of limitation therein provided and prescribed. The drowning complained of was caused by the improper navigation, negligence, and fault of the said steamer, producing the collision aforesaid, and the libellants are entitled to recover.

"4. As there are no innocent rights to be affected by the present proceedings, and no inconvenience will result to the respondents from the delay attending it, the action, if not governed by the statutes aforesaid, is not barred by the libellant's laches." 15 Fed. Rep. 610.

From that decree this appeal was taken. . . .

[The arguments of counsel are omitted.]

Mr. Chief Justice Waite, after making the foregoing statement of the case, delivered the opinion of the court.

The question to be decided presents itself in three aspects, which may be stated as follows:

1. Can a suit in admiralty be maintained in the courts of the United States to recover damages for the death of a human being on the high seas, or waters navigable from the sea, cause by negligence in the absence of an act of Congress, or a statute of a State, giving a right of action therefor?

2. If not, can a suit in rem be maintained in admiralty against an offending vessel for the recovery of such damages when an action at law has been given therefor by statute in the State where the wrong was done, or where the vessel belonged?

3. If it can, will the admiralty courts permit such a recovery in a suit begun nearly five years after the death, when the statute which gives the right of action provides that the suit shall be brought within one year?

It was held by this court, on full consideration, in *Insurance Company v. Brame*, 95 U.S. 756, "that by the common law no civil action lies for an injury which results in death." See also *Dennick v. Railroad Co.*, 103 U.S. 11, 21. Such also is the judgment of the English courts, where an action of the kind could not be maintained until Lord Campbell's Act, 9 and 10 Vict. c. 93. It was so recited in that act, and so said by Lord Blackburn in *Seward v. The Vera Cruz*, 10 App. Cas. 59, decided by the House of Lords in 1884. Many of the cases bearing on this question are cited in the opinion in *Insurance Co. v. Brame*. Others will be found referred to in an elaborate note to *Carey v. Berkshire Railroad*, 1 Cush. 475, in 48 Am. Dec. 616, 633. The only American cases in the common law courts against the rule, to which our attention has been called, are, *Cross v. Guthery*, 2 Root, 90; S.C. 1 Am. Dec. 61; *Ford v. Monroe*, 20 Wend. 210; *James v. Christy*, 18 Missouri, 102; and *Sullivan v. Union Pacific Railroad*, 3 Dillon, 374. *Cross v. Guthery*, a Connecticut case, was decided in 1794, and cannot be reconciled with *Goodsell v. Hartford & New Haven Railroad*, 33 Conn. 55, where it is said: "It is a singular fact, that by the common law the greatest injury which one man can inflict on another, the taking of his life, is without a private remedy." *Ford v. Monroe*, a New York case, was substantially overruled by the Court of Appeals of that State in *Green v. Hudson River Railroad*, 2 Keyes, 294; and *Sullivan v. Union Pacific Railroad*, decided in 1874 by the Circuit Court of the United States for the District of Nebraska, is directly in conflict with *Insurance Co. v. Brame*, decided here in 1878.

We know of no English case in which it has been authoritatively decided that the rule in admiralty differs at all in this particular from that at common law. Indeed, in *The Vera Cruz*, supra, it was decided that even since Lord Campbell's Act a suit in rem could not be maintained for such a wrong. Opinions were delivered in that case by the Lord Chancellor (Selborne), Lord Blackburn, and Lord Watson. In each of these opinions it was assumed that no such action would lie without the statute, and the only question discussed was whether the statute had changed the rule.

In view, then, of the fact that in England, the source of our system of law, and from a very early period one of the principal maritime nations of the world, no suit in admiralty can be maintained for the redress of such a wrong, we proceed to inquire whether, under the general maritime law as administered in the courts of the United States, a contrary rule has been or ought to be established.

In *Plummer v. Webb*, 1 Ware, 75, decided in 1825, Judge Ware, held, in the District Court of the United States for the District of Maine, in an admiralty suit in personam, that "the ancient doctrine of the common law, founded on the principles of the feudal system, that a private wrong is merged in a felony, is not applicable to the civil polity of this country, and has not been adopted in this State" (Maine), and that "a libel may be maintained by a father, in

the admiralty, for consequential damages resulting from an assault and battery of his minor child," "after the death of the child, though the death was occasioned by the severity of the battery"; but the suit was dismissed, because upon the evidence it did not appear that the father had in fact been damaged. The case was afterwards before Mr. Justice Story on appeal, and is reported in 4 Mason, 380, but the question now involved was not considered, as the court found that the cause of action set forth in the libel and proved was not maritime in its nature.

We find no other reported case in which this subject was at all discussed until *Cutting v. Seabury*, 1 Sprague, 522, decided by Judge Sprague in the Massachusetts district in 1860. In that case, which was in personam, the judge said that "the weight of authority in the common law courts seems to be against the action, but natural equity and the general principles of law are in favor of it", and that he could not consider it "as settled that no action can be maintained for the death of a human being." The libel was dismissed, however, because on the facts it appeared that no cause of action existed even if in a proper case a recovery could be had. The same eminent judge had, however, held as early as 1849, in *Crapo v. Allen*, 1 Sprague, 185, that rights of action in admiralty for mere personal torts did not survive the death of the person injured.

Next followed the case of *The Sea Gull*, Chase's Dec. 145, decided by Chief Justice Chase in the Maryland district in 1867. That was a suit in rem by a husband to recover damages for the death of his wife caused by the negligence of the steamer in a collision in the Chesapeake Bay, and a recovery was had, the Chief Justice remarking that "there are cases, indeed, in which it has been held that in a suit at law no redress can be had by the surviving representative for injuries occasioned by the death of one through the wrong of another; but these are all common law cases, and the common law has its peculiar rules in relation to this subject, traceable to the feudal system and its forfeitures," and "it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." In his opinion he refers to the leading English case of *Baker v. Bolton*, 1 Camp. 493, where the common law rule was recognized and followed by Lord Ellenborough in 1808, and to *Carey v. Berkshire Railroad*, 1 Cush. 475; S.C. 48 Am. Dec. 616, to the same effect, decided by the Supreme Court of Massachusetts in 1848, and then says that "in other States the English precedent has not been followed." For this he cites as authority *Ford v. Munroe*, supra, decided in 1838, but which, as we have seen, had been overruled by *Green v. Hudson River Railroad* in 1866, only a short time before the opinion of the Chief Justice was delivered, and *James v. Christy*, 18 Missouri, 162, decided by the Supreme Court of Missouri in 1853. The case of *The Highland Light*, Chase's Dec. 150, was before Chief Justice Chase in Maryland about the same time with *The Sea Gull*, and while adhering to his ruling

in that case, and remarking that "the admiralty may be styled, not improperly, the human providence which watches over the rights and interests of those 'who go down to the sea in ships and do their business on the great waters,'" he referred to a Maryland statute giving a right of action in such cases, and then dismissed the libel because on the facts no liability was established against the vessel as an offending thing.

Afterwards, in 1873, Mr. Justice Blatchford, then the judge of the District Court for the Southern District of New York, sustained a libel by an administrator of an infant child who took passage on the steamer City of Brussels with his mother at Liverpool, to be carried to New York, and while on the voyage was poisoned by the carelessness of the officers of the vessel and died on board. The City of Brussels, 6 Ben. 370. The decision was placed on the ground of a breach of the contract of carriage.

The next case in which this jurisdiction was considered is that of The Towanda, 34 Leg. Int. (Philadelphia) 394; S.C. under the name of Coggins v. Helmsley, 5 Cent. Law Jour. 418, decided by Judge McKennan in the Circuit Court for the Eastern District of Pennsylvania in 1877, and before the judgement of this court in Insurance Co. v. Brame, supra. In that case the ruling of Chief Justice Chase in The Sea Gull was approved, and the same authorities were cited, with the addition of Sullivan v. Union Pacific Railroad, supra.

In The Charles Morgan, 2 Flip. 274, before Judge Swing, in the Southern District of Ohio, on the 24th of October, 1878, the subject was again considered. That was a suit in rem, by the wife of a passenger on a vessel, to recover damages for the death of her husband; and in deciding upon the sufficiency of a plea to the jurisdiction, the judge, after quoting a remark of Mr. Justice Clifford in The Steamboat Co. v. Chase, 16 Wall. 532, that "difficulties, it must be conceded, will attend the solution of this question, but it is not necessary to decide it in this case," retained the libel because, "as the case at bar will probably go the Supreme Court of the United States, it will be better for all parties that the appeal should be taken after a trial upon its merits." Our decision in Insurance Co. v. Brame was announced on the 21st of January, 1878, but was evidently not brought to the attention of the judge, because, while citing quite a number of cases to show that the weight of authority was in favor of the English rule, he makes no reference to it. Indeed, it is probable that the volume of the reports in which it appears had not been generally distributed when his opinion was filed.

It thus appears that prior to the decision in Insurance Co. v. Brame the admiralty judges in the United States did not rely for their jurisdiction on any rule of the maritime law different from that of the common law, but on their opinion that the rule of the English common law was not founded in reason, and had not become

firmly established in the jurisprudence of this country. Since that decision the question has been several times before the Circuit and District Courts for consideration. In *The David Reeves*, 5 Hughes, 89, Judge Morris, of the Maryland district, considering himself bound by the authority of *The Sea Gull*, which arose in his district, and had been decided by the Chief Justice in the Circuit Court, maintained jurisdiction of a suit in rem by a mother for the death of her son in a collision that occurred in the Chesapeake Bay. He conceded, however, that this was contrary to the common law and to the admiralty decisions in England, but, as the question had never been passed on in this court, he yielded to the authority of the Circuit Court decision in his own district.

The case of *Holmes v. Oregon and California Railway*, 6 Sawyer, 262; S.C. 5 Fed. Rep. 75, was decided by Judge Deady, in the Oregon district, on the 28th of February, 1880, and he held that a suit in personam could be prosecuted in admiralty against the owner of a ferry-boat engaged in carrying passengers across the Wallamet River, between East Portland and Portland, for the death of a passenger caused by the negligence of the owner. He conceded that no such action would lie at common law, but, as in his opinion the civil law was different, he would not admit that in admiralty, "which is not governed by the rules of the common law," the suit could not be maintained. His decision was, however, actually put on the Oregon statute, which gave an action at law for damages in such a case, and the death occurred within the jurisdiction of the State. Judge Sawyer had previously decided, in *Armstrong v. Beadle*, 5 Sawyer, 484, in the Circuit Court for the District of California, that an action at law under a similar statute of California would not lie for a death which occurred on the high seas and outside of the territorial limits of the State. In *The Clatsop Chief*, 7 Sawyer, 274; S.C. 8 Fed. Rep. 163, Judge Deady sustained an action in rem against an offending vessel for a death caused by negligence in the Columbia River and within the State of Oregon.

In *The Long Island North Shore Passenger and Freight Trans. Co.*, 5 Fed. Rep. 599, which was a suit for the benefit of the act of Congress limiting the liability of the owners of vessels, Judge Choate, of the Southern District of New York, decided that in New York, where there is a statute giving a right of action in cases of death caused by negligence, claims for damages of that character might be included among the liabilities of the owner of the offending vessel. In that case the injury which caused the death occurred within the limits of the State. In the opinion it is said (p. 608): "It has been seriously doubted whether the rule of the common law, that a cause of action for an injury to the person dies with the person, is also the rule of the maritime law. There is some authority for the proposition that it is not, and that in admiralty a suit for damage in such a case survives. *The Sea Gull*, 2 L.T.R. 15; S.C. Chase's Dec. 145; *Cutting v. Seabury*, 1 Sprague, 522; *The Guldaxe*, 19 L.T.R. 748; S. C. L. R. 2 Ad. & Ecc. 325; *The Epsilon*,

6 Ben. 379, 381. But, however it may be in respect to the original jurisdiction of admiralty courts, I see no valid reason why the right of a person to whom, under the municipal law governing the place of the transaction and the parties to it, the title to the chose in action survives, or a new right to sue is given for damages resulting from a tort, the admiralty courts, in the exercise of their jurisdiction in personam over marine torts, should not recognize and enforce the right so given." This case was decided on the 12th of February, 1881, and on the 21st of the same month Judge Brown, of the Eastern District of Michigan, in *The Garland*, 5 Fed. Rep. 924, held that a suit in rem could be maintained by a father for the loss of the services of his two sons, killed in a collision in the Detroit River. In his opinion he said: "Were this an original question, . . . I should feel compelled to hold that this libel could not be maintained. But other courts of admiralty in this country have furnished so many precedents for a contrary ruling, I do not feel at liberty to disregard them, although I am at loss to understand why a rule of liability differing from that of the common law should obtain in these courts." His decision was, however, finally put on a statute of Michigan which gave an action at law for such damages.

In *The Sylvan Glen*, 9 Fed. Rep. 335, Judge Benedict, of the Eastern District of New York, dismissed a suit in rem on the ground that the statute of New York giving an action for damages in such cases created no maritime lien. This case was decided on the 4th of October, 1881. At November term, 1882, of the Circuit Court for the Eastern District of Louisiana, Judge Billings decided, in *The E. B. Ward, Jr.*, 4 Woods, 145; S.C. 16 Fed. Rep. 255, that a suit in rem could not be maintained for damages for the death of a person in a collision on the high seas through the fault of a vessel having its home port in New Orleans, as the statute of Louisiana did not apply to cases where the wrongful act which caused the death occurred outside of the State. Afterwards, in June, 1883, Judge Pardee, of the Circuit Court for the same district, decided otherwise. *The E. B. Ward, Jr.*, 17 Fed. Rep. 456. In his opinion he said, p. 459: "Upon the whole case, considering the natural equity and reason of the matter, and the weight of authority as determined by the late adjudicated cases in the admiralty courts of the United States, I am inclined to hold that the ancient common law rule, 'actio personalis moritur cum persona,' if it ever prevailed in the admiralty law of this country, has been so modified by the statutory enactments of the various States and the progress of the age, that now the admiralty courts 'are permitted to estimate the damages which a particular person has sustained by the wrongful killing of another,' and enforce an adequate remedy. At all events, as the question is an open one, it is best to resolve the doubts in favor of what all the judges consider to be 'natural equity and justice.'" He also was of opinion that, as the offending vessel was wholly owned by citizens of Louisiana, and the port of New Orleans was her home port, the Louisiana statute applied to her, and that the court of admiralty could enforce such a right of action in a proceeding in rem. See also *The E. B. Ward, Jr.*, 23 Fed. Rep. 900.

The case of *The Manhasset*, 18 Fed. Rep. 918, was decided by Judge Hughes, of the Eastern Virginia District, in January, 1884, and in that it was held that a suit in rem could not be maintained by the administratrix against a vessel, under the statute of Virginia which gave an action for damages caused by the death of a person, even though the tortious act was committed within the territorial limits of the State, but that the widow and child of the deceased man had a right of action, by a libel in rem, under the general maritime law, which they could maintain in their own names and for their own benefit. In so deciding the judge said: "The decision of Chief Justice Chase in the case of *The Sea Gull*, supra, establishes the validity of such a libel in this circuit. I would maintain its validity independently of that precedent. Such a right of action is a maritime right, conferred by the general law maritime; (Domat, Civil Law, pt. 1, bk. 2, tit. 8, § 1, art. 4; Grotius, lib. 2, c. 17, § 13; Ruth. Inst. 203; Bell, Prin. Sc. Laws, p. 748, § 2029; Ersk. Inst., bk. 4, tit. 4, § 105); and is not limited as to time by the twelve months' limitation of the State statute."

The last American case to which our attention has been called is that of *The Columbia*, 27 Fed. Rep. 900, decided by Judge Brown, of the Southern District of New York, during the present year. In giving his opinion, after referring to the fact that, as he understood, the question was then pending in this court, the judge said: "Awaiting the result of the determination of that court, and without referring to the common law authorities, I shall hold in this case, as seems to me most consonant with equity and justice, that the pecuniary loss sustained by persons who have a legal right to support from the deceased, furnishes a ground of reclamation against the wrong-doer which should be recognized and compensated in admiralty."

In *Monaghan v. Horn, in re The Garland*, 7 Canada Sup. Ct. 409, the Supreme Court of Canada held that a mother could not sue in her own name in admiralty for the loss of the life of her son, on the ground that no such action would lie without the aid of a statute, and the statute of the Province of Ontario, where the wrong was done, and which was substantially the same as Lord Campbell's act, provided that the action should be brought in the name of the administrator of the deceased person. No authoritative judgment was given as to the right of an administrator to sue in admiralty under that act. This was in 1882, before *The Vera Cruz*, supra, in the House of Lords.

Such being the state of judicial decisions, we come now to consider the question on principle. It is no doubt true that the Scotch law "takes cognizance of the loss and suffering of the family of a person killed," and gives a right of action therefor under some circumstances. Bell's Prin. Laws of Scot., 7th ed., p. 934, § 2029; *Cadell v. Black*, 5 Patton, 567; *Weems v. Mathieson*, 4 Macqueen, 215. Such also is the law of France. 28 Merlin, Repertoire, 442, verbo *Reparation Civile*, § iv; *Rolland v. Gosse*, 19 Sirey (Cour de Cassation), 269. It is said also that such was the civil law, but this

is denied by the Supreme Court of Louisiana in *Hubgh v. The New Orleans & Carrollton Railroad*, 6 La. Ann. 495; S.C. 54 Am. Dec. 565, where Chief Justice Eustis considers the subject in an elaborate opinion after full argument. A reargument of the same question was allowed in *Hermann v. New Orleans & Carrollton Railroad*, 11 La. Ann. 5, and the same conclusion reached after another full argument. See also Grueber's *Lex Aquilia*, 17. But however this may be, we know of no country that has adopted a different rule on this subject for the sea from that which it maintains on the land, and the maritime law, as accepted and received by maritime nations generally, leaves the matter untouched. It is not mentioned in the laws of Oleron, of Wisbuy, or of the *House Towns*, 1 Pet. Adm. Dec. Appx.; nor in the Marine Ordinance of Louis XIV., 2 Pet. Adm. Dec. Appx.; and the understanding of the leading text writers in this country has been that no such action will lie in the absence of a statute, giving a remedy at law for the wrong. *Benedict Adm.*, 2d ed., § 309; 2 *Parsons' Ship. & Adm.* 350; *Henry, Adm. Jar.* 74. The argument everywhere in support of such suits in admiralty has been, not that the maritime law, as actually administered in common law countries, is different from the common law in this particular, but that the common law is not founded on good reason, and is contrary to "natural equity and the general principles of law." Since, however, it is now established that in the courts of the United States no action at law can be maintained for such a wrong in the absence of a statute giving the right, and it has not been shown that the maritime law, as accepted and received by maritime nations generally, has established a different rule for the government of the courts of admiralty from those which govern courts of law in matters of this kind, we are forced to the conclusion that no such action will lie in the courts of the United States under the general maritime law. The rights of persons in this particular under the maritime law of this country are not different from those under the common law, and as it is the duty of courts to declare the law, not to make it, we cannot change this rule.

This brings us to the second branch of the question, which is, whether, with the statutes of Massachusetts and Pennsylvania above referred to in force at the time of the collision, a suit in rem could be maintained against the offending vessel if brought in time. About this we express no opinion, as we are entirely satisfied that this suit was begun too late. The statutes create a new legal liability, with the right to a suit for its enforcement, provided the suit is brought within twelve months, and not otherwise. The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to sue at all. No one will pretend that the suit in Pennsylvania, or the indictment in Massachusetts, could be maintained if brought or found after the expiration of the year, and it would seem to be clear that, if the admiralty adopts the statute as a rule of right to be administered within its

own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence. It matters not that no rights of innocent parties have attached during the delay. Time has been made of the essence of the right, and the right is lost if the time is disregarded. The liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right. No question arises in this case as to the power of a court of admiralty to allow an equitable excuse for delay in suing, because no excuse of any kind has been shown. As to this, it only appears that the wrong was done in May, 1877, and that the suit was not brought until February, 1882, while the law required it to be brought within a year.

The decree of the Circuit Court is reversed, and the cause remanded, with instructions to dismiss the libel.

The Corsair.

Supreme Court of the United States, 1892.

145 United States 335.

This was an appeal from a decree of the Circuit Court dismissing a libel for damages sustained by the death of Ella Barton, against the steam tug Corsair and her owners. Suit was begun on April 5, 1888, by the filing of a libel by Edward S. Barton and Elizabeth Barton, his wife, against the steam tug Corsair upon two distinct causes of action, viz.: one for damages for the pains and sufferings endured by Ella Barton, a daughter of the said Elizabeth Barton, in a collision caused by the said tug Corsair, on which the said Ella Barton was at the time a passenger, running at full speed into the right bank of the Mississippi River, on the 14th of April, 1887, at a point about ten miles above Algiers, (which is opposite to the city of New Orleans,) in consequence of which said tug filled with water and sank in ten minutes. The other cause for action was for damages sustained by the said Elizabeth Barton in the loss of the life of her said daughter, alleged to have been caused by the negligence of the officers and crew of the tug.

The right to bring this libel was alleged to have accrued under Article 2315 of the Civil Code of Louisiana, as amended in 1884, which reads as follows:

"Articles 2315. Every act whatever, of man, that causes damage to another, obliges him by whose fault it happened, to repair it; the right of this action shall survive, in case of death, in favor of the minor children or widow of the deceased, or either of them, and in default of these, in favor of the surviving father and mother, or either of them, for the space of one year from the death. The survivors above mentioned may also recover the damages sustained by them by the death of the parent, or child or husband, or wife, as the case may be."

By virtue of an attachment issued upon this libel, the vessel was arrested April 5, 1888, and was released upon a stipulation given by Samuel S. Brown and Harry Brown, by their duly authorized agent, "claimants and owners of the steam tug Corsair." Upon the same day they filed their claim as owners, averring that "no other persons have any interest therein," and subsequently filed exceptions to the libel upon the ground that it set forth no cause of action cognizable by proceedings in rem in admiralty. Upon the hearing of these exceptions, the court, "considering that no action in rem lies in this case," "ordered that the exception be sustained to the extent of releasing the tug Corsair from the seizure made under the admiralty warrant issued in the cause, the court being of the opinion that the statute of Louisiana creates no lien upon the vessel." It was "further ordered that libellants be allowed to amend their

pleadings and proceed in personam against the owners of the vessel within ten days if they see fit." On the following day an amended libel was filed against Samuel S. Brown and Harry Brown in personam as "owners of the steam tug Corsair," adopting and reiterating all the allegations contained in the original libel, and praying for a citation against the owners and for an attachment, in case they should not be found, against their goods and chattels, credits and effects wherever found.

Process of arrest and attachment, in the form provided for by Admiralty Rule 2, was allowed by the District Judge, and returned served by the marshal, by seizing and taking into his possession the steam tug Corsair, and placing a keeper in charge, and taking another bond from W. H. Brown & Sons, with a surety, conditioned that if "said owners of the tug Corsair, William H. Brown & Sons, Samuel S. Brown and Harry Brown, shall abide by all orders," etc. On the same day a claim was filed by Samuel S. Brown and Harry Brown as sole owners of the tug Corsair, etc. Exceptions were filed to the amended libel by the claimants upon the ground that process had not been served upon them; that a warrant of arrest ought not to have issued, under Admiralty Rule 7, without affidavit or other proper proof showing the propriety thereof; that proceedings in rem and in personam could not be joined in the same libel; that "there was no power in the court to allow the libellants to change this suit from a suit in rem to a suit in personam; and that the cause of action was barred by the prescription of one year according to the law of the State."

The cause was heard upon these exceptions, and the court "being of the opinion that the suit and the amended libel is an action under a special statute of the State of Louisiana subjecting the owners to liability, whereas the action under the original libel sprang from the general liability of ships arrested as offending things under the admiralty law; that the amendment introduced a new party, and since, at the time of the amendment being made, more than a year had elapsed," the exception was allowed and the suit dismissed.

On appeal to the Circuit Court this decree was affirmed, and an appeal taken by the libellants to this court. . . .

[The arguments of counsel are omitted.]

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

This was a libel in rem against the tug Corsair, by the mother of one Ella Barton, to recover for the loss of her life in a collision alleged to have been occasioned by the negligence of those in charge of the tug. Exceptions to this libel were sustained, upon the ground that a suit in rem would not lie for injuries resulting

in death; but leave was given to amend by proceeding in personam against the owners of the tug. Exceptions were also filed to the amended libel upon the ground that the amendment introduced a new party to the suit, and, as against such party, the year had elapsed within which, under the law, the action must be brought.

1. The decree of dismissal so far as it operated upon the amended libel, was proper for two reasons: First, the amendment to the original libel by introducing the owners of the tug as parties defendants was in violation of Admiralty Rule 15, providing that "in all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or owner alone in personam." . . .

[Part of the opinion dealing with the dismissal of the amended libel is omitted.]

Second. If the so-called amended libel be considered as an independent libel against the owners in personam, then it is clearly defective in failing to aver that the respondents were the owners of the tug at the time of the accident.

2. An important question arises in connection with the dismissal of the original libel, which has never been squarely presented to this court before, and that is as to the power of the District Court to entertain a libel in rem for damages incurred by loss of life, where by the local law a right of action survives to the administrator or relatives of the deceased, but no lien is expressly created by the act. A similar question arose in the case of *Ex parte Gordon*, 104 U.S. 515, where a writ of prohibition was applied for to enjoin the prosecution of an action in rem for loss of life; but the writ was denied upon the ground that the liability was within the jurisdiction of the District Court to decide, and any error it might commit in this particular could only be corrected by appeal. Subsequently in the case of *The Harrisburg*, 119 U.S. 199, it was held that in the absence of an act of Congress or a state statute giving a right of action therefor, a suit in admiralty could not be maintained to recover damages for the death of a human being, caused by negligence. This was a mere application to the court of admiralty of a principle which had been announced by this court as applicable to courts of common law in *Insurance Co. v. Brame*, 95 U.S. 754. The *Harrisburg* was a Pennsylvania vessel, and the collision occurred in the waters of Massachusetts, both of which States gave a remedy by civil action, with a proviso that such action should be brought within one year after the death; and while the question of the right to sue in rem for the recovery of such damages when an action at law had been given therefore by the state statute, was presented in that case, it was not decided, since the suit was not begun until nearly five years after the death, and the case went off upon that ground.

Prior to this decision, a number of libels both in rem and in personam had been brought for loss of life in the courts of different districts, and, as a rule, the liability was held to exist, but the question whether such liability should be enforced in rem or in personam does not seem to have been discussed, except in the cases of *The Sylvan Glen*, 9 Fed. Rep. 335, and *The Manhasset*, 18 Fed. Rep. 918, in one of which Judge Benedict, and in the other Judge Hughes, held, that, while the state statute created a right it did not create a lien, and that a libel in rem could not be maintained. Since the decision in the *Harrisburg Case*, that no libel can lie, except where a right to sue is given by a local statute, the question has been presented only in the case of *The North Cambria*, 40 Fed. Rep. 655, in which Judge Butler adopted the views expressed in *The Sylvan Glen* and *The Manhasset*. In *The Oregon*, 45 Fed. Rep. 62, a lien was given by the state statute and was enforced in the Admiralty.

A similar question under Lord Campbell's Act allowing damages to be recovered "whenever the death of a person shall be caused by wrongful act, neglect or default," has been the subject of much discussion in the courts of England. By the Admiralty Court Act of 1861, sec. 7, jurisdiction was given to the High Court of Admiralty over "any claim for damage done by any ship," and by sec. 35 "the jurisdiction conferred by this act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam." Giving a construction to these provisions, it was held by Sir Robert Phillimore in 1867, in *The Sylph*, L.R. 2 Ad. & Ec. 24, that personal injuries were included by the words "damage done by a ship", and that proceedings in rem might be taken for damages occasioned by such injuries. In the subsequent case of *The Guldaxe*, L.R. 2 Ad. & Ec. 325, the same rule was applied to a suit for damages instituted by the personal representatives of a seaman who had been killed in a collision. This was subsequently affirmed in *The Explorer*, L.R. 3 Ad. & Ec. 289, decided in 1870. The same question came before the Court of Queen's Bench upon an application for a writ of prohibition in the case of *Smith v. Brown*, L.R. 6 Q.B. 729, in 1871, wherein it was held that the word "damage" did not include loss of life and personal injury, and that the Admiralty Court Act conferred no jurisdiction upon the High Court of Admiralty to entertain a suit under Lord Campbell's Act. The judgment of the court in this case was delivered by Lord Chief Justice Cockburn, and concurred in with some doubt by Mr. Justice Blackburn. Notwithstanding this prohibition, however, the Court of Admiralty continued to assume jurisdiction of actions in rem brought by the personal representatives of a deceased person. This appears from the case of *The Franconia*, 2 Prob. Div. 163, Sir Robert Phillimore being of the opinion that he was bound by the case of *The Beta*, L.R. 2 P.C. 447, in which the judicial committee of the Privy Council had held that the word "damage" referred to injuries to the person as well as to property. On appeal to the Court of Appeal, his judgment was affirmed by a divided court. The question was again raised before the Admiralty Division of the High Court of Justice, in the case of *The Vera Cruz*, 9 Prob. Div. 88, in which Mr. Justice Butt did not discuss the question, but held, in deference to

the previous decisions of Dr. Phillimore, that an action in rem would lie by the widow and administratrix of the master of a British schooner against the Vera Cruz, and that the plaintiff should recover a moiety of the damage she had sustained, both vessels being adjudged to be in fault. On appeal the Court of Appeal, 9 Prob. Div. 96, held that it was not bound by its former decision by a divided court in the case of *The Franconia*, and reversed the judgment of the Admiralty Division. The case was again appealed to the House of Lords, and the judgment of the court below was affirmed. 10 App. Cas. 59, 65, 66, 67, 73. Lord Chancellor Selborne in delivering the opinion held that the 35th section of the Admiralty Court Act above cited showed that "while an option to proceed in rem or in personam is given as to the jurisdiction conferred by the act, yet from the very nature of such an option every case provided for by the act is regarded as a proper case for a proceeding in rem; and accordingly the appellant, considering that the 7th section brought cases under Lord Campbell's Act within the purview of the Admiralty jurisdiction, justly upon that hypothesis held it to mean such actions as were capable of being brought by a proceeding like the present in rem; and if the action cannot be so brought, then I apprehend it will follow ex converso that the 7th section does not extend to this description of claim." "No one can say," said he, "that Lord Campbell's Act relates expressly to claims for damage done by ships; and this section in the act of 1861 relates to that and to nothing else. . . . Every word of that legislation" (Lord Campbell's Act) "being as it appears to me, legislation for the general case, and not for particular injury by ships, points to a common law action, points to a personal liability, and a personal right to recover, and is absolutely at variance with the notion of a proceeding in rem." Lord Watson concurring, said: "I entertain no doubt that a right of action such as is given by Lord Campbell's Act in a case like the present is not a 'claim for damage done by a ship' within the meaning of the 7th section of the Admiralty Court Act, 1861."

This is the last expression of the highest court of England upon the question of proceeding in rem under Lord Campbell's Act, and must be regarded as settling the law of that country that such jurisdiction is not conferred. That, notwithstanding this, an action in personam will lie in the Admiralty Division is evident from the case of *The Bernina*, 11 Prob. Div. 31, in which the Admiralty took cognizance of the case, and upon appeal to the Court of Appeal, 12 Prob. Div. 58, and subsequently to the House of Lords, 13 App. Cas. 1, the jurisdiction was sustained, a trial by jury being now permitted in that court, although the main question discussed was as to the principle involved in the case of *Thorogood v. Bryan*, 8 C.B. 115, which was overruled. While these cases turn upon the construction of the English acts, the courts have been guided in such construction by principles which are of general application both in this country and in England.

A maritime lien is said by writers upon maritime law to be the foundation of every proceeding in rem in the Admiralty. In much the larger class of cases, the lien is given by the general Admiralty law, but in other instances, such for example as insurance, pilotage, wharfage, and materials furnished in the home port of the vessel, the lien is given, if at all, by the local law. As we are to look, then, to the local law in this instance for the right to take cognizance of this class of cases, we are bound to inquire whether the local law gives a lien upon the offending thing. If it merely gives a right of action in personam for a cause of action of a maritime nature, the District Court may administer the law by proceedings in personam, as was done with a claim for half pilotage dues under the law of New York, in the case of *Ex parte McNiel*, 13 Wall. 236, but unless a lien be given by the local law, there is no lien to enforce by proceedings in rem in the Court of Admiralty.

The Louisiana act declares, in substance, that the right of action for every act of negligence, which causes damage to another, shall survive, in case of death, in favor of the minor children or widow of the deceased; and in default of these, in favor of the surviving father and mother, and that such survivors may also recover the damages sustained by them by the death of the parent, child, husband, or wife. Evidently nothing more is here contemplated than an ordinary action according to the course of the law as it is administered in Louisiana. There is no intimation of a lien or privilege upon the offending thing, which, as we have already held, is necessary to give a court of admiralty jurisdiction to proceed in rem. . . .

The decree of the court below is, therefore

Affirmed.

The Hamilton.

Supreme Court of the United States, 1907.

207 United States 398.

[The arguments of counsel are omitted.]

Mr. Justice Holmes delivered the opinion of the court.

This is a proceeding for the limitation of liability of the steamship Hamilton in respect of a collision on the high seas with the steamship Saginaw, in which the Saginaw was sunk and her chief mate and some of her crew and passengers were drowned. It is found, and not disputed, that both vessels were to blame. Both vessels belonged to corporations of the State of Delaware. A statute of that State, after enacting that actions for injuries to the person shall not abate by reason of the plaintiff's death, provides that "whenever death shall be occasioned by unlawful violence or negligence, and no suit be brought by the party injured to recover damages during his or her life, the widow or widower of any such deceased person, or if there be no widow or widower, the personal representatives may maintain an action for and recover damages for the death and loss thus occasioned." Act of January 26, 1866, chap. 31, p. 28, vol. 13, Part 1, Delaware Laws, as amended by act of March 9, 1901, chap. 210, p. 500, vol. 22, Delaware Laws. On the strength of this statute the representatives of a passenger and of three of the crew filed claims, and the claims were allowed by the District Court (see 134 Fed. Rep. 95; 139 Fed. Rep. 906), and afterwards by the Circuit Court of Appeals; 146 Fed. Rep. 724; 77 C.C.A. 150. A certiorari was granted by this court to settle the question, as stated by the petitioner, whether the Delaware statute applies to a claim for death on the high seas, arising purely from tort, in proceedings in admiralty. Incidentally the right of representatives of the crew of the Saginaw to recover their claims in full against the Hamilton also has been discussed.

Apart from the subordination of the State of Delaware to the Constitution of the United States there is no doubt that it would have had power to make its statute applicable to this case. When so applied, the statute governs the reciprocal liabilities of two corporations, existing only by virtue of the laws of Delaware, and permanently within its jurisdiction, for the consequences of conduct set in motion by them there, operating outside the territory of the State, it is true, but within no other territorial jurisdiction. If confined to corporations, the State would have power to enforce its law to the extent of their property in every case. But the same authority would exist as to citizens domiciled within the State, even when personally on the high seas, and not only could be enforced by the State in case of their return, which their domicile by its very meaning promised, but in proper cases would be recognized

in other jurisdictions by the courts of other States. In short, the bare fact of the parties being outside the territory in a place belonging to no other sovereign would not limit the authority of the State, as accepted by civilized theory. No one doubts the power of England or France to govern their own ships upon the high seas.

The first question, then, is narrowed to whether there is anything in the structure of the National Government and under the Constitution of the United States that takes away or qualifies the authority that otherwise Delaware would possess - a question that seems to have been considered doubtful in *Butler v. Boston & Savannah Steamship Co.*, 130 U.S. 527, 558. It has two branches: First, whether the state law is valid for any purpose, and, next, whether, if valid, it will be applied in the admiralty. We will take them up in order.

The power of Congress to legislate upon the subject has been derived both from the power to regulate commerce and from the clause in the Constitution extending the judicial power to "all cases of admiralty and maritime jurisdiction." Art. 3, § 2; 130 U.S. 557. The doubt in this case arises as to the power of the States where Congress has remained silent.

That doubt, however, cannot be serious. The grant of admiralty jurisdiction, followed and construed by the Judiciary Act of 1789, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it", Rev. Stats. § 563, cl. 8, leaves open the common law jurisdiction of the state courts over torts committed at sea. This, we believe, always has been admitted. *Martin v. Hunter*, 1 Wheat. 304, 337; *The Hine v. Trevor*, 4 Wall. 555, 571; *Leon v. Galceran*, 11 Wall. 185; *Manchester v. Massachusetts*, 139 U.S. 240, 262. And as the state courts in their decisions would follow their own notions about the law and might change them from time to time, it would be strange if the State might not make changes by its other mouthpiece, the legislature. The same argument that deduces the legislative power of Congress from the jurisdiction of the National courts, tends to establish the legislative power of the State where Congress has not acted. Accordingly, it has been held that a statute giving damages for death caused by a tort might be enforced in a state court, although the tort was committed at sea. *American Steamboat Co. v. Chase*, 16 Wall. 522. So far as the objection to the state law is founded on the admiralty clause in the Constitution, it would seem not to matter whether the accident happened near shore or in mid-ocean, notwithstanding some expressions of doubt. The same conclusion was reached in *McDonald v. Mallory*, 77 N.Y. 546, where the death occurred on the high seas. *Sherlock v. Alling*, 93 U.S. 99, reinforces Chase's case, and answers any argument based on the power of Congress over commerce, as to which we hardly need refer also to *Cooley v. Board of Wardens*, 12 How. 299, *Ex parte McNeil*, 13 Wall. 236; *Wilson v. McNamee*, 102 U.S. 572, and *Homer Ramsdell Transportation Co. v. La Compagnie Generale Transatlantique*, 182 U.S. 406, concerning state pilotage laws.

The jurisdiction commonly expressed in the formula that a vessel at sea is regarded as part of the territory of the State, was held, upon much consideration, to belong to Massachusetts, so far as to give preference to a judicial assignment in insolvency of such a vessel over an attachment levied immediately upon her arrival at New York, in *Crapo v. Kelly*, 16 Wall. 610. That decision was regarded as necessitating the conclusion reached in *McDonald v. Mallory*, supra. Other instances of state regulation are mentioned in *The City of Norwalk*, 55 Fed. Rep. 98, 106; but without further recapitulation of the authorities, we are of opinion that the statute is valid. See *Workman v. New York*, 179 U.S. 552, 563. We should add, what has been assumed thus far, as it had to be assumed in order to raise the question discussed, that we construe the statute as intended to govern all cases which it is competent to govern, or at least not to be confined to deaths occasioned on land. *McDonald v. Mallory*, 77 N.Y. 546. If it touches any case at sea, it controls this. See *The Belgenland*, 114 U.S. 355, 370. Whether it is to be taken to offer a similar liability of Delaware owners to foreign subjects, *Mulhall v. Fallon*, 176 Massachusetts, 266, need not be determined now.

We pass to the other branch of the first question: whether the state law, being valid, will be applied in the admiralty. Being valid, it created an obligatio, a personal liability of the owner of the Hamilton to the claimants. *Slater v. Mexican National R.R. Co.*, 194 U.S. 120, 126. This, of course, the admiralty would not disregard, but would respect the right when brought before it in any legitimate way. *Ex parte McNiel*, 13 Wall. 236, 243. It might not give a proceeding in rem, since the statute does not purport to create a lien. It might give a proceeding in personam. *The Corsair*, 145 U.S. 335, 347. If it gave the latter, the result would not be, as suggested, to create different laws for different districts. The liability would be recognized in all. Nor would there be produced any lamentable lack of uniformity. Courts constantly enforce rights arising from and depending upon other laws than those governing the local transactions of the jurisdiction in which they sit. But we are not concerned with these considerations. In this case the statutes of the United States have enabled the owner to transfer its liability to a fund and to the exclusive jurisdiction of the admiralty, and it has done so. That fund is being distributed. In such circumstances all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not. This is not only a general principle, *Andrews v. Wall*, 3 How. 568, 573; *The J. E. Rumbell*, 148 U.S. 1, 15; Admiralty Rule, 43; *Cargo Ex Galam*, 2 Moore P.C. (N.S.) 216, 236, but is the result of the statute, which provides for, as well as limits the liability, and allows it to be proved against the fund. *The Albert Dumois*, 177 U.S. 240, 260. See *Workman v. New York*, 179 U.S. 552, 563.

The second question concerns the right of the representatives of the crew to recover their claims in full. There is a faint

suggestion that the mate of the Saginaw was negligent, but on this point we shall not go behind the findings below. The main objection is that the statute allows a recovery beyond the maintenance and support which were declared in *The Osceola*, 189 U.S. 158, 175, to be the limit of a seaman's rights against his own vessel when injured by the negligence of the master or a fellow-servant on his ship. But the question here regards the liability of the Hamilton, another vessel. The contract between the seaman and the owners of the Saginaw does not affect the case. *Erie R.R. Co. v. Erie Transportation Co.*, 204 U.S. 220, 226. Neither does the Harter Act, even if its terms could be extended to personal injuries and loss of life. *The Chattahoochee*, 173 U.S. 540. Neither does the negligence of the Saginaw. *The Atlas*, 93, U.S. 302.

We are of opinion that all the claimants are entitled to the full benefits of a statute "granting the right to relief where otherwise it could not be administered by a maritime court." *Workman v. New York*, 179 U.S. 552, 563.

Decree affirmed.

An Act Relating to the maintenance of actions for death on the high seas and other navigable waters, March 3, 1920, ch. 111.

41 Statutes at Large 537.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Sec. 2. That the recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

Sec. 3. That such suit shall be begun within two years from the date of such wrongful act, neglect, or default, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation sought to be charged; but after the expiration of such period of two years the right of action hereby given shall not be deemed to have lapsed until ninety days after a reasonable opportunity to secure jurisdiction has offered.

Sec. 4. That whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

Sec. 5. That if a person die as the result of such wrongful act, neglect, or default as is mentioned in section 1 during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted as a party and the suit may proceed as a suit under this Act for the recovery of the compensation provided in section 2.

Sec. 6. That in suits under this Act the fact that the decedent has been guilty of contributory negligence shall not bar

recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly.

Sec. 7. That the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this Act. Nor shall this Act apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

Sec. 8. That this Act shall not affect any pending suit, action, or proceeding.

The Windrush.

District Court of the United States, Southern District of New York, 1922.

286 Federal Reporter 251.

Hazel, District Judge. These are separate libels for the recovery of damages sustained by reason of a collision between the three-masted steel bark Windrush, an American vessel, 240 feet long, built in England in 1892, and classed 100-A1 by Lloyds, and the Spanish passenger steamship Buenos Aires, 420 feet long, 48 feet beam, drawing 30 feet of water, bound from Cadiz to New York, occurring on May 10, 1920, in the Atlantic Ocean, about 1,000 miles east of Sandy Hook. The various libels were consolidated, and were all tried together by consent of proctors as a single case. The bark, which was bound for Montevideo, was sunk, her entire cargo of refined petroleum lost, and 5 out of 18 members of her crew were either drowned or died of exposure. The libels are on behalf of the owner of the bark, the owner of the cargo, and the administrators of the sailors who lost their lives. . . .

[In an omitted part of the opinion, after reviewing the evidence, the court concluded that the Buenos Aires was solely at fault and that a decree should be entered against her for the whole damages sustained by the owner of the bark and by the owner of the cargo.]

In any event it is contended there can be no recovery on the death claims, since the Buenos Aires was a Spanish vessel, and as the casualty was on the high seas, beyond the jurisdiction of any nation, this court is without jurisdiction. The stipulation herein provides that under Spanish law a right of action existed in favor of the heirs or relatives of the deceased, but no right in rem and no right of action in an administrator. This action, however, was brought under the Act of March 30, 1920 (41 Stat. 537), relating to maintenance of actions for death on the high seas resulting from negligence, and it is not limited to the negligent acts of vessels of the United States on the high seas, to the exclusion of foreign vessels. Although the latter are not specifically mentioned in section 1, yet section 4 refers to a right of action on account of death by wrongful acts whenever the law of any foreign state grants such a right. This provision is not open to the construction that foreign law is to be applied in the federal courts, where a foreign ship through her fault on the high seas causes injury to sailors on an American ship. The high seas are the common ground of all nations, and, as said in *The Brantford City* (D.C.) 29 Fed. 375, are governed and determined by the general maritime law. Persons on board a foreign ship are considered a part of the territory of the country of her flag (*Queen v. Keyn*, 2 Ex. D. 63), and manifestly are subject to the laws of the state to which she owes allegiance,

while the vessel, of course, on her voyage is amenable to the laws of the state to which she belongs. *Lindstrom v. Inter. Nav. Co.*, 123 Fed. 475, 60 C.C.A. 649; *La Bourgogne*, 139 Fed. 433, 71 C.C.A. 489.

The contention that section 4 was included to prevent the limitation of liability of a foreign vessel under American statutes is believed not wholly without merit. Claimants argue that the actions should have been brought in personam by the relatives of the decedents, instead of in rem by the administrators of their estates; but I think the general maritime law must govern, regardless of the fact that the *Buenos Aires* was a Spanish vessel. Mr. Justice Bradley, in dealing with a similar question in *The Scotland*, 105 U.S. 24, 26 L. Ed. 1001, said:

"If a collision occurs on the high seas, where the law of no particular state has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would prima facie determine them by its own law as presumptively expressing the rules of justice."

The rule in England is the same. *The Leon*, 6 P.D. 148; *Chartered Mercantile Bank of India v. Netherlands, etc.*, 10 Q.B.D. 521. The fact that Bachmann died after rescue aboard the steamship in neutral waters, or that the tort was committed on the high seas, does not divest this court of jurisdiction, but requires applying the general maritime law as administered in the United States. Prior to the act under which these libels were brought, it was held in this country that, where death ensued from negligence on the high seas, an action at law could not be maintained, in the absence of an act of Congress or of a statute of the state giving the right. Such right now being existent and in force before this right of action arose, it is a part of the general maritime law, as that law is applied in the federal courts. The power of Congress to pass the act is beyond question. *The Hamilton*, 207 U.S. 398, 28 Sup. Ct. 133, 52 L. Ed. 264. That it became a part of the general maritime law of the country, in view of the stipulation that under Spanish law a right of action existed, is evidenced by *The Lottawanna*, 21 Wall. 558, 22 L. Ed. 654. Neither *The Alaska*, 130 U.S. 201, 9 Sup. Ct. 461, 32 L. Ed. 923, nor *The Lamington* (D.C.) 87 Fed. 752, cited by claimant, supports the view that the Spanish law, to the exclusion of the general maritime law, is to be applied to this case in the libels for death.

In *The Lamington* the injuries were sustained by a seaman on a British ship on the high seas, and the District Court held that the negligence of the ship resulting from defective ropes for the gear of the ship was governed by the law of the place, and relief could not be given by applying the law of the place, and, since there was no such right of action by the law of the place, the libel was dismissed. But such adjudications are distinguishable, for here the

libels are between persons or ships of different nationalities, having different laws. It is not necessary to further treat of this point. It must suffice for me to state that I am satisfied, from my examination of the authorities, that the Act of March 30, 1920, has bestowed upon this court the power to apply the general maritime law, as understood and administered in the United States, in such cases as these; that the law of Spain does not control the right or the procedure; and, furthermore, that the steamship may be proceeded against in rem. It is not claimed that McDougal, Persson, or Bachmann, the deceased seamen, were in any degree negligent. They were below in the bark at the time of the disaster, and did not participate in her navigation. Their representatives are entitled to full compensation for damages sustained by reason of the faulty navigation by the steamship Buenos Aires, in consequence of which death ensued.

A decree may accordingly be entered, with costs, in favor of the bark Windrush and of the owner of her cargo, and in favor of Harold Sturges Rankin, administrator of the deceased seamen, holding the Buenos Aires solely liable for the loss sustained by these various interests, and reference to a commissioner.

Workman v. New York City, Mayor, Aldermen and Commonalty.

Supreme Court of the United States, 1900.

179 United States 552.

Workman, the libellant below, was the owner, on June 11, 1893, of the British barkentine Linda Park. On the date named, while the vessel was moored to a dock at pier 48 in the East River in New York City, she was struck and injured by the steam fire-boat New Yorker. At the time of the collision the New Yorker was running into the slip between piers 48 and 49 for the purpose of getting near to another fire-boat which had shortly prior thereto safely entered the slip. Both the fire-boats had been called in order to aid in extinguishing a fire in a warehouse situated a distance of eighty-five to one hundred feet from the slip bulkhead. To recover the damage occasioned to his vessel, Workman filed, in the District Court of the United States for the Southern District of New York, a libel in personam against the mayor, aldermen and commonalty of the city of New York. This libel was subsequently amended by adding the allegations essential to make, as additional respondents, the fire department of the city of New York and James A. Gallagher, the person in charge of the navigation of the New Yorker at the time of the collision.

The District Court entered a decree in favor of the libellant against the city of New York and Gallagher, and dismissed the libel as to the fire department. 63 Fed. Rep. 298.

The Circuit Court of Appeals, to which the case was taken, affirmed the decree of the District Court against Gallagher and in favor of the fire department. The appellate court, however, reversed that portion of the decree of the District Court which held the city of New York liable, and remanded the case with instructions to dismiss the libel as against the city. 35 U.S. App. 201; 67 Fed. Rep. 347.

The case was then brought to this court by the allowance of a writ of certiorari. . . .

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court. . . .

Whilst it is contended at bar that the District Court correctly decided, considering the local law of New York alone, that the city was liable, it is also asserted that even if by such law there was no responsibility on the part of the city of New York, nevertheless the Circuit Court of Appeals erred in deciding that the city was not bound, because by the maritime law the liability existed, and such law should have controlled, although the local law was to the contrary.

We come then to consider first, whether, in the decision of the controversy, the local law of the city of New York or the maritime law should control; and, second, if the case is solely governed by the maritime law, whether the city of New York is liable.

In examining the first question, that is, whether the local law of New York must prevail, though in conflict with the maritime law, it must be borne in mind that the issue is not - as was the case in *Detroit v. Osborne*, (1890) 135 U.S. 492 - whether the local law governs as to a controversy arising in the courts of common law or of equity of the United States, but does the local law, if in conflict with the maritime law, control a court of admiralty of the United States in the administration of maritime rights and duties, although judicial power with respect to such subjects has been expressly conferred by the Constitution (art. III, sec. 2) upon the courts of the United States.

The proposition then which we must first consider may be thus stated: Although by the maritime law the duty rests upon courts of admiralty to afford redress for every injury to person or property where the subject-matter is within the cognizance of such courts and when the wrongdoer is amenable to process, nevertheless the admiralty courts must deny all relief whenever redress for a wrong would not be afforded by the local law of a particular State or the course of decisions therein. And this, not because, by the rule prevailing in the State, the wrongdoer is not generally responsible and usually subject to process of courts of justice, but because in the commission of a particular act causing direct injury to a person or property it is considered, by the local decisions, that the wrongdoer is endowed with all the attributes of sovereignty, and therefore as to injuries by it done to others in the assumed sovereign character, courts are unable to administer justice by affording redress for the wrong inflicted.

The practical destruction of a uniform maritime law which must arise from this premise, is made manifest when it is considered that if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of state courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would be necessarily one thing in one State and one in another; one thing in one port of the United States and a different thing in some other port. As the power to change state laws or state decisions rests with the state authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrongs done, instead of being general and ever abiding, would be purely local - would be one thing to-day and another thing to-morrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent.

And the principle by which the maritime law would be thus in part practically destroyed would besides apply to other subjects specially confided by the Constitution to the Federal government. Thus, if the local law may control the maritime law, it must also govern in the decision of cases arising under the patent, copyright and commerce clauses of the Constitution. It would result that a municipal corporation, in the exercise of administrative powers which the state law determines to be governmental, could with impunity violate the patent and copyright laws of the United States or the regulations enacted by Congress under the commerce clause of the Constitution, such as those concerning the enrollment and licensing of vessels. This follows if a corporation must for a wrong by it done, be allowed to escape all reparation upon the theory that, though ordinarily liable to sue and be sued, it possessed in the particular matter the freedom from suit which attaches to a sovereign State.

The disappearance of all symmetry in the maritime law and the law on the other subjects referred to, which would thus arise, would, however, not be the only evil springing from the application of the principle relied on, since the maritime law which would survive would have imbedded in it a denial of justice. This must be the inevitable consequence of admitting the proposition which assumes that the maritime law disregards the rights of individuals to be protected in their persons and property from wrongful injury, by recognizing that those who are amenable to the jurisdiction of courts of admiralty are nevertheless endowed with a supposed governmental attribute by which they can inflict injury upon the person or property of another, and yet escape all responsibility therefor. It cannot be doubted that the greater part, if not the whole, of the maritime commerce of the country is either initiated or terminated in ports where municipal corporations exist. All the vessels, whether domestic or foreign, in which this vast commerce is carried on, under the rule referred to, could be subjected to injury and wrong without power to obtain redress, since every municipality would be hedged about with the attributes of supreme sovereignty. For the principle which would exempt the municipal owner of a fire-boat from legal responsibility would be equally applicable to boats used by a street department for the removal of refuse, to ferries, to pilot boats, to training-school ships - one of which, it is suggested in argument, the city of New York now actually operates, and to all other vessels which the municipality might consider it necessary or desirable to use. The wrong and injustice which would thus arise need not be commented upon.

The evil consequences growing from thus implanting in the maritime law the doctrine that wrong can be done with impunity were very aptly pointed out in *Mersey Docks and Harbour Board, Trustees, v. Gibbs*, (1866) L.R. 1 H.L. 122. In that case it was sought to hold the dock trustees liable for damage occasioned to a ship and cargo

in striking a mud bank while attempting to enter a dock. The trustees asserted an exemption on the ground that they did not collect tolls for their own profit, but merely as trustees for the benefit of the public. Lord Chancellor Cranworth said:

"It would be a strange distinction to persons coming with their ships to different ports of this country, that in some ports, if they sustain damage by the negligence of those who have the management of the docks, they will be entitled to compensation, and in others they will not; such a distinction arising, not from any visible difference in the docks themselves, but from some municipal difference in the constitution of the bodies by whom the docks are managed."

And still later, in deciding the case of Currie v. McKnight, (1897) A.C. 97, the House of Lords declared that while the admiralty law as known in England differs from the common law of England, and the common law of Scotland differs from the common law of England, because they were derived from divergent sources, yet the admiralty laws were derived both by Scotland and England from the same source, and "it would be strange as well as in the highest degree inconvenient if a different maritime law prevailed in two different parts of the same island." . . .

[In an omitted part of the opinion the court referred to The Key City, 14 Wall. 623; The Lottawanna, 21 Wall. 558; Liverpool Steam Co. v. Phoenix Insurance Co., 129 U.S. 397; Butler v. Boston Steamship Co., 130 U.S. 527; The Max Morris, 137 U.S. 1; and The J.E. Rumbell, 148 U.S. 1.]

True, it is well settled that in certain cases where a lien is given by a state statute, the admiralty courts will enforce rights so conferred when not in absolute conflict with the admiralty law. The Lottawanna, (1874) 21 Wall. 558. Moreover, it has been decided that although at the time of the adoption of the Constitution, in courts of admiralty as in courts of common law, a cause of action for a personal injury abated by the death of the injured party, nevertheless, when, by a state statute, a right of recovery in such a case was conferred, the admiralty courts would recognize and administer the appropriate relief. The Albert Dumois, (1900) 177 U.S. 257-259, and cases cited. But such cases afford no foundation for the proposition that state laws or decisions can deprive an individual of a right of recovery for a maritime wrong which, under the general principles of the admiralty law, he undoubtedly possessed, and can destroy the symmetry and efficiency of that law by engrafting therein a principle which violates the imperative command of such law that admiralty courts must administer redress for every maritime wrong in every case where they have jurisdictional power over the person by whom the wrong has been committed. The cases in question on the contrary but illustrate the alacrity with which admiralty courts

adopt statutes granting the right to relief where otherwise it could not be administered by a maritime court, and they hence do not support the contention that there is a want of power in admiralty courts to give redress in every case within their jurisdiction where the duty to do so is imposed by the maritime law. This distinction is well illustrated by the ruling in *The Max Morris*, supra. There it was asserted that by the universal principles of the common law, as well as of the local laws of the States, no right to recover for a wrong committed could be enforced in favor of one who had himself contributed to the producing cause of injury. Whilst the premise was conceded, the soundness of the inference deduced from it was denied, and it was held that as by the general principles of the maritime law a measure of relief would be afforded to a person who had suffered a wrong, even although he had contributed thereto, it was the duty of the admiralty courts to grant relief in accordance with the principles of the maritime law.

It being then settled that the local decisions of one or more States cannot, as a matter of authority, abrogate the maritime law, we are brought to consider whether, under the maritime law, the city of New York was liable for the injury inflicted by the fire-boat. . . .

It is not gainsaid that, as a general rule, municipal corporations, like individuals, may be sued; in other words, that they are amenable to judicial process for the purpose of compelling performance of their obligations. True it is, that under the general law, growing out of the public nature of their duties, where judgments or decrees are entered against municipal corporations, such judgments or decrees may not, as a matter of public policy, be enforced by the levy on property held by the corporation for public uses. *Meriwether v. Garrett*, (1880) 102 U.S. 472.

As a result of the general principle by which a municipal corporation has the capacity to sue and be sued, it follows that there is no limitation taking such corporations out of the reach of the process of a court of admiralty, as such courts, within the limit of their jurisdiction, may reach persons having a general capacity to stand in judgment. True, also, where admiralty process has been set in motion against a municipal corporation, public policy, it has been held, restrains a seizure of property used for public purposes by such corporation. *The Fidelity*, (1879) 16 Blatchford, 569. This conclusion, however, is but the application of the exception as to the mode of execution of a judgment or decree against such a corporation, to which we have referred, and its existence in the admiralty law in all cases has also been denied. *The Oyster Police Steamers of Maryland*, (1887) 31 Fed. Rep. 763. Which of these conflicting conclusions, as to the exception in question, is correct, we are not called upon on the present record to determine, since no levy of process upon the fire-boat was made or attempted to be made.

The contention is, although the corporation had general capacity to stand in judgment, and was therefore subject to the process of a court of admiralty, nevertheless the admiralty court would afford no redress against the city for the tort complained of, because under the local law the corporation as to some of its administrative acts was entitled to be considered as having a dual capacity, one private, the other public or governmental, and as to all maritime wrongs committed in the performance of the latter functions it should be treated by the maritime law as a sovereign. (But the maritime law affords no justification for this contention, and no example is found in such law, where one who is subject to suit and amenable to process is allowed to escape liability for the commission of a maritime tort, upon the theory relied upon.) We, of course, concede that where maritime torts have been committed by the vessels of a sovereign, and complaint has been made in a court of admiralty, that court has declined to exercise jurisdiction, but this was solely because of the immunity of sovereignty from suit in its own courts. So, also, where, in a court of admiralty of one sovereign, redress is sought for a tort committed by a vessel of war of another nation, it has been held that as by the rule of international comity the sovereign of another country was not subject to be impleaded, no redress could be given. Both of these rules, however, proceed upon the hypothesis of the want of a person or property before the court over whom jurisdiction can be exerted. As a consequence, the doctrine above stated rests not upon the supposed want of power in courts of admiralty to redress a wrong committed by one over whom such courts have adequate jurisdiction, but alone on their inability to give redress in a case where jurisdiction over the person or property cannot be exerted. In other words, the distinction between the two classes of cases is that which exists between the refusal of a court to grant relief because it has no jurisdiction to do so, and the failure of a court to afford redress in a case where the wrong is admitted and jurisdictional authority over the wrongdoer is undoubted. . . .

[In an omitted part of the opinion the court referred to *The Exchange*, 7 Cranch 116; *The Siren*, 7 Wall. 153; *The Davis*, 10 Wall. 15; *The Athol*, 1 Wm. Rob. 374; *The Parlement Belge*, 4 P. D. 129, 5 P. D. 197.]

It results that, in the maritime law, the public nature of the service upon which a vessel is engaged at the time of the commission of a maritime tort affords no immunity from liability in a court of admiralty, where the court has jurisdiction. This being so, it follows that as the municipal corporation of the city of New York, unlike a sovereign, was subject to the jurisdiction of the court, the claimed exemption from liability asserted in the case at bar, because of the public nature of the service upon which the fire-boat was engaged - even if such claim for the purposes of the case be conceded - was without foundation in the maritime law, and therefore afforded no reason for denying redress in a court of admiralty for

the wrong which the courts below both found to have been committed.

The remaining suggestion is that as a proceeding in rem could not have been maintained against the fire-boat because it was the property of the city of New York, and therefore an instrumentality employed in the performance of its municipal functions, no action in personam was available to the owner of the injured vessel. As we at the outset said, there is contrariety of opinion in the lower admiralty courts of the United States as to whether the rule of the courts of common law which exempts from seizure the property of a municipality devoted to its municipal uses obtains in a court of admiralty of the United States. This conflict, as we have also said, we deem it unnecessary to determine in this case, because, even if it be conceded that the fire-boat could not have been seized by process from a court of admiralty, the proposition that, therefore, the owner could not be called upon, in an action in personam, to respond for the damages inflicted by the boat, is without foundation. Of course, as has been repeatedly declared by this court, by the general admiralty law of this country, subject to the exemption from process possessed by the national government, a ship, by whomsoever owned or navigated, is liable for an actionable injury resulting from the negligence of the master and crew of such vessel. *The John G. Stevens*, (1898) 170 U.S. 113, 120, and cases cited, 122. A liability of the owners in personam, however, is not dependent upon ability to maintain a proceeding in rem because of the maritime tort. A maritime lien may not exist in a cause of collision, for instance, when the thing occasioning the tort was not the subject of a maritime lien, *The Rock Island Bridge*, (1867) 6 Wall. 213; or such a lien, if it exist, may not be enforceable, and so may be said to render the offending thing not the subject of a maritime lien, because of the ownership and possession of such thing being in the government of the nation. *The Siren*, (1869) 7 Wall. 152. Or the remedy in rem may not be available owing to the offending thing being actually in another country, or because of its loss intermediate the collision and the institution of legal proceedings.

A recovery can be had in personam, however, for a maritime tort when the relation existing between the owner and the master and crew of the vessel, at the time of the negligent collision, was that of master and servant. *Thorpe v. Hammond*, (1871) 12 Wall. 408; *The Plymouth*, (1866) 3 Wall. 35.

The prerequisite in admiralty to the right to resort to a libel in personam is the existence of a cause of action, maritime in its nature. That a collision upon navigable waters of the United States between vessels, by the fault of one of such vessels, creates a maritime tort and a cause of action within the jurisdiction of a court of admiralty, is of course unquestioned. . . .

Our conclusion is that the District Court rightly decided that the mayor, aldermen and commonalty of the city of New York were

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liable for the damages sustained by the owner of the Linda Park.

The decree of the Circuit Court of Appeals for the Second Circuit is reversed, and the decree of the District Court is affirmed.

[The dissenting opinion of Mr. Justice Gray, Mr. Justice Brewer, Mr. Justice Shiras, and Mr. Justice Peckham is omitted.]

Union Fish Company v. Erickson.

Supreme Court of the United States, 1919.

248 United States 308.

[The arguments of counsel are omitted.]

Mr. Justice Day delivered the opinion of the court.

Erickson filed a libel in admiralty in the District Court of the United States for the Northern District of California, alleging that by an oral contract with the petitioner, owner of the vessel "Martha" he engaged to proceed to Pirate Cove, Alaska, and after arrival there to serve for a year as master of the vessel, and perform certain duties in connection therewith for an agreed compensation. The libel averred that he proceeded to Pirate Cove, and performed his duties under the contract until he was wrongfully discharged by the respondent. Libelant sought to recover damages for breach of contract. An answer was filed denying the alleged contract and averring that libelant was discharged because of his wrongful conduct.

A decree was rendered in favor of libelant in the District Court; upon appeal that decree was affirmed by the Circuit Court of Appeals. 235 Fed. Rep. 385.

The question presented and argued here concerns the application of the California Statute of Frauds, which it is alleged rendered the contract void because not to be performed within one year from the making thereof. The Civil Code of California provides: Section 1624. "The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

"1. An agreement that by its terms is not to be performed within a year from the making thereof."

The contract of the master was of a maritime character. This does not seem to be controverted by the petitioner. (See The Boston 3 Fed. Cas. 921, Cas. No. 1669; The William H. Hoag, 168 U.S. 443.) We have, then, a maritime contract for services to be performed principally upon the sea, and the question is can such engagement be nullified by the local laws of a State, where the contract happens to be entered into, so as to prevent its enforcement in an admiralty court of the United States?

The Constitution (Article III, § 2) extends the judicial power of the United States to all cases of admiralty and maritime

jurisdiction. Admiralty jurisdiction under the Federal Constitution "embraces," says Mr. Justice Story in his treatise on the Constitution, "two great classes of cases, - one dependent upon locality, and the other upon the nature of the contract." In the latter class are embraced "contracts, claims, and services purely maritime and touching rights and duties appertaining to commerce and navigation." Story on the Constitution, 4th ed., § 1666.

This court has had occasion to consider the nature and extent of admiralty jurisdiction as it was intended to be conferred by the Constitution. In *The Lottawanna*, 21 Wall. 558, the subject was much considered, and Mr. Justice Bradley, speaking for the court, said:

"One thing, however, is unquestionable, the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States."

This principle was reiterated in *Workman v. New York City*, 179 U.S. 552. In that case it was declared that neither local law nor decisions could deprive of redress where a cause of action, maritime in its nature, was prosecuted in a court of admiralty of the United States. (179 U.S. 560)

In the recent case of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, the subject was again considered and the cases in this court reviewed, and state legislation was declared invalid "if it . . . works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." (244 U.S. 216.)

In entering into this contract the parties contemplated no services in California. They were making an engagement for the services of the master of the vessel, the duties to be performed in the waters of Alaska, mainly upon the sea. The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California. The parties must be presumed to have had in contemplation the system of maritime law under which it was made. *Watts v. Camors*, 115 U.S. 353, 362.

In different countries the appointment of masters of vessels has been the subject of maritime law which has directed the conduct of "those who pursue commerce and put to sea." Their duties and qualifications have been the subject of regulation by the recognized principles of admiralty law. *Benedict's Admiralty*, 4th ed., § 146. They are regulated by statutes enacted under federal authority. See U.S. Comp. Stats. of 1916, vol. 12, Index "Masters of Vessels."

If one State may declare such contracts void for one reason, another may do likewise for another. Thus the local law of a State may deprive one of relief in a case brought in a court of admiralty of the United States upon a maritime contract, and the uniformity of rules governing such contracts may be destroyed by perhaps conflicting rules of the States.

We think the Circuit Court of Appeals correctly held that this contract was maritime in its nature and an action in admiralty thereon for its breach could not be defeated by the statute of California relied upon by the petitioner.

Affirmed.

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Southern Pacific Company v. Jensen.

Supreme Court of the United States, 1917.

244 United States 205.

Mr. Justice McReynolds delivered the opinion of the court.

Upon a claim regularly presented, the Workmen's Compensation Commission of New York made the following findings of fact, rulings and award, October 9, 1914:

"1. Christen Jensen, the deceased workman, was, on August 15, 1914, an employee of the Southern Pacific Company, a corporation of the State of Kentucky, where it has its principal office. It also has an office at Pier 49, North River, New York City. The Southern Pacific Company at said time was, and still is, a common carrier by railroad. It also owned and operated a steamship El Oriente, plying between the ports of New York and Galveston, Texas.

"2. On August 15, 1914, said steamship was berthed for discharging and loading at Pier 49, North River, lying in navigable waters of the United States.

"3. On said date Christen Jensen was operating a small electric freight truck. His work consisted in driving the truck into the steamship El Oriente where it was loaded with cargo, then driving the truck out of the vessel upon a gangway connecting the vessel with Pier 49, North River, and thence upon the pier, where the lumber was unloaded from the truck. The ship was about 10 feet distant from the pier. At about 10:15 A.M. after Jensen had been doing such work for about three hours that morning he started out of the ship with his truck loaded with lumber, a part of the cargo of the steamship El Oriente, which was being transported from Galveston, Texas, to New York City. Jensen stood on the rear of the truck, the lumber coming about to his shoulder. In driving out of the port in the side of the vessel and upon the gangway, the truck became jammed against the guide pieces on the gangway. Jensen then reversed the direction of the truck and proceeded at third or full speed backward into the hatchway. He failed to lower his head and his head struck the ship at the top line, throwing his head forward and causing his chin to hit the lumber in front of him. His neck was broken and in this manner he met his death.

"4. The business of the Southern Pacific Company in this State consisted at the time of the accident and now consists solely in carrying passengers and merchandise between New York and other States. Jensen's work consisted solely in moving cargo destined to and from other States.

"5. Jensen left him surviving Marie Jensen, his widow, 29 Years of age, and Howard Jensen, his son, seven years of age, and Evelyn Jensen, his daughter, three years of age.

"6. Jensen's average weekly wage was \$19.60 per week.

"7. The injury was an accidental injury and arose out of and in the course of Jensen's employment by the Southern Pacific Company and his death was due to such injury. The injury did not result solely from the intoxication of the injured employee while on duty, and was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or another."

"This claim comes within the meaning of Chapter 67 of the Consolidated Laws as re-enacted and amended by Chapter 41 of the Laws of 1914, and as amended by Chapter 316 of the Laws of 1914."

"Award of compensation is hereby made to Marie Jensen, widow of the deceased, at the rate of \$5.87 weekly during her widowhood with two years' compensation in one sum in case of her remarriage; to Harold Jensen, son of the deceased, at the rate of \$1.96 per week and to Evelyn Jensen, daughter of the deceased, at the rate of \$1.96 per week until the said Harold Jensen and Evelyn Jensen respectively shall arrive at the age of eighteen years, and there is further allowed the sum of One Hundred (\$100) Dollars for funeral expenses."

In due time the Southern Pacific Company objected to the award . . . [upon the ground, among others] . . . "that the Act is unconstitutional in that it violates Article III, Section 2, of the Constitution conferring admiralty jurisdiction upon the courts of the United States."

Without opinion, the Appellate Division approved the award and the Court of Appeals affirmed this action (215 N.Y. 514, 519) holding that the Workmen's Compensation Act applied to the employment in question and was not obnoxious to the Federal Constitution. . . .

In New York Central R.R. Co. v. White, 243 U.S. 188, we held the statute valid in certain respects; and, considering what was there said, only two of the grounds relied on for reversal now demand special consideration. First. Plaintiff in error being an interstate common carrier by railroad is responsible for injuries received by employees while engaged therein under the Federal Employers' Liability Act of April 22, 1908, c. 149, 35 Stat. 65, and no state statute can impose any other or different liability. Second. As here applied, the Workmen's Compensation Act conflicts with the general maritime law, which constitutes an integral part of the federal law under Art. III, § 2, of the Constitution, and to that extent is invalid.

[In an omitted part of the opinion the Federal Employers' Liability Act was held inapplicable.]

The fundamental purpose of the Compensation Law as declared by the Court of Appeals is "the creation of a state fund to insure the payment of a prescribed compensation based on earnings for disability or death from accidental injuries sustained by employees engaged in certain enumerated hazardous employments," among them being "longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage." Its general provisions are specified in our opinion in *New York Central R.R. Co. v. White*, supra, and need not be repeated. Under the construction adopted by the state courts no ship may load or discharge her cargo at a dock therein without incurring a penalty, unless her owners comply with the act which, in order to secure payment of compensation for accidents, generally without regard to fault and based upon annual wages, provides regard to fault and based upon annual wages, provides (§50) that -- "An employer shall secure compensation to his employees in one of the following ways:

"1. By insuring and keeping insured the payment of such compensation in the state fund, or -- 2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association together with a copy of the contract or policy of insurance. -- 3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter."

"If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues of an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of noncompliance to be recovered in an action brought by the commission."

Article III § 2, of the Constitution, extends the judicial power of the United States "To all cases of admiralty and maritime jurisdiction;" and Article I, § 8, confers upon the Congress power "To make all laws which may be necessary and proper for carrying

into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof." Considering our former opinions, it must now be accepted as settled doctrine that in consequence of these provisions Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country. *Butler v. Boston & Savannah Steamship Co.*, 130 U.S. 527; *In re Garnett*, 141 U.S. 1, 14. And further, that in the absence of some controlling statute the general maritime law as accepted by the federal courts constitutes part of our national law applicable to matters within the admiralty and maritime jurisdiction. *The Lottawanna*, 21 Wall. 558; *Butler v. Boston & Savannah Steamship Co.*, 130 U.S. 527, 557; *Workman v. New York City*, 179 U.S. 552.

In *The Lottawanna*, Mr. Justice Bradley speaking for the court said: "That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to when it was declared in the instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' . . . One thing, however, is unquestionable: the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have intended to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

By § 9, Judiciary Act of 1789, 1 Stat. 76, 77, the District Courts of the United States were given "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction; . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." And this grant has been continued. Judicial Code, §§ 24 and 256.

In view of these constitutional provisions and the federal act it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied. A lien upon a vessel for repairs in her own port may be given by state statute, *The Lottawanna*, 21 Wall. 558, 579, 580; *The J.E. Rumbell*, 148 U.S. 1; pilotage fees fixed, *Cooley v. Board of Wardens*, 12 How. 299; *Ex parte McNeil*, 13 Wall. 236, 242; and the right given to recover in death cases, *The Hamilton*, 207 U.S. 398; *La Bourgogne*, 210 U.S. 95, 138. See *The City of Norwalk*, 55 Fed. Rep. 98, 106. Equally well established is the rule that state statutes may not contravene an applicable act of Congress or affect the general maritime law beyond certain

limits. They cannot authorize proceedings in rem according to the course in admiralty, *The Moses Taylor*, 4 Wall. 411; *Steamboat Co. v. Chase*, 16 Wall. 522, 534; *The Glide*, 167 U.S. 606; nor create liens for materials used in repairing a foreign ship, *The Roanoke*, 189 U.S. 185. See *Workman v. New York City*, 179 U.S. 552. And plainly, we think, no such legislation is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself. These purposes are forcefully indicated in the foregoing quotations from *The Lottawanna*.

A similar rule in respect to interstate commerce deduced from the grant to Congress of power to regulate it is now firmly established. "Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free." *Bowman v. Chicago & Northwestern Ry. Co.*, 125 U.S. 465, 507, 508; *Vance v. Vandercook Co.*, 170 U.S. 438, 444; *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U.S. 311. And the same character of reasoning which supports this rule, we think, makes imperative the stated limitation upon the power of the States to interpose where maritime matters are involved.

The work of a stevedore in which the deceased was engaging is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, 59, 60.

If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other States may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded. A far more serious injury would result to commerce than could have been inflicted by the Washington statute authorizing a materialman's lien condemned in *The Roanoke*. The legislature exceeded its authority in attempting to extend the statute under consideration to conditions like those here disclosed. So applied, it conflicts with the Constitution and to that extent is invalid.

Exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the Federal District Courts, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." The remedy which the Compensation Statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court and is not saved to suitors from the grant of exclusive jurisdiction. *The Hine v. Trevor*, 4 Wall. 555, 571, 572; *The Belfast*, 7 Wall. 624, 644; *Steamboat Co. v. Chase*, 16 Wall. 522, 531, 533; *The Glide*, 167 U.S. 606, 623. And finally this remedy is not consistent with the policy of Congress to encourage investments in ships manifested in the Acts of 1851 and 1884 (Rev. Stats., §§ 4283-4285; § 18, Act of June 26, 1884, c. 121, 23 Stat. 57) which declare a limitation upon the liability of their owners. *Richardson v. Harmon*, 222 U.S. 96, 104.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice Holmes, dissenting.

The Southern Pacific Company has been held liable under the statutes of New York for an accidental injury happening upon a gang-plank between a pier and the company's vessel and causing the death of one of its employees. The company not having insured as permitted, the statute may be taken as if it simply imposed a limited but absolute liability in such a case. The short question is whether the power of the State to regulate the liability in that place and to enforce it in the State's own courts is taken away by the conferring of exclusive jurisdiction of all civil causes of admiralty and maritime jurisdiction upon the courts of the United States.

There is no doubt that the saving to suitors of the right of a common-law remedy leaves open the common-law jurisdiction of the state courts, and leaves some power of legislation at least, to the States. For the latter I need to do no more than refer to state pilotage statutes, and to liens created by state laws in aid of maritime contracts. Nearer to the point, it is decided that a statutory remedy for causing death may be enforced by the state courts, although the death was due to a collision upon the high seas. *Steamboat Co. v. Chase*, 16 Wall. 522. *Sherlock v. Alling*, 93 U.S. 99, 104. *Knapp, Stout & Co. v. McCaffrey*, 177 U.S. 638, 646. *Minnesota Rate Cases*, 230 U.S. 352, 409. The misgivings of Mr. Justice Bradley were adverted to in *The Hamilton*, 207 U.S. 398, and held at least insufficient to prevent the admiralty from recognizing such a state-created right in a proper case if indeed they went to any such extent. *La Bourgogne*, 210 U.S. 95, 138.

The statute having been upheld in other respects, New York Central R.R. Co. v. White, 243 U.S. 188, I should have thought these authorities conclusive. The liability created by the New York act ends in a money judgment, and the mode in which the amount is ascertained, or is to be paid, being one that the State constitutionally might adopt, cannot matter to the question before us if any liability can be imposed that was not known to the maritime law. And as such a liability can be imposed where it was unknown not only to the maritime but to the common law, I can see no difference between one otherwise constitutionally created for death caused by accident and one for death due to fault. Neither can the statutes limiting the liability of owners affect the case. Those statutes extend to non-maritime torts, which of course are the creation of state law. Richardson v. Harmon, 222 U.S. 96, 104. They are paramount to but not inconsistent with the new cause of action. However, as my opinion stands on grounds that equally would support a judgment for a maritime tort not ending in death, with which admiralty courts have begun to deal, I will state the reasons that satisfy my mind.

No doubt there sometimes has been an air of benevolent gratuity in the admiralty's attitude about enforcing state laws. But of course there is no gratuity about it. Courts cannot give or withhold at pleasure. If the claim is enforced or recognized it is because the claim is a right, and if a claim depending upon a state statute is enforced it is because the State had constitutional power to pass the law. Taking it as established that a State has constitutional power to pass laws giving rights and imposing liabilities for acts done upon the high seas when there were no such rights or liabilities before, what is there to hinder its doing so in the case of a maritime tort? Not the existence of an inconsistent law emanating from a superior source, that is, from the United States. There is no such law. The maritime law is not a corpus juris -- it is a very limited body of customs and ordinances of the sea. The nearest to anything of the sort in question was the rule that a seaman was entitled to recover the expenses necessary for his cure when the master's negligence caused his hurt. The maritime law gave him no more. The Osceola, 189 U.S. 158, 175. One may affirm with the sanction of that case that it is an innovation to allow suits in the admiralty by seamen to recover damages for personal injuries caused by the negligence of the master and to apply the common-law principles of tort.

Now, however, common-law principles have been applied to sustain a libel by a stevedore in personam against the master for personal injuries suffered while loading a ship, Atlantic Transport Co. v. Imbrovek, 234 U.S. 52; and The Osceola recognizes that in some cases at least seamen may have similar relief. From what source do these new rights come? The earliest case relies upon "analogies of the municipal law," The Edith Godden, 23 Fed. Rep. 43, 46, --

sufficient evidence of the obvious pattern, but inadequate for the specific origin. I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions. A common-law judge could not say I think the doctrine of consideration a bit of historical nonsense and shall not enforce it in my court. No more could a judge exercising the limited jurisdiction of admiralty say I think well of the common-law rules of master and servant and propose to introduce them here en bloc. Certainly he could not in that way enlarge the exclusive jurisdiction of the District Courts and cut down the power of the States. If admiralty adopts common-law rules without an act of Congress it cannot extend the maritime law as understood by the Constitution. It must take the rights of the parties from a different authority, just as it does when it enforces a lien created by a State. The only authority available is the common law or statutes of a State. For from the often repeated statement that there is no common law of the United States, *Wheaton v. Peters*, 8 Pet. 591, 558; *Western Union Telegraph Co. v. Call Publishing Co.*, 181 U.S. 92, 101, and from the principles recognized in *Atlantic Transport Co. v. Imbrovek* having been unknown to the maritime law, the natural inference is that in the silence of Congress this court has believed the very limited law of the sea to be supplemented here as in England by the common law, and that here that means, by the common law of the State. *Sherlock v. Alling*, 93 U.S. 99, 104. *Taylor v. Carryl*, 20 How. 583, 598. So far as I know, the state courts have made this assumption without criticism or attempt at revision from the beginning to this day; e.g. *Wilson v. Mac Kenzie*, 7 Hill (N.Y.) 95. *Gabrielson v. Waydell*, 135 N.Y. 1, 11. *Kalleck v. Deering*, 161 Massachusetts, 469. See *Ogle v. Barnes*, 8 T.R. 188. *Nicholson v. Mounsey*, 15 East, 384. Even where the admiralty has unquestioned jurisdiction the common law may have concurrent authority and the state courts concurrent power. *Schoonmaker v. Gilmore*, 102 U.S. 118. The invalidity of state attempts to create a remedy for maritime contracts or torts, parallel to that in the admiralty, that was established in such cases as *The Moses Taylor*, 4 Wall. 411, and *The Hine v. Trevor*, 4 Wall. 555, is immaterial to the present point.

The common law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quas sovereign that can be identified; although some decisions with which I have disagreed seem to me to have forgotten the fact. It always is the law of some State, and if the District Courts adopt the common law of torts, as they have shown a tendency to do, they thereby assume that a law not of maritime origin and deriving its authority in that territory only from some particular State of this Union also governs maritime torts in that territory -- and if the common law, the statute law has at least equal force, as the discussion in *The Osceola* assumes. On the other hand the refusal of the District Courts to give remedies coextensive with the common law would prove no more than that they regarded their jurisdiction as limited by the ancient

lines -- not that they doubted that the common law might and would be enforced in the courts of the States as it always has been. This court has recognized that in some cases different principles of liability would be applied as the suit should happen to be brought in a common-law or admiralty court. Compare *The Max Morris*, 137 U.S. 1, with *Belden v. Chase*, 150 U.S. 674, 691. But hitherto it has not been doubted authoritatively, so far as I know, that even when the admiralty had a rule of its own to which it adhered, as in *Workman v. New York City* 179 U.S. 552, the state law, common or statute, would prevail in the courts of the State. Happily such conflicts are few.

It might be asked why, if the grant of jurisdiction to the courts of the United States imports a power in Congress to legislate, the saving of a common-law remedy, i. e., in the state courts, did not import a like if subordinate power in the States. But leaving that question on one side, such cases as *Steamboat Co. v. Chase*, 16 Wall. 522, *The Hamilton*, 207 U.S. 398, and *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, show that it is too late to say that the mere silence of Congress excludes the statute or common law of a State from supplementing the wholly inadequate maritime law of the time of the Constitution, in the regulation of personal rights, and I venture to say that it never has been supposed to do so, or had any such effect.

As to the spectre of a lack of uniformity I content myself with referring to *The Hamilton*, 207 U.S. 398, 406. The difficulty really is not so great as in the case of interstate carriers by land, which "in the absence of Federal statute providing a different rule are answerable according to the law of the State for nonfeasance or misfeasance within its limits." The *Minnesota Rate Cases* 230 U.S. 352, 408, and cases cited. The conclusion that I reach accords with the considered cases of *Lindstrom v. Mutual Steamship Co.*, 132 Minnesota, 328; *Kennerson v. Thames Towboat Co.*, 89 Connecticut, 367; and *North Pacific S.S. Co. v. Industrial Accident Commission of California*, 163 Pac. Rep. 199, as well as with the New York decision in this case. 215 N.Y. 514.

(Mr Justice Pitney concurred substantially in the dissenting opinion of Mr. Justice Holmes, but presented some additional considerations. His opinion is, unfortunately, too long to be included.)

Mr. Justice Brandeis and Mr. Justice Clarke concurred in the dissent, both upon the grounds stated by Mr. Justice Holmes and upon those stated by Mr. Justice Pitney.

Chelentis v. Luckenbach Steamship Company, Incorporated.

Supreme Court of the United States, 1918.

247 United States 372.

[The arguments of counsel are omitted.]

Mr. Justice McReynolds delivered the opinion of the court.

In December, 1915, petitioner was employed by respondent, a Delaware corporation, as fireman on board the steamship "J.L. Luckenbach" which it then operated and controlled. While at sea, twenty-four hours out from New York, the port of destination, petitioner undertook to perform certain duties on deck during a heavy wind; a wave came aboard, knocked him down and broke his leg. He received due care immediately; when the vessel arrived at destination he was taken to the marine hospital where he remained for three months; during that time it became necessary to amputate his leg. After discharge from the hospital, claiming that his injuries resulted from the negligence and an improvident order of a superior officer, he instituted a common law action in Supreme Court, New York County, demanding full indemnity for damage sustained. The cause was removed to the United States District Court because of diverse citizenship. Counsel did not question seaworthiness of ship or her appliances and announced that no claim was made for maintenance, cure, or wages. At conclusion of plaintiff's evidence the court directed verdict for respondent, and judgment thereon was affirmed by the Circuit Court of Appeals. 243 Fed. Rep. 536.

In the *Osceola*, 189 U.S. 158, 175, a libel in rem to recover damages for personal injuries to a seaman while on board and alleged to have resulted from the master's negligence, speaking through Mr. Justice Brown we held:

"1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

"2. That the vessel and her owner are both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship. *Scarff v. Metcalf*, 107 N.Y. 211.

"3. That all the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"4. That the seaman is not allowed to recover an indemnity for the negligence of the master or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

The work about which petitioner was engaged is maritime in its nature; his employment was a maritime contract; the injuries received were likewise maritime and the parties' rights and liabilities were matters clearly within the admiralty jurisdiction. *Atlantic Transportation Co. v. Imbrovek*, 234 U.S. 52, 59, 60. And unless in some way there was imposed upon the owners a liability different from that prescribed by maritime law petitioner could properly demand only wages, maintenance and cure. Under the doctrine approved in *Southern Pacific Co. v. Jensen*, no State has power to abolish the well recognized maritime rule concerning measure of recovery and substitute therefor the full indemnity rule of the common law. Such a substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the "uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

Two acts of Congress are relied upon, and it is said that under each petitioner has the right to recover full indemnity according to the common law. They are: (1) Section 9, Judiciary Act of 1789, 1 Stat. 76, 77, whereby District Courts of the United States were given exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it" (Judicial Code, § § 24, 256); and (2) section 20 of Act to Promote the Welfare of American Seamen, approved March 4, 1915, c. 153, 38 Stat. 1164, 1185, which provides -- "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

The precise effect of the quoted clause of the original Judiciary Act has not been delimited by this court and different views have been entertained concerning it. In *Southern Pacific Co. v. Jensen* we definitely ruled that it gave no authority to the several States to enact legislation which would work "material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations." In *The Moses Taylor*, 4 Wall. 411, 431, we said: "That clause only saves to suitors 'the right of a common-law remedy, where the common law is competent to give it.' It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding in rem, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law." And in *Knapp, Stout & Co. v. McCaffrey*, 177 U. S. 638, 644, 648: "Some of the cases already

cited recognize the distinction between a common law action and a common law remedy. Thus in *The Moses Taylor*, . . . it is said of the saving clause of the Judiciary Act: 'It is not a remedy in the common law courts which is saved, but a common law remedy.'" "If the suit be in personam against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute . . . of a common law remedy. The suit in this case being one in equity to enforce a common law remedy, the state courts were correct in assuming jurisdiction."

The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dictionary. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law. Under the circumstances here presented, without regard to the court where he might ask relief, petitioner's rights were those recognized by the law of the sea.

Section 20 of the Seamen's Act declares "seamen having command shall not be held to be fellow-servants with those under their authority," and full effect must be given this whenever the relationship between such parties becomes important. But the maritime law imposes upon a shipowner liability to a member of the crew injured at sea by reason of another member's negligence without regard to their relationship; it was of no consequence therefore to petitioner whether or not the alleged negligent order came from a fellow servant; the statute is irrelevant. The language of the section discloses no intention to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore.

The judgment of the court below is

Affirmed.

Mr. Justice Holmes concurs in the result.

Mr. Justice Pitney, Mr. Justice Brandeis and Mr. Justice Clarke dissent.

Act, 1917 -- 1

An Act to amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workmen's compensation law of any State,
October 6, 1917, ch. 97.

40 Statutes at Large 395.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause three of section twenty-four of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize."

Section 2. That clause three of section two hundred and fifty-six of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State."

Approved, October 6, 1917.

Knickerbocker Ice Co. v. Stewart -- 1

Knickerbocker Ice Company v. Stewart.

Supreme Court of the United States, 1920.

253 United States 149.

[The arguments of counsel are omitted.]

Mr. Justice McReynolds delivered the opinion of the court.

While employed by Knickerbocker Ice Company as bargeman and doing work of a maritime nature, William M. Stewart fell into the Hudson River and drowned -- August 3, 1918. His widow, defendant in error, claimed under the Workmen's Compensation Law of New York; the Industrial Commission granted an award against the Company for her and the minor children; and both Appellate Division and the Court of Appeals approved it 226 N.Y. 302. The latter concluded that the reasons which constrained us to hold the Compensation Law inapplicable to an employee engaged in maritime work -- *Southern Pacific Co. v. Jensen*, 244 U.S. 205 -- had been extinguished by "An Act To amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workmen's compensation law of any State," approved October 6, 1917, c. 97, 40 Stat. 395.

The provision of § 9 Judiciary Act, 1789 (c. 20 1 Stat. 76), granting to United States District Courts, "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . , saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it," was carried into the Revised Statutes -- §§ 563 and 711 -- and thence into the Judicial Code -- clause 3, §§ 24 and 256. The saving clause remained unchanged until the statute of October 6, 1917, added "and to claimants the rights and remedies under the workmen's compensation law of any State."

In *Southern Pacific Co. v. Jensen* (May, 1917) 244 U.S. 205, we declared that under § 2, Article III, of the Constitution ("The judicial power shall extend to... all cases of admiralty and maritime jurisdiction") and § 8, Article I (Congress may make necessary and proper laws for carrying out granted powers), "in the absence of some controlling statute the general maritime law as accepted by the federal courts constitutes part of our national law applicable to the matters within admiralty and maritime jurisdiction"; also that "Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country." And we held that, when applied to maritime injuries, the New York Workmen's Compensation Law conflicts with the rules adopted by the Constitution and to that extent is invalid. "The

necessary consequence would be destruction of the very uniformity in respect of maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded."

We also pointed out that the saving clause taken from the original Judiciary Act had no application, since, at most, it only specified common-law remedies, whereas the remedy prescribed by the compensation law was unknown to the common law and incapable of enforcement by the ordinary processes of any court. Moreover, if applied to maritime affairs, the statute would obstruct the policy of Congress to encourage investments in ships.

In *Chelentis v. Luckenbach S.S.Co.* (June, 1918), 247 U.S. 372, an action at law seeking full indemnity for injuries received by a sailor while on shipboard, we said: "Under the doctrine approved in *Southern Pacific Co v. Jensen*, no State has power to abolish the well recognized maritime rule concerning measure of recovery and substitute therefor the full indemnity rule of the common law. Such substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the 'uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.'" And, concerning the clause, "saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it," this: "In *Southern Pacific Co. v. Jensen*, we definitely ruled that it gave no authority to the several States to enact legislation which would work 'material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations.'" "Under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law." Thus we distinctly approved the view that the original saving clause conferred no substantive rights and did not authorize the States to do so. It referred only to remedies and to the extent specified permitted continued enforcement by the state courts of rights and obligations founded on maritime law.

In *Union Fish Co. v. Erickson*, 248 U.S. 308, an admiralty cause, a master sought to recover damages for breach of an oral contract with the owner of a vessel for services to be performed principally upon the sea. The latter claimed invalidity of the contract under a statute of California, where made, because not in writing and not to be performed within a year. We ruled: "The Circuit Court of Appeals correctly held that this contract was maritime in its nature and an action in admiralty thereon for its breach could not be defeated by the statute of California relied upon by the petitioner." "In

entering into this contract the parties contemplated no services in California. They were making an engagement for the services of the master of the vessel, the duties to be performed in the waters of Alaska, mainly upon the sea. The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California. The parties must be presumed to have had in contemplation the system of maritime law under which it was made." See also *The Blackheath*, 195 U.S. 361, 365.

As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution, itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.

Since the beginning, federal courts have recognized and applied the rules and principles of maritime law as something distinct from laws of the several States -- not derived from or dependent on their will. The foundation of the right to do this, the purpose for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago. "That we have a maritime law of our own, operative throughout the United States, cannot be doubted. . . One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." *The Lottawanna*, 21 Wall. 558, 574, 575. The field was not left unoccupied; the Constitution itself adopted the rules concerning rights and liabilities applicable therein; and certainly these are not less paramount than they would have been if enacted by Congress. Unless this be true it is quite impossible to account for a multitude of adjudications by the admiralty courts. See *Workman v. New York City*, 179 U.S. 552, 557, et seq.

The distinction between the indicated situation created by the Constitution relative to maritime affairs and the one resulting from the mere grant of power to regulate commerce without more, should not be forgotten. Also, it should be noted that federal laws are constantly applied in state courts -- unless inhibited their duty so requires. Constitution, Article VI, clause 2; Second Employers' Liability Cases, 223 U.S. 1, 55. Consequently mere reservation of partially concurrent cognizance to such courts by an act of Congress conferring an otherwise exclusive jurisdiction upon national courts, could not create substantive rights or obligations or indicate assent to their creation by the States.

When considered with former decisions of this court, a satisfactory interpretation of the Act of October 6, 1917, is difficult perhaps impossible. The Howell, 257 Fed. Rep. 578, and Rhode v. Grant Smith Porter Co., 259 Fed. Rep. 304, illustrate some of the uncertainties. In the first, the District Court in New York dismissed a libel, holding that rights and remedies prescribed by the Compensation Law of that State are exclusive and pro tanto supersede the maritime law. In the second, the District Court of Oregon ruled that when an employee seeks redress for a maritime tort by an admiralty court, rights, obligations and liabilities of the respective parties must be measured by the maritime law and these cannot be barred, enlarged or taken away by state legislation. Other difficulties hang upon the unexplained words "workmen's compensation law of any state."

Moreover, the act only undertook to add certain specified rights and remedies to a saving clause within a code section conferring jurisdiction. We have held that before the amendment and irrespective of that section, such rights and remedies did not apply to maritime torts because they were inconsistent with paramount federal law -- within that field they had no existence. Were the added words therefore wholly ineffective? The usual function of a saving clause is to preserve something from immediate interference -- not to create; and the rule is that expression by the legislature of an erroneous opinion concerning the law does not alter it. Endlich, Interpretation of Statutes, § 372.

Neither branch of Congress devoted much debate to the act under consideration -- altogether, less than two pages of the Record (65th Cong., pp. 7605, 7843). The Judiciary Committee of the House made no report; but a brief one by the Senate Judiciary Committee, copied below, [the report is omitted -- see 253 U.S. 162], probably indicates the general legislative purpose. And, with this and accompanying circumstances, the words must be read.

Having regard to all these things, we conclude that Congress undertook to permit application of Workmen's Compensation Laws of

the several States to injuries within the admiralty and maritime jurisdiction; and to save such statutes from the objections pointed out by *Southern Pacific Co. v. Jensen*. It sought to authorize and sanction action by the States in prescribing and enforcing, as to all parties concerned, rights, obligations, liabilities and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work.

And so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement, arises from the Constitution, as above indicated. The definite object of the grant was to commit direct control to the Federal Government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.

Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it to be dealt with according to its discretion -- not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the States to do so as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated but actually established -- it would defeat the very purpose of the grant. See *Sudden & Christenson v. Industrial Accident Commission*, 188 Pac. Rep. 803.

Congress cannot transfer its legislative power to the States -- by nature this is non-delegable. In *re Rahrer*, 140 U.S. 545, 560; *Field v. Clark*, 143 U.S. 649, 692; *Buttfield v. Stranahan*, 192 U.S. 470, 496; *Butte City Water Co. v. Baker*, 196 U.S. 119, 126; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U.S. 194, 214.

In *Clark Distilling Co. v. Western Md. Ry. Co.*, 242 U.S. 311, notwithstanding the contention that it violated the Constitution -- Article I, § 8, clause 3 -- this court sustained an act of Congress which prohibited the shipment of intoxicating liquors from one State into another when intended for use contrary to the latter's laws. Among other things, it was there stated that "the argument as to delegation to the States rests upon a mere misconception. It is true the regulation which the Webb-Kenyon Act contains permits state prohibitions to apply to movements of liquor from one State into another, but the will which causes the prohibitions to be applicable is that of Congress," i.e., Congress itself forbade

shipments of a designated character. And further: "the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest," i.e., different considerations would apply to innocuous articles of commerce.

The reasoning of that opinion proceeded upon the postulate that because of the peculiar nature of intoxicants which gives enlarged power concerning them, Congress might go so far as entirely to prohibit their transportation in interstate commerce. The statute did less. "We can see no reason for saying that although Congress in view of the nature and character of intoxicants had a power to forbid their movement in interstate commerce, it had not the authority to so deal with the subject as to establish a regulation (which is what was done by the Webb-Kenyon Law) making it impossible for one State to violate the prohibitions of the laws of another through the channels of interstate commerce. Indeed, we can see no escape from the conclusion that if we accepted the proposition urged, we would be obliged to announce the contradiction in terms that because Congress had exerted a regulation lesser in power than it was authorized to exert, therefore its action was void for excess of power." See *Delamater v. South Dakota*, 205 U.S. 93, 97.

Here, we are concerned with a wholly different constitutional provision -- one which, for the purpose of securing harmony and uniformity, prescribes a set of rules, empowers Congress to legislate to that end, and prohibits material interference by the States. Obviously, if every State may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which Framers of the Constitution both foresaw and undertook to prevent.

In *The Hamilton*, 207 U.S. 398, an admiralty proceeding, effect was given, as against a ship registered in Delaware, to a statute of that State which permitted recovery by an ordinary action for fatal injuries, and the power of a State to supplement the maritime law to that extent was recognized. But here the state enactment prescribes exclusive rights and liabilities, undertakes to secure their observance by heavy penalties and onerous conditions, and provides novel remedies incapable of enforcements by an admiralty court. See *New York Central R.R. Co. v. White*, 243 U.S. 188; *New York Central R.R. Co. v. Winfield*, 244 U.S. 147; *Southern Pacific Co. v. Jensen*, supra. The doctrine of *The Hamilton* may not be extended to such a situation.

The judgment of the court below must be reversed and the cause remanded with directions to take further proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. Justice Holmes, dissenting.

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205, the question was whether there was anything in the Constitution or laws of the United States to prevent a State from imposing upon an employer a limited but absolute liability for the death of an employee upon a gang-plank between a vessel and a wharf, which the State unquestionably could have imposed had the death occurred on the wharf. A majority of the Court held the State's attempt invalid, and thereupon, by an Act of October 6, 1917, c. 97, 40 Stat. 395, Congress tried to meet the effect of the decision by amending § 24, cl. 3 and § 25, cl. 3 of the Judicial Code; Act of March 3, 1911, c. 231, 36 Stat. 1087. Those sections in similar terms declared the jurisdiction of the District Court and the exclusive jurisdiction of the Courts of the United States, "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it." The amendment added, "and to claimants the rights and remedies under the workmen's compensation law of any State." I thought that claimants had those rights before. I think that they do now both for the old reasons and for new ones.

I do not suppose that anyone would say that the words, "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction," Const. Art. III, § 3, by implication enacted a whole code for master and servant at sea, that could be modified only by a constitutional amendment. But somehow or other the ordinary common-law rules of liability as between master and servant have come to be applied to a considerable extent in the admiralty. If my explanation, that the source is the common law of the several States, is not accepted, I can only say, I do not know how, unless by the fiat of the judges. But surely the power that imposed the liability can change it, and I suppose that Congress can do as much as the judges who introduced the rules. For we know that they were introduced and cannot have been elicited by logic alone from the mediaeval sea laws.

But if Congress can legislate it has done so. It has adopted statutes that were in force when the Act of October 6, 1917, was passed, and to that extent has acted as definitely as if it had repeated the words used by the several States -- a not unfamiliar form of law. *Gibbons v. Ogden*, 9 Wheat. 1, 207; *Hobart v. Drogan*, 10 Pet. 108, 119; *Coolley v. Board of Wardens*, 12 How. 299, 317, 318; *Interstate Consolidated Street Ry. Co. v. Massachusetts*, 207 U.S. 79, 84, 85; *Franklin v. United States*, 216 U.S. 559; *Louisville & Nashville R.R. Co. v. Western Union Telegraph Co.*, 237 U.S. 300, 303. An act of Congress, we always say, will be construed so as to sustain it, if possible, and therefore if it were necessary, the words "rights and remedies under the workmen's compensation law of any State" should be taken to refer solely to laws existing at

the time, as it certainly does at least include them. See *United States v. Paul*, 6 Pet. 141. Taking the act as so limited it is to be read as if it set out at length certain rules for New York, certain others more or less different for California, and so on. So construed the single objection that I have heard to the law is that it makes different rules for different places, and I see nothing in the Constitution to prevent that. The only matters with regard to which uniformity is provided for in the instrument so far as I now remember, are duties, imposts and excises, naturalization and bankruptcy, in Article I, §8. As to the purpose of the clause concerning the judicial power in these cases nothing is said in the instrument itself. To read into it a requirement of uniformity more mechanical than is educed from the express requirement of equality in the Fourteenth Amendment seems to me extravagant. Indeed it is contrary to the construction of the Constitution in the very clause of the Judiciary Act that is before us. The saving of a common-law remedy adopted the common law of the several States within their several jurisdictions, and I may add by way of anticipation, included at least some subsequent statutory changes. *Steamboat Co. v. Chase*, 16 Wall. 522, 530-534. *Knapp, Stout & Co. Company v. McCaffrey*, 177 U.S. 638, 645, 646. *Rounds v. Cloverport Foundry & Machine Co.*, 237 U.S. 303, 307. I cannot doubt that in matters with which Congress is empowered to deal it may make different arrangements for widely different localities with perhaps widely different needs. See *United States v. Press Publishing Co.*, 219 U.S. 1,9.

I thought that *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U.S. 311, went pretty far in justifying the adoption of state legislation in advance, as I cannot for a moment believe that apart from the Eighteenth Amendment special constitutional principles exist against strong drink. The fathers of the Constitution so far as I know approved it. But I can see no constitutional objection to such an adoption in this case if the act of Congress be given that effect. I assume that Congress could not delegate to state legislatures the simple power to decide what the law of the United States should be in that district. But when institutions are established for ends within the power of the States and not for any purpose of affecting the law of the United States, I take it to be an admitted power of Congress to provide that the law of the United States shall conform as nearly as may be to what for the time being exists. A familiar example is the law directing the common-law practice, &c. in the District Courts to "conform, as near as may be, to the practice," &c., "existing at the time" in the State Courts. *Rev. Stats.*, § 914. This was held by the unanimous Court to be binding in *Amy v. Watertown*, No. 1, 130 U.S. 301. See *Gibbons v. Ogden*, 9 Wheat. 1, 207, 208; *Cooley v. Board of Wardens*, 12 How. 299, 317, 318. I have mentioned the scope given to the saving of a common-law remedy and have referred to cases on the statutes adopting state pilotage laws. Other instances are to be found in the

acts of Congress, but these are enough. I think that the same principle applies here. It should be observed that the objection now dealt with is the only one peculiar to the adoption of local law in advance. That of want of uniformity applies equally to the adoption of the laws in force in 1917. Furthermore we are not called on now to consider the collateral effects of the act. The only question before us is whether the words in the Constitution. "The judicial power shall extend to . . . all cases of admiralty and maritime jurisdiction" prohibit Congress from passing a law in the form of the New York Workmen's Compensation Act -- if not in its present form, at least in the form in which it stood on October 6, 1917. I am of opinion that the New York law at the time of the trial should be applied and that the judgment should be affirmed.

Mr. Justice Pitney, Mr. Justice Brandeis and Mr. Justice Clarke concur in this opinion.

State Industrial Commission of the State of New York v. Nordenholt Corporation et al.

Supreme Court of the United States, 1922.

259 United States 263.

Certiorari to a judgment of the Supreme Court of New York, Appellate Division, entered upon a remittitur issued from the New York Court of Appeals pursuant to a decision of the latter court which affirmed a reversal by the former court of an order made under the State Workmen's Compensation Act by the present petitioner requiring the respondents to pay compensation to the widow of a longshoreman who died as the result of personal injuries received while in the employ of the respondent Nordenholt Corporation.

[The arguments of counsel are omitted.]

Mr. Justice McReynolds delivered the opinion of the court.

Sebastiana Insana, mother of Guiseppe Insana, asked of the New York State Industrial Commission an allowance under the Workmen's Compensation Law on account of her son's death, which she claimed resulted from accidental injuries received May 15, 1918, in the course of his employment as a longshoreman by the Nordenholt Corporation then unloading a vessel lying in navigable waters at Brooklyn. The cargo consisted of bags of cement. These were hoisted to the dock and there tiered up by Insana and other longshoremen. While thus engaged, he slipped and fell on the dock.

The Commission found "the accidental injuries which the said deceased sustained while working for his employer when he fell from the pile of bags to the floor were the activating cause of his death, and his death was a direct result of the injuries sustained by him while engaged in the regular course of his employment," and awarded compensation as specified by the statute. Upon authority of Keator v. Rock Plaster Manufacturing Co., 224 N.Y. 540, and Anderson v. Johnson Lighterage Co., 224 N.Y. 539, the Appellate Division reversed the award, 195 App. Div. 913, and the Court of Appeals affirmed its action without opinion, October 25, 1921, 232 N.Y. 507.

In both the Keator and Anderson Cases, the employee suffered injuries on land while helping to unload a vessel lying in navigable waters. The Court of Appeals held when so injured he was performing a maritime contract and that for reasons stated in Doey v. Howland Co., Inc., 224 N.Y. 30, the Industrial Commission had no jurisdiction to make an award. While making repairs on an ocean-going vessel lying at the dock in navigable waters, Doey fell down a hatchway and sustained fatal injuries. The Appellate Division

reversed an award of compensation, and the Court of Appeals affirmed its action, holding that as Doey was performing a maritime contract the Commission had no jurisdiction, under the doctrine of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, and *Clyde S.S. Co. v. Walker*, 244 U.S. 205, 255.

An award to Newham, injured on the dock while checking freight and doing work similar to that of a foreman of stevedores was set aside in *Newham v. Chile Exploration Co.*, 232 N.Y. 37 (October 18, 1921). The court said:

"We have held in *Matter of Doey v. Howland Co.*, 224 N.Y. 30, and in *Matter of Anderson v. Johnson Lighterage Co.*, 224 N.Y. 539, and in *Matter of Keator v. Rock Plaster Manufacturing Co.*, 224 N.Y. 540, that if the employee was engaged at the time of his injury in the performance of a maritime contract the state did not have jurisdiction of the matter and the Workmen's Compensation Law did not apply. This is the deduction which we have made from the cases of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, and *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149.

The court below has made deductions from *Southern Pacific Co. v. Jensen*; *Clyde S.S. Co. v. Walker*, and *Knickerbocker Ice Co. v. Stewart*, which we think are unwarranted, and has proceeded upon an erroneous view of the federal law.

When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land.

[In an omitted part of the opinion the court referred to *Southern Pacific Co. v. Jensen*, 244 U.S. 205; *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372; *Union Fish Co. v. Erickson*, 248 U.S. 308; *Peters v. Veasey*, 251 U.S. 121; *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149; *Western Fuel Co. v. Garcia*, 251 U.S. 233; *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469.]

Insana was injured upon the dock, an extension of the land, *Cleveland Terminal & Valley R.R. Co. v. Cleveland S.S. Co.*, 208 U.S. 316 and certainly prior to the Workmen's Compensation Act the employer's liability for damages would have depended upon the common law and the state statutes. Consequently, when the

Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law. And this is true whether awards under the act are made as upon implied agreements or otherwise. The stevedore's contract of employment did not contemplate any dominant federal rule concerning the master's liability for personal injuries received on land. In Jensen's case, rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. Here no such antagonism exists. There is no pertinent federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law. Compare New York Central R.R. Co. v. Winfield, 244 U.S. 147.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Grant Smith-Porter Ship Company v. Rohde.

Supreme Court of the United States, 1922.

257 United States 469

This was a proceeding in admiralty to recover damages for personal injuries resulting to an employee. The questions are determined on a certificate from the court below stating the facts.

[The arguments of counsel are omitted.]

Mr. Justice McReynolds delivered the opinion of the court.

Asking for instruction, the court below has sent up the following certificate and questions. Judicial Code, § 239.

"This cause came to the Circuit Court of Appeals for the Ninth Circuit upon an appeal from the United States District Court of Oregon from a judgment in favor of the appellee as libelant in that court, and against the appellant as libelee in that court, for the sum of \$10,000. The cause was a libel in admiralty for damages for injury sustained.

"Libelant, Herman F. Rohde, received injury while at work on a partially completed vessel lying at a dock in the Willamette River forming a part of the shipbuilding plant of respondent, Grant Smith-Porter Ship Company. The character of the work being done by libelant and the operations of respondent of which the work formed a part are as follows: Respondent, Grant Smith-Porter Ship Company, at and prior to the time of libelant's injury was engaged in constructing steam vessels for the United States government under contract with United States Shipping Board Emergency Fleet Corporation. One of these steam vessels was the steamer 'Ahala.' Prior to the time of libelant's injury this steamer had been launched in the Willamette River at Portland, Oregon, which river is a part of the navigable waters of the United States. At the time of libelant's injury, April 10, 1919, the vessel had been substantially completed, but was not ready for delivery and all of the work in process at the time of libelant's injury was work pertaining to the construction of the vessel by respondent, Grant Smith-Porter Ship Company. Libelant's work was that of a carpenter or joiner and at the time of the injury he was at work constructing a bulkhead enclosing certain tanks in the vessel.

"Libelant began this proceeding in personam against respondent in the District Court of the United States for the District of Oregon sitting in admiralty. Negligence of the employer, respondent Grant Smith-Porter Ship Company, in the construction and maintenance of a scaffold is alleged as the ground for recovering of damages.

"At and prior to the time of libelant's injury, there was in effect the so-called 'Workmen's Compensation Law' of the State of Oregon (Chapter 112, Laws of Oregon, 1913, as amended Chapter 271 Laws of 1915, and Chapter 288 Laws of 1917). The law applied to hazardous occupations (including shipbuilding) within the State of Oregon. An option is given both to employers and workmen to accept the compensation law or to reject it; that is, both employers and workmen are required to notify the proper state authority if it is desired not to come under the act. Without such notice, the law is applicable and payments are required to be made by the employer, which payments include deductions from the wages of workmen. Workmen who thus come under the act are entitled to receive certain specified payments in the event of injury, and the act provides (Section 12): 'And the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death, except as hereinafter specially provided.'

"At and prior to the time of libelant's injury, respondent was engaged in shipbuilding operations on the Willamette River at Portland within the State of Oregon; and libelant was in its employ as carpenter or joiner in such shipbuilding operations. Prior to the time of the injury, neither respondent, the employer, nor libelant, the workman, had notified the appropriate state authority of any rejection of the provisions of the Workmen's Compensation Act, and up to the time of the injury, respondent, the employer, had taken all the steps required by the compensation act to bring the work under its provisions; and there had been deducted and paid over to the commission administering the compensation fund payments from wages earned and paid libelant, the workman, up to the time of the injury. Payroll deductions from the wages of libelant and other workmen were made without regard to whether or not the work done by such workman was on vessels under construction on the ways or vessels under construction after launching.

"Questions of law concerning which the Circuit Court of Appeals of the Ninth Circuit desires the instruction of the Supreme Court are: 1. Is there jurisdiction in admiralty because the alleged tort occurred on navigable waters? 2. Is libelant entitled because of his injury to proceed in admiralty against respondent for the damages suffered?"

The contract for constructing "The Ahala" was non-maritime, and although the incompleeted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment, nor his activities at the time had any direct relation to navigation or commerce. *Thames Towboat Co. v. The Schooner "Francis McDonald,"* 254 U.S. 242. The injury was suffered within a State whose positive enactment prescribed an exclusive remedy therefor. And as both parties had accepted and proceeded under the statute by making payments to the Industrial Accident Fund it

cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime law *Union Fish Co. v. Erickson*, 248 U.S. 308. Under such circumstances regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations. *Southern Pacific Co. v. Jensen*, 244 U.S. 205; *Western Fuel Co. v. Garcia*, ante, 233.

The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the transaction and in tort matters upon the locality, has been so frequently asserted by this court that it must now be treated as settled. *Waring v. Clarke*, 5 How. 441, 459; *Philadelphia, Wilmington & Baltimore R.R. Co. v. Philadelphia Towboat Co.*, 23 How. 209, 215; *The Propeller Commerce*, 1 Black, 574, 579; *The Plymouth*, 3 Wall. 20, 33; *Leathers v. Blessing*, 105 U.S. 626, 630; *Martin v. West*, 222 U.S. 191, 197. See *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, 59; and *Hughes on Admiralty*, 2d ed., p. 195.

The Workmen's Compensation Law of Oregon declares that when a workman subject to its terms is accidentally injured in the course of his employment he "shall be entitled to receive from the Industrial Accident Fund hereby created the sum or sums hereinafter specified and the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death . . ."

In *Western Fuel Co. v. Garcia*, supra, we recently pointed out that, as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented by state statutes. The present case is controlled by that principle. The statute of the State applies and defines the rights and liabilities of the parties. The employee may assert his claim against the Industrial Accident Fund to which both he and the employer have contributed as provided by the statute, but he can not recover damages in an admiralty court.

This conclusion accords with *Southern Pacific Co. v. Jensen*, 244 U.S. 205; *Chelentis v. Luckenbach S.S. Co.*, 247 U. S. 372; *Union Fish Co. v. Erickson*, 248 U.S. 308; and *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149. In each of them the employment or contract was maritime in nature and the rights and liabilities of the parties were prescribed by general rules of maritime law essential to its proper harmony and uniformity. Here the parties contracted with reference to the state statute; their rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential.

As pointed out in *The Ira M. Hedges*, 218 U.S. 264, 270, "there sometimes is difficulty in distinguishing between matters going to the jurisdiction and those determining the merits." The certified questions are not wholly free from uncertainty of that nature and we therefore state our view of their real intendment.

Construing the first question as meaning to inquire whether the general admiralty jurisdiction extends to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying on navigable waters within a State, we answer, yes.

Assuming that the second question presents the inquiry whether in the circumstances stated the exclusive features of the Oregon Workmen's Compensation Act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist, we also answer, yes.

Mr. Justice Clarke concurs in the result.

The Chief Justice took no part in the decision of this cause.

The Runa. Red Cross Line, Petitioner, v. Atlantic Fruit Company.

Supreme Court of the United States, 1924.

2 American Maritime Cases 418.

Mr. Justice Brandeis delivered the opinion of the Court.

The Arbitration Law of New York, enacted April 19, 1920, c. 275, and amended March 1, 1921, c. 14, declares that a provision in a written contract to settle by arbitration a controversy thereafter arising between the parties "shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." It authorizes the Supreme Court (of the State), or a judge thereof, to direct, upon the application of a party to such an agreement, that the arbitration proceed in the manner so provided; to appoint an arbitrator for the other party, in case he fails to avail himself of the method prescribed by the contract; and to stay trial of the action, if suit has been begun. The Law applies to contracts made before its enactment, if the controversy arose thereafter. *Matter of Berkovitz vs. Arbib & Houlberg*, 230 N.Y. 261, 270, 271. Prior to this statute an agreement to arbitrate was legal in New York and damages were recoverable for a breach thereof *Haggart vs. Morgan*, 5 N.Y. 422, 427. But specific performance of the promise would not be enforced; the promise could not be pleaded in bar of an action; and it would not support a motion to stay. *Finucane Co. vs. Board of Education*, 190 N.Y. 76, 83. These limitations upon the enforcement of a promise to arbitrate had been held to be part of the law of remedies. *Meacham vs. Jamestown, etc. R.R. Co.*, 211 N.Y. 346, 352. The purpose of the statute was to make specific performance compellable. 230 N.Y. 261, 269. Whether agreements for arbitration of disputes arising under maritime contracts are within the scope of the statute, and whether, if so construed and applied, the state law conflicts with the Federal Constitution, are the questions for decision.

Proceeding under the Arbitration Law, the Red Cross Line applied to the Supreme Court of the State, on April 12, 1921, for an order directing the Atlantic Fruit Company to join with it in the arbitration of a dispute arising out of the charter of the steamship Runa. The substantive claim was that the master had not prosecuted the voyage with the utmost dispatch and, hence, that certain amounts paid by the charterer should be returned. The charter party, which had been executed in New York on November 28, 1919, contained the following provision:

"That should any dispute arise between Owners and Charterers the matters in dispute shall be referred to three persons in New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of Court. . . ."

Before instituting this proceeding the Red Cross Line had duly appointed its arbitrator; but the Atlantic Fruit Company had refused to appoint the one to be named by it. The court ordered the latter company to proceed to arbitration as provided in the contract, and to appoint its arbitrator by a day fixed. This order was affirmed by the Appellate Division without opinion. Its judgment was reversed by the Court of Appeals, which stated that the controversy between the parties is one of admiralty; that under Article III, Section 2, of the Federal Constitution, and Section 256, Clause Third, of the Judicial Code, such controversies are within the exclusive jurisdiction of the admiralty courts; and that the State had no power to compel the charter owner to proceed to arbitration. *Matter of Red Cross Line vs. Atlantic Fruit Co.*, 233 N.Y. 373. The case is here on writ of certiorari under Section 237 of the Judicial Code as amended. 260 U.S. 716.

Respondent contends that the petition should be dismissed for lack of a federal question. The argument is that the Court of Appeals held, as a matter of statutory construction, that the Arbitration Law does not extend to controversies which are within the admiralty jurisdiction; and that the substantive claim sought to be enforced is so cognizable. The claim to recover an amount paid under a charter party as charter hire is within the admiralty jurisdiction. *Morewood vs. Enequist*, 23 How. 491. If that court had construed the Arbitration Law as excluding from its scope controversies which are within the admiralty jurisdiction, the construction given to the State statute would bind us; and there would be no occasion to consider the constitutional question presented. *Quong Ham Wah Co. vs. Industrial Accident Commission*, 255 U.S. 445; *Ward & Gow vs. Krinsky*, 259 U.S. 503, 510. An expression used by the Court of Appeals lends some color to respondent's contention, 233 N.Y. 373, 381. But a reading of the whole opinion shows that the State Court excluded maritime contracts from the operation of the Law, not as a matter of statutory construction, but because it thought the Federal Constitution required such action. Compare *State Industrial Commission vs. Nordenholt Corporation*, 259 U.S. 263. We proceed, therefore, to the consideration of the constitutional question.

The federal courts -- like those of the States and of England -- have, both in equity and at law, denied, in large measure, the aid of their processes to those seeking to enforce executory agreements to arbitrate disputes. They have declined to compel specific performance, *Tobey vs. County of Bristol*, 3 Story 800, 819-826; or to stay proceedings on the original cause of action. Story, *Equity Jurisprudence*, section 670. They have not given effect to the executory agreement as a plea in bar; except in those cases where the agreement, leaving the general question of liability to judicial decision, confines the arbitration to determining the amount payable or to furnishing essential evidence of specific facts, and makes it a condition precedent to the cause of action. *Hamilton vs. Liverpool, London & Globe Insurance Co.*, 136 U.S. 242, 255;

Martinsburg & Potomac R.R. Co. vs March, 114 U.S. 549. But an agreement for arbitration is valid, even if it provides for the determination of liability. If executory, a breach will support an action for damages. Hamilton vs. Home Insurance Co., 137 U.S. 370, 385-386. If executed, -- that is, if the award has been made, -- effect will be given to the award in any appropriate proceeding at law, or in equity. Karthaus vs. Ferrer, 1 Pet. 222; Burchell vs. Marsh, 17 How. 344; Bayne vs. Morris, 1 Wall. 97. And, although there is no federal legislation on the subject, an executory agreement, however comprehensive, will, if made a rule of court, be enforced in courts of the United States by any appropriate process. Hecker vs. Fowler, 2 Wall. 123.

In admiralty, also, agreements to submit controversies to arbitration are valid. Reference of maritime controversies to arbitration has long been common practice. Houseman vs. Schooner North Carolina, 15 Pet. 40, 45. The insertion in a charter party of a provision for such settlement of disputes arising thereunder was practiced at least as early as the eighteenth century. Thompson vs. Charnock, 2 Durnford & East 139. For breach of an executory agreement a libel for damages will lie. An executory agreement may be made a rule of court. United States vs. Farragut, 22 Wall. 406, 419; Kleine vs. Catara, 2 Gall. 61. An award will be given full effect. The agreement whether executory or executed, can not be enforced in admiralty by specific performance; merely because that court lacks the power to grant equitable relief. The Eclipse, 135 U.S. 599, 608. The executory agreement (perhaps in deference to the rule prevailing at law and in equity) will not be given effect as a bar to a libel on the original cause of action. The reluctance of the admiralty court to lend full aid goes, however, merely to the remedy. The substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation.

By reason of the saving clause, state courts have jurisdiction in personam, concurrent with the admiralty courts, of all causes of action maritime in their nature arising under charter parties. Judiciary Act of September 24, 1789, c. 20, sec. 9, 1 Stat. 73, 77; Judicial Code, Sec. 24, Par. 3; Leon vs. Galceran, 11 Wall. 185; Schoonmaker vs. Gilmore, 102 U.S. 118; Chappell vs. Bradshaw, 128 U.S. 132; De Lovio vs. Boit, 2 Gall. 398, 475. The "right of a common law remedy," so saved to suitors, does not, as has been held in cases which presently will be mentioned, include attempted changes by the States in the substantive admiralty law, but it does include all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law. Knapp, Stout & Co. vs. McCaffrey, 177 U.S. 638, 644, et seq.; Round vs. Cloverport Foundry & Machine Co., 237

U.S. 303. A State may not provide a remedy in rem for any cause of action within the admiralty jurisdiction. *The Hine vs. Trevor*, 4 Wall. 555; *The Glide*, 167 U.S. 606. But otherwise, the State, having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents, as it sees fit. New York, therefore had the power to confer upon its courts the authority to compel parties within its jurisdiction to specifically perform an agreement for arbitration, which is valid by the general maritime law, as well as by the law of the State, which is contained in a contract made in New York and which, by its terms, is to be performed there.

This state statute is wholly unlike those which have recently been held invalid by this Court. The Arbitration Law deals merely with the remedy in the state courts in respect of obligations voluntarily and lawfully incurred. It does not attempt either to modify the substantive maritime law or to deal with the remedy in courts of admiralty. The Workmen's Compensation Laws involved in *Southern Pacific Co. vs. Jensen*, 244 U.S. 205; *Clyde Steamship Co. vs. Walker*, 244 U.S. 255; *Peters vs. Veasey*, 251 U.S. 121; and *Knickerbocker Ice Co. vs. Stewart*, 253 U.S. 149, were declared invalid, because their provisions were held to modify or displace essential features of the substantive maritime law. In *Union Fish Co. vs. Erickson*, 248 U.S. 308, the state statute did not deal with the substantive maritime law. It was held invalid, because, as construed and applied, it attempted to modify the remedial law of the admiralty courts. The statutes involved in all the cases were declared valid. Those giving the substantive right to recover for negligence resulting in death were upheld, because they merely supplemented the substantive maritime law and did not conflict with any essential feature of it. *Western Fuel Co. vs. Garcia*, 257 U.S. 233; *Great Lakes Dredge & Dock Co. vs. Kierejewski*, 261 U.S. 479, 1923 A.M. C. 441. See also *Steamboat Co. vs. Chase*, 16 Wall. 522; *Sherlock vs. Alling*, 93 U.S. 99, 104; *The Hamilton*, 207 U.S. 398; *La Bourgogne*, 210 U.S. 95, 138. The Workmen's Compensation Laws involved in other cases were upheld, because their provisions, as applied, were found not to be in conflict with any essential feature of the general maritime law. *Grant Smith-Porter, Co. vs. Rhode*, 257 U.S. 469; *Industrial Commission vs. Nordenholt Co.*, 259 U.S. 263. No state statute was involved in *Chelentis vs. Luckenbach*, 247 U.S. 372. The court held there that under the general maritime law the seaman had no substantive right to recover; that this rule of substantive maritime law applied whether he sued in the state courts or in the court of admiralty; and that the Seaman's Act of 1915 did not change this rule of substantive law. In no case has this Court held void a state statute which neither modified the substantive maritime law, nor dealt with the remedies enforceable in admiralty.

The Runa -- 5

As the constitutionality of the remedy provided by New York for use in its own courts is not dependent upon the practice or procedure which may prevail in admiralty, we have no occasion to consider whether the unwillingness of the federal courts to give full effect to executory agreements for arbitration can be justified.

Reversed.

[The dissenting opinion of Mr. Justice McReynolds is omitted.]

Act, 1922 -- 1

An Act to amend section 24 and section 256 of the Judicial Code,
June 10, 1922, ch. 216.

42 Statutes at Large 634.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause 3 of section 24 of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the workmen's compensation law of any State, District Territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize; Provided, That the jurisdiction of the district courts shall not extend to causes arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, District, Territory, or possession of the United States."

Sec. 2. That clause 3 of section 256 of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States."

State of Washington v. Dawson -- 1

State of Washington, Plaintiff-in-Error, v. W.C. Dawson & Co.

California Industrial Accident Commission et al., Plaintiff-in-Error, v. James Rolph Company and General Accident, Fire and Life Assurance Corporation, Limited.

Supreme Court of the United States, 1924.

2 American Maritime Cases 403.

In error to the Supreme Courts of the States of Washington and California.

Mr. Justice McReynolds delivered the opinion of the Court.

These causes turn upon the same point, were heard together and it will be convenient to decide them by one opinion.

The immediate question presented by number three hundred sixty-six is whether one engaged in the business of stevedoring, whose employees work only on board ships in the navigable waters of Puget Sound, can be compelled to contribute to the accident fund provided for by the Workmen's Compensation Act of Washington. The State maintains that the objections to such requirement pointed out in *Knickerbocker Ice Co. vs. Stewart*, 253 U.S. 149, were removed by the Act of June 10, 1922, ch. 216, 42 Stats. 634. Its Supreme Court ruled otherwise. 122 Wash. 572, 582.

In number six hundred eighty-four the Supreme Court of California approved the conclusion of the Supreme Court of Washington and declared the Act of June 10, 1922, went beyond the power of Congress. It accordingly held the Industrial Accident Commission had no jurisdiction to award compensation for the death of a workman killed while actually engaged at maritime work, under maritime contract, upon a vessel moored at her dock in San Francisco Bay, and discharging her cargo. -- Calif. --

The judgments below must be affirmed; the doctrine of *Knickerbocker Ice Co. vs. Stewart*, to which we adhere, permits no other conclusion. There we construed the Act of October 6, 1917, ch. 97 (Johnson Amendment) 40 Stats. 395, which undertook to amend the provision of sections 24 and 256, Judicial Code, which saves to suitors in all civil causes of admiralty and maritime jurisdiction "the right of a common law remedy where the common law is competent to give it," by adding the words "and to claimants the rights and remedies under the workmen's compensation law of any State." After declaring the true meaning and purpose of the Act, we held it beyond the power of Congress.

Except as to the master and members of the crew, the Act of 1922 must be read as undertaking to permit application of the workmen's compensation laws of the several States to injuries within the admiralty and maritime jurisdiction substantially as provided by the Act of 1917. The exception of master and crew is wholly insufficient to meet the objections to such enactments heretofore often pointed out. Manifestly, the proviso which denies jurisdiction to district courts of the United States over causes arising out of the injuries specified was intended to supplement the provision covering rights and remedies under State compensation laws. As that provision is ineffective, so is the proviso. To hold otherwise would bring about an unfortunate condition wholly outside the legislative intent.

Counsel insist that later conclusions of this Court have modified the doctrine of *Southern Pacific Co. vs. Jensen*, 244 U.S. 205, and *Knickerbocker Ice Co. vs. Stewart*, *supra*. They rely especially upon *Western Fuel Co. vs. Garcia*, 257 U.S. 233, *Grant Smith-Porter Co. vs. Rohde*, 257 U.S. 469, and *Industrial Commission vs. Nordenholt Co.*, 259 U.S. 263.

[In an omitted part of the opinion the court referred to *Southern Pacific Co. v. Jensen*; *Knickerbocker Ice Co. v. Stewart*; *Western Fuel Co. v. Garcia*; *Grant Smith-Porter Co. v. Rohde*; and *Industrial Commission v. Nordenholt Co.*]

None of the later causes depart from the doctrine of *Southern Pacific Co. vs. Jensen* and *Knickerbocker Ice Co. vs. Stewart*, and, we think, the provisions of the Act of 1922 cannot be reconciled therewith.

Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees; but it may not be delegated to the several States. The grant of admiralty and maritime jurisdiction looks to uniformity; otherwise wide discretion is left to Congress. *Knickerbocker Ice Co. vs. Stewart*. Exercising another power -- to regulate commerce -- Congress has prescribed the liability of interstate carriers by railroad for damages to employees (Act April 22, 1908, ch. 149, 35 Stat. 65) and thereby abrogated conflicting local rules. *New York Central R.R. Co. vs. Winfield*, 244 U.S. 147.

This cause presents a situation where there was no attempt to prescribe general rules. On the contrary, the manifest purpose was to permit any State to alter the maritime law and thereby introduce conflicting requirements. To prevent this result the Constitution adopted the law of the sea as the measure of maritime rights and obligations. The confusion and difficulty, if vessels were compelled to comply with the local statutes at every port, are not difficult to see. Of course, some within the States may prefer local rules; but the Union was formed with the very definite design

State of Washington v. Dawson -- 3

of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interests must yield to the common welfare. The Constitution is supreme.

Affirmed.

[Mr. Justice Holmes declined to concur and Mr. Justice Brandeis dissented. The dissenting opinion is omitted.]

The Allianca -- 1

The Allianca. Panama Railroad Company, Plaintiff in Error, v.
Andrew Johnson.

Supreme Court of the United States, 1924.

2 American Maritime Cases 551.

Mr. Justice Van Devanter delivered the opinion of the Court.

This was an action by a seaman against his employer, the owner of the ship on which he was serving, to recover damages for personal injuries suffered at sea while he was ascending a ladder from the deck to the bridge in the course of his employment, -- the complaint charging that the injuries resulted from negligence of the employer in providing an inadequate ladder and negligence of the ship's officers in permitting a canvas dodger to be stretched and insecurely fastened across the top of the ladder and in ordering the seaman to go up the ladder. The employer was a New York corporation. The ship was a domestic merchant vessel which at the time of the injuries was returning from an Ecuadorian port. The action was brought on the common-law side of a District Court of the United States, and the right of recovery was based expressly on section 20 of the Act of March 4, 1915, c. 153, 38 Stat. 1185, as amended by Section 33 of the Act of June 5, 1920, c. 250, 41 Stat. 1007, which reads as follows:

"Sec. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The defendant unsuccessfully demurred to the complaint and then answered. The issues were tried to the court and a jury; a verdict for the plaintiff was returned, and a judgment was entered thereon, which the Circuit Court of Appeals affirmed. 1923 A.M.C. 798, 289 Fed. 964. The defendant prosecutes this writ of error.

The defendant objects that the statute whereon the plaintiff based his right of action is in conflict with section 2 of Article III of the Constitution, which extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction."

Before coming to the particular grounds of the objection, it will be helpful to refer briefly to the purpose and scope of the constitutional provision as reflected in prior decisions.

As there could be no cases of "admiralty and maritime jurisdiction" in the absence of some maritime law under which they could arise, the provision presupposes the existence in the United States of a law of that character. Such a law or system of law existed in Colonial times and during the Confederation and commonly was applied in the adjudication of admiralty and maritime cases. It embodied the principles of the general maritime law, sometimes called the law of the sea, with modifications and supplements adjusting it to conditions and needs on this side of the Atlantic. The framers of the Constitution were familiar with that system and proceeded with it in mind. Their purpose was not to strike down or abrogate the system, but to place the entire subject -- its substantive as well as its procedural features -- under national control because of its intimate relation to navigation and to interstate and foreign commerce. In pursuance of that purpose the constitutional provision was framed and adopted. Although containing no express grant of legislative power over the substantive law, the provision was regarded from the beginning as implicitly investing such power in the United States. Commentators took that view; Congress acted on it, and the courts, including this court, gave effect to it. Practically therefore the situation is as if that view were written into the provision. After the Constitution went into effect, the substantive law theretofore in force was not regarded as superseded or as being only the law of the several States, but as having become the law of the United States -- subject to power in Congress to alter, qualify or supplement it as experience or changing conditions might require. When all is considered, therefore, there is no room to doubt that the power of Congress extends to the entire subject and permits of the exercise of a wide discretion. But there are limitations which have come to be well recognized. One is that there are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them or including a thing falling clearly without. Another is that the spirit and purpose of the constitutional provision require that the enactments, -- when not relating to matters whose existence or influence is confined to a more restricted field, as in *Cooley vs. Board of Wardens*, 12 How. 299, 319, -- shall be coextensive with and operate uniformly in the whole of the United States. *Waring vs. Clarke*, 5 How. 441, 445; *The Lottawanna*, 21 Wall. 558, 574, 577; *Butler vs. Boston & Savannah Steamship Co.*, 130 U.S. 527, 556, 557; *In re Garnett*, 141 U.S. 1, 12; *Southern Pacific Co. vs. Jensen*, 244 U.S. 205, 215; *Knickerbocker Ice Co. vs. Stewart*, 253 U.S. 149, 164; *Washington vs. Dawson & Co.*, 1923 A.M.C. 403, 264 U.S. -- ; 2 Story Const., 5th ed. secs. 1663, 1664, 1672.



In this connection it is well to recall that the Constitution, by section 1 of Article III, declares that the judicial power of the United States shall be vested in one Supreme Court "and in such inferior courts as the Congress may from time to time ordain and establish," and, by section 8 of Article I, empowers the Congress to make all laws which shall be necessary and proper for carrying into execution the several powers vested in the government of the United States. Mention should also be made of the enactment by the first Congress, now embodied in sections 24 and 256 of the Judicial Code, whereby the District Courts are given exclusive original jurisdiction "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it."

The particular grounds on which a conflict with section 2 of Article III is asserted are that the statute enables a seaman asserting a cause of action essentially maritime to withdraw it from the reach of the maritime law and the admiralty jurisdiction, and to have it determined according to the principles of a different system applicable to a distinct and irrelevant field, and also disregards the restriction in respect of uniformity. For reasons which will be stated we think neither ground can be sustained.

The statute is concerned with the relative rights and obligations of seamen and their employers arising out of personal injuries sustained by the former in the course of their employment. Without question this is a matter which falls within the recognized sphere of the maritime law, and in respect of which the maritime rules have differed materially from those of the common law applicable to injuries sustained by employees in nonmaritime service. But, as Congress is empowered by the constitutional provision to alter, qualify or supplement the maritime rules, there is no reason why it may not bring them into relative conformity to the common-law rules or some modification of the latter, if the change be country-wide and uniform in operation. Not only so, but the constitutional provision interposes no obstacle to permitting rights founded on the maritime law or an admissible modification of it to be enforced as such through appropriate actions on the common-law side of the courts -- that is to say through proceedings in personam according to the course of the common law. *Chelentis vs. Luckenbach Steamship Co.*, 247 U.S. 372, 384; *Knickerbocker Ice Co. vs. Stewart*, 253 U.S. 149, 159. This was permissible before the Constitution, and it is still permissible. Judicial Code, secs. 24 and 256; *Waring vs. Clarke*, 5 How. 441, 460; *New Jersey Steam Navigation Co. vs. Merchants' Bank*, 6 How. 344, 390; *Leon vs. Galceran*, 11 Wall. 185, 188, 191; *Schoonmaker vs. Gilmore*, 102 U.S. 118; *Knapp, Stout & Co. vs. McCaffrey*, 177 U.S. 638, 646; *Carlisle Packing Co. vs. Sandanger*, 259; *Red Cross Line vs. Atlantic Fruit Co.*, 1924 A.M.C. 418, 264 U.S.

Rightly understood the statute neither withdraws injuries to seamen from the reach and operation of the maritime law, nor enables the seamen to do so. On the contrary, it brings into that law new rules drawn from another system and extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules. The election is between alternatives accorded by the maritime law as modified, and not between that law and some nonmaritime system.

The source from which the new rules are drawn contributes nothing to their force in the field to which they are translated. In that field their strength and operation come altogether from their inclusion in the maritime law. *Louisville & Nashville R.R. Co. vs. Western Union Telegraph Co.*, 237 U.S. 300, 303. True, they are not in so many words made part of that law; but an express declaration is not essential to make them such. As originally enacted, section 20 was part of an act the declared purpose of which was "to promote the welfare of American seamen." It then provided that in suits to recover damages for personal injuries "seamen having command shall not be held to be fellow-servants with those under their authority," and in *Chelentis vs. Luckenbach Steamship Co.*, supra, p. 384, this court treated it as part of the maritime law, but held it did not disclose a purpose "to impose on shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore." After that decision the section was re-enacted in the amended form hereinbefore set forth as part of an act the expressed object of which was "to provide for the promotion and maintenance of the American merchant marine." In that form it makes applicable to personal injuries suffered by seamen in the course of their employment "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees." Thus its origin, environment and subject-matter show that it is intended to, and does, bring the rules to which it refers into the maritime law.

But it is insisted that, even if the statute brings those rules into that law, it is still invalid in that it restricts the enforcement of rights founded on them to actions at law, and thereby encroaches on the admiralty jurisdiction intended by the Constitution. It must be conceded that the construction thus sought to be put on the statute finds support in some of its words, and also that if it be so construed a grave question will arise respecting its constitutional validity. But, as this court often has held, "a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts on that score." *United States vs. Jin Fuey Moy*, 241 U.S. 394, 401; *United States vs. Delaware and Hudson Co.*, 213 U.S. 366, 407-408; *Beander vs. Barnett*, 255 U.S. 224. The question arises, therefore, whether the statute is fairly open to such construction. There may be room for diverging opinions about the answer, but we think the better view is that it should be in the affirmative.

The course of legislation, as exemplified in Section 9 of the Judiciary Act of 1789, Sections 563 (par. 8) and 711 (par. 3) of the Revised Statutes, and Sections 24 (par. 3) and 256 (par. 3) of the Judicial Code, always has been to recognize the admiralty jurisdiction as open to the adjudication of all maritime cases as a matter of course; and to permit a resort to common-law remedies through appropriate proceedings in personam as a matter of admissible grace. It therefore is reasonable to believe that had Congress intended by this statute to withdraw rights of action founded on the new rules from the admiralty jurisdiction and to make them cognizable only on the common-law side of the courts, it would have expressed that intention in terms befitting such a pronounced departure, -- that is to say, in terms unmistakably manifesting a purpose to make the resort to common-law remedies compulsory, and not merely permissible. But this was not done. On the contrary, the terms of the statute in this regard are not imperative but permissive. It says "may maintain" an action at law "with the right of trial by jury," the import of which is that the injured seaman is permitted, but not required, to proceed on the common law side of the court with a trial by jury as an incident. The words "in such action" in the succeeding clause are all that are troublesome. But we do not regard them as meaning that the seaman may have the benefit of the new rules if he sues on the law side of the court, but not if he sues on the admiralty side. Such a distinction would be so unreasonable that we are unwilling to attribute to Congress a purpose to make it. A more reasonable view, consistent with the spirit and purpose of the statute as a whole, is that the words are used in the sense of "an action to recover damages for such injuries," the emphasis being on the object of the suit rather than the jurisdiction in which it is brought. So we think the reference is to all actions brought to recover compensatory damages under the new rules as distinguished from the allowances covered by the old rules, usually consisting of wages and the expense of maintenance and cure. See *The Osceola*, 189 U.S. 158; *The Iroquois*, 194 U.S. 240; *Chelentis vs. Luckenbach Steamship Co.*, 247 U.S. 372. In this view the statute leaves the injured seaman free under the general law -- sections 24 (par.3) and 256 (par.3) of the Judicial Code -- to assert his right of action under the new rules on the admiralty side of the court. On that side the issues will be tried by the court, but if he sues on the common-law side there will be a right of trial by jury. So construed, the statute does not encroach on the admiralty jurisdiction intended by the Constitution, but permits that jurisdiction to be invoked and exercised as it has been from the beginning.

Criticism is made of the statute because it does not set forth the new rules but merely adopts them by a generic reference. But the criticism is without merit. The reference, as is readily understood, is to the Employers' Liability Act of April 22, 1908, c. 149, 35 Stat. 65, and its amendments. This is a recognized mode of incorporating one statute or system of statutes into another, and

serves to bring into the latter all that is fairly covered by the reference, *Kendall vs. United States*, 12 Pet. 524, 625; *In re Heath*, 144 U.S. 92; *Corry vs. Baltimore*, 196 U.S. 466, 477; *Interstate Ry. Co. vs. Massachusetts*, 207 U.S. 79, 84.

The asserted departure from the restriction respecting uniformity in operation is without any basis. The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform. The national legislation respecting injuries to railway employees engaged in interstate and foreign commerce which it adopts has a uniform operation, and neither is nor can be deflected therefrom by local statutes or local views of common law rules. *Second Employers' Liability Cases*, 223 U.S. 1, 51, 55; *Baltimore & Ohio R.R. Co. vs. Baugh*, 149 U.S. 368, 378. Of course that legislation will have a like operation as part of this statute. ✓

A further objection urged against the statute is that it conflicts with the due process of law clause of the Fifth Amendment in that it permits injured seamen to elect between varying measures of redress and between different forms of action without according a corresponding right to their employers, and therefore is unreasonably discriminatory and purely arbitrary. The complaint is not directed against either measure of redress or either form of action but only against the right of election as given. Of course the objection must fail. There are many instances in the law where a person entitled to sue may choose between alternative measures of redress and modes of enforcement; and this has been true since before the Constitution. But it never has been held, nor thought so far as we are advised, that to permit such a choice between alternatives otherwise admissible is a violation of due process of law. In the nature of things, the right to choose cannot be accorded to both parties, and, if accorded to either, should rest with the one seeking redress rather than the one from whom redress is sought.

At the trial the defendant requested a directed verdict in its favor on the ground that no actionable negligence was shown, but the request was denied. Although approved by the Circuit Court of Appeals, the ruling is complained of here. In view of the concurring action of the two courts, we deem it enough to say that the record discloses sufficient evidence of negligence to warrant its submission to the jury.

The defendant also complains that two requests which it preferred on the subject of assumption of risk were denied. The requests were so framed that, considering the state of the evidence, they would not have conveyed a right understanding of the subject and might well have proved misleading. Their refusal was not error.

Judgment affirmed.

Mr. Justice Sutherland did not hear the argument or participate in the decision.