2. SAME—PRESUMPTION FROM GRANT OF PATENT.
The presumption of validity arising from the grant of a patent cannot control the judgment of the court when it is manifest there is no invention.

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

The J. J. Warren Company, the appellant, as assignee of the patentees, filed its bill to restrain the infringement of letters patent of the United States No. 444,642, issued January 13, 1891, to Thomas Gaskell Allen, Jr., William Louis Sachtleben, and John Forrest Walters for "luggage carrier for cycles." The answer denied patentable novelty and invention, and asserted that the alleged invention required nothing more than the exercise of mere mechanical skill, and that the letters patent were invalid. Testimony was taken upon the part of the complainant below solely upon the question of infringement, and which established such infringement. The defendant introduced by stipulation a certain old medicine case in use in 1889. At the hearing the bill was dismissed for want of equity, and upon the ground that the patent was invalid. The specification of the patent contains the following: "The usual and present construction of carrier for attaching to a cycle is of laced metal or of basket work, like a flat, rectangular screen, with fasteners for fixing it onto the tip of the frame of the machine, and it is on such a screen that a coat or other article of wearing-apparel is usually fastened by a cord or a strap; and in some cases, when a small bag is used, it is generally hung from the handle-bar; there being in every instance a difficulty of adjusting the carrier to the balance of the machine, which renders it inconvenient for the rider to master the motion of the machine, and necessarily increases his labor in working the pedals. Another disadvantage arises from the tendency of the machine to overbalance itself by the height of the article fastened on the upper frame,—circumstances which have always prevented cyclists from taking a change of clothing with them on a journey. All the foregoing disadvantages are completely eclipsed by our invention, which consists of a hold-all or casing of a shape corresponding to the space between the 'arch,' 'strut,' and 'tie' of a machine, so that it occupies a position below the rider's body, and sufficiently low to the gravity-center as to steady the machine while traveling. Its position in no wise interferes with the rider's legs while operating the pedals, and its capacity is such that all the necessary articles for personal use, besides a stock of the most essential small articles of wearing-apparel, such as socks, collars, and the like, besides a complete change of clothing, can be stored in it for use, as required. The hold-all is provided internally with web-loops or pockets, and the opening, which is at the side, is covered by a flap, over which is another flap to fold in an opposite direction to enable the inclosed articles to be protected from dust and rain."

The luggage carrier occupies the space between the arch, strut, and tie of a safety bicycle, and is of the form and shape of that space, and by straps and buckle fasteners is attached to the arch and strut and other portions of the cycle; the specification further stating that: "The shape or formation of the hold-all will depend essentially upon the curvature of the machine frame, the hold-all being in every case, according to our invention, of such a character that it can be fixed into and occupy the space between the arch, strut, and tie of a cycle-machine propelled by manual power acting on pedals, as hereinbefore set forth. * * * The hold-all, when removed from the cycle-machine, can be readily carried in the hand, like an ordinary hand-bag, by the loop-strap, U."

The claim of the patent is as follows: "A hold-all, adapted to fit within the space between the arch, strut, and tie of a cycle-machine, and composed of two side plates, A, B, edge strip, C, one of the side plates being provided with a flap, D, to fold downward, and coverable by an outside flap, E, to fold upward, for inclosing the contents, and preserving them from dust and rain, substantially as described."

William Zimmerman, for appellant.

T. A. Banning, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge (after stating the facts as above). It may be difficult to accurately define the distinction between invention and mechanical skill. Possibly no better definition can be presented than that stated by Justice Matthews in Hollister v. Manufacturing Co., 113 U. S. 59, 72, 73, 5 Sup. Ct. 717, 724. "Invention," he says, "is that intuitive faculty of the mind put forth in the search for new results or new methods, creating what had not before existed, or bringing to light what had been hidden from vision." This is in contradistinction to "the suggestion of that common experience which arose spontaneously and by a necessity of human reasoning in the minds of those who had become acquainted with the circumstances with which they had to deal." And mechanical skill, he says, is that which "involves only the expression of the ordinary faculties of reasoning upon the material supplied by a special knowledge, and the facility of manipulation which results from its habitual and intelligent practice." Within the provisions of the constitution touching the issuance of patents, the beneficiary must be an inventor, and he must have made a discovery. It is, therefore, "not enough that a thing shall be new, in the sense that in the shape or form in which it is produced it shall not have been known before, and that it shall be useful, but it must, under the constitution, amount to an invention or a discovery." Thompson v. Boisselier, 114 U. S. 1, 5 Sup. Ct. 1042, and authorities cited; Hill v. Wooster, 132 U. S. 693, 700, 10 Sup. Ct. 228; Burt v. Evory, 133 U. S. 349, 359, 10 Sup. Ct. 394. Within these decisions, can the subject-matter of this patent be deemed an invention, or a product of mechanical skill? It appears from the specification of the patent that previously there had been in use attached to a cycle a carrier of laced metal or basket-work like a flat, rectangular screen, attached to the tip of the frame. The carrier of the patent is of the shape corresponding to the space between the arch, strut, and tie of the machine. It was not novel to make the flaps of the carrier fold in opposite directions. That is shown in the medicine case presented by the defendant, and was old. What, then, did the patentees accomplish? They adopted the idea of a valise or hand bag, and conformed its shape to the space between the arch, strut, and tie of the cycle. The specification itself declares that when removed from the machine it can be carried as an ordinary hand bag. This is, therefore, a mere change in the shape of a hand bag. To be sure, it overcomes the objections to that which was formerly in use. It is more convenient, and by means of straps and buckle fasteners it will not sway from side to side when the cycle is in motion. There is, however, nothing novel in such fastening to prevent motion, and we are unable to perceive anything in this alleged invention except the adaptation in shape and size of an ordinary hand bag to the space between the arch, strut, and tie of the machine. It is a mere change of form and size, and that is not invention. Smith v. Nichols, 21 Wall. 112, 119, and cases supra. It even does not exhibit a high degree of mechanical skill.

A certain presumption in favor of the validity of the patent arises from the action of the patent office in granting the patent. In the consideration of the case we have allowed to this presumption its due weight, and we have assumed it to be true that no such article of such shape or size, or for the purpose designed, was before known, and that it is of superior utility. The presumption referred to is sometimes defined to mean that the patent itself is prima facie evidence of novelty and of invention, but that presumption is probably a mere rule of evidence, which casts the burden of proof upon the alleged infringer. This presumption cannot usurp the province of the court to declare what constitutes novelty. The court should give due consideration to the action of the patent office, but should not permit that action to control its deliberate judgment when it is manifest that there is no invention. Hollister v. Manufacturing Co., 113 U. S. 59–71, 5 Sup. Ct. 717. If we entertained doubt touching the question of invention here, the presumption arising from the issuance of the patent would perhaps avail to resolve the doubt in favor of the patent. Entertaining no such doubt, we cannot yield our judgment to a presumption which arises merely from the patent itself, and casts the burden of proof upon the infringing party. The decree will be affirmed.

CHURCH v. AYER.

(District Court, D. Connecticut. April 10, 1897.)

NATIONAL BANKS—INDIVIDUAL LIABILITY OF STOCKHOLDERS.

An agent chosen by stockholders to take charge of the business of a national bank in liquidation cannot, after all debts have been paid, enforce the individual liability of stockholders, under Rev. St. §§ 5151, 5234, as he has no greater powers than those conferred upon the receiver.

This was an action at law brought by Louis K. Church, receiver of the Puget Sound National Bank, against Edwin Ayer, to enforce his individual liability as a stockholder, under Rev. St. §§ 5151, 5234. Upon motion to strike out amendment to answer.

Holcomb & Pierce, for plaintiff.
Lewis E. Stanton, for defendant.

TOWNSEND, District Judge. Motion to expunge defense and strike out whole of amended answer. This is an action at law brought by the receiver of the Puget Sound National Bank to enforce the individual liability of one of its stockholders, in accordance with the provisions of sections 5151 and 5234 of the Revised Statutes of the United States. The defense that the controller of the currency had no jurisdiction to appoint such receiver was raised in this court, and was disposed of by the writer, and said decision was affirmed by the supreme court in Bushnell v. Leland, 164 U. S. 684, 17 Sup. Ct. 209. The motion to expunge said defense is granted.

The defendant has filed an amendment to the answer, alleging that since the commencement of this action the controller of the currency

has paid to all creditors of said bank, other than stockholders, the amount of their claims in full; that the expenses of the receivership and redemption of the circulating notes of said bank have been fully provided for by the deposit of money with the treasurer of the United States; that under the provisions of the act of congress of June 30, 1876, as amended by the act of August 3, 1892, a majority of the stockholders duly elected an agent of said bank; that the plaintiff herein duly transferred and delivered to him "all the assets of said association then remaining in the hands of the receiver, or subject to the order of the receiver or of the controller of the currency"; that all the provisions of said acts have been fully complied with; that said agent is now proceeding to wind up and distribute the assets of said association; that said receiver has been discharged; that said bank is no longer insolvent or in the hands of a receiver; and that its debts have been paid. The amended answer further avers that certain persons have bought up a large amount of the claims against said bank, have advanced moneys to take it out of the receiver's hands, and have issued a statement of its assets and liabilities, showing that it has nearly $100,000 of good assets with which to pay debts of some $18,000; that the acts aforesaid were done without defendant's knowledge or consent, except by notice of said meeting, and that said agent "is now seeking to enforce the demand in this action for no other purpose than to compel this defendant to contribute towards the payment of said claim or amount of $18,331.14 said to be due to creditors, although said agent has in his hands ample assets to pay the same. Defendant further says that said A. S. Taylor, agent, instead of distributing the assets of said association among the stockholders who have been assessed, as required by said act of August 3, 1892, is still endeavoring to enforce stockholder liability against this defendant in the present suit, long after the outstanding claims against said association have been paid by the controller of the currency, and after the receiver has been discharged." The plaintiff moves to strike out the whole of said amendment, on the ground that it does not present any defense to said action. The first question of law thus raised is whether the receiver has transferred to this agent defendant's liability as a shareholder to pay the debts of said bank. The statute provides that such shareholders shall be individually responsible for all debts of such association, to the extent of the amount of their stock therein, and that the receiver "may if necessary to pay the debts of such association" enforce such individual liability. Rev. St. §§ 5151, 5234. The act of 1892 provides for the election by the shareholders of an agent to wind up the affairs of the association after the "controller of the currency shall have paid to each and every creditor of such association, not including the shareholders, who are creditors of such association whose claim or claims as such creditor shall have been proved or allowed as therein prescribed the full amount of such claim," etc., and that if such agent shall be elected, and a bond shall be duly filed, "the controller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said controller and said

receiver," and that such agent shall hold and dispose of such assets, and may sue and do all other lawful acts necessary to finally settle and distribute the assets and property in his hands. 27 Stat. 345. The plaintiff contends that the language of said statute is sufficiently broad to cover this cause of action for an uncollected asset of the association. It is clear that such agent can have no greater powers than those which were conferred upon the controller and receiver. The receiver has the right to enforce the liability of the stockholder only when and "if necessary to pay the debts of such association." Kennedy v. Gibson, 8 Wall. 504. "The same statute of 1876 provides when the stockholders may choose an agent to take charge of the business of a bank in liquidation; that is, after the receiver has had charge of it long enough to pay all its debts, and after its debts have all been paid, then the stockholders can select an agent to take charge of what remains of the assets." Bank v. Eckels, 57 Fed. 870. It is unnecessary, in the determination of this motion, to consider defendant's further claim that such a liability is not an asset of the corporation, and that the obligations now sought to be paid have been created since the failure of said association, and that, therefore, the individual liability of the shareholders cannot be enforced for their payment. The amendment to the answer alleges that all the debts of said association have been paid. The motion to strike it out is denied.

In re HYDRAULIC STEAM DREDGE NO. 1.

(Circuit Court of Appeals, Seventh Circuit. May 3, 1897.)

No. 375.

1. ADMIRALTY JURISDICTION—STEAM DREDGE.
   Quære: Whether an hydraulic steam dredge, which sucks up material from the bottom by means of a pipe and pump, and discharges the same through a line of adjustable pipes upon the adjacent shore, is a subject of admiralty jurisdiction.[1]

2. SAME—MARITIME CONTRACTS.
   A contract under which coal is furnished to an hydraulic steam dredge engaged in sucking up material from the bottom of a lake, and discharging it through pipes upon the adjacent shore, not for the purpose of improving navigation, but merely to make a fill to be used for railroad purposes, is not a maritime contract, under which a maritime lien may arise.[2]

Appeal from the District Court of the United States for the Northern District of Illinois.

A libel in rem was filed in the district court of the United States for the Northern district of Illinois by the O. S. Richardson Fueling Company, appellant here, against the Hydraulic Steam Dredge No. 1 for supplies of coals furnished to the dredge at the port of Chicago, and which were necessary to enable her to engage in her business. These supplies amounted to $4,520.75, and were furnished between June 3, 1895, and June 27, 1896, which amount was claimed to be a lien upon the dredge by virtue of the water-craft laws of the state of Illinois. The Northwestern National Bank of Chicago, intervening as claimant, denied that the dredge was a vessel within the maritime and admiralty jurisdiction of the court, or that it was used, or intended to be

[1] See Saylor v. Taylor, 23 C. C. A. 343, 77 Fed. 476.

[2] See note to The Richard Winslow, 18 C. C. A. 347.

used, in navigating the waters and canals of the state of Illinois, or employed in commerce and navigation upon any waters whatever; denied that any maritime lien or charge arose by reason of the furnishing of the supplies; and alleged that it was the mortgagee of the dredge by virtue of a mortgage dated June 15, 1896, executed by the American Hydraulic Dredging Company, the owner of the dredge, to secure payment of an indebtedness of $18,600, with interest, which mortgage was filed for record in the office of the recorder of Cook county in the state of Illinois, and in the Northern district of Illinois, on June 18, 1896, alleged default in payment of the indebtedness secured by the mortgage, and that the mortgagee thereupon entered and took possession of the dredge on the —— day of July, 1896, and continued to hold possession thereof until it was taken from the possession of the bank under process issued upon the libel.

The cause was submitted to the court below upon an agreed statement of the facts, as follows:

"That said dredge, at the time of the filing of the libel, was owned by the American Hydraulic Dredging Company, a corporation of the state of Illinois, having its principal place of business at Chicago; that she was then lying in the waters of the harbor of Chicago in said district; that she was built at Milwaukee, in the state of Wisconsin, in the latter part of the year 1892, but did no work there; and, immediately on her substantial completion, was towed on Lake Michigan from said Milwaukee to Chicago, in the state of Illinois, being intended for work there; that said dredge is of a cubical capacity of more than twenty tons burden; that the hull of said dredge is a timbered and floating wooden structure, corresponding in general construction with that of other dredges used in the dredging business, and of some lighters and scows, and is flat-bottomed and without a keel, with perpendicular sheeted sides except at the rear end, where it is somewhat rounded to give less resistance when dragged or towed through the water, and is partly inclosed and roofed over above; is ninety feet long, thirty-three feet wide, and six feet in draught, without any sail, paddle-wheel, propeller screw, or other means for self-propulsion; carries no rudder or steering gear; and is towed or pushed through the water by independent means when occasion requires it to be moved. In it are placed an engine of about four hundred horse power, with four boilers and furnaces to supply the same with steam, together with an eighteen-inch centrifugal pump operated by said engine, with subordinate equipment and machinery suitable for the operation of the dredge. The dredge has geared to and suspended from its front end a cylindrical metal pipe twenty inches in diameter, which pipe runs to and is connected with said centrifugal pump at one end, and at its other or exterior end carries a rotary cutting apparatus operated by a small subsidiary engine, which exterior end of said pipe with said rotary cutting apparatus is so geared and adjusted that they may be lowered to the ground surface or bottom under the water where it is intended to operate the same, and, when so lowered, said dredge is operated substantially as follows: Said rotary cutting apparatus and said centrifugal pump are put into operation by said engines respectively, with such effect that the earth, sand, or gravel forming said bottom, being dug out, loosened, or disintegrated by said rotary cutting apparatus, is then at once, together with the adjacent water, mixed with it, sucked up through said exterior end of said cylindrical pipe, and is thereupon pumped and drawn into and through said centrifugal pump, which discharges the whole volume thereof, of which from eighty-five to ninety-five parts in each one hundred is water, through a continuous line of adjustable pipes, twenty inches in diameter, to the adjacent shore or place of deposit of the volume so discharged. That, after arriving at Chicago from Milwaukee, said dredge made docks for the Illinois Steel Company at South Chicago, and excavated a slip at Waukegan, Illinois, at which vessels could lay, but was chiefly employed in the construction of a part of the drainage canal of the sanitary district of Chicago, and, in such employment, excavated a portion of the main channel of said canal of over one-half a mile long, and from two hundred to two hundred and fifty feet in width, and from six to twenty-five feet in depth, through and over prairies and meadow lands where said channel was located, performing said excavation substantially in the manner following: Said dredge was towed to a point on the Illinois and Michigal canal where a breach or opening through the bank of said canal into the adjacent land was

made by independent means, in which land, by like means, a cavity or excavation was then dug out, sufficient in capacity to admit the said dredge, which was pushed into and occupied said cavity, after which said opening was closed up, and said dredge disconnected from any navigable waters. A ditch three or four feet in width was then, by independent means, dug from this cavity through the adjacent land to the Desplaines river, some three hundred and fifty feet distant, through which ditch a stream of water was admitted and flowed from said river to said cavity in continuous quantities, sufficient to enable said centrifugal pump to be operated in connection with said rotary cutting apparatus. Whereupon said dredge floated upon said admitted water, and began said operation, thereby excavating and removing the earth in front of it, and, being pushed or dragged forward from time to time in the enlarged cavity thus opened up by it, made its way, and proceeded in said excavation through said prairies and meadow lands.

"That last prior to the filing of the libel in this cause the employment of said dredge was by the Illinois Central Railroad Company to fill in earth for its railroad purposes behind a line of piling on its grounds on the lake front in Chicago, during which said employment said dredge was upon the navigable waters of Lake Michigan, at the lake-front harbor of said Chicago; and said filling was done by said dredge pumping the sand, gravel, and earth from the bottom of said lake, thereby incidentally and necessarily deepening the channel of said harbor where it was located, and depositing said earth, sand, and gravel, with water, behind said piling on said railroad grounds; but the object for which it was so employed was to fill in said earth, and not to deepen said channel. That the coal furnished by said libelant to the said dredge was consumed and used by said dredge while it was so engaged in its operation of filling for said Illinois Central Railroad Company, to wit, from the 30th of June, 1895, to the 16th day of August, 1895, when there was a balance due the libelant on account of the coal used and furnished of three hundred and fifty dollars ($350); and from November 20, 1895, to June 27, 1896, when the amount of coal so furnished as aforesaid amounted to the sum of forty-one hundred and seventy and $^{75}/_{100}$ dollars ($4,170.75), making a total amount due the libelant of forty-five hundred and twenty and $^{75}/_{100}$ dollars ($4,520.75) for coal furnished to said dredge as aforesaid, upon its credit; and that said coal so furnished to said dredge as aforesaid was necessary to enable said dredge to be operated and engage in her said business. That in connection with said dredge, and as one of the appurtenances, was a scow, used on which to place and store its supplies of coal, but not used to receive or carry the earth excavated by said dredge, which earth was by said method of its operation discharged through the pipes aforesaid, on the adjacent land. That neither said dredge nor scow was registered, enrolled, or licensed under the laws of the United States, and neither has ever been so registered, enrolled, or licensed. That said dredge was operated by a force of about twelve men, working partly on the dredge, and partly at the shore end of said discharge pipe, and operating under the direction of a superintendent and two foremen, neither of whom was a licensed master. All employed on said dredge went ashore for their meals and to sleep, the dredge never having carried either cooking appliances or accommodations for sleeping. That said claimant, the Northwestern National Bank of Chicago, intervenes herein by virtue of being mortgagee of said dredge, her boilers, engines, machinery, tools, furniture, gear, appurtenances, and said scow, there being included in said mortgage also furniture and chattels located in the office of the American Hydraulic Dredging Company, in said city of Chicago, which said mortgage was made by said American Hydraulic Dredging Company to said claimant, and executed on the 15th day of June, 1896, by Lindom W. Bates, its president, and by Charles H. Whiting, its secretary, and was acknowledged by them before George P. Foster, a justice of the peace of the town of South Chicago, in Cook county, in the state of Illinois, in the district aforesaid, on the 15th day of June, 1896, which was filed for record in the recorder's office of said Cook county on the 18th day of June, 1896, and was given to secure one note of said dredging company for $600, dated June 15, 1896, payable in five days from date, and one note for $2,000, payable in thirty days from date, and one note of $11,500, payable in ninety days from date, said notes all being of even date with said mortgage; and that said bank, claiming as said mortgagee, on the 16th day of July, 1896, took possession of

said dredge, and her said machinery and appurtenances, and was in possession thereof as such mortgagee when the libel herein was filed, and when the marshal, under and by virtue of the process under said libel, on the 28th day of July, 1896, took possession of said dredge and her machinery and appurtenances; but no sale of said mortgaged property had been made under or by virtue of said mortgage when said libel was filed, and when said marshal so took possession. That this stipulation is not to be construed as an admission by either party thereto of the conclusions of law drawn or stated by the other party, either in the libel or answer herein, which conclusions of law affirm or deny that said dredge is a maritime structure engaged in commerce and navigation within the admiralty jurisdiction of this court, and which on the part of said libelant affirm, and on the part of said claimant and respondent deny, the jurisdiction of this court over said dredge in that behalf."

At the hearing, the district court dismissed the libel, from which decree the libelant appeals to this court.

John C. Richberg, for appellant.

1. Under the fourth assignment of errors it is claimed that the court below erred in holding that it had not jurisdiction to entertain a libel against the steam dredge for coal furnished upon its credit, and used by it while engaged in its business upon the navigable waters of the United States, when a lien was given for such supplies, so furnished, by the local law.

That a steam dredge is subject to admiralty jurisdiction has been expressly decided in several well-considered cases where the question was directly in issue, viz.: The Pioneer, 30 Fed. 206, decided by Judge Benedict in 1886; The Starbuck, 61 Fed. 502, decided by Judge Butler in 1894; The Alabama, 19 Fed. 544; Id., affirmed on appeal, 22 Fed. 449; Aitcheson v. The Endless Chain Dredge, 40 Fed. 254; Maltby v. Steam Derrick Boat, 3 Hughes, 477, Fed. Cas. No. 9,000; Coasting Co. v. The Commodore, 40 Fed. 258; The Atlantic, 53 Fed. 607 (citing The Alabama, supra, with approval). Admiralty jurisdiction has also been held in numerous cases of water crafts not actually engaged in transporting or carrying cargoes, but engaged in navigation and certain employments incident thereto. In such cases, Judge Brown, of the United States district court for the Southern district of New York, has always taken jurisdiction, notably in The Public Bath No. 13, 61 Fed. 692, decided in 1894, citing The Pioneer, supra, with approval; The Paradox, Id. 860, citing The Public Bath No. 13, supra; The Queen, 40 Fed. 694; Disbrow v. Walsh, 36 Fed. 607; The City of Alexandria, 31 Fed. 427. Other cases by other federal judges are Kearney v. A Pile Driver, 3 Fed. 246; The Hezekiah Baldwin, 8 Ben. 556, Fed. Cas. No. 6,449; Woodruff v. One Covered Scow, 30 Fed. 269; The Menominie, 36 Fed. 204; The Hendrick Hudson, 3 Ben. 419, Fed. Cas. No. 6,355; Wood v. Two Barges, 46 Fed. 204; The W. F. Brown, Id. 290; The Dick Keys, 1 Biss. 408, Fed. Cas. No. 3,898; The Kate Tremaine, 5 Ben. 60, Fed. Cas. No. 7,622; The Old Natchez, 9 Fed. 476; The Minna, 11 Fed. 759, and note. The admiralty jurisdiction has been extended over water crafts which 75 years ago were unknown, and to-day do 75 per cent. of the water-borne commerce. In the case of The General Cass, 1 Brown, Adm. 334, Fed. Cas. No. 5,307, Judge Longyear decided in favor of admiralty jurisdiction in all classes of modern water crafts engaged in commerce or navigation, or in aid thereof. The words "admiralty" and "maritime," as they are used in the constitution and acts of congress, are by no means synonymous. They were evidently both inserted to preclude a narrower construction which might be given to either word had it been used alone. Martin v. Hunter's Lessee, 1 Wheat. 304. Maritime cases are more properly those arising under the maritime law, which is not the law of a particular country, and does not rest for its character or authority on the peculiar institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade, which general convenience and a common sense of justice have established in all the commercial countries of the world to regulate the dealings and intercourse of merchants and mariners in matters relating to the sea. 3 Kent, Comm. (3d Ed.) 1; Laws of Oleron, arts. 14, 15; Laws of Wisbuy, arts. 26, 27; Marine Ord. of France; Roccus; Pardessus Loix Mar.; 2 Valin, 177, 188; Rhod. Law, 36; Consulat, 18; Godolp. 43, 155.

2. Is the water craft in question a ship or vessel of which the admiralty will take jurisdiction?

"'Ship' is a general term, and in the law is equivalent to 'vessel.' It is defined: 'A locomotive machine adapted to transportation over rivers, seas, and oceans.'" Ben. Adm. (3d Ed., 1894) § 215. "Includes whatever is built in a particular form for the purpose of being used on water." The Mac [1892] Law T. 909, Brett, L. J. "In its original acceptation, it is generic for anything formed for the purpose of going on the water." Id., 910, Cotton, L. J. "'Ship' and 'vessel' are used in a very particular sense to include all navigable structures, but a fixed structure, like a dry dock, is not used for such purposes; a general designation for any vessel employed in navigation; and, in the Roman law, anything which floated upon the waters, and was accessory to commerce." And. Law Dict. Congress has defined the word as follows: "The word 'vessel' includes every description of water craft or other artificial contrivance used or capable of being used as a means of propulsion on water." Rev. St. U. S. 1874, tit. 1, c. 1, § 3. The word includes a steam dredge. The Pioneer (1886) 30 Fed. 206; Chaffe v. Ludeling (1875) 27 La. Ann. 611. Those structures can hardly be denied the character of ships and vessels which in every particular are superior to the ships and vessels of those countries and periods in which the great codes of maritime law were promulgated and enforced. Ben. Adm. (1894) § 217. The true test of admiralty jurisdiction over water crafts is the navigability of the waters upon which the water crafts are employed. The Genesee Chief, 12 How. 443, expressly overruling the principle laid down in the case of The Thomas Jefferson, 10 Wheat. 428, and affirmed in Ex parte Boyer, 109 U. S. 629, 3 Sup. Ct. 434. The admiralty jurisdiction depends upon the subject-matter, the nature, and character of the controversy. If that be connected with ships or shipping, commerce, and navigation, the admiralty has jurisdiction. "Toutes les affairs relatives a la commerce et navigation et aux navitgatures appartient au droyt maritime." 3 Pardessus, Loix Mar. 451. A contract made on land, to be performed on land, as the contract for building a ship, is not a maritime contract. Roach v. Chapman, 22 How. 129. The contract for delivering the supplies, and which were delivered in the case at bar, however, is a maritime contract; for the dredge when the supplies were furnished was on navigable water, engaged in her employment, a great agent of maritime commerce, its wants and exigencies, to which she was well adapted. Those who furnish water crafts with what is necessary to enable them to navigate the sea, and to perform their appropriate functions, and to make such crafts available for the great purpose for which they are created, have always found favor in admiralty. The General Cass, Brown, Adm. 334, Fed. Cas. No. 5,307, in which Judge Longyear held that "the true criterion by which to determine whether or not a water craft or vessel is subject to admiralty jurisdiction is the business or employment for which it is intended or is susceptible of being used, or in which it is actually engaged, rather than its size, form, capacity, or means of propulsion." That the thing in question is not propelled by oars, sails, or steam power, and is engaged only in harbors and docks, and is moved from place to place by tugs, does not prevent its being a vessel within the admiralty jurisdiction. 1 Am. & Eng. Enc. Law (2d Ed.) 655, and cases there cited, and cases herein referred to. The fact that a water craft is not registered, enrolled, or licensed, and is exempt from payment of the hospital tax, they are, nevertheless, recognized as vessels by act of congress of July 20, 1846. The act of March 2, 1831 (section 1), speaks of "any raft, flat, boat, or vessel of the United States entering otherwise than by sea * * * are exempt from custom house fees." Also, by provision of the act of March 3, 1851, it is provided: "This act shall not apply to the owner or owners of any canal boat, barge or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation." Now, the general term used throughout the act was "ship or vessel." Here is a clear implication, therefore, that congress understood "ship or vessel" to include the craft named in the proviso. A steam dredge for deepening channels of navigation is a subject of admiralty jurisdiction. The General Cass, Brown, Adm. 334, Fed. Cas. No. 5,307; The Endless Chain Dredge, supra. A dredge and her scow are to be treated as one concern, and subject to admiralty jurisdiction. The Starbuck, supra.

8. Lien of libelant.

Contracts made for supplies after the vessel has been launched and received are held to be maritime contracts. The Manhattan, 46 Fed. 797. For supplies furnished in a home port to a domestic vessel, the right of action is conferred by state statute. The Transfer No. 4, 9 C. C. A. 521, 61 Fed. 364; The Corsair, 145 U. S. 335, 12 Sup. Ct. 949. "Contracts depend upon the subject-matter or nature of the service, or employment which relate to commerce, or navigation." Ex parte Easton, 95 U. S. 72. "Jurisdiction as to contracts depends not upon locality, but upon the subject-matter of the contract." The Jerusalem, 2 Gall. 348, Fed. Cas. No. 7,294 (Judge Story). The object of the state statute is to put the local lien on a par with the general maritime lien, that the creditors of the domestic vessel, in her home port, may be put on the same footing with creditors of a foreign vessel, and with creditors of a particular vessel in a foreign port. The Lena Mowbray, 71 Fed. 720, citing The Daisy Day, 40 Fed. 538. The rule is well settled that a lien for supplies furnished in a home port given by a state statute can be enforced in rem in the United States district court. The Menominie, 36 Fed. 197; The Lottawanna, 21 Wall. 558. The statute of the state of Illinois gives a lien upon the craft in question for the supplies furnished by appellant. Rev. St. Ill. c. 12.

Charles M. Sturges, for appellee.

Under the authorites, and on the facts answered and admitted on the record, was the libeled dredge a maritime structure, engaged in commerce and navigation, within the federal admiralty jurisdiction?

It is not controverted that such structures have been repeatedly ruled to be within that jurisdiction where operated in connection with attendant scows or barges for the maritime transportation of the material excavated. It is respectfully urged that it is this test which logically determines the boundary of jurisdiction in respect of this class of structures,—a boundary, perhaps, like others, not always easy of precise delimitation,—and distinguishes a mere floating machine from a congeries, which, as a whole, may be said to be engaged, although in a very subordinate degree, in the essential functions of maritime transportation. It is not contended that no case can be found in which the jurisdiction may not have been recognized on other incidental grounds, but it is believed that this is the true and reasonable distinction, both on principle and by the great weight of authority. The safe and practicable channel of the authorities is marked out, not by the ripple of an occasional adjudication, but by the steady flow of concurrent cases, progressing in harmony with established principles. In Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336, the supreme court of the United States carefully and authoritatively discussed the limitations of admiralty jurisdiction in respect of structures lying near the boundary, and, once for all, it is believed, negatived the proposition that because such a structure floats on the water, and has some incidental relations to navigation and commerce, it is thereby brought within the domain of admiralty. The principles and reasoning of this case are believed to have finally disposed of some inclination, perhaps to be discerned in a few earlier decisions of lower courts, to extend the jurisdiction to everything that floats, or can be found to have some argumentative relation in its functions to navigation and commerce. In this case, Mr. Justice Bradley extendedly quotes from The Mac, 7 Prob. Div. 126, 130, in which a "hopper barge," used for receiving mud from a dredging machine, and carrying it out to deep water, though it had no means of locomotion of its own, but was towed by other vessels, having nevertheless a bow, stern, and rudder, and being steerable, was held by the court of appeal in England to be a "ship," within the English merchant shipping act. In the course of the quotation so made by Mr. Justice Bradley, it was said by Lord Justice Brett: "This hopper barge is used for carrying men and mud. She is used in navigation; for to dredge up and carry away mud and gravel is an act done for the purposes of navigation. Suppose that a saloon barge, capable of carrying 200 persons, is towed down the river Mersey, in order to put passengers on board of vessels lying at its mouth; she would be used for the purposes of navigation, and I think it equally true that the hopper barge was used in navigation." At the close of this quotation, Mr. Justice Bradley adds: "Perhaps this case goes as far as any case has gone in

extending the meaning of the terms 'ship' or 'vessel.' Still, the hopper barge was a navigable structure used for the purpose of transportation." It is respectfully submitted that this language, in connection with the language cited, is significant and authoritative in respect of the test above contended for. In The Alabama, 22 Fed. 449, the libel was filed against a steam dredge, and her two consort scows (to which, when operating, the dredge delivered the mud excavated, to be in them towed away by tow boats) for towage from Mobile Bay, Ala., to Tampa, Fla. On appeal in the circuit court the jurisdiction was sustained, Mr. Justice Pardee saying in the course of his opinion (page 450): "It would be of no use to dig up the earth in the channel unless it should be transported away, and it could not be transported away unless it should first be dug out; and the whole business seems to be the transportation by water of earth and dirt from one place to another place. * * * The scows are movable things engaged in navigation. The dredge boat by itself might not be up to the test." In The Starbuck, 61 Fed. 502, the jurisdiction was sustained against a dredge and her carrying scows, it appears, on the ground that they were "one concern,"—it is believed in recognition of the distinction here insisted on. In Pile Driver E. O. A., 69 Fed. 1005, it is pointed out that jurisdiction in admiralty against steam dredges legitimately rests on their being operated in connection with scows to carry the mud dredged, that being essentially a marine transportation. Even in The Pioneer, 30 Fed. 206, which sustained the jurisdiction on other reasoning, it appears by the report that the dredge libeled in that case was operated in connection with scows to carry the earth dredged, although it is not stated that the scows were joined in the libel. Nor would such joinder seem necessary to support the jurisdiction. If, as a whole, the dredge and scows formed a maritime thing, it would appear that a libel must be sustained against any portion of it brought by seizure within the decreeing power of the court. With great deference to the distinguished judge who decided The Pioneer, last cited, it is believed that the reasoning which declared her maritime because she carried her own internal and functional viscera is unsound and illusory. Mr. Justice Swan, in Pile Driver E. O. A., 69 Fed. 1005, above cited, declares the doctrine of The Pioneer to be irreconcilable with the authorities, and expressly rejects that case. Perhaps in no case to be cited, where jurisdiction in admiralty has been sustained against a dredge, is this fact of a consortship and joint operation with carrying scows or barges to receive and transport, by water transportation, the material excavated, absent or to be fairly uninferred,—a factor already above urged to be the test, on principle, of the jurisdiction in the case of such structures. In the case at bar the material excavated and removed is pumped up from the bottom by the hydraulic or centrifugal pump, and is discharged through pipes to the adjacent land. The structure at bar has its operation through its immediate pipe nexus with the shore, and not by maritime transshipment by navigation as in the case of dredges operated in connection with scows or barges. It is, in its essence, a floating pump, capable of sucking up earth mixed with water, with its discharge pipe carried on shore. It is not believed that the structure at bar was removed into the category of a maritime thing, because one of its appurtenances was a scow on which was placed and stored its supplies of coal.

The analogies of related structures, in respect of which jurisdiction in admiralty has been denied, disallow the jurisdiction.

In Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336 (already cited), a floating dry dock in the Mississippi river, near New Orleans (used to receive vessels that they might be therein inspected and repaired), was struck by a steamship which stove her in below the water line, whereby she began to fill with water, and would have sunk or been lost without succor which was extended to her. The structure was ruled to be not maritime, so as to subject her to a libel in admiralty for salvage. It is to be remarked on the case last cited that the incidental functions in aid of the welfare and safety of commerce and navigation, of which a floating dredge, as a mechanism, may be capable in deepening and removing obstructions from navigable channels, no more in principle bring it within the jurisdiction of admiralty, as engaged in functions appertaining to commerce and navigation, than would the very important functions towards a like safety and welfare afforded by the mechanism of the dry dock in the case last cited. The argument that functions of incidental benefit

to commerce and navigation bring the subject-matter within the jurisdiction of admiralty proceeds on reasoning disallowed in Edwards v. Elliott, 21 Wall. 532, 554, in which the building of a ship was denied to be a maritime function. The preparation of a navigable channel, or the excavation of slips or docks, no more appertains to commerce and navigation than does the building of the ships designed to sail or lie in them. In the very recent case of Pile Driver E. O. A., 69 Fed. 1005, the structure libeled (to enforce a lien for supplies under a state statute) was a floating platform about 60 feet long, 20 feet wide, and 2½ feet deep, equipped with a rudder and steering wheel, and having a stern wheel by which, when connected with the engine used to operate the pile-driving apparatus, the craft could be moved in the performance of its work, or from place to place in Alpena bay, or Alpena river, where it was to build docks or drive piles. On this platform were placed a pile-driving mechanism, and an engine and boiler to operate the same. It was the business of the craft to drive piles and build docks. The platform or floating substructure (the pile-driving apparatus having been removed for that purpose, and placed on shore) had on two occasions, a number of years before the supplies in question were furnished, been used to transport on the water cedar ties and gravel. It appeared that persons connected with the management of the structure lived on her, where cooking was done for them. Upon very full and able consideration and examination of the authorities, Judge Swan ruled in this case that the state lien could not be enforced in admiralty unless the structure in respect of which it was asserted was maritime within the rules of that jurisdiction; that the functions of the pile driver were not maritime under those rules; that, to be within that jurisdiction, the structure in question must not only float, but must float for the performance of essentially maritime functions appertaining to commerce and navigation; and that the jurisdiction must be declined. The careful attention of the court to this Pile Driver Case is respectfully asked. Its analogies are submitted to be remarkably close to, if not identical in principle with, those of the case at bar. Its reasoning on the authorities is believed to be unanswerable.

In Maltby v. Steam Derrick Boat, 3 Hughes, 477, Fed. Cas. No. 9,000, the libel was for salvage for raising a sunken steam derrick boat from the channel of the Blackwater river, in Virginia. The structure was a boat of two decks, with a mast for hoisting purposes, and a steam engine and machinery. It was without sails or means of self-propulsion. It was used for removing obstructions from the channel. The jurisdiction was contested, on the ground that the craft was not maritime, or designed for commerce and navigation. The court sustained the jurisdiction, on the ground that admiralty had cognizance of the salvage of property on navigable waters, irrespective of the consideration as to whether the thing saved was, or was not, maritime in quality. The conclusion of the court on that ground would seem to have been erroneously reached, under the doctrine of Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336, already cited, not then decided, in which case the contrary is intimated unless the property saved be lost from a maritime structure. In the quite recent case of The Big Jim, 61 Fed. 503, a libel for wages was filed against a marine or hydraulic pump ballasted on piles, but capable of being towed from place to place where her services were needed, and which had been so towed, and which was used to suck up mud from the bottom of the water, or from scows alongside, and to force it by steam power on the adjacent land. It is believed to be necessarily inferred from the report (which is brief and with few details) that the pump was erected on a floating boat or platform, since the nautical terms of the "towing" and "ballasting" of the structure, used in the report, are not otherwise to be accounted for. The court ruled the structure not to be maritime in nature, within the rules of admiralty, and declined jurisdiction. The analogies of this case to the facts at bar are respectfully urged to be very close. The sucking up of the mud by the pump, and its being forced by steam power on shore, are essentially identical with that operation of the dredge in the case at bar. It is to be remarked that this case was decided on the same day with The Starbuck, 61 Fed. 502 (already cited), in which the same learned judge ruled in favor of the jurisdiction over a dredge and her consort scows "as one concern," as I have already submitted in recognition of the distinctions contended for here. In The Hendrick Hudson, 8 Ben. 419, Fed. Cas. No. 6,355, jurisdiction was declined of a libel for salvage

of a floating hulk of a dismantled steamboat, fitted up for a saloon or hotel, which was being towed from one point to another on the Hudson river. Judge Blatchford broadly discussed the limitations on the jurisdiction, and said: "The fact that the structure has the shape of a vessel, or had been once used as a vessel, or could by proper appliances be again used as such, does not affect the question. The test is the actual status of the structure, as being fairly engaged in commerce or navigation. A contract, claim, or service to be cognizable in admiralty must be maritime, in such a sense that it concerns rights or duties appertaining to commerce or navigation. [Citing authorities.] Though the service in the present case was maritime in one sense, because the hulk was in the water, yet it was not maritime in such a sense as to bring the case within the admiralty and maritime jurisdiction of this court. * * * The service did not fairly and legitimately concern any right or duty which appertained to commerce or navigation, or to a structure engaged in commerce or navigation." The case of The Hezekiah Baldwin, 8 Ben. 556, Fed. Cas. No. 6,449, was a libel for repairs to a floating elevator in New York harbor, of which the court entertained jurisdiction. The structure transferred grain by its machinery from one barge or vessel to another. The jurisdiction is to be sustained by the test of the maritime transportation which the structure effected, and in which it was a factor. This aspect of that case is expressly noted by Judge Pardee in the analogies, which, in The Alabama, 22 Fed. 449 (already cited), he points out between the maritime transshipment effected by the floating elevator in question, and the same effected by the dredge in its delivery of its excavated mud to its consort-carrying scows, in the case of the dredge and scows before him for decision. The case of The Hezekiah Baldwin lies close to the boundary line, but is perhaps soundly decided. The structure was a floating link in a continuous transportation of merchandise by water. The same learned judge, in Woodruff v. One Covered Scow, 30 Fed. 269, sustained a libel for a lien for wharfage under the state law, against a floating scow or platform, on which a house was built, moored by lines to one of the docks in New York harbor, and there rising and falling with the tide, used for the storage of oars and sails of small craft landing near by, and as a means to afford persons egress from small boats to the adjoining wharf, and thence to the shore. The learned judge ruled that the structure could not be held to be a "ship" or "vessel," but sustained the jurisdiction, on the ground that the dock service to the house boat was maritime, it being used in connection with and having relations to navigation and commerce. This decision was rendered February 18, 1887, and would seem contradictory of the principles laid down in Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336, decided but a few weeks earlier (in January, 1887), which was not cited or referred to by the learned judge, and may be assumed not then to have been published or brought to his attention. This house boat would seem, on principle, to be no more maritime than a moored dry dock, or a floating bethel, hotel, or circus, or a floating warehouse in which sails or rigging might be stored. In Ruddiman v. A Scow Platform, 38 Fed. 158, jurisdiction of a libel for wharfage against a moored floating structure (with physical analogies akin to those of the structure before the court in Woodruff v. One Covered Scow, last cited) was, with better reason, declined, upon a reference (inter alia) to Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336. In The W. F. Brown, 46 Fed. 290, a floating house structure was towed by a propeller from Evansville, Ind., to New Orleans, being at intermediate points moored to the shore, whereupon exhibitions of a circus were given on her, the spectators coming from the land. The case is somewhat obscurely reported, but it is perhaps to be gathered that the propeller and the floating circus house were one plant, belonging to the same owner. Two libels were filed against the propeller,—one by her engineer for services; the other by performers on the circus boat, who, it would appear, had been employed to perform also some duties in and about the management of the propeller. It is not stated whether or not the circus boat was embraced in the libel. The court held the propeller engaged in maritime functions in the course of the towage, and sustained the libel of the engineer. As respects the performers, the court ruled that their services on the whole case were not maritime, and refused to exercise jurisdiction on their behalf. This case is cited, not as having close analogies to the case at bar, but as illustrating the extent to which structures may float or be towed on navigable waters, with

extended changes of place; yet, nevertheless, as in the case of the circus boat, not in the exercise of maritime functions.

It is to be here remarked, that the cases cited clearly show that a capability of being towed through the water from place to place, where the functions of a floating structure are desired to be exercised, forms no intrinsic test of the quality of the structure as maritime, for the purposes of admiralty jurisdiction. The floating dry dock above mentioned was undoubtedly capable of being towed, and being placed in position elsewhere in the river in which she lay, were that deemed advantageous. The Big Jim hydraulic pump was fitted to be towed for a change of position, and had been towed. Such, too, was the case of the hotel and saloon boat. The voyage of the circus boat, towed from Evansville to New Orleans, covered an extended stretch on navigable waters. In the cases of the pile driver and of the steam derrick boat, the capability of being moved on the water without difficulty, from place to place where it was desired to operate them, was an essential part of their structure. Nor is any such test to be found in the fact that such structures may be so shaped or fitted as to facilitate or conveniently accommodate themselves to such a movement on the water.

In conclusion on this branch of the case, it is respectfully insisted that, on the facts and on principle and authority, the structure libeled in the case at bar is, in the language of the answer, "in essence and substance merely a floating tool or implement, * * * and is not a structure or maritime creature subject to the jurisdiction invoked in this cause." Being assured of the careful scrutiny by the court of the stipulation of facts, I have not discussed in detail the elements of fact embraced therein. It is not believed that the men who operated the dredge can be regarded, under the circumstances of that operation, and in connection with their duties on the shore, and of their sleeping and eating there, as sailors or mariners. It is respectfully submitted that they were artisans or laborers, pure and simple, engaged in the operation of a machine. In Edwards v. Elliott, 21 Wall. 532, Mr. Justice Clifford remarked (page 554) on the distinction between artisans having their homes on the land and seamen living on the seas. It would seem a misnomer to attribute a maritime quality to the structure which plowed its way over prairies and meadows, as is set forth in the statement of facts. The mere fact that this was accomplished by the use of water fed to and under the dredge did not, it is believed, make it maritime in that operation, although it floated and progressed on that water, and made it a navigable channel.

Could the dredge be held "a vessel" or maritime structure, the libel could not even in that event be sustained for the supplies furnished, in the case at bar, to enable it to pursue its employment in making land for the railroad uses of the Illinois Central Railroad Company.

That employment is set out in the agreed statement of facts, and the coal in question was consumed and used by the dredge in the course of that employment. That employment was essentially a common-law land service, as much so, in principle, as would have been the construction, from a structure floating in the adjacent slip, of a warehouse for the railroad company on the land so provided. The service performed was in no legitimate sense maritime or appertaining to commerce and navigation. Could the court below, sitting in admiralty, take cognizance in rem against the dredge on the libel of the Illinois Central Railroad Company for the nonperformance of the contract to make or fill in this land? Could that be held a maritime contract? The building of docks and wharves has no such relation to commerce as to justify the jurisdiction of admiralty over the instruments of their construction. The Pile Driver E. O. A., 69 Fed. 1005. It appears by the agreed facts that the contract was to make or fill in the land, and not to deepen the channel on which the dredge floated. No maritime lien can arise, as has been already shown, in respect of a contract or service not maritime in its nature. The functions in which the ship or vessel is engaged at the date of the contract or service is the test. On this ground the court in The Pulaski, 33 Fed. 383, declined jurisdiction in rem in respect of a contract for the storage of wheat in a schooner laid up for the winter, which wheat was alleged to have been damaged because of the hatches not being properly covered and protected. In a like case, and on the same ground, this circuit court of appeals, in the late case of The Richard Winslow, 18 C. C. A. 344, 71 Fed. 426, declined jurisdic-

tion in admiralty in respect of a similar contract. In both of these cases the contract was in connection with a contract for the carriage of the grain on navigable waters. Although it is a general rule that a contract is an entirety, nevertheless the court in each case, scrupulous as to exercising an illegitimate jurisdiction, discriminated the subject-matter of the contract as of a dual nature, and declined to take cognizance of that portion of it which did not appertain to navigation and commerce. On analogous grounds, in The Murphy Tugs, 28 Fed. 429, the use of a slip or dock by a vessel tied up on the lakes for the winter was ruled not maritime, the vessel being not then engaged in the functions of commerce and navigation. Other cases where, on like principles, jurisdiction was declined, are pointed out in the opinion of Mr. Justice Jenkins, in The Richard Winslow, above cited. If the person furnishing supplies to a vessel must furnish them on her credit,—and this is indispensable in admiralty, where reliance is had on a state lien, even although the state law contain no such requirement (The Lena Mowbray, 71 Fed. 720, and cases there cited),—he must in like manner also necessarily see to it, for the purposes of resort to and cognizance in admiralty, that this credit is extended to the vessel in the course of a maritime matter or employment.

On the whole case, the floating machine at bar is not within the reason for privileged maritime liens in the admiralty.

In The St. Jago De Cuba, 9 Wheat. 409, the court discussed the foundations in principle of the privileged liens of admiralty (overriding other rights and interests), and said (page 416): "The whole object of giving admiralty process and priority of payment to privileged creditors is to furnish wings and legs to the forfeited hull, to get back for the benefit of all concerned; that is, to complete her voyage. * * * In every case the last lien given will supersede the preceding. The last bottomry bond will ride over all that precede it, and an abandonment to a salvor will supersede every prior claim. The vessel must get on. This is the consideration that controls every other; and not only the vessel, but even the cargo, is sub modo subjected to this necessity." Such a structure as is before the court in this case is in no just sense within the considerations thus pointed out. The reasons for a privileged maritime lien are not applicable to such a structure. There is no voyage or cargo at hazard. There is no maritime exigency. "Cessante ratione legis, cessat ipsa lex."

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge, upon this statement of the case, delivered the opinion of the court.

The allowance of a maritime lien for services and supplies had its origin in the necessities of trading vessels visiting distant ports, where the master and the owner would presumably be without credit to obtain them. The lien was created for the benefit of the vessel, and not for the benefit of the creditor, and to enable the vessel to pursue her voyage, and because the ship is made to "plow the sea, and not to rot by the walls." Henry, Adm. § 43; The St. Jago De Cuba, 9 Wheat. 409. Such liens take precedence of antecedent charges upon the vessel because of the paramount necessity for the service and the supplies, which tend to the preservation of the res. The lien was not allowed for necessary supplies furnished at the home port of the vessel, where presumably the owner and the master had credit, although the subject-matter of the contract to furnish them was of a maritime nature. The water-craft laws of Illinois allow a lien for supplies in the home port, which the admiralty, the subject-matter being maritime and within its jurisdiction, will recognize and enforce. The question here is therefore this: whether the contract for the supply of coals was maritime in its nature. If not, we need not stop to consider the interesting question argued at the bar, whether this steam dredge was a vessel, and subject to the jurisdic-

tion of the admiralty. We abstain, therefore, from a review of the many cases to which we are referred, not altogether at agreement, nor wholly in accord with the principle underlying the jurisdiction of the admiralty, speaking to the question of admiralty jurisdiction over a steam dredge or like floating structure. It is perhaps pertinent to suggest and sufficient to say, as was said in Cope v. Dock Co., 119 U. S. 625, 7 Sup. Ct. 336, that the fact that a structure floats upon the water does not of itself make it a ship or vessel; for then a floating church or a floating barroom or a floating circus would come within the admiralty jurisdiction,—a conclusion which cannot be tolerated. The thing, the structure,—by whatever name it may be known,—must be engaged in, or in some sense related to, commerce and navigation. The decisions holding that a steam dredge is within the admiralty jurisdiction may perhaps be rested upon the ground that a dredge is not only a floating structure upon the waters, but, as stated by Judge Pardee in The Alabama, 22 Fed. 449, is accompanied by a scow, and that the scow and the dredge are to be deemed one movable thing upon the waters, engaged in a common enterprise, and carrying the excavated earth by water transportation, and so engaged in navigation and related to commerce. Judge Pardee observes, however, that "the dredge boat by itself might not be up to the test." In like manner, the supreme court, in the case cited, spoke of the case of The Mac, 7 Prob. Div. 126, as going somewhat to an extreme in defining the meaning of the terms "ship" and "vessel," and said that a "hopper barge was a navigable structure used for the purpose of transportation." Here the floating structure was not operated for the maritime transportation of the material excavated by scows or barges, but it discharged upon adjacent land, and through a line of adjustable pipes, the earth sucked up from the bed of the lake. It is insisted that here is no element of navigation beyond the fact, which is not controlling, that the thing was a floating structure upon the water, and therefore such structure is not within the admiralty jurisdiction. The question is interesting, but we do not think it necessary to pursue it.

Upon the assumption that the structure in question is a ship or vessel, and within the admiralty jurisdiction, that jurisdiction will not be asserted to enforce a contract touching the ship, unless such contract is maritime in its nature. Insurance Co. v. Dunham, 11 Wall. 1. The admiralty deals alone with things pertaining to the sea. We declared in The Richard Winslow, 34 U. S. App. 542, 18 C. C. A. 344, and 71 Fed. 426, that "a maritime contract must therefore concern transportation by sea. It must relate to navigation and to maritime employment. It must be one of navigation and commerce on navigable waters." It was there pointed out that not every contract having reference to a ship is within the admiralty jurisdiction, but only such as relate to maritime employment, such as pertain to the navigation of a ship or assist the vessel in the discharge of a maritime obligation. It is not enough that the service is to be done upon the sea or with respect to the ship. It must relate to trade and commerce upon navigable waters. The coals furnished by libelant were supplied to the dredge while it was engaged in its work for the Illinois Central Railroad Company, and to enable it to perform that work, which was "to fill in earth for its railroad purposes behind a line of