

the court, through Judge NELSON, saying that "the effect of the proof of usage as given in this case, if sanctioned, would be to overturn the whole law on the subject of bills of exchange in the city of New York." The doctrine is adhered to in *Bowen v. Newell*, 8 N. Y. 194.

The case presented is this: In a written agreement, parties have used a term which is unambiguous, and which has an accepted signification, both in commercial and judicial language. Proof of usage is sought to be introduced to show that in the very respect in which this term had its origin and has had its world-wide employment, it has a local meaning repugnant to its settled sense. To permit this would be to introduce ambiguity where none exists, and defeat the clearly-expressed intent of a written contract.

There must be judgment for the libelant upon the answer of the defendants.

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THE CAROLINA.\*

FRY v. COOK and others.\*

(District Court, D. Louisiana. April, 1876.)

1. ARREST IN ADMIRALTY.

The limitation in the statutes of the United States and the rules of the supreme court, allowing arrests in civil causes by virtue of a process from a court of the United States only in cases in which an arrest is authorized by the laws of the state in which such court was sitting, applies to admiralty as well as to common-law processes

2. ADMIRALTY JURISDICTION.

In the absence of circumstances showing cruelty or great hardship, the admiralty courts of the United States cannot be required or allow themselves to entertain jurisdiction of a case where subjects of a foreign government invoke their assistance against a merchant vessel of a foreign government.

*R. H. Shannon*, for libelant.

*Edward M. Hudson* and *J. Walker Fearn*, for respondents.

BILLINGS, D. J. This is an action brought to recover damages for assault and battery, alleged to have been committed on the high seas. An order of arrest was at first issued, which, on argument, was vacated, on the grounds that the statutes of the United States and the rules of the supreme court allowed an arrest by virtue of a process from a court of the United States only in cases in which an arrest is authorized by the laws of the state in which such court was sit-

\*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

ting; that this limitation applied to admiralty as well as to common-law processes; and that according to the laws of the state of Louisiana the body of a non-resident could not be taken on any mesne process unless he was an absconding debtor.

The case is now before me on an exception to the exercise of jurisdiction on the part of this court. I have directed testimony to be taken summarily before the commissioner on the merits, so that all the facts are before me. The question is, ought this court, from a regard to the commerce of a friendly government, to refrain from granting relief? It appears that the libellant is a foreigner, and a seaman on a British vessel, upon which the beating is alleged to have been inflicted, he having shipped in Liverpool for the round voyage to this country and back, and upon that voyage having arrived at the port of New Orleans; that the defendants are all British subjects. The British consul resident at this port, having been notified, came before me and, in behalf of his government, remonstrated against this court taking cognizance of the cause.

Independently of the considerations which arise from the nationality of the parties and vessel, the weight of evidence is against the libellant. But, as these considerations have been so fully and ably presented, I will avail myself of the aid which the proctors have rendered, and state my conclusion as to the duty of courts in exercising or withholding jurisdiction in such cases. It is undoubtedly true, as a general proposition, that an action for a personal tort follows the person, and may be brought in any foreign court. It is also true that the courts of a nation are established and maintained for the convenience of its own citizens or subjects, and if foreigners are permitted to become actors therein, it is because of what is termed comity between nations. *American Law Review*, vol. 7, p 417, and *Daniel Webster's Works*, (Everett's Edition) vol. 6, pp. 117, 118. The only ground upon which a foreigner could urge a claim to become a libellant in our courts would be that it was by comity due his government that its subjects should be thus heard, and, so far as this claim could be considered as a right, it could be insisted on only by that government, and, except in cases of inhumanity or gross injustice, would disappear whenever the claimant's government took a position against it.

There is in this case no circumstance such as the unwarranted termination of the voyage, the discharge of a seaman, or brutality, which might possibly constitute a proper ground for the interposition of the jurisdiction of a foreign court without the request of the representa-

tive of libelant's government. It is a suit brought by a foreigner springing out of a voyage on the ship of a friendly nation, in the midst of that voyage, against the subjects of that nation, on account of alleged grievances. The libelant not only proposes to disconnect himself from the ship, but asks the detention of ship, officers, and crew in a foreign port, in order to settle a dispute which can far better be settled by the tribunals of the country in which, under whose laws, and in connection with whose commerce, he made his contract, and to which he agreed to return. The representative of that country asks this court not to interfere. It is urged, and that fairly, that by the very agreement of the parties—the articles of shipping—the courts of the kingdom of Great Britain have been made the forum for the settlement of this dispute; that they afford adequate redress; and that for courts to entertain this and similar suits during a voyage which the parties had agreed to make at intermediate points at which the vessel might touch, would impose delays which might seriously and uselessly embarrass the commerce of a friendly power. The exercise of jurisdiction in such a case is discretionary, and, until the congress of the United States controls the subject by legislation, is discretionary with its courts, and should be controlled by precedent if that exist. In this case I am satisfied, by reason and abundant authority, that the court should decline to entertain jurisdiction. *Gienar v. Meyer*, 2 H. Bl. 603; *The Golubchick*, 1 W. Rob. 143; *Gonzales v. Minor*, 2 Wall. Jr., 348; *The Becherdass Ambaidass*, 1 Low. 569; *The Maggie Hammond*, 9 Wall. 485; *One Hundred and Ninety-four Shawls*, Abb. Adm. 317; *Gardner v. Thomas*, 14 Johns. 134; *Johnson v. Dalton*, 1 Cow. 543; and the very able articles on "suits between aliens in the courts of the United States," (7 Amer. Law Rev. 417,) from which a reference to many of the above cases was derived.

Let the libel be dismissed. Let the suit of the same libelant against the British bark *Carolina*, for the same reasons, be dismissed.

See *The Montapedia*, post, 427.

## THE MONTAPEDIA.\*

(District Court, E. D. Louisiana. November, 1882.)

## 1. MERCHANT SHIPPING ACT—REV. ST. §§ 4501-4512.

The statute of June 7, 1872, (17 St. at Large, p. 262; Rev. St. §§ 4501 to 4512,) does not apply to a British vessel.

## 2. ADMIRALTY JURISDICTION.

In the absence of circumstances showing cruelty or great hardship the admiralty courts of the United States cannot be required or allow themselves to entertain jurisdiction of a case where subjects of a foreign government invoke their assistance against a merchant vessel of another foreign government.

*The Carolina*, (decided April, 1876, ante, 424,) followed.

In Admiralty.

*O. B. Sansum* and *J. B. White*, for libelants.

*J. R. Beckwith* and *J. Walker Fearn*, for claimants.

**BILLINGS, D. J.** This is a suit instituted by subjects of the empire of China against a British vessel. They were shipped at a port within the United States, namely, at San Francisco, for a voyage which was to occupy three years, and were to be discharged at Hong Kong. The whole question is, does the statute of June 7, 1872, (17 St. 262; Rev. St. at various sections from section 4501-4512,) apply to a British vessel? The conclusion which I have reached is that it does not. The act of June 7, 1872, is, in the provisions which relate to the shipping of seamen, a literal copy of the "Merchant Shipping Act," enacted by the parliament of Great Britain in the year 1854.

In section 160 of the act of the parliament of Great Britain (17 & 18 Vict. c. 104; Digest of Statutes relating to Merchant Shipping, 102) it is enacted that British ships which engage seamen at any place out of her majesty's dominions shall enter into the engagement with the sanction of the British consular officers, and according to that act of parliament. In section 15 of the act of the congress of the United States (17 St. at Large, 265) it is enacted *totidem verbis* that merchant ships of the United States who engage seamen at any place out of the United States shall enter into the engagement with the sanction of the consular officers of the United States, and according to that act of congress. Such an adoption on the part of the United States, in the year 1872, of a statute of Great Britain passed in the year 1854—such a coincidence in the legislation of the two nations—furnishes a guide to the courts of each in the construction of these statutes equivalent to a treaty stipulation; for it cannot be supposed that our government would copy the stat-

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