

The Hine Vs. Trevor

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Decided On : 1866

Appeal No. : 71 U.S. 555

Appellant : The Hine

Respondent : Trevor

Judgement :

The Hine v. Trevor - 71 U.S. 555 (1866)

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The Hine v. Trevor

71 U.S. (4 Wall.) 555

ERROR TO THE SUPREME COURT

OF THE STATE OF IOWA

SYLLABUS

1. The doctrine of the case of [*The Genesee Chief*](#), 12 How. 443, that the admiralty jurisdiction of the federal courts as granted by the Constitution as not limited to tidewater, but extends wherever vessels float and navigation

successfully aids commerce approved and affirmed.

2. The grant of admiralty powers to the district courts of the United States by the ninth section of the Act of September 24, 1789, is coextensive with this grant in the Constitution as to the character of the waters over which it extends.

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3. The Act of February 26, 1845, is a limitation of the powers granted by the act of 1789 as regards cases arising upon the lakes and navigable waters connecting said lakes, in the following particulars:

1. It limits the jurisdiction to vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and which are employed in commerce and navigation, between ports and places in different states.

2. It grants a jury trial, if either party shall demand it.

3. The jurisdiction is not exclusive, but is expressly made concurrent with such remedies as may be given by state laws.

4. The grant of original admiralty jurisdiction by the act of 1789, including as it does all cases not covered by the act of 1845, is exclusive not only of all other federal courts, but of all state courts.

5. 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 except as to cases arising on the lakes and their connecting waters.

6. These statutes do not come within the saving clause of the ninth section of the act of 1789, concerning a common law remedy.

7. But this rule does not prevent the seizure and sale by the state courts of the interest of any owner or part owner in a vessel by attachment or by general execution when the proceeding is a personal action against such owner, to

recover a debt for which he is personally liable.

8. Nor does it prevent any action which the common law gives for obtaining a judgment *in personam* against a party liable in a marine contract or a marine tort.

A collision occurred between the steamboats *Hine* and *Sunshine* on the *Mississippi River* at or near St. Louis in which the latter vessel was injured. Some months afterwards, the owners of the *Sunshine* caused the *Hine* to be seized while she was lying at Davenport, Iowa, in *a proceeding under the laws of that state*, to subject her to sale in satisfaction of the damages sustained by their vessel. The Code of Iowa, under which this seizure was made, gives a lien against any boat found in the waters of that state for injury to person or property by said boat, officers or crew &c.; gives precedence in liens; authorizes the seizure and sale of the boat, without any process against the wrongdoer, whether owner or master, and saves the plaintiff all his

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common law rights, but makes no provision to protect the owner of the vessel.

The owners of the *Hine* interposed a plea *to the jurisdiction of the state court*. The point being ruled against them, it was carried to the supreme court of the state, where the judgment of the lower court was affirmed, and by the present writ of error this Court was called upon to reverse that decision.

To comprehend the argument fully, it is here well to state that Congress had, prior to the date of this proceeding, enacted:

1. In 1789, September 24th, by the Judiciary Act, that the district court of the United States

"shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden, . . . *saving to suitors in all cases the right of a common law remedy where the common law is*

competent to give it. "

2. In 1845, by statute of the 26th February of that year,

"That the district courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort arising in, upon, or concerning steamboats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the same time employed in business of commerce and navigation, between ports and places in different states and territories upon the *lakes* and *navigable waters connecting said lakes* as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels, employed in navigation and commerce upon the high seas, or tidewaters within the admiralty and maritime jurisdiction of the United States."

The question in the present case was how far the jurisdiction of the district courts of the United States, in cases of admiralty arising on our navigable inland waters, is exclusive, and how far the state courts might exercise jurisdiction concurrently.

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MR. JUSTICE MILLER delivered the opinion of the Court.

The record distinctly raises the question how far the jurisdiction of the district courts of the United States in admiralty causes arising on the navigable inland waters of this country is exclusive and to what extent the state courts can exercise a concurrent jurisdiction.

Nearly all the states -- perhaps all whose territories are penetrated or bounded by rivers capable of floating a steamboat -- have statutes authorizing their courts, by proceedings *in rem*, to enforce contracts or redress torts which, if they had the same relation to the sea that they have to the waters of those rivers, would be conceded to be the subjects of admiralty jurisdiction. These statutes have been acted upon for many years, and are the sources of powers exercised largely by the state courts at the present time. The question of their conflict with the constitutional legislation of Congress on the same subject is now for the first time

presented to this Court.

We are sensible of the extent of the interests to be affected by our decision and the importance of the principles upon which that decision must rest, and have held the case under advisement for some time in order that every consideration which could properly influence the result might be deliberately weighed.

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There can, however, be no doubt about the judgment which we must render, unless we are prepared to overrule the entire series of decisions of this Court upon the subject of admiralty jurisdiction on Western waters, commencing with the case of *The Genesee Chief* in 1851 and terminating with that of *The Moses Taylor*, decided at the present term; [[Footnote 1](#)] for these decisions supply every element necessary to a sound judgment in the case before us.

The history of the adjudications of this Court on this subject, which it becomes necessary here to review, is a very interesting one, and shows with what slowness and hesitation the court arrived at the conviction of the full powers which the Constitution and acts of Congress have vested in the federal judiciary. Yet as each position has been reached, it has been followed by a ready acquiescence on the part of the profession and of the public interested in the navigation of the interior waters of the country, which is strong evidence that the decisions rested on sound principles, and that the jurisdiction exercised was both beneficial and acceptable to the classes affected by it.

From the organization of the government until the era of steamboat navigation, it is not strange that no question of this kind came before this Court. The commerce carried on upon the inland waters prior to that time was so small that cases were not likely to arise requiring the aid of admiralty courts. But with the vast increase of inland navigation consequent upon the use of steamboats, and the development of wealth on the borders of the rivers, which thus became the great water highways of an immense commerce, the necessity for an admiralty court, and the value of admiralty principles in settling controversies growing out of this system of

transportation, began to be felt.

Accordingly we find in the case of [The Steamboat Thomas Jefferson](#), reported in 10 Wheat. 428, that an attempt was made to invoke the jurisdiction in the case of a steamboat making a voyage from Shippingport, in Kentucky, to a point

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some distance up the Missouri River and back again. This Court seems not to have been impressed with the importance of the principle it was called upon to decide, as indeed no one could then anticipate the immense interests to arise in future which by the rulings in that case were turned away from the forum of the federal courts. Apparently without much consideration -- certainly without anything like the cogent argument and ample illustration which the subject has since received here -- the Court declared that no act of Congress had conferred admiralty jurisdiction in cases arising above the ebb and flow of the tide.

In the case of [The Steamboat Orleans](#), in 11 Pet. 175, the Court again ruled that the district court had no jurisdiction in admiralty, because the vessel which was the subject of the libel was engaged in interior navigation and trade, and not on tidewaters. The opinion on this subject, as in the case of *The Thomas Jefferson*, consisted of a mere announcement of the rule, without any argument or reference to authority to support it.

The case of [Waring v. Clark](#), 8 How. 441, grew out of a collision within the ebb and flow of the tide on the Mississippi River, but also *infra corpus comitatus*. The jurisdiction was maintained on the one side and denied on the other with much confidence. The Court gave it a very extended consideration, and three of the judges dissented from the opinion of the Court, which held that there was jurisdiction. The question of jurisdiction above tidewater was not raised, but the absence of such jurisdiction seems to be implied by the arguments of the Court as well as of the dissenting judges.

The next case in order of time, [The Genessee Chief](#), 12 How. 457, is by far the most important of the series, for it overrules all the previous decisions limiting the

admiralty jurisdiction to tidewater and asserts the broad doctrine that the principles of that jurisdiction, as conferred on the federal courts by the Constitution, extend wherever ships float and navigation successfully aids commerce, whether internal or external.

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That case arose under an Act of Congress approved February 26, 1845, [[Footnote 2](#)] which provides that

"The district courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort arising in, upon, or concerning steamboats, or other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in navigation between ports and places, in different states and territories, upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of like steamboats and other vessels employed in navigation and commerce upon the high seas and tidewaters within the admiralty and maritime jurisdiction of the United States."

The *Genesee Chief* was libeled under this act for damages arising from a collision on Lake Ontario. A decree having been rendered against the vessel, the claimants appealed to this Court.

It was urged here that the act under which the proceeding was had was unconstitutional.

1st. Because the act was not a regulation of commerce, and was not therefore within the commercial clause of the Constitution.

2d. Because the constitutional grant of admiralty powers did not extend to cases originating above tidewater, and Congress could not extend it by legislation.

The Court concurred in the first of these propositions that the act could not be supported as a regulation of commerce. The Chief Justice, who delivered the

opinion, then entered into a masterly analysis of the argument by which it was maintained that the admiralty power conferred by the federal Constitution did not extend beyond tidewater in our rivers and lakes.

This argument assumed that, in determining the limits of those powers, we were bound by the rule which governed the Admiralty Court of Great Britain on the same subject at the time our Constitution was adopted. And it was said

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that the limit of the court's power in that country was the ebb and flow of the tide.

This was conceded to be true as a matter of fact, but the Chief Justice demonstrated that the reason of this rule was that the limit of the tide in all the waters of England was at the same time the limit of practicable navigation, and that as there could be no use for an admiralty jurisdiction where there could be no navigation, this *test* of the navigability of those waters became substituted as the rule, instead of the navigability itself. Such a rule he showed could have no pertinency to the rivers and lakes of this country, for here no such test existed. Many of our rivers could be navigated as successfully and as profitably for a thousand miles above tidewater as they could below, and he showed the absurdity of adoption as the test of admiralty jurisdiction in this country an artificial rule which was founded on a reason in England that did not exist here. The true rule in both countries was the navigable capacity of the stream, and as this was ascertained in England by a test which was wholly inapplicable here, we could not be governed by it. The cases of *The Thomas Jefferson* and *The Steamboat Orleans*, already referred to, were then examined and overruled.

This opinion received the assent of all the members of the Court except one.

Although the case arose under the act of 1845, already cited, which in its terms is expressly limited to matters arising upon the lakes and the navigable waters connecting said lakes, and which the Chief Justice said was a limitation of the powers conferred previously on the federal courts, it established principles under which the district courts of the United States began to exercise admiralty

jurisdiction of matters arising upon all the public navigable rivers of the interior of the country.

This Court also, at the same term in which the case of *The Genesee Chief* was decided, held in *Fretz v. Bull*, in which the point was raised in argument, that the federal courts had jurisdiction according to the principles of that case in the matter of a collision on the Mississippi River above tidewater.

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As soon as these decisions became generally known, admiralty cases increased rapidly in the district courts of the United States, both on the lakes and rivers of the West. Many members of the legal profession engaged in these cases, and some of the courts have from this circumstance assumed, without examination, that the jurisdiction in admiralty cases arising on the rivers of the interior of the country is founded on the act of 1845, and such is perhaps the more general impression in the West. The very learned court whose judgment we are reviewing has fallen into this mistake in the opinion which it delivered in the case before us, and it is repeated here by counsel for the defendant in error.

But the slightest examination of the language of that act will show that this cannot be so, as it is confined, as we have already said, to cases arising "on the lakes and navigable waters connecting said lakes." The jurisdiction upon those waters is governed by that statute, but its force extends no further.

The jurisdiction thus conferred is in many respects peculiar, and its exercise is in some important particulars different under that act from the admiralty jurisdiction conferred by the act of September 24, 1789.

1. It is limited to vessels of twenty tons burden and upwards enrolled and licensed for the coasting trade.
2. To vessels employed in commerce and navigation between ports and places in different states.

3. It grants a jury trial if either party shall demand it.

4. The jurisdiction is not exclusive, but is expressly made concurrent with such remedies as may be given by state laws.

But the true reason why the admiralty powers of the federal courts began now to be exercised for the first time in the inland waters was this: the decision in the case of *The Genesee Chief* having removed the imaginary line of tidewater which had been supposed to circumscribe the jurisdiction of the admiralty courts, there existed no longer any reason why the general admiralty powers conferred on

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all the district courts by the ninth section of the Judiciary Act [[Footnote 3](#)] should not be exercised wherever there was navigation which could give rise to admiralty and maritime causes. The Congress which framed that act -- the first assembled under the Constitution -- seemed to recognize this more extended view of the jurisdiction in admiralty by placing under its control cases of seizure of vessels under the laws of impost, navigation, and trade of the United States when those seizures were made in waters navigable from the sea by vessels of ten tons burden or upwards.

The case of [The Magnolia](#), 20 How. 296, is another important case in the line of decisions which we have been considering. It was a case of collision occurring on the Alabama River, far above the ebb and flow of the tide, on a stream whose course was wholly within the limits of the state which bears it name. This was thought to present an occasion when the doctrines announced in the case of *The Genesee Chief* might properly be reconsidered and modified, if not overruled. Accordingly we find that the argument in favor of the main proposition decided in that case was restated with much force in the opinion of the Court, and that a very elaborate opinion was delivered on behalf of three dissenting judges. The principles established by the case of *The Genesee Chief* were thus reaffirmed after a careful and full reconsideration. It was also further decided (which is pertinent to the case before us) that the jurisdiction in admiralty on the great

Western rivers did not depend upon the Act of February 3, 1845, but that it was founded on the Act of September 24, 1789. That decision was made ten years ago, and the jurisdiction, thus firmly established, has been largely administered by all the district courts of the United States ever since without question.

At the same time, 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 cognizance,

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and they have in these causes administered remedies which differ in no essential respect from the remedies which have heretofore been considered as peculiar to admiralty courts. This authority has been exercised under state statutes, and not under any claim of a general common law power in these courts to such a jurisdiction.

It is a little singular that at this term of the Court we should, for the first time, have the question of the right of the state courts to exercise this jurisdiction, raised by two writs of error to state courts, remote from each other, the one relating to a contract to be performed on the Pacific Ocean and the other to a collision on the Mississippi River. The first of these cases, *The Moses Taylor*, had been decided before the present case was submitted to our consideration.

The main point ruled in that case is that the jurisdiction conferred by the act of 1789 on the district courts in civil causes of admiralty and maritime jurisdiction is exclusive by its express terms, and that this exclusion extends to the state courts. The language of the ninth section of the act admits of no other interpretation. It says, after describing the criminal jurisdiction conferred on the district courts, that they

"shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden."

If the Congress of the United States has the right, in providing for the exercise of the admiralty powers, to which the Constitution declares the authority of the federal judiciary shall extend, to make that jurisdiction exclusive, then undoubtedly it has done so by this act. This branch of the subject has been so fully discussed in the opinion of the Court in the case just referred to that it is unnecessary to consider it further in this place.

It must be taken, therefore, as the settled law of this Court that wherever the district courts of the United States have original cognizance of admiralty causes by virtue of the act of 1789, that cognizance is exclusive, and no other

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court, state or national, can exercise it, with the exception always of such concurrent remedy as is given by the common law.

This examination of the case, already decided by this Court, establishes clearly the following propositions:

1. The admiralty jurisdiction, to which the power of the federal judiciary is by the Constitution declared to extend, is not limited to tidewater, but covers the entire navigable waters of the United States.
2. The original jurisdiction in admiralty exercised by the district courts by virtue of the act of 1789, is exclusive not only of other federal courts, but of the state courts also.
3. The jurisdiction of admiralty causes arising on the interior waters of the United States other than the lakes and their connecting waters is conferred by the Act of September 24, 1789.
4. The admiralty jurisdiction exercised by the same courts on the lakes and the waters connecting those lakes is governed by the Act of February 3, 1845.

If the facts of the case before us in this record constitute a cause of admiralty cognizance, then the remedy, by a direct proceeding against the vessel, belonged

to the federal courts alone, and was excluded from the state tribunals.

It was a case of collision between two steamboats. The case of *The Magnolia*, [[Footnote 4](#)] to which we have before referred, was a case of this character, and many others have been decided in this Court since that time. That they were admiralty causes has never been doubted.

We thus see that every principle which is necessary to a decision of this case has been already established by this Court in previous cases. They lead unavoidably to the conclusion that the state courts of Iowa acted without jurisdiction; that the law of that state attempting to confer this jurisdiction is void because it is in conflict with the Act of Congress of September 24, 1789, and that this act is well authorized by the Constitution of the United States. Unless

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we are prepared to retract the principles established by the entire series of decisions of this Court on that subject, from and including the case of *The Genesee Chief* down to that of *The Moses Taylor*, decided at this term, we cannot escape this conclusion. The succeeding cases are in reality but the necessary complement and result of the principles decided in the case of *The Genesee Chief*. The propositions laid down there, and which were indispensable to sustain the judgment in that case, bring us logically to the judgment which we must render in this case. With the doctrines of that case on the subject of the extent of the admiralty jurisdiction we are satisfied, and should be disposed to affirm them now if they were open to controversy.

It may be well here to advert to one or two considerations to which our attention has been called, but which did not admit of notice in the course of observation which we have been pursuing without breaking the sequence of the argument.

1. It is said there is nothing in the record to show that the *Hine* was of ten tons burden or upwards, and that therefore the case is not brought within the jurisdiction of the federal courts. The observation is made in the opinion of the Supreme Court of Iowa in reference to the provision of the act of 1845, which that

court supposed to confer jurisdiction on the federal courts in the present case, if it had such jurisdiction at all. We have already shown that the jurisdiction is founded on the act of 1789. That act also speaks of vessels of ten tons burden and upwards, but not in the same connection that the act of 1845 does. In the latter act it is made essential to the jurisdiction that the vessel which is the subject of the contract, or the tort, should be enrolled and licensed for the coasting trade, and should be of twenty tons burden or upwards. In the act of 1789 it is declared that the district courts shall have jurisdiction in admiralty of seizures for violations of certain laws where such seizures are made on rivers navigable by vessels of ten tons burden or upwards from the sea. In the latter case, the phrase is used in describing the carrying capacity of the

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river where the seizure is made. In the former case it relates to the capacity of the vessel itself.

2. It is said that the statute of Iowa may be fairly construed as coming within the clause of the ninth section of the act of 1789, which "saves to suitors, in all cases, the right of a common law remedy where the common law is competent to give it."

But the remedy pursued in the Iowa courts in the case before us is in no sense a common law remedy. It is a remedy partaking of all the essential features of an admiralty proceeding *in rem*. The statute provides that the vessel may be used and made defendant without any proceeding against the owners or even mentioning their names. That a writ may be issued and the vessel seized on filing a petition similar in substance to a libel. That after a notice in the nature of a monition, the vessel may be condemned and an order made for her sale if the liability is established for which she was sued. Such is the general character of the steamboat laws of the Western states.

While the proceeding differs thus from a common law remedy, it is also essentially different from what are in the West called suits by attachment, and in some of the older states foreign attachments. In these cases there is a suit against a personal

defendant by name, and because of inability to serve process on him on account of nonresidence or for some other reason mentioned in the various statutes allowing attachments to issue the suit is commenced by a writ directing the proper officer to attach sufficient property of the defendant to answer any judgment which may be rendered against him. This proceeding may be had against an owner or part owner of a vessel, and his interest thus subjected to sale in a common law court of the state.

Such actions may also be maintained *in personam* against a defendant in the common law courts as the common law gives, all in consistence with the grant of admiralty powers in the ninth section of the Judiciary Act.

But it could not have been the intention of Congress, by the exception in that section, to give the suitor all such

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remedies as might afterwards be enacted by state statutes, for this would have enabled the states to make the jurisdiction of their courts concurrent in all cases by simply providing a statutory remedy for all cases. Thus the exclusive jurisdiction of the federal courts would be defeated. In the act of 1845, where Congress does mean this, the language expresses it clearly, for after saving to the parties, in cases arising under that act, a right of trial by jury and the right to a concurrent remedy at common law where it is competent to give it, there is added, "any concurrent remedy which may be given by the state laws where such steamer or other vessel is employed."

The judgment is reversed and the case is remanded to the Supreme Court of Iowa with directions that it be dismissed for want of jurisdiction.

[[Footnote 1](#)]

Supra, p. <71 U.S. 411|>411.

[[Footnote 2](#)]

5 Statutes at Large 726.

[[Footnote 3](#)]

1 Statutes at Large 77.

[[Footnote 4](#)]

[61 U. S. 20](#) How. 296.

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