DeLovio v. Boit

7 Fed. Cas. 418, no. 3,776 C.C.D.Mass. 1815

Story, Circuit Justice. This is a libel brought in the district court upon a policy of insurance, alleging it to be a maritime contract, of which that court, as a court of admiralty and maritime jurisdiction, has cognizance. There is a plea to the jurisdiction, and the present question rests solely on the general sufficiency of that plea as a declinatory bar. It has been argued, and now stands for judgment. I shall make no apology for the length of this opinion. The vast importance and novelty of the questions, which are involved in this suit, render it impossible to come to a correct decision without a thorough examination of the whole jurisdiction of the admiralty. I shall, therefore, consider, in the first place, what is the true nature and extent of the ancient jurisdiction of the admiralty; in the next place, how far it has been abridged or altered by statutes, or by common law decisions; and in the last place, what causes are included in the delegation by the constitution to the judicial power of the United States of "all cases of admiralty and maritime jurisdiction."

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On the whole, the result of this examination may be summed up in the following propositions. 1. That the jurisdiction of the admiralty, until the statutes of Richard II., extended to all maritime contracts, whether executed at home or abroad, and to all torts, injuries, and offences, on the high seas, and in ports, and havens, as far as the ebb and flow of the tide. 2. That the common law interpretation of these statutes abridges this jurisdiction to things wholly and exclusively done upon the sea. 3. That this interpretation is indefensible, upon principle, and the decisions founded upon it are inconsistent and contradictory. 4. That the interpretation of the same statutes by the admiralty does not abridge any of its ancient jurisdiction, but leaves to it cognizance of all maritime contracts, and all torts, injuries and offences, upon the high sea, and in ports as far the tide ebbs and flows. 5. That this is the true limit, which upon principle would seem to belong to the admiralty; that it is consistent with the language and intent of the statutes; and is supported by analogous reasoning, and public convenience, and a very considerable weight of authority. 6. That under all the circumstances, the courts of law and of admiralty in England are not so tied down by a uniformity of decisions, that they are not at liberty to entertain the question anew, and to settle the doctrines upon their true principles; and that this opinion is supported by some of the best elementary writers in that kingdom.

But whatever may in England be the binding authority of the common law decisions upon this subject, in the United States we are at liberty to re-examine the doctrines, and to construe the jurisdiction of the admiralty upon enlarged and liberal principles. The constitution has delegated to the judicial power of the United States cognizance "of all cases of admiralty and maritime jurisdiction;" and the act of congress (Sept. 24, 1789, c. 20, § 9) has given to the district court "cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade, of the United States, where the seizures are made on waters navigable from the sea by vessels of ten or more tons burthen; with their respective districts, as well as upon the high seas."

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What is the true interpretation of the clause "all cases of admiralty and maritime jurisdiction?" If we examine the etymology, or received use, of the words "admiralty" and "maritime jurisdiction," we shall find, that they include jurisdiction of all things done upon and relating to the sea, or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. Cowell, Interpreter, voce "Admiral;" Spel. Gloss. voce "Admiral," sub finem; Godolph. Jur. c. 1; 1 Valin, Comm. 1; Seld. De Dom. Mar. lib. 2, c. 16, p. 160; Stypman, Jus. Marit. par. 1, c. 6, pp. 76, 77; Id. par. 5, c. 1, p. 602; Loccenius, Jus. Marit. lib. 2, c. 2. In all the great maritime nations of Europe, the terms "admiralty jurisdiction" are uniformly applied to the courts exercising jurisdiction over maritime contracts and concerns. We shall find the terms just as familiarly known among the jurists of Scotland, France, Holland and Spain, as of England, and applied to their own courts, possessing substantially the same jurisdiction, as the English admiralty in the reign of Edward the Third. If we pass from the etymology and use of these terms (i. e. "admiralty jurisdiction") in foreign countries, the only expositions of them, that seem to present themselves, are, that they refer, 1. To the jurisdiction of the admiralty as acknowledged in England at the American Revolution; or, 2. At the emigration of our ancestors; or 3. As acknowledged and exercised in the United States at the American Revolution; or, 4. To the ancient and original jurisdiction, inherent in the admiralty of England by virtue of its general organization.

As to the first exposition, it is difficult to perceive upon what ground it can be reasonably maintained, for it would enlarge and limit the jurisdiction by the provisions of statutes, which have been enacted for the government and regulation of the high court of admiralty, and which proprio vigore do not extend to the colonies. It would further involve qualifications of the jurisdiction, which are perfectly arbitrary in themselves, inapplicable to our situation, and contradictory to the commissions and practice of the vice admiralty colonial courts. Even if this exposition were to be adopted, are we to be governed by the doctrines of the common law, or of the admiralty? I am not aware of any superior sanctity in the decisions at common law upon the subject of the jurisdiction of other courts (to which at least they bore no good will), which should entitle them to outweigh the very able and learned decisions of the great civilians of the admiralty. And where could we so properly search for information on this subject, as in the works of those jurists, who have adorned the maritime courts from age to age, and made its jurisdiction the pride and study of their lives?

The second exposition is liable to the same objections; for it is clear, that the statutes of Richard do not extend in terms to the colonies, and it is quite certain, that they were not included in any supposed mischiefs, for they then had no existence. Besides, it is a very material consideration, that, at the emigration of our ancestors, the contest between the courts of common law and the admiralty was at its height; and very soon after (in 1632) it was, by the agreement of the twelve judges, decided in favor of the admiralty. And here again it may be asked, whose doctrines are to be adopted, those of the common law or of the admiralty?

The third exposition requires an examination of the authority and powers of the vice admiralty courts in the United States under the colonial government. In some of the states, and probably in all, the crown established, or reserved to itself the right to establish, admiralty courts; and the nature and the extent of

their jurisdictions depended upon the commission of the crown, and upon acts of Parliament conferring additional authorities. The commissions of the crown gave the courts, which were established, a most ample jurisdiction over all maritime contracts, and over torts and injuries, as well in ports as upon the high seas. And acts of parliament enlarged, or rather recognised, this jurisdiction by giving or confirming cognizance of all seizures for contraventions of the revenue laws. The Fabius, 2 C. Rob. Adm. 245. Tested, therefore, by this exposition, the admiralty jurisdiction of the United States would be as large, as its most strenuous advocates ever contended for.

The clause however of the constitution not only confers admiralty jurisdiction, but the word "maritime" is superadded, seemingly ex industria, to remove every latent doubt. "Cases of maritime jurisdiction" must include all maritime contracts, torts and injuries, which are in the understanding of the common law, as well as of the admiralty, "causae civiles et maritimae." In this view there is a peculiar property in the incorporation of the term "maritime" into the constitution. The disputes and discussions, respecting what the admiralty jurisdiction was, could not but be well known to the framers of that instrument. Montgomery v. Henry, 1 Dall. [1 U. S.] 149; Talbot v. Commanders and Owners of Three Brigs, Id. 95. One party sought to limit it by locality; another by the subject matter. It was wise, therefore, to dissipate all question by giving cognizance of all "cases of maritime jurisdiction," or, what is precisely equivalent, of all maritime cases. Upon any other construction, the word "maritime" would be mere tautology; but in this sense it has a peculiar and appropriate force. And Mr. Justice Winchester (speaking with reference to contracts) has very correctly observed, that "neither the judicial act nor the constitution, which it follows, limit the admiralty jurisdiction of the district court in any respect to place. It is bounded only by the nature of the cause, over which it is to decide." Stevens v. The Sandwich [Case No. 13,409]. The language of the constitution will therefore warrant the most liberal interpretation; and it may not be unfit to hold, that it had reference to that maritime jurisdiction, which commercial convenience, public policy, and national rights, have contributed to establish, with slight local differences, over all Europe; that jurisdiction, which, under the name of consular courts, first established itself upon the shores of the Mediterranean, and, from the general equity and simplicity of its proceedings, soon commended itself to all the maritime states; that jurisdiction, in short, which, collecting the wisdom of the civil law, and combining it with the customs and usages of the sea, produced the venerable Consolato del Mare, and still continues in its decisions to regulate the commerce, the intercourse, and the warfare of mankind. Zouch, c. 1, p. 87, etc.; Seld. ad Fletam, c. 8, § 5; Rob. Collect. Marit. 105, note; Le Guidon, c. 3; 1 Emer. 21. Of this great system of maritime law it may be truly said, "Non erit alia lex Romae, alia Athenis, alia nunc, alia post-hac; sed et omnes gentes, et omni tempore, una lex et sempiterna et immortalis, continebit." Cic. Frag. de Repub. lib. 3 (Editio Bost. 1817, tom. 17, p. 186).

At all events, there is no solid reason for construing the terms of the constitution in a narrow and limited sense, or for ingrafting upon them the restrictions of English statutes, or decisions at common law founded on those statutes, which were sometimes dictated by jealousy, and sometimes by

misapprehension, which are often contradictory, and rarely supported by any consistent principle. The advantages resulting to the commerce and navigation of the United States, from a uniformity of rules and decisions in all maritime questions, authorize us to believe that national policy, as well as juridical logic, require the clause of the constitution to be so construed, as to embrace all maritime contracts, torts and injuries, or, in other words, to embrace all those causes, which originally and inherently belonged to the admiralty, before any statutable restriction. And most cordially do I subscribe to the opinion of the learned Mr. Justice Winchester, in the case already cited (Stevens v. The Sandwich [Case No. 13,409]), "that the statutes of Richard II. have received in England a construction, which must at all times prohibit their extension to this country," and "that no principles can be extracted from the adjudged cases in England, which will explain or support the admiralty jurisdiction, independent of the statutes or the works of jurists, who have written on the general subject." Indeed the doctrine that would extend the statutes of Richard to the present judicial power of the United States seems little short of an absurdity. It is incorporating into the text of the constitution an exception, not only unauthorized by its terms, but wholly inappropriate in phraseology to any other realm than England. We have not as yet any "admirals or their deputies;" we do not refer their jurisdiction to the reign of "the most noble King Edward the Third;" much less would an American citizen dream, that the constitution authorized the admiralty "to arrest ships in the great flotes for the great voyages of the king and of the realm;" and "to have jurisdiction upon the said flotes during the said voyages only," and "saving always to the king all manner of forfeitures and profits thereof coming," and "to the lords, cities and boroughs their liberties and franchises."

There are moreover decisions of the courts of the United States, which completely establish the proposition, that the statutes of Richard, and the common law construction of them, do not attach to this clause of the constitution. We have already seen, that the courts of common law, after these statutes, held, that the admiralty had no jurisdiction of things done within the ebb and flow of the tide, in ports, creeks, and havens. It has, notwithstanding, been repeatedly and solemnly held by the supreme court, that all seizures under laws of impost, navigation and trade, on waters navigable from the sea by vessels of ten or more tons burthen, as well within ports and districts of the United States, as upon the high seas, are causes of admiralty and maritime jurisdiction. U. S. v. La Vengeance, 3 Dall. [3 U. S.] 297; Same v. The Sally, 2 Cranch [6 U. S.] 406; Same v. The Betsey and Charlotte, 4 Cranch [8 U. S.] 443. This limitation, as to the place of seizure, is prescribed by an act of congress (Act Sept. 24, 1789, c. 20, § 9 [1 Stat. 76]), but it is perfectly clear, that congress have no authority to include cases within the admiralty jurisdiction, which the terms of the constitution did not warrant. And the ground is made stronger by the consideration, that the right of trial by jury is preserved by the constitution in all suits at common law, where the value in controversy exceeds twenty dollars; and by the statute, this right is excluded in all cases of admiralty and maritime jurisdiction. It is therefore utterly impossible to reconcile these decisions which in my humble judgment are founded in the most accurate and just conceptions of the admiralty jurisdiction, with the narrow and perplexed doctrines of the common law. The argument then, that attempts to engraft them upon the constitution, is wholly untenable.

On the whole, I am, without the slightest hesitation, ready to pronounce, that the delegation of cognizance of "all civil cases of admiralty and maritime jurisdiction" to the courts of the United States

comprehends all maritime contracts, torts, and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts, (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations,) which relate to the navigation, business or commerce of the sea.

The next inquiry is, what are properly to be deemed "maritime contracts." Happily in this particular there is little room for controversy. All civilians and jurists agree, that in this appellation are included, among other things, charter parties, affreightments, marine hypothecations, contracts for maritime service in the building, repairing, supplying, and navigating ships; contracts between part owners of ships; contracts and quasi contracts respecting averages, contributions and jettisons; and, what is more material to our present purpose, policies of insurance. S. P. Johnson, J., in Croudson v. Leonard, 4 Cranch [8 U. S.] 434; Cleirac, Le Guidon, c. 1, p. 109; Id. c. 3, p. 124; Id. Jurisd. de la Marine, p. 191; 1 Valin, Comm. 112, 120, etc., 127, etc.; 2 Emer. 319; Godolph. 43; Zouch, 90, 92; Eaton, 69, etc., 295, etc.; Malyne, Lex Merc., 303; Id., Collection of Sea Laws, c. 2, p. 47; Consol. del Mare, c. 22; 2 Brown, Adm. c. 4, p. 71; 4 Bl. Comm. 67; Stevens v. The Sandwich [supra]; Targa, Reflex. c. 1. And in point of fact the admiralty courts of other foreign countries have exercised jurisdiction over policies of insurance, as maritime contracts; and a similar claim has been uniformly asserted on the part of the admiralty of England. 2 Boucher, Consol. del Mare, p. 730; 1 Valin, Comm. 120; 2 Emer. 319; Roccus de Assec. note 80; 2 Brown, Adm. 80; Zouch. 92, 102; Molloy, bk. 2, c. 7, § 18. There is no more reason why the admiralty should have cognizance of bottomry instruments, as maritime contracts, than of policies of insurance. Both are executed on land, and both intrinsically respect maritime risks, injuries and losses.

My judgment accordingly is, that policies of insurance are within (though not exclusively within) the admiralty and maritime jurisdiction of the United States. I therefore overrule the plea to the jurisdiction, and assign the respondent to answer peremptorily upon the merits.

In making this decree, I am fully aware, that from its novelty it is likely to be put to the question with more than usual zeal; nor can I pretend to conjecture, how far a superior tribunal may deem it fit to entertain the principles, which I have felt it my solemn duty to avow and support. Whatever may be the event of this judgment, I shall console myself with the memorable words of Lord Nottingham, in the great case of the Duke of Norfolk, 3 Ch. Cas. 52: "I have made several decrees, since I have had the honor to sit in this place, which have been reversed in another place; and I was not ashamed to make them, nor sorry when they were reversed by others."