THE FLORA.

Case No. 4,878.

{1 Biss. 29;[1] 3 Chi. Leg. News, 130.}

District Court, N. D. Illinois. Oct. Term, 1853.

ORIGIN OF ADMIRALTY JURISDICTION ON WESTERN WATERS.

1. The admiralty jurisdiction on the western lakes and rivers is not limited to cases within the act of February 26, 1845 {5 Stat. 726}.
2. The district court may resort to the act of September 24, 1789 {1 Stat. 73}, to sustain its jurisdiction.

In admiralty. In this case the libel alleged that a scowboat, of the burthen of sixty tons, the property of the libellant, was engaged in carrying earth from the excavation of the Chicago harbor, on the waters of the western shore of Lake Michigan, and upon that lake and the navigable waters thereof; that on the 14th of June, 1853, the boat was lying alongside the north pier of the Chicago harbor, and while there was run into and sunk by the brig Flora, a vessel licensed and enrolled, etc., of about two hundred tons burthen, and then bound on a voyage from a port in Michigan to Chicago, loaded with lumber. The objection was taken that the boat sunk was not licensed and enrolled for the coasting trade, and was not employed at the time in business of commerce and navigation between ports and places in different states and territories, upon the lakes and navigable waters thereof (all of which was admitted), as required by the act of February 26, 1845 {supra}, and that the court had no jurisdiction of the case.

DRUMMOND, District Judge. The ninth section of the judiciary act of 1789 (1 Stat. 76) gave to the district courts cognizance of all civil causes of admiralty and maritime jurisdiction. The tenth section gave the same jurisdiction to the district court of Kentucky. The case of The Thomas Jefferson, 10 Wheat. {23 U. S.} 428, was a libel filed in

the district court of Kentucky for wages earned in a voyage from a port in that state up the Missouri river and back again to the port of departure. It was a voyage throughout, several hundred miles above the ebb and flow of the tide, and the supreme court of the United States held that the decree of the district court, dismissing the libel for want of jurisdiction, was right, because the contract was not a maritime contract "upon acknowledged principles of law."

In The Genesee Chief v. Fitzhugh, 12 How. [53 U. S.] 443, the supreme court overruled the decision in the case of The Thomas Jefferson; that is, the court decided that the district court, in point of law, had jurisdiction of the matter contained in the libel in that case, and should have proceeded to an adjudication of the rights of the parties, and that the supreme court ought to have so held in 1825. If this was correct, then the adjudication of the district court of Kentucky would have been right, if so made under the tenth section of the law of 1789. There was no other law conferring general admiralty jurisdiction upon that court. And this section shows that the later decision is the true one, because congress, after granting general admiralty jurisdiction to the district courts in the section immediately preceding, in this confers the same jurisdiction upon the district court of Kentucky, and yet the geographical position of Kentucky was of course well known to congress. The second section of the act of March 3, 1819 [3 Stat. 502], establishing the district court of Illinois, gave it the same jurisdiction as the district court of Kentucky had by the act of 1789. Of course then, under the ruling of the supreme court, it had general admiralty jurisdiction over all the navigable waters within the district, and could have taken cognizance of a case like The Thomas Jefferson before the passage of the act of 1845. If, then, it had general admiralty jurisdiction prior to the act of 1845, how could that act "confer a new jurisdiction?" The Genesee Chief v. Fitzhugh, 12 How. [53 U. S.] 451. The Supreme Court in Fretz v. Bull, Id. 466, ruled in accordance with the principles of the case reported in the same volume, and already referred to, that the district court had jurisdiction in admiralty for a tort on the Mississippi above tide-water (The Genesee Chief v. Fitzhugh, Id. 458); this was not under the law of 1815, and consequently the admiralty jurisdiction of this court would not be confined to the limits and restrictions contained in that law in cases arising on the Mississippi and its tributaries, but we must refer to the act of 1789 as our guide. Does it not follow, if there is no other admiralty jurisdiction on the lakes than what is conferred by the act of 1845, that this court must adjudicate differently when it has cases in admiralty before it on the Ohio or Mississippi, and on the waters of Lake Michigan? For example, in the one case the parties are entitled to a jury, and in the other not. Is there, then, that perfect equality which is referred to, "not only in the laws, but in the mode of administering them"? The court compares the acts of 1789 and 1845, and declares that the jurisdiction under both laws is confined to vessels enrolled and licensed for the coasting trade, and the act of 1845 extends only to such

vessels when they are engaged in commerce between the different states and territories. Is this strictly correct? Certainly the jurisdiction under the act of 1789 is not so restricted. Is there no admiralty jurisdiction on the lakes except what is brought within the act of 1845? Suppose a vessel is engaged in commerce between one of the states and Canada, is it not within the admiralty jurisdiction of this court if it enters the harbor of Chicago? We have Canadian vessels here daily in our season of navigation. It may happen, too, that a vessel from Europe may visit us, owned in England or France; such a vessel is not enrolled and licensed for the coasting trade, and is it for that reason alone beyond the jurisdiction of this court? Again, does the word state or territory, in the act of 1845, mean a foreign country? It seems to me clear that the act intends to speak only of the states and territories of the United States, because it refers to vessels and steamboats enrolled and licensed under their authority. The case of foreign vessels has been mentioned, because this court has not unfrequently had such cases before it, and considerable difficulty and embarrassment have been felt in acting upon such cases under the law of 1845, as well as in cases where the vessel was enrolled and licensed under the law, but employed at the time not in business of commerce and navigation between ports and places in different states and territories of the United States, but between one of the states and Canada, a foreign country. In the act of 1789, the jurisdiction of the district court is to include all seizures under the laws of imposts, navigation or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen within the district, and stress is justly laid on this clause by the court in the case of The Genesee Chief. We are beginning to have considerable foreign commerce in some of the ports of Lake Michigan, and it is not improbable that seizures may be made here. Is this law not still in force, or can there be no seizures unless the vessel is of twenty tons burthen or upwards, as is expressed in the law of 1845? It has been generally supposed that the act of 1845 was passed by congress under the influence of the decision in the case of The Thomas Jefferson and subsequent cases founded on it, and with a view to avoid those decisions. It may safely be affirmed if congress had thought the supreme court would make the decision that was made in the case of The Genesee Chief, the law of

1845 would not have been enacted. If the district courts already had general jurisdiction in admiralty on the lakes, why did congress pass a law extending their jurisdiction? It should rather have been entitled an act limiting their jurisdiction. If the law of 1845 supersedes the law of 1789, then clearly, in this district and in all others that border on the lakes, and also possess navigable waters other than the lakes, there must be, in some respects, two different modes of administering admiralty law.

I confess, in view of these considerations, and many others that might be urged, I do not well see how we can administer admiralty law on these lakes, in many cases, without resorting to the law of 1789; and yet, to hold that to be in force, as well as the law of 1845, leads to difficulties, which are apparent from an examination of the opinion of the court in the case of The Genesee Chief.

From the foregoing considerations, even if I were obliged to resort to the law of 1845 to sustain the jurisdiction of the court, I should be disposed to give it an extremely liberal construction, and to hold, whenever in a case of collision, either craft is within that law, and the circumstances bring it within the admiralty jurisdiction upon general principles of the maritime law, that this court can take cognizance. This case is within that rule. The Flora comes strictly within the provisions of the act of 1845. I therefore think the court has jurisdiction, and the motion to dismiss the case must be overruled.

NOTE. This is believed to have been the first case declaring the doctrine that the admiralty jurisdiction of the district courts, upon the western lakes and rivers, did not depend upon the act of Feb. 26th, 1845, and it is printed, unchanged, from the original manuscript of Judge Drummond.

The question of admiralty jurisdiction of the western lakes and rivers has since been much discussed, and it is believed that a historical view of the rulings of the supreme court may be of interest.

It had long been the doctrine that admiralty jurisdiction extended only as far as the ebb and flow of the tide, and did not exist at all upon the western lakes. The Thomas Jefferson, 10 Wheat. {23 U. S.} 428; Peyroux v. Howard, 7 Pet. {32 U. S.} 324; The Orleans v. Phoebus, 11 Pet. {36 U. S.} 175; Waring v. Clark, 5 How. {46 U. S.} 441; New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. {47 U. S.} 344. See, also, The Genesee Chief v. Fitzhugh, 12 How. {53 U. S.} 443; Fretz v. Bull. Id. 466; Walsh v. Rogers, 13 How. {54 U. S.} 283; Gibbons v. Ogden, 9 Wheat. {22 U. S.} 195.

In the case of Jackson v. The Magnolia, 20 How. {61 U. S.} 296, the supreme court held that the admiralty jurisdiction of the courts of the United States extends to cases of collision upon navigable waters, although the place of such collision be within the body of a county, and above the flux and reflux of the tide, and this by virtue of the judiciary act of 1789, and not from the act of 1845. This ruling was made by a divided court, three of the justices dissenting, and Justices Daniel and Campbell delivering elaborate opinions,

protesting against the doctrines asserted by the majority, as a usurpation on the part of the judiciary and a violation of rights reserved by the constitution.

The case of Allen v. Newberry, 21 How. [62 U. S.] 244, decided that admiralty had not jurisdiction of a contract for shipment of goods between ports of the same state.

In Nelson v. Leland, 22 How. [63 U. S.] 48, jurisdiction was sustained in a case of collision on the Yazoo river two hundred miles above its confluence with the Mississippi, Justices Campbell and Catron dissenting.

The admiralty jurisdiction is not taken away by the fact that the collision or other tort was committed within the body of a county.

If the collision occurred on those navigable waters which empty into the sea, or into the bays and gulfs which form a part of the sea, the maritime courts have jurisdiction. The Commerce, 1 Black [66 U. S.] 574.

The Eagle, 8 Wall. [75 U. S.] 15, is a leading and well considered case. The court there ruled that the district courts can take cognizance of all civil causes of admiralty jurisdiction upon the lakes and waters connecting them, the same as upon the high seas, bays, and rivers navigable from the sea; that it is not necessary, in a libel on the lakes, to bring the case within the act of 1845; but on the contrary, this act, instead of being an extending and enabling act, as was intended, having become, in consequence of the decisions of this court, inoperative, must be regarded as obsolete and of no effect; and that the saving clause, as to the concurrent remedy at common law, is also of necessity useless and of no effect. It was further held, that the ninth section of the judiciary act of 1789, conferring upon the district courts exclusive original cognizance of all civil causes of admiralty jurisdiction, "including all seizures under laws of impost, navigation, or trade of the United States where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas," is also inoperative.

In Taylor v. Carryl, 20 How. [61 U. S.] 583, and The Moses Taylor, 4 Wall. [71 U. S.] 411, the question of state jurisdiction was fully discussed.

In the case of The Hine v. Trevor, 4 Wall. [71 U. S.] 555, some of the previous decisions are discussed. The rule is laid down that the act of 1845 is a limitation of the powers granted by the act of 1789, as regards cases arising upon the lakes and navigable waters connecting said lakes, and sums up the doctrines as follows: 1. The admiralty jurisdiction, to which the power of the federal judiciary is by the constitution declared to extend, is not limited to tide-water, but covers the entire navigable waters of the United States. 2. The original jurisdiction in admiralty exercised by the district courts, by virtue of the act of 1789, is exclusive, not only of other federal courts, but of the state courts also. 3. The jurisdiction of admiralty causes arising on the interior waters of the United States, other than the lakes and their connecting waters, is conferred by the act of September

24, 1789. 4. The admiralty jurisdiction exercised by the same courts, on the lakes and the waters connecting those lakes is governed by the act of February 3, 1845. See, also, The Revenue Cutter [Case No. 11,713]; Cunningham v. Hall [Id. 3,481]; The Great West, No. 2 v. Oberndorf, 57 Ill. 168.

The following are the reported decisions of the circuit and district courts on the subject of admiralty jurisdiction: De Lovio v. Boit [Case No. 3,776]; Gloucester Ins. Co. v. Younger [Id. 5,487]; McGinnis v. The Pontiac [Id. 8,801]; The Revenue Cutter [Id. 11,713]; Western Transp. Co. v. The Great Western [Id. 17,443]; Franconet v. The F. W. Backus [Id. 5,048]; Scott v. The Young America [Id. 12,549]; Eads v. The H. D. Bacon [Id. 4,232]; Williams v. The Jenny Lind [Id. 17,723]; Parmlee v. The Charles Mears [Id. 10,766]; The Globe [Id. 5,483]: Brooks v. The Peytona [Id. 1,959]; Whitaker v. The Fred Lorentz [Id. 17,527]; Merritt v. Sackett [Id. 9,484];

Poag v. The McDonald {Id. 11,239}; Thackeray v. The Farmer of Salem {Id, 13,852}; Wallis v. Chesney {Id. 17,110}; The Ann Arbor {Id. 408}; The Leonard {Id. 8,256}; Cunningham v. Hall {Id. 3,481}; The Volunteer {Id. 16,990}; The Eli Whitney {Id. 4,345}; U. S. v. 269½ Bales of Cotton {Id. 16,583}; The Mary Washington {Id. 9,229}; Francis v. The Harrison {Id. 5,038}; The America {Id. 289}; The Sarah Jane {Id. 12,349}; The Island City {Id. 7,109}; The A. R. Dunlap {Id. 513}; Place v. The City of Norwich {Id. 11,202}; Wright v. Norwich & N. Y. Transp. Co. {Id. 18,086}; The Circassian {Id. 2,722}; The Sailor Prince {Id. 12 218}; The Adele {Id. 78}; The Eledona {Id. 4,340}; The Antelope {Id. 482}; The Norway {Id 10,359}; The Leonard {Id. 8,256}; The Missouri {Id. 9,652}; The Transit {Id. 14,139}; The Hardy {Id. 6,056}; McAllister v. The Sam Kirkman {Id. 8,658}; Cheeseman v. Two Ferryboats {Id. 2,633}; The Elmira Shepherd {Id. 4,418}; The Circassian {Id. 2,720a}.

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