locus of the damage, and not the locus of the origin of the tort, which is the real test of admiralty jurisdiction over torts.

In the case of City of Milwaukee v. The Curtis, The Camden, and The Welcome, 37 Fed. 705, a libel in rem was filed by the city of Milwaukee against the vessels named, for injuries to a bridge. The libel was dismissed for want of jurisdiction. The proposition involved there was counter to that in the case at bar. It was for an injury to land, and not for an injury originating on land. Nevertheless, the remarks of Judge Jenkins as to the locality of the damage being conclusive of the question of admiralty jurisdiction are in point. He says:

"In cases of tort, locality is the test of jurisdiction in the admiralty. The ultimate judicial authority has determined the principle that the true meaning of the rule of locality is that, although the origin of the wrong is on water, yet, if the consummation and substance of the injury are on the land, a court of admiralty has not jurisdiction; that the place or locality of the injury is the place or locality of the thing injured, and not of the agent causing the injury. Ex parte Phenix Ins. Co., 118 U. S. 610, 7 Sup. Ct. 25. Within this settled principle, a tort is maritime, and within the jurisdiction of the admiralty, when the injury is to a vessel afloat, although the negligence causing the injury originated on land. The Rock Island Bridge, 6 Wall. 213; Leonard v. Decker, 22 Fed. 741. In the former case it was ruled that an action in personam would lie against the owners of the bridge, because the injury was consummate upon navigable waters, being inflicted upon a movable thing engaged in navigation, but that a proceeding in rem against the bridge was not maintainable, because a maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters. And so an injury happening, through default of the master, to one upon a vessel discharging cargo at a wharf to which she was securely moored, is within the admiralty jurisdiction (Leathers v. Blessing, 105 U. S. 626), but otherwise if the injury occurred to one upon the wharf (The Mary Stewart, 10 Fed. 137). In the latter case there is an inadvertent remark to the effect that both the wrong and the injury must occur upon the water,—a proposition not sustained by authority. It suffices if the damage—the substantial cause of action arising out of the wrong—is complete upon navigable waters. The Plymouth, supra."

Counsel for respondent relies greatly upon The Mary Stewart, supra, and particularly upon the remarks criticised by Judge Jenkins in the case just quoted, as indicating that the tort must be complete on the water before a court of admiralty will take jurisdiction. That was a case involving the proposition counter to the one in the case at bar, viz. the tort there originated on the water, but the consummation and the injury were sustained on land. The facts of the case were, briefly, that one, an employé of the stevedore engaged in loading the vessel, was injured, while standing on the wharf, by a bale of cotton, which was being hoisted aboard the ship, but which fell before it reached the ship's rail. It was contended that a court of admiralty could not take jurisdiction. The district judge correctly held that jurisdiction could not attach, but, in sustaining this contention, went a little further than the facts justified him. He said:

"It is clear that the cause of action set out in the libel is without the jurisdiction of the admiralty. In cases of tort, the locality alone determines the admiralty jurisdiction. Only those torts are maritime which happen on navigable waters. If the injury complained of happened on land, it is not cognizable in the admiralty, even though it may have originated on the water.

The Plymouth, 3 Wall. 20. This springs from the well-known principle that there are two essential ingredients to a cause of action, viz. a wrong, and damage resulting from that wrong. Both must concur. To constitute a maritime cause of action, therefore, not only the wrong must originate on water, but the damage—the other necessary ingredient—must also happen on water. Now, the injury in the case at bar happened on the land."

This language must, of course, be taken subject to the facts of that case, and to the question of law which the learned judge was then considering. I do not think that he meant to lay it down as a general principle that "the wrong must originate on the water," for that would be to make the test of admiralty jurisdiction depend upon the locality where the tort originated,—a proposition not countenanced by a single authority or dictum. I think that the only true and rational solution of the jurisdictional question, where the tort occurs partly on land and partly on water, is to ascertain the place of the consummation and substance of the injury. This latter element of the wrong is necessarily the only substantial cause of action, otherwise it would be "damnum absque injuria."

With reference to other cases cited by counsel for respondent, they may be disposed of with the statement that, discarding scattered and isolated expressions, and reading the opinions cited as a whole, they rather make for than against the jurisdiction of admiralty. While, as previously stated, I have been unable to find any case on "all fours" with the one at bar, yet there are many authorities upon the counter proposition—viz. where the tort has its origin on water, but is consummated, and the injury sustained, on land—which seem to me to furnish convincing authority for the jurisdiction of the court in this case. In those cases, where the facts showed that the tort originated on water, but was consummated, and the injury sustained, on land, it is held that courts of admiralty have no jurisdiction. The authorities even go further, and hold that where the tort originates on water, and results in injury to land, as wharves, piers, bridges, etc. (e. g. a vessel colliding with a wharf, etc.), libels for damages sustained by such wharves, etc., will not be entertained in admiralty, because the injury took place, to all intents and purposes, on land, and not on water, and the fact that the agent causing the injury was afloat made no difference. The Plymouth, supra; The Neil Cochran, supra; The Ottawa, supra; The Arkansas, 17 Fed. 383; The Professor Morse, 23 Fed. 803; The John C. Sweeney, 55 Fed. 540; The Mary Stewart, supra; The H. S. Pickands, 42 Fed. 239; The Mary Garrett, 63 Fed. 1009; The Rock Island Bridge, 6 Wall. 213. But it is held, on the other hand, that if a vessel sustain injury by colliding with wharves, piers, etc., they may maintain an action in personam against the owners thereof, the damage having been sustained on water. Greenwood v. Town of Westport, 53 Fed. 824; Id., 60 Fed. 561; Hill v. Board, 45 Fed. 260. The central idea found running through all these cases is, so far as jurisdiction over torts is concerned, that the admiralty law looks to the place where the injury was suffered, and not to the locality of the agent causing the injury. If this be the correct doctrine with respect to cases where the tort originates on water, but results in damage to land or on land, I see no valid reason why the same test of jurisdiction is not applicable to cases

where the tort originates on land, but results in damage on the water. Applying this criterion to the case at bar, it will be readily conceded to be conclusive in favor of the question of jurisdiction.

The second exception interposed is that it appears from the allegations of the libel that the wrong of which libelant complains was the act of a fellow servant, for which the respondent is not, in law, liable. The allegations to which this exception is directed are:

"That, in passing the same or said lumber on board of the said vessel, it was slid down a chute into her hold, and, as each piece was so slid down the said chute, warning was required, to notify those in the said vessel's hold, to enable them to escape from the said lumber as it slid down the said chute; and warning was given by the said defendant, and relied upon by the said libelant, for all of said lumber received down the said chute, up to the sliding of one piece, to wit, a large piece of lumber which the said defendant carelessly, negligently, and improperly slid down the said chute without any warning or notification that the same was coming or sliding down the said chute; and, the said defendant so allowing the said piece of lumber to slide down the said chute, the libelant, having no knowledge that the same was coming, was unable to avoid it, and, in consequence thereof, the said piece of lumber struck libelant's right leg, and broke the same, etc."

The "defendant" is described in the libel as the Port Blakely Mill Company, organized and existing under and by virtue of the laws of the state of California. Being a corporation, it must necessarily act by and through its agents and servants. The company itself is not a fellow servant. When the libel mentions the "defendant," it means, obviously, an employé of the defendant. But who this person was, or what occupation he was engaged in, or what relation he bore to the company and to the libelant, is not disclosed by the averments of the libel. It is plain, therefore, that the court cannot, on the present exception, determine affirmatively that the libelant was injured by the carelessness or negligence of a fellow servant. The final disposition of this question must wait until the court has become more fully advised in the premises. The exceptions are therefore overruled.

THE BOLIVIA.

DECHAN v. BARROW STEAMSHIP CO., Limited.

(Circuit Court of Appeals, Second Circuit. November 16, 1894.)

Appeal from the District Court of the United States for the Southern District of New York.

Samuel B. Johnson, for libelant and appellant.

Wing, Shoudy & Putnam, for claimant and appellee.

Order filed declaring action abated by reason of death of the libelant.

CENTRAL VERMONT R. CO. v. LEWIS.

(Circuit Court of Appeals, Second Circuit. January 8, 1895.)

Appeal from the Circuit Court of the United States for the Northern District of New York.

Louis Hasbrouck, for appellant.

Shedden & Booth, for appellee.

Dismissed, per stipulation of consent withdrawing appeal.