

OLESON *v.* THE IDA CAMPBELL.

*District Court, D. Minnesota.*

March 9, 1888.

ADMIRALTY—JURISDICTION—TORTS—DEATH BY WRONGFUL ACT.

Gen. St. Minn. p. 825, § 2, providing that, “when death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived,” etc., does not confer upon the United States district court jurisdiction of a libel *in rem*, filed by the administratrix of an injured person to enforce a marine tort, as in case of death from such a tort the action does not survive in admiralty.

*Edward H. Ozmun*, for libelant.

*Warren H. Mead*, for claimant.

NELSON, J, A libel *in rem* is filed by the administratrix of the deceased to enforce a marine tort. The remedy is prosecuted under the statute of the state of Minnesota, (Gen. St. p. 825, § 2.) It reads as follows:

“When death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action, had he lived, for an injury caused by the same act or omission,” etc.

An answer and claim are interposed, and it is insisted that the statute gives this court in admiralty no jurisdiction. It is true that a remedy can be enforced, in admiralty for a marine tort, if the injured party survived, but in case of death from such a tort the action does not survive in admiralty. It is therefore a disputed and unsettled question whether or not a state statute, like the one cited, is applicable in such case to authorize an action in admiralty by the representatives. Elaborate views *pro* and *con* have been expressed by eminent judges. Without referring to them *in extenso*, I shall follow the expression of opinion denying the jurisdiction of a court of admiralty to entertain such an action under the statute. Decree ordered dismissing libel.

In the admiralty suit *in personam* of *Annie Oleson, Adm'x, etc.*, *v. Peter F. Ritchie*, owner of steam-boat *Ida Campbell*, a decree dismissing libel is also ordered.