

able and necessary implication from the language which congress has used. Were there nothing before the court except the act of 1888, it might be urged that congress did not intend to confer such extensive judicial power upon an executive officer, although the language of the act would justify such a conclusion. As already seen, congress, in another section of this contract-labor law, has used language which unambiguously expressed more than was intended (*Church of Holy Trinity v. U. S.*, supra); and it would not be surprising to find elsewhere in the law a similar instance of the incautious use of words. But the provisions of the supplementary immigration act of 1891 (chapter 551) seem to preclude a restricted interpretation of the section now under discussion, on any such theory of intent. In the eighth section of this act of 1891 it is expressly provided that:

"All decisions made by the inspecting officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the secretary of the treasury."

This language was held in *Nishimura Ekiu's Case*, supra, to confer upon the executive officers named in the act a judicial discretion, not reviewable by the courts. Since congress, in 1891, conferred such power upon subordinate executive officers, it is difficult to see why it should be held that congress did not intend in 1888 to confer like power upon the secretary of the treasury. By selecting an officer of such exalted rank as the final arbiter of the question of an immigrant's status, congress placed the power where it would be exercised with care, wisdom, and discretion; and, having the right thus to legislate upon the subject (*Nishimura Ekiu's Case*, supra; *Fong Yue Ting v. U. S.*, 149 U. S. 698, 13 Sup. Ct. 1016), its grant of power should be construed as it is expressed. Where it is shown that the person proceeded against under the contract-labor law is not an immigrant, the secretary has no jurisdiction to pass upon the question. *In re Panzara*, 51 Fed. 275; *In re Martorelli* (U. S. Cir. Ct. S. D. N. Y.; Oct., 1894) 63 Fed. 437. But where it appears that such person is an immigrant, who has not been here more than one year, the secretary of the treasury has been selected by congress as the sole tribunal to determine whether he is or is not within the prohibited class.

The writ must be dismissed, and the relator remanded.

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#### THE CARIB PRINCE.

WUPPERMAN v. THE CARIB PRINCE. MIDDLETON et al. v. SAME.  
CADENAS et al. v. SAME. GILLESPIE et al. v. SAME.

(District Court, E. D. New York. October 4, 1894.)

1. CONFLICT OF LAWS—CONSTRUCTION OF BILL OF LADING.  
A bill of lading of goods to be carried in an English ship, signed in an English port, must be construed according to the law of England.
2. BILL OF LADING—EXEMPTIONS FROM LIABILITY—ENGLISH LAW.  
Under the law of England, a provision in a bill of lading exempting the shipowner from liability for damage caused by a latent defect covers

damages from a defective rivet in the bulkhead side of a water tank, where, the ship being a new one, the tank had been tested by hammer and water pressure, and the defect was where no external examination would have discovered it.

Actions by Josephine W. Wupperman, Clifford E. Middleton and others, Manuel Cadenas and another, and William Gillespie and others against the steamship Carib Prince for damages to merchandise. The several libels were dismissed.

George A. Black, for libelants.  
Convers & Kirlin, for claimants.

BENEDICT, District Judge. These actions are brought to recover of the steamship Carib Prince for damage done to merchandise forming part of the cargo of that vessel on a voyage from Grenada to New York. The vessel was constructed with a water tank of iron in her peak, one side of which was formed by a bulkhead. This tank, when she sailed from Grenada, was empty, but during the voyage from Grenada to New York it was filled with water one afternoon, in order to trim the vessel; and the next morning, much of the water having gone from the tank, an investigation showed that the head had come off from one of the rivets riveting the bulkhead side of the tank, leaving a hole through which water had poured upon the libelants' merchandise, stowed near the bulkhead. The evidence in respect to the rivet has led me to the conclusion that the cause of the accident was a defect in the rivet, arising from the fact that the quality of the iron had been injured by too much hammering at the time it was annealing, so that it became brittle and weak. This defect could not be seen. The broken rivet was found on one of the bags of cargo, and showed that it had broken off in the countersunk part of the rivet, below the head, so that, while the rivet remained in place, no external examination would have discovered the defect. This defective rivet was, in my opinion, the cause of the accident. The condition of the rivet rendered it unfit to sustain the reasonable pressure caused by filling the tank with water while at sea, and the vessel consequently was unseaworthy in that respect. The evidence shows that the vessel was a new vessel, built by builders of the highest class, and all reasonable effort was made to secure a proper riveting of the tank. After construction the tank was tested by a hammer and by water pressure, and it was found to be tight and strong enough to sustain the weight of water when not in motion. When the tank was filled with water while the ship was in motion, the rivet in question proved insufficient, owing, as already stated, to the fact that the iron had lost its strength in the process of being hammered while it was annealing, and it gave way, causing the damage sued for.

If diligence on the part of the shipowner to provide a seaworthy ship, and a justifiable belief on his part that his ship was seaworthy, could avail to relieve him from his warranty of seaworthiness, he could be relieved upon the proofs in the case; but the rule has been declared that if the unseaworthy condition arose from a defective

construction, although latent and unknown to the owner, he is not excused. The shipowner must show affirmatively that his ship was seaworthy at the beginning of the voyage.

The question then arises whether this obligation on the part of the shipowner has been qualified by the clause in the bill of lading which exempts the shipowner from damage caused by a latent defect, which is this case. This was an English ship. The contract was signed in a port governed by English law, and it has been held in this circuit that such a case is to be governed by the law of the place where the contract was made. It was a British vessel, governed by the laws of England. *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 9 Sup. Ct. 469; *The Majestic*, 9 C. C. A. 161, 60 Fed. 624; *Bank of Edgefield v. Farmers' Co-op. Manufg Co.*, 2 U. S. App. 282, 295, 2 C. C. A. 637, 52 Fed. 98. The law of England, as declared in the case of *The Laertes*, 12 Prob. Div. 187, is to the effect that by the laws of England such an exception as that contained in the bill of lading sued on, if it does not abrogate, at all events limits, the warranty which the law would otherwise imply, that the ship was seaworthy at the beginning of the voyage, and exempts the ship if due diligence is exercised by the shipowner. Applying that law to this case, it follows, from the fact that the weak condition of the iron rivet could not be discovered by the exercise of due diligence, that the ship cannot be held liable for the injury to the libelants' cargo, because the danger arose from a latent defect in the rivet which gave way, within the exception in the bill of lading under which the merchandise was carried. Upon this ground the libels are dismissed, and with costs.

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### THE HERCULES.

#### GENTHUER v. THE HERCULES.

(District Court, E. D. New York. September 28, 1894.)

#### 1. WITNESSES—IMPROPER INFLUENCES—THREATS OF CRIMINAL PROSECUTION.

The conduct of claimant's agent, in causing it to be made known to a witness who had given damaging testimony that he was in danger of prosecution for a criminal offense, whereby the witness was moved to offer himself as a witness for claimant, and thereupon gave a deposition contradicting many of his previous statements, strongly disapproved by the court, and considered to cast a doubt upon the testimony of another witness produced from the same source.

#### 2. TOWAGE—LOSS OF TOW IN STORM.

Tug *held* in fault for taking barges out of the protection of the Delaware breakwater, and starting on a voyage to Boston, in the face of strong indications of an approaching storm, contrary to the judgment of other tug-boat captains in the breakwater at the time, and for refusing to turn back until it became impossible to proceed, and until one of the barges had sprung a leak, from which she sank.

This was a libel by Philip C. Genthuer against the steam tug *Hercules* to recover for the loss of the *Saugerties* while in tow of the tug.

Benedict & Benedict, for libelant.

Robinson, Biddle & Ward, for claimants.