

"If, however, the patent could be sustained at all, it would have to be restricted and confined to the specific combination described in the second claim, as indicated by the letters of reference in the drawings, and each element specifically pointed out is an essential part thereof; \* \* \* for, if not so restricted by the letters of reference, the effect would be to make the claim coextensive with what was rejected in the patent office. If any validity could be conceded to the patent, the limitation and restriction which would have to be placed upon it by the action of the patent office, and, in view of the prior art, would narrow the claim, or confine it, to the specific structure therein described; and, as thus narrowed, there could be no infringement on the part of appellants if a single element of the patentee's combination is left out of the appellants' device."

In *Gordon v. Warder*, the court said:

"We do not regard the patent of Watson, Renwick, and Watson, dated May 13, 1851, as an anticipation of Gordon, although the specification in that case did contain a paragraph stating that it might be advantageous, in some cases, to make the binder adjustable in respect to the cutting apparatus. No means were there provided, or method pointed out, whereby such a desirable result could be obtained. Nor do we find, in the other patents put in evidence by the defendants, any such anticipation of the Gordon claim, as above defined, as to invalidate the grant made to Gordon on May 12, 1868, though such a state or condition of the art was brought about by these earlier patents as to require us to restrict the scope of the Gordon patent closely to the devices and methods claimed by him."

Looking at Tirrell's improvement in issue here from this point of view, it consists of mechanical details, accomplishing a useful result, but of a low order; and the mechanical details of respondents' devices are different, in the sense of the patent law, and accomplish a result also in a large part different, and cannot be held to infringe.

Decree of circuit court affirmed.

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### RIGGIN v. BROWN et al.

(District Court, D. Maryland. February 16, 1894.)

#### 1. STATES AND STATE OFFICERS—BOARD OF PUBLIC WORKS—OYSTER NAVY—NEGLIGENCE OF COMMANDER.

Code Md. art. 72, regulating the oyster fishery in the waters of the state, charges the board of public works with the duty of keeping in repair the vessels of the state fishery force; and Act Md. 1886, c. 296, provides for the appointment of commanders for such vessels by the board. These commanders are required by law to take an oath, and give bond to the state. *Held*, that such a commander is himself a public officer, and hence the members of the board are not personally liable for injuries resulting from his negligence to a workman repairing such vessel, especially where there is nothing to show that the commander is incompetent.

#### 2. SAME—LIABILITY AS OWNERS.

The board of public works, in keeping such vessels in repair, act purely as public officers, and do not come within any rule by which charterers or others who have obtained the exclusive navigation of a vessel may be held liable as owners for injuries resulting from the negligence of its officers or crew.

In Admiralty. Libel to recover for injuries by William H. Riggin against Frank Brown, Marion De K. Smith, and Spencer C. Jones.

Code Md. art. 72, regulating the oyster fishery in the waters of the state, provides for the maintenance by the board of public

works of vessels to guard those waters and prevent violations of the law. Act Md. 1886, c. 296, imposes upon the board the additional duty of appointing a commander in chief of the state fishery force, and deputy commanders for the several vessels thereof, and of supervising the former in his administration and control of the force.

Thomas S. Hodson, for complainant.

John P. Poe, Atty. Gen., for board of public works.

MORRIS, District Judge. This is a libel to recover for injuries which the libelant alleges he sustained by the falling upon him of the main boom of the schooner Helen Baughman, and which injury, it is alleged, was caused by the negligence or unskillfulness of the deputy commander, who was in charge of said schooner, or of some one of the crew; the libelant being employed at the time in doing some necessary repairs to the mast of the schooner. The defendants are the governor, comptroller, and treasurer of Maryland, and compose the board of public works, who are by law charged with the duty of keeping the vessels of the state fishery force in good order and repair, and of appointing the commanders of said vessels. The schooner Helen Baughman is one of the vessels of the state fishery force, and the theory of the libel is that, if the commander of the vessel or his crew were negligent or unskillful, and through their fault the libelant received the injury complained of, the members of the board of public works are personally liable. This contention is manifestly untenable. The board of public works have a purely official connection with the state fishery force, and it is not alleged that the commander of the schooner appointed by them was not competent. The commander of the schooner, although appointed by the board, was, when he had taken the oath of office and given bond as required by law, (section 32,) himself a public officer. The law is that each public officer is answerable for his own negligence only, and not for that of others, although selected by him, and subject to his orders. *Robertson v. Sichel*, 127 U. S. 507, 8 Sup. Ct. 1286. But it is contended that in admiralty, by reason of a rule which in some cases makes the charterer or other person who, by agreement with the general owner, has obtained the exclusive possession, command, and navigation of a vessel, liable as if actual owner, being regarded pro hac vice as the actual owner, the members of the board of public works are to be regarded as owners pro hac vice of the schooner Helen Baughman. The mere statement of this contention, it seems to me, is its own refutation. Neither the board of public works nor the individual members of it have ever obtained from the state of Maryland, which is the actual owner of the schooner, any possession or command of her. She is a public vessel, the property of the state, engaged under the command of public officers in the enforcement of the laws regulating the taking of oysters in the waters of Maryland. It is made the duty of the board of public works to see that the state's vessels are kept in good repair, but

in obeying this provision of the law they are acting purely as public officers; and it is a contention not countenanced by any rule of the admiralty or of the common law that they can be held personally liable, because, while one of these vessels is at the shipyard, it happens by the negligence of one of her officers or crew that a workman employed on the repairs is unfortunately injured.

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THE BERKSHIRE.

NORFOLK & W. R. CO. et al. v. THE BERKSHIRE.

(District Court, D. Rhode Island. December 26, 1893.)

**COLLISION—COASTING VESSELS—ACT FEB. 13, 1893.**

The third section of the act of February 13, 1893, which in terms exempts vessels in the coasting trade and their owners from all liability in certain cases, applies only to the mutual rights and liabilities of owners and shippers, and does not abolish liability to third persons for collisions, or other marine torts.

In Admiralty. Libel by the Norfolk & Western Railroad Company and others against the steamer Berkshire to recover damages for a collision. Heard on exceptions to the answer. The exceptions are sustained.

This is a libel in admiralty for a collision. The claimant answers, among other things, that the steamer "was a ship engaged in the transportation of merchandise and property between the ports of the United States of America, to wit, between the ports of Providence, R. I. and Norfolk, Va., and was engaged in the transportation of merchandise on the said 16th day of August, 1893; that the said Berkshire was in all respects seaworthy, properly manned, equipped, and supplied, and that by and under section 3 of the statute of the United States entitled 'An act relating to the navigation of vessels,' etc., approved February 13, 1893, and to go into effect the first day of July, 1893, the said steamship Berkshire is not responsible for the collision heretofore described, even if it resulted from faults or errors in the navigation or in the management of said steamship, inasmuch as the said collision occurred after said statute went into effect." To this part of the answer the libelant excepts.

W. G. Roelker, for libelants.

E. P. Carver, for claimant.

CARPENTER, District Judge, (after stating the facts.) The whole of the act which is here pleaded, (27 Stat. 445,) seems to me to relate to the rights and liabilities of owners and shippers, as between themselves, with respect to the cargo; and the third section of the act, therefore, although in terms it exempts vessels and their owners from all liabilities whatever in certain cases, must be read with this limitation. The frame of the act shows that this is the only purpose; and the exemption stated in the third section is apparently intended as a compensation to shipowners for the additional duties and liabilities put on them by the other sections of the act.

The construction for which the claimant contends is that the statute abolishes all liability and remedy for all marine torts of vessels transporting merchandise to or from any port in the United

States, provided the vessel be seaworthy and properly manned, equipped, and supplied, and leaves unaffected the liability of vessels transporting goods between other ports, and, perhaps, freight vessels in ballast, and also tug boats, pleasure boats, and vessels transporting only passengers. That a statute may be held to abrogate so large a branch of the admiralty law, it is necessary, as it seems to me, that the intent so to do shall appear by express words, or by absolutely necessary implication.

It is also to be observed that there is evidently no reason why the general rule of the admiralty should be changed in respect to this class of vessels, to the exclusion of others; and such partial change of the law is apt to introduce complications in the administration of rights in case of collision between vessels coming under this section and those not coming under it. For this reason, also, the construction which takes the literal words of the section to extend its force beyond the general scope of the act cannot be admitted, unless it be a necessary construction.

The exception will be sustained.

END OF CASES IN VOL. 59.