Case No. 7,458.

JONES v. COAL BARGES.

{3 Wall. Jr. 53;[1] 3 Am. Law Reg. 391; 3 Pittsb. Leg. J. 44.}

Circuit Court, W. D. Pennsylvania. April Term, 1855.

ADMIRALTY JURISDICTION.

1. The coal barges, arcs, or flat boats used on many rivers, to transport merchandise down stream, and usually broken up and sold for lumber at the end of their voyage, are not "ships or vessels," subject to admiralty jurisdiction on such waters.

{Distinguished in The General Cass, Case No. 5,307. Cited in Gastrel v. A Cypress Raft, Id. 5,266; The F. & P. M. No. 2, 33 Fed. 513: Ruddiman v. A Scow Platform, 38 Fed. 159; Sea brook v. A Raft of Railroad Cross-Ties, 40 Fed. 596.}

{Cited in American Transp. Co. v. Moore, 5 Mich. 394.}

2. Although the extension of admiralty jurisdiction over our fresh water public rivers seems to have been assumed rather from the decision of the supreme court in The Genesee Chief v. Fitzhugh {12 How. (53 U. S.) 458}, decided in 1851, than from the act of congress of February 26th, 1845 {5 Stat. 726}, which speaks only "of the lakes and navigable waters connecting said lakes," yet it does not follow that the admiralty may assume jurisdiction over everything floating on such waters. On the contrary, the restraints of that act should be applied to all the jurisdiction now assumed over such waters, to wit, "to vessels over twenty tons burden, licensed and enrolled for the coasting trade," and the pleadings in such cases should contain such averment in order to give jurisdiction.

{Cited in Muntz v. A Raft of Timber, 15 Fed. 557.

{See The Ann Arbor, Case No. 408.}

{Appeal from the district court of the United States for the Western district of Pennsylvania.}

The constitution of the United States, according to the views taken of it by the supreme court for the first fifty years of our federal government, confined the admiralty jurisdiction of the court to tide waters; and considered that, however large were the streams or lakes, yet if the water in them was not tidal, no admiralty jurisdiction could be exercised over them. The Thomas Jefferson, 10 Wheat. {23 U. S.} 428; Orleans v. Phoebus, 11 Pet. {36 U. S.} 175. Although, therefore, an act of 1789 {1 Stat. 55}, which gave the court jurisdiction over enrolled and licensed vessels, spoke, in one place, indiscriminately of "waters navigable from the sea," our lakes, which had been the scene of naval victories between ships of war, and our western rivers, of late years navigated by large steamers freighted with immense cargoes, were for more than sixty years regarded as beyond any constitutional control of the admiralty. In 1845, however (Act Feb. 26, 1845), congress taking a more extensive view of its constitutional rights, passed a law giving to the federal courts jurisdiction "in matters of contract and tort arising in, upon, or concerning steamboats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between

ports and places in different states and territories upon the lakes and navigable waters connecting said lakes." This law was decided in 1851, in The Genesee Chief v. Fitzhugh, 12 How. [53 U. S.] 443, to be constitutional; and the supreme court, reversing its earlier decisions, as not made upon a sufficiently comprehensive view of the constitution, and of the extent, progress and necessities of the country, seemed, in that leading case, to declare that the admiralty jurisdiction granted by the constitution to the federal government, and the exercise of which congress might allow to the courts when it pleased, extends to all public navigable lakes and rivers where commerce is carried on.

In this condition of the law, a coal barge, loaded with coals, and on its way from Pennsylvania into another state, was coming down the Monongahela, a considerable and important stream at Pittsburg, Pennsylvania, but one having numerous dams and locks in it, and one which, though navigable in the rainy season for small steamers, is perhaps hardly to be reckoned one of the great navigable rivers of the west Coming out of a lock in the river, this barge ran foul of another barge loaded with coal, and fastened to the shore, but standing out further in the stream than she had any right to be. The descending barge was broken, and sank with her cargo, and a libel by its owner having been allowed and sustained by the district court, the case came here by appeal, the correctness of that court's action in sustaining the libel, being the point in issue here. These western coal barges, it must be added, are rough trunks, being flat boats with sides, made merely for transporting coals, and, owing to the trouble of returning up stream with them, usually sold as lumber at the end of the voyage. They have no coasting license.

GRIER, Circuit Justice. The subject of dispute proposed by the libel, is a collision between two coal barges loaded with coal. They are not ships or vessels in the maritime sense of the terms. They do not take out a coasting license. They are generally

mere open chests or boxes of small comparative value, which are floated by the stream and sold for lumber at the end of their voyage. A remedy in rem against such a vessel, either for its contracts or its torts, would not only be worthless but ridiculous; and the application of the maritime law to the cargo, and hands employed to navigate her, would be equally so.

The case of The Genesee Chief v. Fitzhugh, 12 How. [53 U. S.] 458, reversing the former decisions of the supreme court (which had adopted the English definition of navigable rivers, and bounded the jurisdiction of admiralty courts by tide water), does not necessarily extend the sceptre of the admiral over every stream whose occasional floods or factitious basins may suffice to float a steamboat. If it was unreasonable to refuse to ships and steamboats on our great lakes and rivers the benefit of the remedies afforded by courts of admiralty, it may be equally so to apply the principle and practice of the maritime law to everything that floats on a fresh water stream. Every mode of remedy and doctrine of the maritime law affecting ships and mariners, may be justly applied to ships and steamboats, but could have no application whatever to rafts and flat boats. A court of admiralty is not needed to try common law actions of trespass, nor to administer common law remedies in any form. The act of 1845 extends the jurisdiction of courts of admiralty to "the lakes and navigable waters connecting said lakes." On other navigable rivers it seems to have been assumed by virtue of the decision of the supreme court, and without regard to the limitations of the act of congress, either as to place or subject. But the court having decided this act of congress to be constitutional and binding, it must govern the question as to the subjects which it defines, even if it be not considered as denying such jurisdiction on the navigable waters omitted.

This act confines the jurisdiction of admiralty courts on the lakes and rivers, to "matters of contract and tort in, upon, or concerning steamboats and other vessels of twenty tons burden and upward, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and places in different states and territories upon the lakes and navigable waters connecting said lakes."

The supreme court, in speaking of this provision in the act of 1845, and of the act of 1789, says: "These laws are both constitutional, and ought therefore to be carried into execution. 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 different states and territories. It does not apply to vessels engaged in the domestic commerce of a state, nor to a vessel, or boats, not enrolled and licensed for the coasting trade under the authority of congress." The Genesee Chief v. Fitzhugh, supra.

It follows, that in order to show the jurisdiction of the district courts of the United States in "matters of contract and tort" arising on the lakes and other navigable rivers, the

libellant should aver and prove the facts and conditions stated in the act of congress of 26th of February, 1845. And as in this case no amendment to this effect can be made conformably with the facts of the case, the decree is reversed, and the cause dismissed for want of jurisdiction. The question of costs is reserved for further hearing.

[1] {Reported by John William Wallace, Esq., and here reprinted by permission.}