

ten days after the decision of the collector in this matter, they gave notice to him of their dissatisfaction with his decision, and set forth distinctly and specifically therein the grounds of objection thereto; and did within thirty days after the date of such decision, appeal therefrom to the Secretary of the Treasury, and did within thirty days from the date of the decision of the Secretary of the Treasury in this matter, institute this suit.

The jury rendered a verdict in favor of the plaintiffs for one hundred and eighty-seven dollars, \$187, (the amount claimed by the plaintiffs) and \$6 88 interest from the 16th of April, 1858, making in all \$193 88.

RECENT ENGLISH DECISIONS.

In the Lords Justices Court, Lincoln's Inn, Saturday June 12, 1858.

COPE VS. DOHERTY.

1. The Tuscarora and the Andrew Foster, two American ships, came in collision in the Irish channel, whereby the latter ship, together with her cargo, was wholly lost. The owners of the cargo of the Andrew Foster attached the Tuscarora in the English admiralty, and she was condemned in damages; upon a bill filed in the Lord Justices Court, asking for the benefit of the English Merchants Shipping Act of 1854, which is similar in its provisions to the Act of Congress of March 3, 1851, it was held, that inasmuch as both ships were owned by foreigners, the American owner could not avail himself of the British statute before an English court.
2. It would seem that neither the English nor the American statute can be made available to the American shipowner, in case of collision between foreign ships, where the cause is before an English tribunal.

The Tuscarora, an American ship of the burthen of about one thousand two hundred and thirty-one tons, sailed from Liverpool on the 27th April, 1857, bound for Philadelphia; the Andrew Foster, also an American ship, of the burthen of about one thousand two hundred and eighty-seven tons, sailed from New York on the 1st of April, 1857, bound for Liverpool.

About midnight of the 28th of April, a very dark night, the two vessels came in collision in the Irish channel, between Tuskar and Bardsey, whereby the Andrew Foster and her cargo were totally

lost. The Tuscarora was compelled to put back to Liverpool for repairs, when she was attached by owners of cargo on board the Andrew Foster. The consignees of the Tuscarora stipulated for her to the full amount of her appraised value, to wit, eight thousand pounds sterling, and she proceeded on her voyage. On her return to Liverpool, she was attached by the owners of the Andrew Foster, but did not again give bail. In the end, the Tuscarora was condemned in damages by the admiralty court as being in fault in the collision, and that judgment was affirmed, on appeal, by privy council.

A bill was then filed in equity by the owners of the Tuscarora against all the parties who had proceeded against her, asking the benefit of the merchants shipping act, and that all parties should be restrained from claiming more than their just proportion of the value of the Tuscarora, and her freight for the voyage. The bill was demurred to by John Doherty, and others, English owners of cargo on the Andrew Foster, on the ground that the ships being both American, the provisions of the merchants shipping act did not apply.

The demurrer was sustained by Vice Chancellor Wood, from whom an appeal was taken to the Lords Justices.

The sections of the merchants shipping act bearing on the case, are fully recited in the judgment of Lord Justice Turner. An act of Congress of the third of March, 1851, chapter 43, Statutes page 635, has similar provisions.

The following are the judgments of the Lords Justices.

LORD JUSTICE KNIGHT BRUCE.—The two first paragraphs in the bill in this cause, are thus worded: “On the 28th day of April, 1857, a collision took place between the American ship “Tuscarora,” of which the plaintiffs are owners, and an American ship called “Andrew Foster.” Shortly after which collision, the “Andrew Foster” foundered, and was, together with the cargo laden therein, lost. In respect to the loss of the said ship, the plaintiffs are answerable in damages to the extent and in manner mentioned in paragraph 9, of the merchants shipping act, 1854, (that is to say to the extent of the value of the “Tuscarora,” and

the freight due or to grow due in respect of her then voyage. Such value, however, is insufficient to answer all the claims made or which may be made against the plaintiffs, in respect of the loss of said ship "Andrew Foster."

There is no statement in the bill of the place where, or any place near which the alleged collision happened, but it was agreed between the counsel that it should be deemed to have happened at sea, in the Irish channel, between Tuskar and Bardsey; and they also agreed that both vessels should be taken as having belonged, and the ship "Tuscarora," as still belonging wholly to citizens of the United States of America, and both ships, with regard to Great Britain, in every sense as foreign vessels.

The question is whether the 504th and 514th sections of the merchants shipping act of 1854, the 17th and 18th of the Queen, chapter 104, or either of them ought to be construed as applying to such a case, at least the plaintiffs, the appellants have not, nor could reasonably have contended that their bill has any foundation, unless those two sections, or one of them, ought to be so interpreted; and I am of opinion, considering the state of the law of this country, immediately before the passing of the act, and considering the context, that we ought not so to construe the 504th and 514th sections, or either of them; in other words, the language of the statute does not appear to me to show that any provision was intended to be made by either of the two sections, for the case of damage done at sea by a vessel in every sense foreign to another vessel in every sense foreign, or to her cargo. I assume the plaintiffs would have been right, if both the "Tuscarora" and the "Andrew Foster" had been British in ownership and character, all things else being the same—nor do I say whether the plaintiffs would have been right or wrong, if one only of the two ships had been of that description, or if the collision had happened in a British river or a British port. But as the facts are, the plaintiffs seem to me, I repeat, to have no case here.

Stress was laid by learned counsel on the word "British," in the 516th section, where it is first used, a circumstance which, however, in my opinion, does not assist them. I consider it to be clear, that

independently of that word, the plaintiffs are not within the act, and we should, I think, be giving an undue and improper effect to it; were we to hold that it changes the construction of the statute for the purpose in contention; nor in saying this do I forget the language of the 18th, 19th, 100th, 109th, and 291st sections, the preamble, the interpretation clause, the expressions of the 5th section, the 527th, 528th and 529th sections, and the statute of the 17th and 18th of the Queen, chapter 120, the merchants shipping repeal act, 1854. The Vice Chancellor having allowed the demurrer, that decision ought not, in my judgment, to be disturbed.

LORD JUSTICE TURNER.—After having given this case very attentive consideration, I have come to the same conclusion as my learned brother, and the Vice Chancellor have arrived at, and am of opinion, that this demurrer was properly allowed. This bill is filed by American owners of an American ship against the owners of another American ship, also American, and the owners of the cargo on board the latter ship, stating a collision between the two ships, by which the latter of them was sunk, and praying to have the value of the plaintiff's ship and of the freight for her voyage, ascertained and apportioned between the parties interested in the ship and cargo lost by the collision, but to restrain proceedings against the plaintiffs, in respect to the damages incurred by the defendants. The plaintiffs can only be entitled to this relief, if they can bring the case within the provisions of the 514th section of the merchants shipping act of 1854, and the question therefore is, whether that act extends to the case of a collision between foreign ships, of which the owners are foreigners. This act is divided into several parts, each of which relates to a distinct and independent branch of the merchants shipping law. The act, indeed, may well be considered as embodying several distinct acts in one act, and one part of the act, therefore, throws no further light upon the other parts of it than would be cast upon them by the existence of other separate and distinct enactments to the same effect. It is upon the 9th part of this act, with the light thus thrown upon it by the other parts of the act, and with the aid, of course, of the interpretation clause, which applies to the whole act,

the question before us depends. This 9th part of the act relates to the liability of ship owners. It first provides that this part of this act shall apply to the whole of Her Majesty's Dominions, which I take to mean no more than that it is to be in force throughout those dominions. It then lays down the rules which are to govern the liability of ship owners. It next points out the course of procedure, and winds up with a limiting provision, specifying some cases to which this part of the act is not to apply or extend.

In construing this part of the act we ought, I think, in the first place, to consider to what cases the rules which are laid down were meant to extend, and then what is the effect of the limiting provision, for no fair judgment can be formed as to the effect of that provision, until it is known to what the limit was intended to be applied. To what cases then were these rules intended to extend? They are contained in the 503d and 504th sections of the act, which are as follows: "No owner of any sea-going ship, or share therein, shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things, that is to say, of or to any goods, merchandise or other things, whatsoever, taken in or put on board any such ship, by reason of any fire happening on board such ship. Of or to any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has at the time of shipping the same, inserted in his bills of lading, or otherwise declared in writing to the master or owner of such ship, the true nature and value of such articles." The 504th section is, "No owner of any sea-going ship, or share therein, shall in cases where all or any of the following events occur, without his actual fault or privity, (that is to say,) where any loss of life or personal injury is caused to any person being carried in such ship. Where any damage or loss is caused to any goods, merchandise or other things whatsoever, on board any such ship, where any loss of life or personal injury is by reason of the improper navigation of such sea-going ship as aforesaid, caused to any person carried in any other ship or boat; where any loss or

damage is by reason of any such improper navigation of such sea-going ship, as aforesaid, caused to any other ship or boat, or to any goods, merchandise, or other things, whatsoever on board any other ship or boat, be answerable in damages to an extent beyond the value of his ship and the freight due, or to grow due in respect of such ship during the voyage which, at the time of the happening of any such events as aforesaid, is in prosecution or contracted for, subject to the following proviso, that is to say, that in no case where any such liability as aforesaid, is incurred in respect of loss of life or personal injury to any passenger, shall the value of any such ship, and the freight thereof be taken to be less than fifteen pounds per registered ton." And the 514th section provides that, "in cases where any liability is alleged and actions are brought, persons may come to the court of Equity to have the value ascertained." And the 515th section is, that "all sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the 9th part of this act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship, in the same manner as money disbursed for the use thereof."

Now the words of these sections, the 503d and 504th, are no doubt wide and extensive. The words "any sea-going ship," construed with reference to the interpretation clause, would embrace every vessel navigating the sea, which is not propelled by oars. But it is not because general words are used in an Act of Parliament, every case which falls within the words, is to be governed by the act. It is the duty of the courts of justice so to construe the words as to carry into effect the meaning and intention of the legislature. We had occasion, very much, to consider this point in *Hawkins vs. Gathercole* in which case, we restrained the effect of general words in the act on which that case depended, and there are many cases in the books to the same effect; some of which are referred to in that case, and others not there referred to, but to be found in Viner's Abridgment, title "Statutes." Was it then the intention of the Legislature, that the general words contained in the sections to which I have referred, should extend to the case of

a collision between foreign ships owned by foreigners? I think it was not. This is a British Act of Parliament, and it is not, I think, to be presumed that the British Parliament could intend to legislate as to the rights and liabilities of foreigners. In order to warrant such a conclusion, I think that either the words of the act ought to be express, or the context of it to be very clear.

The circumstance of foreign vessels being affected by some other parts of the act, was relied on upon the part of the appellants in support of their argument; they were intended to be included in this part of the act also. But the parts of the act which affect foreign vessels, apply to different subjects, and may well rest on different considerations, and this part of the appellant's argument, is not, therefore, I think, entitled to any weight.

Another consideration which, as it seems to me, bears strongly upon the construction to be put upon the general words of these sections of the act is, I think, furnished by considering the source from which these sections are derived. They are plainly taken from the 53d of George the Third, chapter 159, and the prior acts on which the statute was founded, and those acts had, before the passing of this act, been decided not to apply to foreign vessels. The legislature cannot be supposed to have been ignorant of that decision at the time this act was passed, and it cannot, I think, be imputed to it, that with that knowledge it intended to alter the law on this important subject, without some more definite expression of that intention. But what seems to me to be more decisive upon the subject is the context of the act. If the 504th section reaches the case of a collision between foreign vessels owned by foreigners, the 503d section must also reach that case, for in each of these sections the words are, "No owner of any sea-going ship, or share therein;" and then we must suppose that the British Parliament meant by this act to legislate upon the questions what should be inserted in the bills of lading of foreign shippers, and what should be declared by them to the masters of the vessels on board which their goods were shipped. There is besides this, the provision as to the registered tons, which of course must mean registered tons according to the measurement prescribed by the act, the act having no reference to the measurement of foreign ships. And there is also the pro-

vision as to the account between the part owners, which cannot surely have been intended to have effect in foreign courts. I am satisfied, therefore, that upon the true construction of the clauses to which I have referred, taking them apart from the limiting provision, they were not intended to apply to foreign ships owned by foreigners.

Then does the limiting provision which is contained in the 516th section of the act, alter this construction? Now that limiting provision is this: "Nothing in the 9th part of this act contained, shall be construed to lessen or take any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman, and to extend to any British ship, not being a recognised British ship within the meaning of this act." I am of opinion that the construction which I have put upon the previous parts of the 9th division of the act is not altered by this section, for foreign ships owned by foreigners being excluded, and it being clear that there can be no foreign owner of a British ship, the words "No owner," in the 504th section, can only mean, and must be read, "No British owner," and as to the words, "any sea-going ship, they must of course either mean, and must accordingly be read, either "any British sea-going ship," or "any British and foreign sea-going ship," according as the act is limited in its operation to British ships, or extends to British and foreign ships, a point which I leave wholly untouched.

But in case whether it be "no British owner of any British ship," or, "no British owner of any British and foreign ship," in either of these cases the proviso, that the act shall not extend to any British ship not being a British registered ship, fits perfectly well to the enactment, without involving any such consequences as the appellants have contended for.

An attempt was made on the part of the appellants to bring this case within *Doane vs. Lipman*, and cases of that class; but I think those cases have no bearing upon this point. This is a question of liability and not of procedure.

Upon the whole, therefore, my opinion is, this appeal must be dismissed, and dismissed with costs.