Ct. 612), and recovery in personam against the owners of the vessel for loss of life is restrained upon the surrender of the vessel in proceedings under the statute (section 4285). It is evident, therefore, that the statute not only makes the fund derived from the sale of the vessel a fund applicable to all claims pro rata (see, also, rule 55 in admiralty), but that it bars all other remedy. The necessary effect of this is to make every admissible claim a statutory lien upon the fund. The fund must be distributed, therefore, according to the statute itself, i. e. pro rata among the claims arising from the collision (Butler v. Steamship Co., supra; The Maria and Elizabeth, 12 Fed. 627), saving any special equitable rights as between the parties.

4. No question arises here under the Harter act as respects the liability for baggage or cargo. The claims for both were settled and paid by the owners of the Catskill, who were reimbursed, as above stated, less $100 particular average, by the insurers on baggage and cargo, and their claim for so much of the loss has been duly proved. The amount of this claim will, therefore, be paid to these insurers, like the other damage claims, in priority to the claim for the damage to the Catskill.

5. A question being raised as respects the abandonment of the wreck of the Catskill to her insurers, in accordance with the suggestions on the argument, in case any surplus should be found remaining after the payment of the other claims, a further order of reference may be taken to report the evidence upon the question of abandonment and as to who is entitled to the balance remaining.

THE SAGINAW.

(District Court, S. D. New York. May 19, 1899.)

COLLISION—MEASURE OF DAMAGES—DEMURRAGE.

The owners of a vessel injured in a collision during a voyage are not entitled to recover demurrage for the time the vessel was delayed for making repairs, where they suffered no actual pecuniary loss from the delay.

In Admiralty. Libel against the steamship Saginaw to recover damages for collision. On exceptions to referee's report.

Wheeler & Cortis, for the Persia.
Robinson, Biddle & Ward, for the Saginaw.

BROWN, District Judge. From the evidence and the finding of the referee, I understand that there was no actual pecuniary loss sustained by the owners through any loss of the use of the Persia during the short time she was laid up while repairing her damages from the collision, except two items of expense, namely $170 for night work in expediting her unloading after the collision, and $39.29, the cost of board for passengers during a delay of 1 day and 16 hours beyond the scheduled time of sailing, making together the sum of $209.29. The referee has allowed, however, to her owners the sum of $2,026.66 for the value of the use of the Persia for 3⅛ days, the period occupied in making repairs, upon the authority of Randall v. Sprague, 21 C. C. A. 334, 74 Fed. 249, 250. That case, however,

was a case of charter, and of unreasonable delay in loading, during which time it was found that the charterers "had the substantial use of the vessel, for which they should therefore pay."

I do not think that the decision in that case should be extended to a case of collision, where the defendants on the one hand have had no use of the vessel, and where the libelants on the other hand, as found by the referee, have not sustained any actual pecuniary loss, except in the extra expense above stated, the vessel having performed her regular and appointed voyage without other loss and arrived at Hamburg in ample time for her scheduled return seven days later. The allowance of these extra expenses, upon the facts found, will fully satisfy, I think, the rule of restitutio in integrum, which is the established limit of damages in collision cases. Williamson v. Barrett, 13 How. 101. In the recent case of The Conqueror, 166 U. S. 110, 127, 17 Sup. Ct. 510, the supreme court in commenting on this rule observed:

"The damages must not be merely speculative, and something else must be shown than the simple fact that the vessel was laid up for repairs. Thus, if a vessel employed upon the Lakes should receive damages by collision, occurring just before the close of navigation, and she were repaired during the winter, no demurrage could be allowed, since no vessel upon the Lakes can earn freight during the winter. * * * It is not the mere fact that a vessel is detained that entitles the owner to demurrage. There must be a pecuniary loss, or at least, a reasonable certainty of pecuniary loss." Page 133, 166 U. S., and page 517, 17 Sup. Ct.

The case of The Emerald [1896] Prob. Div. 192, is also there cited with approval, as well as the older case of The Clarence, 3 W. Rob. 283, in which the court say:

"In order to entitle a party to be indemnified for what is termed in this court a consequential loss, being for the detention of his vessel, two things are absolutely necessary—actual loss, and reasonable proof of the amount. Both must be proved * * *. It does not follow as a matter of necessity that anything is due for the detention of a vessel whilst under repair"; there would be, "where the vessel would have been beneficially employed";

and demurrage was there disallowed, because it did not appear how much the owner had "actually lost by her detention whilst under repair," or that the owner had sustained "one single shilling of direct and actual loss." In other words, restitution means indemnity for actual pecuniary loss, and nothing more.

The subject was discussed at length in the case of The Mayflower, Brown, Adm. 376, Fed. Cas. No. 9,345, where the same conclusion was arrived at, that there must be proof of actual loss on account of the detention (page 384, Brown, Adm.), or "reasonable certainty that the vessel would have been actually employed by the owner during such detention, and that she would have actually earned the owner something over and above her expenses." See, also, The Potomac, 105 U. S. 630, 632; Steamboat Co. v. Mayor, etc., 36 Fed. 716.

The practice in this district has been not to admit claims for the vessel's time while making repairs, if it occasioned no loss of her regular trips, or other expense.

In the present case, as the proofs show that there was no actual loss by detention, except the sum of $209.29, that amount may be substituted in place of the demurrage allowed in the report.

HERRING v. MODESTO IRR. DIST.

(Circuit Court, N. D. California. June 30, 1899.)

No. 12,615.

1. JURISDICTION OF FEDERAL COURTS—EFFECT OF STATE STATUTES.
   The fact that a plaintiff is given a different remedy in the state courts cannot affect the jurisdiction of a federal court to entertain his action, where, by reason of his citizenship and the amount involved, he has the right to sue in that court.[1]

2. MUNICIPAL BONDS—ACTION BY HOLDER FOR JUDGMENT—SUFFICIENCY OF COMPLAINT.
   A complaint filed in a federal court, in an action of which it has jurisdiction, alleging that plaintiff is the owner of coupons from negotiable bonds duly issued in conformity to law by a California irrigation district, and that such coupons are past due and unpaid, states a cause of action which entitles the plaintiff to a judgment against the district. The fact that such coupons are, under the statute, to be paid from a special fund, to be raised by the officers of the district in a special manner, does not impose on the plaintiff the necessity of alleging that such fund has been raised, or that the officers have failed to perform their duty to raise it, nor does the fact that payment can in either case only be enforced by means of a mandamus affect the plaintiff's right to a judgment, since in a federal court such relief can only be afforded after a judgment as a means for its enforcement.

3. CALIFORNIA IRRIGATION DISTRICTS—RIGHT TO PLEAD ILLEGALITY OF ORGANIZATION.
   The supreme court of California having in numerous decisions upheld the constitutionality of the Wright act (St. Cal. 1886 & Ex. Sess. 1887, p. 29), providing for the organization and government of irrigation districts, a district organized under its provisions, and which continues to exist, is at least a de facto municipal corporation, and its officers de facto officers; and the legality of its organization cannot be collaterally attacked by an individual, or pleaded by the district itself for the purpose of defeating obligations which it incurred while acting as such de facto corporation.

4. SAME—DEFENSE TO BONDS—CHARACTER OF LAND IN DISTRICT.
   The question whether land embraced within an irrigation district is of a character which would be benefited by a system of irrigation is one of fact, which the statute of California commits to the determination of the board of supervisors of the county on the application for organization of the district; and, in the absence of allegations of fraud or bad faith, their decision is conclusive, and the question cannot be raised by the district as a defense to bonds it has issued.

5. SAME—FAILURE TO REVIEW BENEFITS.
   Allegations in the answer of an irrigation district in a suit on its bonds that the district has derived no benefit from the work constitute no defense, and are immaterial.

6. SAME—EXCLUSION OF TERRITORY FROM DISTRICT.
   The exclusion of lands from an irrigation district after its organization under the provisions of the California statute cannot affect the validity of bonds issued by the district.

Rosenbaum & Scheeline and Chickering, Thomas & Gregory, for plaintiff.

Rodgers, Paterson & Slack and C. W. Eastin, for defendant.

[1] As to effect of state laws on federal jurisdiction generally, see note to Barling v. Bank, 1 C. C. A. 513.