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

piling on its grounds on the lake front in Chicago." By means of its cutting apparatus, the earth on the bed of the lake was dug up, loosened, and disintegrated, and, with the adjacent water, sucked up into and through a centrifugal pump, and thence discharged through a continuous line of adjustable pipes to the place of deposit upon the adjacent shore. This is not a maritime employment. The fact that the dredge floated upon navigable waters is not controlling. The dredge in the performance of that contract was not engaged in navigation, nor even in the marine transportation of the earth dug from the bed of the lake. To the contrary, a peculiar mechanism dispensed with the necessity of marine transportation. The employment related solely to the land, to the creation of an embankment upon the land for the use of a railway upon the land. The only possible relation to the sea in this employment was in this: that for the purpose of obtaining the earth, and as a necessary incident thereto, the bed of the lake was dug out, and thereby the channel was deepened. That was not, however, for the purposes of navigation. It is not suggested that vessels engaged in navigation frequented the place; that wharves were constructed or designed; or that the excavation was for the purpose of or in aid of navigation. The work was done in and for the construction of an embankment upon the land, and for railroad purposes. The earth was taken from the bed of the lake because more convenient to the place of deposit, and less expensive than when brought from a distant point on land. The effect upon the channel was incidental and subordinate. The work had no possible relation to marine transportation. It is of no moment that the structure floated upon the water, and dug out the bed of the lake. That does not give marine character to this employment. The admiralty deals with vessels which "plow the sea," and with contracts touching navigation. In The Richard Winslow, supra, we held that a contract for storage of grain during the closed season of navigation was not maritime. The present case falls within the principle of that decision. It may be that this structure could engage in a maritime service, and its maritime engagements brought within the jurisdiction of the admiralty. It is enough to say that in the performance of its contract to plow the prairies of the state of Illinois, or in the construction of a railway embankment upon land, to dig up the bed of the lake, and shoot the earth through tubes for deposit on the land adjacent, it was not so employed. The supplies furnished to enable the dredge to perform a contract not maritime cannot attain to the dignity of a maritime lien.

It is of no moment to say that the coals supplied were furnished to the dredge from barges or scows, and that, therefore, there was maritime transportation. With equal propriety could it be asserted that supplies furnished by scows to a floating church, a floating drink shop, a floating dance hall, or a floating circus, gave to such enterprises a maritime nature. The question is not whether navigation was employed to supply the coals, but whether the dredge was engaged in commerce and navigation, so that the supplies furnished, being in aid of navigation, can be charged as a maritime lien upon the dredge. We are of opinion that the libel was properly dismissed. Decree affirmed.

THE EDMUND PHINNEY.

CLAYTON v. HEBB.

(Circuit Court of Appeals, Fourth Circuit. May 5, 1897.)

No. 202.

COMPULSORY PILOTAGE LAWS.

The provision in the Maryland statute (Acts 1896, c. 40), exempting from the compulsory pilotage law vessels "laden either in whole or in part with coke or coal mined in the United States," applies only to vessels which, in a commercial sense, are coal-laden, or carry a reasonable quantity to constitute a cargo, and not to one which carries only a small quantity (25 tons) as ballast.

Appeal from the District Court of the United States for the District of Maryland.

Robert H. Smith, for appellant.

Stewart Brown and Geo. Stewart Brown, for appellee.

Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

GOFF, Circuit Judge. John S. Hebb, the appellee, filed a libel in the district court of the United States for the district of Maryland against Frederick L. Clayton, agent and consignee of the American bark Edmund Phinney, in a cause of pilotage civil and maritime. He alleged that he was a duly-licensed pilot, authorized and competent to pilot vessels of any tonnage and class over the waters of the Chesapeake, to and from the Atlantic Ocean; that the Edmund Phinney was an American vessel of between 700 and 800 tons burden, registered in the port of Portland, Me., in the name of J. S. Winslow & Co., as owners, of which Frederick L. Clayton was the agent and consignee in the port of Baltimore; that said vessel, laden with a full cargo of lumber, had cleared and was ready to sail from the port of Baltimore to a foreign port, to wit, to Rosario, on the river Platte, in South America; and that, as so laden, she drew rather more than 16½ feet of water. It is also set forth in the libel that under the provisions of the Code of the state of Maryland, as amended and reenacted by the act of the general assembly of that state (chapter 40, Acts 1896), it is, among other things, provided that "all vessels sailing under register bound to and from Baltimore city (except vessels employed in and licensed for the coasting trade and American vessels laden either in whole or in part with coke or coal mined in the United States), shall take a licensed pilot or in case of refusal to take such pilot shall themselves, their owners or consignees, pay the said pilot, as if one had been employed, and such pilotage shall be paid to the pilot first speaking to such vessel (before Cape Henry bears south, if inward bound)." Also, it is alleged that the said Edmund Phinney, being so laden and ready to proceed on her voyage, the appellee, as a duly-licensed pilot, made application to both the captain and to said Frederick L. Clayton, the consignee, and offered himself ready and willing to pilot her to sea, but that both of them declined the offer and refused to take the pilot; that thereupon, he having so offered, and they having so refused, he presented to said captain and consignee a bill for pilotage, which, under the law, amounted to

$82.50, but that payment of the same was refused; that he was informed by them that their excuse for not accepting a pilot was that, in addition to the cargo of lumber aboard said vessel, they had shipped a quantity of coal mined in the United States, amounting to from 20 to 25 tons in all, and that by reason of such alleged shipment of coal they claimed that the vessel was "laden in part with coal mined in the United States," and that it was therefore exempt from the demand of pilotage. The libel then claimed that such shipment of coal, if made, was not in the usual and regular course of trade to the port of destination, but that the same was colorable merely, and made for the express purpose of evading the requirements of said pilot laws, and that, as it was made for the purpose of evading the law, it was not within the fair and reasonable intent of the same, nor of its proper construction, and that, therefore, the vessel was not "laden in part" with coal so mined, and not exempt from paying the pilotage fees so demanded. Hence he prayed a decree against the consignee for the sum of $82.50. The answer of Clayton admitted that the Edmund Phinney was an American vessel of about 650 tons burden, hailing from the port of Portland, Me.; that he was the agent of the vessel in the port of Baltimore for procuring a cargo for her, and that he was her consignee for such purpose; that she was laden in the port of Baltimore, but not that she was fully laden with lumber; that she cleared and sailed from Rosario, in South America, and that when laden she drew about 16½ feet of water. He alleged that the vessel was partly laden with coal mined in the United States. He denied that the libelant made application, either to him or to the master, after the vessel was loaded, or at any other time, to pilot her to sea, and he denied that any bill for pilotage had been presented to him. He admitted that the vessel did not take a pilot on the voyage from Baltimore, mentioned in the libel, and claimed that there was no obligation on her part so to do, and that a pilot was not needed. He set up that the vessel was partly laden with coal mined in the United States; that she carried 25 tons or more at the bottom of her hold, the balance of her cargo being lumber; and that both the coal and lumber had been shipped in the usual way. He claimed that the vessel was exempt from all pilotage charges. He denied that the coal was shipped for the purpose of evading the pilot laws, and claimed that there was no ground upon which any claim for pilotage could be lawfully made. The case came on to be regularly heard, when quite a number of witnesses were examined in open court, all the testimony being set out in the record. The district judge entered a decree in favor of the libelant for the sum claimed, together with the costs of the suit. From that decree this appeal was sued out.

The decision of the questions raised by the assignment of errors depends upon the meaning of the amendment to the Maryland Code, set forth in the libel,—upon its proper construction. There is no material conflict in the testimony, and no trouble as to the facts. The case is so clearly stated in the opinion filed by Judge Morris in the court below, and the construction he gives the legislation in question coincides so fully with the conclusion we reach, that we deem it eminently proper to adopt his views as the judgment of this court. We quote from his opinion, as follows: