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MATERIAL-MEN AND THEIR LIENS.

"STATE statutes, which attempt to confer upon state courts a remedy for marine torts and marine contracts, by proceedings strictly *in rem*, are void:" *The Hine* v. *Trevor*, 4 Wallace U. S. R. 555.

By the Constitution of the United States (Art. III., § 1), it is enacted that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish;" and by § 2, clause 1, of the same article, it is enacted that "the judicial power shall extend * * * * * to *all cases of admiralty and maritime jurisdiction.*" The 9th section of the Judiciary Act of 1789 (1 U. S. Stat. at L. 76), declares that "The District Court shall have, *exclusively* of the courts of the several states, * * * * *cognisance of all civil causes of admiralty and maritime jurisdiction.*"

This jurisdiction has been repeatedly affirmed by the courts and declared constitutional: *Martin* v. *Hunter*, 1 Wheat. 304; *Slocum* v. *Mayberry*, 2 Id. 1; *Gelston* v. *Hoyt*, 3 Id. 246; *Waring* v. *Clarke*, 5 How. 451; *The Hine* v. *Trevor*, 4 Wall. 555; *The Moses Taylor*, Id. 411; in which last case it was declared, "that the provisions of the 9th section of the Judiciary Act, which vests in the District Courts of the United States *exclusive cogni*

sance of *civil causes of admiralty* and *maritime* jurisdiction, is constitutional."

The jurisdiction of our admiralty courts, as to the liens of material-men, only extends to liens on foreign ships or vessels. These liens, according to the civil law and the general maritime law, extend to all ships, without distinction, whether foreign or domestic: 1 Valin Comm. 363; 1 Parsons' Mar. Law 492. But although the jurisdiction of our admiralty courts originally extends only to foreign ships, yet they have exercised jurisdiction where a lien on domestic ships is given by the law of the state in which the supplies are furnished or repairs performed: *The Schooner Marion*, 1 Story 68, 72; *The Case of Peyroux* v. *Howard*, 7 Pet. 324; *The General Smith*, 4 Wheat. 438; *The St. Jago de Cuba*, 9 Id. 409; *Pratt* v. *Reed*, 19 How. 359; *The Brig Nestor*, 1 Sumner 73; *The Barque Chusan*, 2 Story 455; 2 Parsons' Mar. Law 492.

The greatest difficulty has been in determining the extent of the lien for repairs, &c., in a port in the same state. That there is no such lien recognised by our admiralty courts, except that which a shipwright has at common law, so long as he retains possession, is very clear, and has been so affirmed by our courts: *The General Smith*, 4 Wheat. 438; *The Schooner Marion*, 1 Story 68, 72; *Boon* v. *The Hornet*, Crabbe 426; *Tree* v. *The Indiana*, Id. 479.

Most of our states have, however, passed laws giving the lien in certain cases, the laws of some states including contracts for building, and in others being limited to repairs and supplies; and in some states the laws include all ships, whether foreign or domestic, and in others only domestic ships, engaged exclusively in the navigation of the rivers of such states. These statutes, generally, authorize a suit to enforce the lien, either in the state courts or in the Admiralty Court sitting in that district: 2 Parsons' Mar. Law 493, n. 1.

We propose to discuss these state liens under the following heads:—

I. Are these state statutes creating liens *unconstitutional*; and do they interfere with the *exclusive jurisdiction* of the Admiralty Courts of the United States?

II. The state legislatures have no power to confer any additional jurisdiction upon the United States courts, but they may give

a lien where none before existed, if not in conflict with the Constitution of the United States.

I. In *The Moses Taylor*, 4 Wall. 411, decided by the Supreme Court of the United States, December Term 1866, the court declared, "that a statute of California, which authorizes actions *in rem* against vessels for causes of action cognisable in the Admiralty, to that extent invests her courts with admiralty jurisdiction;" * * * "and that the provisions of the 9th section of the Judiciary Act which vests in the District Courts of the United States exclusive cognisance of civil causes of admiralty and maritime jurisdiction, is constitutional."

In the case of *The Hine* v. *Trevor*, 4 Wall. 555, decided at the same term, the court held "that the grant of original admiralty jurisdiction by the Act of 1789 (1 U. S. Stat. at L. 76), including as it does all cases not covered by the Act of 1845 (5 Stat. at L. 726), is exclusive, not only of all other Federal courts, but of all state courts; and that, therefore, state statutes, which attempt to confer upon state courts a remedy for marine torts and marine contracts, by proceedings strictly *in rem*, are void, because they are in conflict with that Act of Congress."

Let us examine the facts as set forth in these cases, and understand the grounds upon which they were decided. In the first case, the steamship Moses Taylor, of over one thousand tons burden, was owned by one Roberts of the city of New York, and was employed by him in navigating the Pacific Ocean, and in carrying passengers and freight between Panama and San Francisco. Two important facts must not be lost sight of: First, The Moses Taylor was a foreign vessel; and there never has been any question as to the jurisdiction of our Admiralty Courts to enforce the lien against foreign ships; and it has always been held for this purpose, that each state is considered as foreign to the rest: *The General Smith*, 4 Wheat. 438; *Pratt* v. *Reed*, 19 How. 359; *The Brig Nestor*, 1 Sum. 73; *Davis* v. *Child*, Davies 71; *Nickerson* v. *The Schooner Monson*, U. S. D. C. Mass., 5 Law Reporter 416; and second, that she navigated the high seas, and was seized at a *foreign* port: *North* v. *Brig Eagle*, Bee Adm. 78; *The Jerusalem*, 2 Gall. 345; *Zane* v. *The Brig President*, 4 Wash. C. C. R. 453. This case, therefore, comes directly under our admiralty jurisdiction, and is exclusively under it.

In the other case, *The Hine* v. *Trevor*, the ship Hine was a foreign ship, and was at a foreign port, and the collision, the cause of the suit, occurred on the Mississippi river, which places it also under the exclusive jurisdiction of our admiralty courts. In the first case the statute of California gave a lien upon all steamers and vessels, including foreign as well as domestic ships; in the other case the statute of Iowa gave a lien against any vessel found in the waters of that state, including also both domestic and foreign ships. Admiralty jurisdiction, in both of these cases, was exclusive; for the admiralty jurisdiction of the Federal courts as granted by the Constitution is not limited to tide-water, but extends wherever vessels float and navigation successfully aids commerce: *The Genesee Chief*, 12 How. 457, approved and affirmed by *The Hine* v. *Trevor*, 4 Wall. 563, and because the vessels in both cases were *foreign* vessels, at *foreign* ports, and not *domestic* ships at *home* ports: *The Schooner Marion*, 1 Sto. 68, 73; *Boon* v. *The Hornet*, Crabbe 426; *The General Smith*, 4 Wheat. 438; *Cole* v. *The Atlantic*, Crabbe 440; *Ex parte Lewis*, 2 Gall. 483; *Zane* v. *The Brig President*, 4 Wash. C. C. R. 453.

In *The Moses Taylor*, Mr. Justice FIELD, in delivering the opinion of the court, says, that "the statute of California, to *the extent* in which it authorizes actions *in rem* against vessels for causes of action cognisable in admiralty, invests her courts with admiralty jurisdiction;" and Mr. Justice MILLER, in delivering the opinion of the court in *The Hine* v. *Trevor*, after reviewing and affirming *The Moses Taylor*, says, "the state courts have been in the habit of adjudicating causes, which, in the nature of their subject-matter, are identical in every sense with causes which are acknowledged to be of admiralty and maritime cognisance;" * * * * "and if the facts of the case before us in this record constitute a cause of admiralty cognisance, then the remedy by a direct proceeding against the vessel belonged to the Federal courts alone, and was excluded from the state tribunals (4 Wall. 569). We therefore hold, from the authorities presented, that state statutes, which attempt to confer upon state courts remedies strictly *in rem* against foreign ships found in the waters of those states, are unconstitutional; because such statutes would be giving to state courts the right to exercise concurrent jurisdiction with the Admiralty Courts of the United States;

whereas, the grant of original admiralty jurisdiction, by the Act of 1789, is exclusive not only of all Federal courts, but of all state courts.

But, on the other hand, we contend, that a statute, passed by a state legislature giving the state courts a remedy by proceedings *in rem* to enforce the local lien of a material-man against a domestic ship in her home port—engaged in trade exclusively within the borders of said state—between ports and places of the same state—in the purely internal commerce of the state—the contract relating exclusively to that commerce, and which does not in any way affect trade or commerce with other states, is constitutional, and does not interfere with the exclusive jurisdiction of our admiralty courts, and is not the subject of admiralty jurisdiction, but concerns the purely internal trade of a state, the jurisdiction over which belongs to the courts of the state.

If, then, a state has no right to authorize actions *in rem* against vessels for causes of action cognisable in the admiralty—because a cause of admiralty cognisance belongs only to the Federal courts—the question arises, Have our admiralty courts any jurisdiction over domestic ships in their home ports?

We have seen in regard to domestic ships, that if the builder, or person making repairs, retains possession, he has a common-law lien; for this lien or "*privilegium*," by the civil law and the general maritime law, extends to ships without distinction between foreign and domestic vessels. But according to the admiralty law it is otherwise, and no lien is recognised on domestic ships: *Allen et al.* v. *Newbury*, 21 How. 244; *Maguire* v. *Card*, Id. 248.

By the old 12th Rule of the Admiralty material-men could proceed *in rem* against domestic ships, where the local law gave a lien to them for supplies, repairs, and other necessaries. In May 1859, the old 12th Rule was amended, and the new rule declares that material-men may proceed *in personam*, but not *in rem*, no matter whether the local law gives a lien or not, against domestic ships for supplies, repairs, &c. Mr. Justice NELSON, in delivering the opinion of the court in the case of *Maguire* v. *Card*, says, "we have at this term amended the 12th Rule of the Admiralty, so as to take from the District Courts the right of proceeding *in rem* against a domestic vessel for supplies and repairs, which had been assumed upon the authority of a lien given by

state laws, it being conceded that no such lien existed according to the admiralty law:" 21 How. 251.

In the case of *The N. J. Steam Nav. Co.* v. *The Merchants, Bank*, 6 How. 392, it was decided by the court that "the exclusive jurisdiction of the court in admiralty cases was conferred on the National Government as closely connected with the grant of the commercial power." * * * * "It is a maritime court instituted for the purpose of administering the law of the seas. There seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limits of the grant of the commercial power."

This decision has been approved and affirmed by two subsequent decisions. The first case was an appeal in admiralty from a decree of the District Court for the district of Wisconsin. The libel states that the goods in question were shipped at the port of Two Rivers in the state of Wisconsin, to be delivered at the port of Milwaukie in the same state; and the court held, that the admiralty jurisdiction "does not extend to a case where there was a shipment of goods from a port in a state to another port in the same state, both being in Wisconsin." * * * * "The District Court of the United States had no jurisdiction over it in admiralty, but that the jurisdiction belonged to the courts of the state:" *Allen et al.* v. *Newberry*, 21 How. 246, 247.

The other case was brought up by appeal from the Circuit Court of the United States for the district of California, and the Supreme Court reversed the decree of the court below, and remitted the cause, with directions to dismiss the libel. It was a proceeding *in rem*, in the District Court of California against the steamer Goliah, to recover a balance of an account, for coal furnished to the steamer, under the lien law created by the statute of California. The steamer was engaged in trade exclusively within the state of California. In delivering the opinion of the court, Mr. Justice NELSON said, "We have determined to leave all these liens depending upon state laws, and not arising out of the maritime contract, to be enforced by the state courts. So in respect to the completely internal commerce of the states, which is the subject of regulation by their municipal laws; contracts growing out of it should be left to be dealt with by its own tribunals:" *Maguire* v. *Card*, 21 How. 251.

There is no conflict between the cases (*Allen et al.* v. *Newbury*

and *Maguire* v. *Card*) reported in 21 Howard, and the cases (*The Moses Taylor* and *The Hine* v. *Trevor*) reported in 4 Wallace. The court in *The Hine* v. *Trevor* decided, that "the state courts have been in the habit of adjudicating causes, which, in the nature of their subject-matter, are identical in every sense with causes which are acknowledged to be of admiralty and maritime cognisance; and it must be taken, therefore, as the settled law of this court, that wherever the District Courts of the United States have original cognisance of admiralty causes, by virtue of the Act of 1789, that cognisance is exclusive, and no other court, state or national, can exercise it." * * * "And if the facts of the case before us in this record constitute a cause of admiralty cognisance, then the remedy *in rem* against the vessel belongs to the Federal courts and was excluded from the state tribunals." In this case the Hine was navigating the Mississippi river, and engaged in commerce between the states, and was as between our states considered as a foreign vessel at a foreign port. The same facts control the case of *The Moses Taylor*. But in the two cases reported in 21 Howard, the vessels were not foreign vessels or vessels at a foreign port engaged in commerce between the states; but they were domestic vessels engaged entirely and distinctly in the domestic commerce of a state, which does not affect the rights and privileges of the commerce of other states, and which comes within the limit of the grant of commercial power, and strictly under the jurisdiction of the municipal laws of the states. These cases were not referred to in the opinions of the court in 4th Wallace, because the facts do not constitute a case of admiralty cognisance, but one which comes directly under the jurisdiction of the state courts.

Hence, we hold that a state has as much right and authority to pass a statute giving material-men a lien to be enforced *in rem* against domestic vessels which are engaged in commerce purely and completely internal—which is carried on between ports of the same state, and which does not extend to or affect other states, as well as she has the right and power to enact a statute creating a lien to be enforced *in rem* against a saw-mill, &c situate in and carrying on business in the state; for by such statute she does *not* confer upon her courts jurisdiction concurrent with that of the United States Admiralty Courts; and does not in any manner, either in word or spirit of the Constitution, assume jurisdiction

over causes of action which, in the nature of their subject-matter, are identical in every sense with causes which are acknowledged to be of admiralty and maritime cognisance. The admiralty courts have no original jurisdiction over domestic ships at home ports, either under the Constitution of the United States, or by the Acts of 1789 or 1845, but have only exercised jurisdiction where the state laws gave liens, which jurisdiction it has been conceded does not exist, as there is no such lien existing according to the admiralty law (21 How. 251); and that there never has been any original jurisdiction in the United States relative to domestic ships: 21 How. 244, 246, 248, 250.

II. By the Constitution of the United States (Art. 1, § viii., clause iii.), it is declared that "Congress shall have power to regulate commerce with foreign nations, and among the several states," &c.; and, by Art. x., "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively." The government of the United States was eminently intended, among other purposes, to secure certain personal rights, and to exact certain personal duties. The Constitution confers upon the General Government a few special powers, but it confers them in order that the General Government may accomplish, for the people of each state, the advantages and blessings for which the state governments are presumed to be inadequate. It lays upon the people of the states and the government certain restrictions, and lays them for the protection of the people against an exercise of state power, deemed injurious to the general welfare. When the Constitution was framed, on account of the relation of maritime commerce to the intercourse of the people of the United States with foreign nations, or to the intercourse of the people of different states with each other, the whole civil as well as criminal jurisdiction in admiralty, original as well as appellate, was given by the states to the government of the Union, subject, however, to the powers reserved to the states under the Constitution, and which were not by them granted to the General Government: Curtis on Const. vol. 2, 445, *et seq.* And one of the powers expressly reserved by the states, and not ceded by them to the government, is the power and right to regulate and control their internal commerce. For, by the Constitution, "Congress shall have power to regulate commerce with foreign nations and among

the several states," &c.; not to regulate the commerce of each state; and "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively." It has never been questioned that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitutions. That must be conceded to be a fundamental principle in the political organization of the American states. We cannot well comprehend how, upon principle, it should be otherwise. The people, of course, possess all legislative powers originally. They have committed this in the most general and unlimited manner to the several state legislatures, saving only such restrictions as are imposed by the Constitution of the United States, or of the particular state in question: *Thorpe* v. *The Rutland and Burlington Railroad Co.*, Law Mag. Jan. 1856, opinion of C. J. REDFIELD.

In *Maguire* v. *Card*, and *Allen* v. *Newberry*, it was held, that under the Act of 1845 (5 U. S. Stat. at Large 726) the admiralty courts had no jurisdiction over the domestic commerce of a state, and that the restrictions mentioned in said act are declaratory of the general law, and that they existed independently of that statute. By this act the jurisdiction of the admiralty courts is confined "to matters of contract and of tort arising in, upon, or concerning steamboats and other vessels, employed in business of commerce and navigation between ports and places in different states," &c. The court held "this restriction of the jurisdiction to business carried on between ports and places in different states was doubtless suggested by the limitation in the Constitution of the power in Congress to regulate commerce." "There certainly can be no good reason," says the court, "for extending the jurisdiction of the admiralty over this commerce * * * for, according to the true interpretation of the grant of the commercial power in the Constitution to Congress, it does not extend to or embrace the purely internal commerce of a state; and hence that commerce is necessarily left to the regulation under state authority:" 21 How. 246, 247. It was held in *Gibbon* v. *Ogden* that this power did not extend to the purely internal commerce of a state. Chief Justice MARSHALL, in delivering the opinion of the court in that case, observed: "It is not intended to say that these words comprehend that commerce which is completely

internal, which is carried on between man and man in a state, or between ports of the same state, and which does not extend to or affect other states. The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not to those which are completely within a particular state, when they do not affect other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself:" 9 Wheat. 194.

And, therefore, if the regulation of its internal commerce is reserved for the state itself, all powers and means necessary to that regulation, control, and government must necessarily follow. And if a state has the power to enact a law giving material-men a lien against domestic ships engaged in trade exclusively within the state (which is strictly within the power to regulate *internal commerce*, 21 How. 244, 248), it must necessarily have the power to prescribe the remedy by which the lien can be enforced and made effectual; for in order to invest the statute with force and effect, it must be held that such a statute gives not only a right, but a remedy, and that the lien should be enforced in the manner pointed out by the statute.

But, although the state legislatures have a right to give a lien where none before existed, it is very clear that they have no power to confer any additional jurisdiction upon the United States courts. The grant of admiralty jurisdiction to the District Courts of the United States by the 9th section of the Act of Congress, September 24th 1789, is co-extensive with this grant in the Constitution, declaring "the judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction" (4 Wall. 411, 555), subject to the power reserved by the states to regulate and control their own internal commerce: 9 Wheat. 194, 195; 6 How. 392; 21 Id. 244, 248. And if the Constitution gives to the United States courts exclusive jurisdiction of all admiralty cases—which was one of the powers specially delegated to the government under the Constitution—it is clear that the state cannot in any way confer by statute any additional jurisdiction upon these courts: *The United States* v. *Judge Peters*, 5 Cranch 115.

If then there are no liens of material-men recognised by the

admiralty courts of the United States against domestic ships at their home ports, and that the admiralty courts have no original, and necessarily, no exclusive, jurisdiction over such liens, and that such liens have their origin and foundation in state laws; and that the District Courts, for want of jurisdiction, have not the right to proceed *in rem* against domestic ships to enforce liens given by state laws for supplies, repairs, &c., how are these state liens to be enforced? In the words of the Supreme Court (21 How. 251), we answer, "all these liens depending upon state laws must be enforced by the state courts."

And who will doubt the right of a mechanic, who has performed repairs upon a domestic ship, or one who has furnished supplies or other necessaries to a domestic ship, engaged in the internal trade and commerce of his state, to enforce *in rem* a state lien against said ship in pursuance of the laws of his state? Will it be, for one moment, argued that because admiralty has no jurisdiction over such a lien, therefore the state courts can have none? Or that because admiralty has no jurisdiction, it can nevertheless prevent the state courts from exercising such jurisdiction, on the ground that, if there is any such jurisdiction, it must belong to the admiralty courts on the principle of exclusive jurisdiction? Or that because the admiralty courts assume jurisdiction, though against the Constitution, and against the true interpretation of the grant of the commercial power in that Constitution to Congress, therefore the state courts are powerless to enforce the statutes of their states?

We think the law is clear as decided by the Supreme Court of the United States; and that the state legislatures have the power to pass a law giving a lien—when it is not in the nature of its subject-matter identical in every sense with causes which are acknowledged to be of admiralty and maritime cognisance—to material-men against domestic ships employed entirely in the internal trade and commerce of the state; and that such liens can be enforced *in rem* against such ships by the state courts, and that such proceedings are not in conflict with the Constitution of the United States, and do not in any way interfere with the exclusive jurisdiction of the admiralty courts, not in any manner whatever conferring concurrent jurisdiction on the state courts with the courts of admiralty. And further, that the jurisdiction of the state courts to enforce such lien laws is an original jurisdiction, vested in the state courts by the state legislatures, inde-