

**Manchester Vs. Massachusetts**

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**Court :** US Supreme Court

**Decided On :** Mar-16-1891

**Appeal No. :** 139 U.S. 240

**Appellant :** Manchester

**Respondent :** Massachusetts

**Judgement :**

Manchester v. Massachusetts - 139 U.S. 240 (1891)

U.S. Supreme Court Manchester v. Massachusetts, 139 U.S. 240 (1891)

**Manchester v. Massachusetts**

**No. 1518**

**Argued January 14-15, 1891**

**Decided March 16, 1891**

**139 U.S. 240**

*ERROR TO THE SUPERIOR COURT OF THE STATE OF*

*MASSACHUSETTS FOR THE COUNTY OF BARNSTABLE*

## **SYLLABUS**

The Act of the Legislature of Massachusetts, approved May 6, 1886, Laws of 1886, c.192, "for the protection of the fisheries in Buzzard's Bay" is valid, so far as it relates to the taking of menhaden.

It applies to a vessel which has a license to fish for menhaden under the laws of the United States.

As between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from the coast, and bays wholly within its territory which do not exceed two marine leagues in width at the mouth are within this limit, and included in such territorial jurisdiction is the right of control over fisheries.

The courts of Massachusetts can lawfully take jurisdiction of violations of such statutes as against the admiralty and maritime jurisdiction of the courts of the United States.

It has always been the doctrine of this Court that whenever a conflict arises between a state and the United States as to the regulation of commerce or navigation, the authority of the latter is supreme and controlling.

Within what are generally recognized as the territorial limits of states by the law of nations, a state can define its boundaries on the sea and the boundaries of its counties, and by this test Massachusetts can include Buzzard's Bay within the limits of its counties.

There are no existing treaties or acts of Congress which relate to the menhaden fisheries within such a bay as Buzzard's Bay.

The question is not considered whether or not Congress would have the right to control the menhaden fisheries in question.

By an Act of the Legislature of the Commonwealth of Massachusetts approved May 6, 1886, Laws 1886, c. 192, entitled "An act for the protection of the fisheries in Buzzard's Bay," it was enacted as follows:

"SECTION 1. No person shall draw, set, stretch, or use any dragnet, set-net or gill-net, purse or sweep seine of any kind for taking fish anywhere in the waters of Buzzard's Bay within the jurisdiction of this commonwealth, nor in any harbor, cove, or bight of said bay, except as hereinafter provided. "

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"SEC. 2. Any net or seine used in violation of any provision of this act, together with any boat, craft, or fishing apparatus employed in such illegal use, and all fish found therewith, shall be forfeited, and it shall be lawful for any inhabitant or inhabitants of any town bordering on said bay to seize and detain, not exceeding forty-eight hours, any net or seine found in use contrary to the provisions of this act, and any boat, craft, fishing apparatus, and fish found therewith, to the end that the same may be seized and libeled, if need be, by due process of law."

"SEC. 3. All nets and seines in actual use set or stretched in the waters aforesaid in violation of this act are declared to be common nuisances."

"SEC. 4. Nothing contained in this act shall be construed to interfere with the corporate rights of any fishing company located on said bay, nor in any way to affect the fish weirs mentioned in section seventy of chapter ninety-one of the Public Statutes, nor the use of nets or seines in lawful fisheries for shad or alewives in influent streams of said bay, nor to the use of set-nets or gill-nets in the waters of the Town of Fairhaven within a line drawn from Cormorant Rock southwesterly to the buoy on West Island Rips, and from thence westerly in a straight course through the buoy on West Island Ledge to the town line of Fairhaven."

"SEC. 5. Whoever violates any provision of this act or aids or assists in violating the same shall pay a fine not exceeding two hundred dollars for each offense."

"SEC. 6. District courts and trial justices shall have concurrent jurisdiction with the superior court of all offenses and proceedings under the provisions of this act."

"SEC. 7. All fines received under this act shall be paid one-half to the complainant and the other half to the commonwealth. All moneys from any forfeitures incurred under this act shall inure and be paid one-fourth to the informer, and one-fourth to the person filing the libel, and the other half to the commonwealth."

Under that statute, a complaint in writing under oath was made on behalf of the commonwealth before a trial justice

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in and for the County of Barnstable in Massachusetts, that Arthur Manchester at Falmouth, in the County of Barnstable, on the 19th day of July, in the year 1889, did then and there draw, set, stretch, and use a purse seine for the taking of fish in the waters of Buzzard's Bay, within the jurisdiction of the commonwealth. Under a warrant issued on this complaint, Manchester was, on the 1st of August, 1889, brought before the trial justice, and pleaded not guilty. The justice found him guilty on a hearing of the case, and imposed upon him a fine of \$100, to the use of the commonwealth, and costs, and ordered that, if the fine and costs should not be paid, he should be committed to jail, there to be kept until he should pay them, or be otherwise discharged by due course of law.

The defendant appealed to the Superior Court of Barnstable County. In that court, the case was, according to the statute, tried by a jury, which found the defendant guilty. That court reported the case for the determination of the Supreme Judicial Court of the commonwealth, which heard it, and on the 18th of September, 1890, made an order that judgment should be rendered on the verdict, on the rescript being received by the superior court, it affirmed the judgment of the trial justice, and directed the defendant to pay a fine of \$100 and the costs of prosecution, and stand committed until he should comply with the order.

The report of the superior court, signed by a justice thereof, was as follows:

"This was a complaint under section 1 of chapter 192 of the Statutes of 1886. A copy of the complaint is annexed and made a part of this report. The evidence of the commonwealth tended to show that the defendant and others, who were

citizens of Rhode Island and were officers and crew of the fishing steamer called the *A. T. Serrell*, on the day named in the complaint were engaged in drawing, setting, stretching, and using a purse seine for the taking of fish in the waters of Buzzard's Bay. The place where the defendant was so engaged with said seine was about, and not exceeding, one mile and a quarter from a point on the shore midway from the north line of said town to the south line thereof. The point where the defendant was so using said

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seine was within that part of Buzzard's Bay which the harbor and land commissioners, acting under the provisions of section 2 of chapter 196 of the Acts of the year 1881, had, so far as they were capable of doing so, assigned to and made a part of the Town of Falmouth. A copy of the map showing boundary lines between the adjacent cities and towns bordering on Buzzard's Bay as so located by said commissioners was used at the trial, and may be referred to. The point where the defendant was using said seine is marked 'A' on said plan. The commonwealth's evidence tended to show that the defendant and his associates, on said day and at the point described, caught with said seine a large quantity of the fish called 'menhaden.' In this act of fishing, no fixed apparatus was used, and the bottom of the sea was not encroached upon or disturbed. The commonwealth further offered evidence tending to show that the distance between the headlands at the mouth of Buzzard's Bay, *viz.*, at Westport, in the County of Bristol, on the one side, and the Island of Cuttyhunk, in the County of Dukes, on the other side, was more than one and less than two marine leagues. The Island of Cuttyhunk is the most southerly of the chain of islands lying to the eastward of Buzzard's Bay, and known as the 'Elizabeth Islands.' The distance across said bay at the point where the acts of the defendant were done is more than two marine leagues, and the opposite points are in different counties. The defendant did not dispute any of the testimony offered by the commonwealth, but introduced evidence tending to show that he was engaged in fishing for menhaden only, and that he caught no other fish excepting menhaden; that menhaden is not a food fish, and is only valuable for the purpose of bait and of manufacture into fish oil, and that the taking

of said menhaden by seining does not tend in any way to decrease the quantity and variety of food fishes. The defendant offered evidence further tending to show that he was in the employ of the firm of Charles Cook and others, who were engaged in the State of Rhode Island in the business of seining menhaden to be sold for bait and to be manufactured into fish oil and fish manure. The defendant further offered testimony tending to show that it was impossible to

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discern objects across from one headland to the other at the mouth of Buzzard's Bay. The defendant's evidence showed that the said steamer was of Newport, Rhode Island, duly enrolled and licensed at that port under the laws of the United States for carrying on the menhaden fishery, and it was conceded by the commonwealth that the defendant was employed upon the vessel described by said enrollment and license, and at the time of the commission of the acts complained of, he and his associates were so in the employ of the vessel described in said license. The district attorney stated that he should not controvert any of the foregoing evidence, but claimed that it was incompetent in defense of this complaint; but, for the purposes of the trial, I admitted the testimony. The foregoing is all the evidence offered at the trial of this complaint. It was conceded that the defendant could not be convicted if chapter 212 of the Acts of 1865 was not repealed by the statute of 1886, chapter 192. At the conclusion of the evidence, the defendant asked me to rule as follows: 1. As the government does not claim that the act complained of is in violation of any statute except of chapter 192 of the Acts of 1886, the defendant, notwithstanding that statute, is authorized to take menhaden by the use of the purse seine in the waters of Buzzard's Bay in the place where this act was committed. 2. Chapter 192 of the Acts of the year 1886 did not repeal chapter 212 of the Acts of the year 1865. 3. The defendant may lawfully take menhaden by the use of the purse seine in Buzzard's Bay, in the place where the acts complained of in this case were done. And also: 1. The act complained of was on the high seas, and without the jurisdiction of Massachusetts. 2. The act complained of having been done under a United States license for carrying on this fishery, the defendant cannot be held as a criminal for violating a

statute of this commonwealth. 3. The defendant cannot be held unless the act complained of was done and committed within the body of a county, as understood at common law. 4. The statute of this commonwealth prohibiting under a penalty the use of nets and seines and the taking of fish within three miles of the shore is invalid, especially as against a license to fish granted

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under the laws of the United States. The defendant further asked me to rule that on all the evidence, the defendant could not be convicted. I declined to rule as requested by the defendant, and submitted the case to the jury with the instruction that the statute of 1865 was repealed by the statute of 1886, and with the instruction that if they found that the defendant was engaged in using a purse seine for the taking of fish of any kind in that part of Buzzard's Bay which was within the jurisdiction of the Commonwealth of Massachusetts, they would be authorized to convict the defendant, and that the place where the acts of the defendant were committed, being within a marine league from the shore at low water mark, was within the jurisdiction of the commonwealth. The jury returned a verdict of guilty, and now, after verdict, and at the request of the defendant, and by the consent of the parties, I report the case, with my rulings at the trial of the same, for the determination of the Supreme Judicial Court."

The Supreme Judicial Court held the statute in question to be constitutional and valid, and delivered an opinion, by Chief Justice Field, which is reported in 152 Mass. 230.

The defendant has sued out a writ of error directed to the superior court to review its judgment, and assigns as errors that the court ruled and adjudged.

"1. That the place where the alleged offense was committed was not a part of the high seas, and was not, under Article III, Section 2 of the Constitution, which provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, within the exclusive jurisdiction of the federal government."

"2. That said place, notwithstanding said provision of the Constitution, was within the jurisdiction of Massachusetts."

"3. That the plaintiff in error was not authorized to do the act complained of by a license under Title 51 of the Revised Statutes, and was not protected by such license."

"4. That chapter 192 of the Acts of the General Court of Massachusetts for the year 1886, as construed by the court, was valid notwithstanding the provisions of the Constitution and laws above cited, or any provisions of the Constitution and laws of the United States. "

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MR. JUSTICE BLATCHFORD, after stating the case, delivered the opinion of the Court.

The principal contentions in this Court on the part of the defendant are that although Massachusetts, if an independent nation, could have enacted a statute like the one in question, which her own courts would have enforced and which other nations would have recognized, yet when she became one of the United States, she surrendered to the general government her right of control over the fisheries of the ocean, and transferred to it her rights over the waters adjacent to the coast and a part of the ocean; that, as by the Constitution, Article III, Section 2, the judicial power of the United States is made to extend to all cases of admiralty and maritime jurisdiction, it is consistent only with that view that the rights in respect of fisheries should be regarded as national rights and be enforced only in national courts; that the proprietary right of Massachusetts is confined to the body of the county; that the offense committed by the defendant was committed outside of that territory, in a locality where legislative control did not rest upon title in the soil and waters, but upon rights of sovereignty inseparably connected with national character, and which were entrusted exclusively to enforcement in admiralty courts; that the commonwealth has no jurisdiction upon the ocean within three miles of the shore; that it could not, by the statute in question, oust the United

States of jurisdiction; that fishing upon the high seas is in its nature an integral part of national commerce, and its control and regulation are necessarily vested in Congress, and not in the individual states; that Congress has manifested its purpose to take the regulation of coast fisheries, in the particular covered by the Massachusetts statute in question, by the joint resolution of Congress of February 9, 1871, 16 Stat. 593, establishing the fish commission, and by Title 51 of the Revised Statutes, entitled "Regulation of Fisheries," and by the Act of

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February 28, 1887, c. 288, 24 Stat. 434, relating to the mackerel fisheries, and by acts relating to bounties, privileges, and agreements, and by granting the license under which the defendant's steamer was fishing, and that, in view of the act of Congress authorizing such license, no statute of a state could defeat the right of the defendant to fish in the high seas under it.

By the Public Statutes of Massachusetts, part 1, title 1, c. 1, sections 1 and 2, it is enacted as follows:

"Section 1. The territorial limits of this commonwealth extend one marine league from its seashore at low water mark. When an inlet or arm of the sea does not exceed two marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore line."

"SEC 2. The sovereignty and jurisdiction of the commonwealth extend to all places within the boundaries thereof, subject to the rights of concurrent jurisdiction granted over places ceded to the United States."

The same Public Statutes, part 1, title 1, c. 22, section 1, contain the following provision: "The boundaries of counties bordering on the sea shall extend to the line of the commonwealth, as defined in section one of chapter one." Section 11 of the same chapter is as follows: "The jurisdiction of counties separated by waters within the jurisdiction of the commonwealth shall be concurrent upon and over such waters." By section 2 of chapter 196 of the Acts of Massachusetts of 1881 it is provided as follows:

"SEC. 2. The harbor and land commissioners shall locate and define the courses of the boundary lines between adjacent cities and towns bordering upon the sea and upon arms of the sea from high water mark outward to the line of the commonwealth, as defined in said section one [section one of chapter one of the General Statutes], so that the same shall conform as nearly as may be to the course of the boundary lines between said adjacent cities and towns on the land, and they shall file a report of their doings, with suitable plans and exhibits, showing the boundary lines of any town by them located and defined, in the registry of deeds in which deeds of real estate situated in such town are required to be recorded, and also in the office of the secretary of the commonwealth. "

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The report of the superior court states that the point where the defendant was using the seine was within that part of Buzzard's Bay which the harbor and land commissioners, acting under the provisions of the act of 1881, had, so far as they were capable of doing so, assigned to and made part of the Town of Falmouth; that the distance between the headlands at the mouth of Buzzard's Bay "was more than one and less than two marine leagues;" that

"the distance across said bay at the point where the acts of the defendant were done, is more than two marine leagues, and the opposite points are in different counties;"

and that

"the place where the defendant was so engaged with said seine was about, and not exceeding, one mile and a quarter from a point on the shore midway from the north line of"

the two of Falmouth "to the south line" of that town. Buzzard's Bay lies wholly within the territory of Massachusetts, having Barnstable county on the one side of it, and the counties of Bristol and Plymouth on the other. The defendant offered evidence that he was fishing for menhaden only, with a purse seine; that "the bottom of the sea was not encroached upon or disturbed;" "that it was impossible

to discern objects across from one headland to the other at the mouth of Buzzard's Bay;" and that the steamer was duly enrolled and licensed at the port of Newport, Rhode Island, under the laws of the United States, for carrying on the menhaden fishery.

By section 1 of chapter 196 of the Laws of Massachusetts of 1881, it was enacted as follows:

"Section 1. The boundaries of cities and towns bordering upon the sea shall extend to the line of the commonwealth as the same is defined in section one of chapter one of the General Statutes."

Section 1 of chapter 1 of the General Statutes contains the provisions before recited as now contained in the Public Statutes, chapter 1 of section 1 and chapter 22, sections 1 and 11. Buzzard's Bay was undoubtedly within the territory described in the charter of the Colony of New Plymouth and the Province charter. By the definitive Treaty of Peace of September 3, 1783, between the United States and Great Britain, 8 Stat. 81, His

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Britannic majesty acknowledged the United States, of which Massachusetts Bay was one, to be free, sovereign, and independent states, and declared that he treated with them as such, and for himself, his heirs, and successors, relinquished all claims to the government, propriety, and territorial rights of the same end every part thereof. Therefore, if Massachusetts had continued to be an independent nation, her boundaries on the sea, as defined by her statutes, would unquestionably be acknowledged by all foreign nations, and her right to control the fisheries within those boundaries would be conceded. The limits of the right of a nation to control the fisheries on its seacoasts and in the bays and arms of the sea within its territory have never been placed at less than a marine league from the coast on the open sea, and bays wholly within the territory of a nation the headlands of which are not more than two marine leagues or six geographical miles apart have always been regarded as a part of the territory of the nation in

which they lie. Proceedings of the Halifax Commission of 1877 under the Treaty of Washington of May 8, 1871, Executive Document No. 89, 45th Congress, 2d session, H.R., pp. 120, 121, 166.

On this branch of the subject, the case of *Queen v. Keyn*, 2 Ex.D. 63, is cited for the plaintiff in error, but there the question was not as to the extent of the dominion of Great Britain over the open sea adjacent to the coast, but only as to the extent of the existing jurisdiction of the Court of Admiralty in England over offenses committed on the open sea, and the decision had nothing to do with the right of control over fisheries in the open sea or in bays or arms of the sea. In all the cases cited in the opinions delivered in *Queen v. Keyn*, wherever the question of the right of fishery is referred to, it is conceded that the control of fisheries, to the extent of at least a marine league from the shore, belongs to the nation on whose coast the fisheries are prosecuted.

In *Direct U.S. Cable Co. v. Anglo-American Tel. Co.*, L.R. 2 App.Cas. 394, it became necessary for the Privy Council to determine whether a point in Conception Bay, Newfoundland, more than three miles from the shore, was a part of the territory

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of Newfoundland and within the jurisdiction of its legislature. The average width of the bay was about fifteen miles, and the distance between its headlands was rather more than twenty miles, but it was held that Conception Bay was a part of the territory of Newfoundland, because the British government had exercised exclusive dominion over it, with the acquiescence of other nations, and it had been declared by act of Parliament "to be part of the British territory, and part of the country made subject to the Legislature of Newfoundland." We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from its coast; that bays wholly within its territory, not exceeding two marine leagues in width at the mouth, are within this limit, and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory free-swimming fish, or

free-moving fish, or fish attached to or imbedded in the soil. The open sea within this limit is, of course, subject to the common right of navigation, and all governments, for the purpose of self-protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit. Gould on Waters, part 1, c. 1, 1-17, and notes; *Neill v. Duke of Devonshire*, 8 App.Cas. 135; *Gammell v. Commissioners*, 3 Macq. 419; *Mowat v. McFee*, 5 Sup.Ct. of Canada 66; *Queen v. Cubitt*, 22 Q.B.D. 622; St. 46 & 47 Vict. c. 22.

It is further insisted by the plaintiff in error that the control of the fisheries of Buzzard's Bay is, by the Constitution of the United States, exclusively with the United States, and that the statute of Massachusetts is repugnant to that Constitution and to the laws of the United States. In *Dunham v. Lamphere*, 3 Gray 268, it was held, Chief Justice Shaw delivering the opinion of the court, that in the distribution of powers between the general and state governments, the right to the fisheries, and the power to regulate the fisheries on the coasts and in the tidewaters of the state, were left by the Constitution of the United States with the states, subject only to such powers as Congress may justly

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exercise in the regulation of commerce, foreign and domestic. In the present case, the court below was asked to reconsider that decision, mainly on the ground that the admiralty and maritime jurisdiction of the courts of the United States was not considered in the opinion, and that the recent decisions of the Supreme Court of the United States on the power of Congress to regulate commerce required that the decision be reconsidered; but the court stated that no recent decisions of this Court had been cited which related to the regulation of fisheries within the territorial tidewaters of a state, and that the decisions of this Court which related to that subject did not appear to be in conflict with the decision in *Dunham v. Lamphere*, and that it never had been decided any where that the regulation of the fisheries within the territorial limits of a state was a regulation of commerce.

It is further contended that by the Constitution of the United States, the judicial power of the United States extends to all cases of admiralty and maritime

jurisdiction, and is exclusive; that this case is within such jurisdiction, and that therefore the courts of Massachusetts have no jurisdiction over it. In *McCready v. Virginia*, [94 U. S. 391](#) , the question involved was whether the State of Virginia could prohibit the citizens of other states from planting oysters in Ware River, a stream in Virginia where the tide ebbed and flowed, when her own citizens had that privilege. In that case it was said that the principle had long been settled in this Court that each state owns the beds of all tidewaters within its jurisdiction, unless they have been granted away, and that in like manner the states own the tidewaters themselves, and the fish in them, so far as they are capable of ownership while running, and this Court added, in its opinion:

"The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the state, which has consequently the right, in its discretion, to appropriate its tidewaters and their beds to be used by its people as a common for taking and cultivating fish

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so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the state thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact a property right, and not a mere privilege or immunity of citizenship."

In [Smith v. Maryland](#), 18 How. 71, [59 U. S. 74](#) , a vessel licensed to be employed in the coasting trade and fisheries was seized by the Sheriff of Anne Arundel County, in Maryland, while engaged in dredging for oysters in Chesapeake Bay in violation of a statute of Maryland enacted for the purpose of preventing the destruction of oysters in the waters of that state, and the questions presented were whether that statute was repugnant to the provisions of the Constitution of the United States which grant to Congress the power to regulate commerce, or to those which declare that the judicial power of the United States

shall extend to all cases of admiralty and maritime jurisdiction, or to those which declare that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Mr. Justice Curtis, in delivering the opinion of this Court, said:

"Whatever soil below low water mark is the subject of exclusive propriety and ownership belongs to the state on whose maritime border and within whose territory it lies, subject to any lawful grants of that soil by the state or the sovereign power which governed its territory before the declaration of independence. [Pollard v. Hagan](#), 3 How. 212; [Martin v. Waddell](#), 16 Pet. 367; [Den v. The Jersey Co.](#), 15 How. 426. But this soil is held by the state not only subject to, but in some sense in trust for, the enjoyment to certain public rights, among which is the common liberty of taking fish, as well shellfish as floating fish."

He also said that the statute of Maryland does

"not touch the subject of the common liberty of taking oysters save for the purpose of guarding it from injury, to whomsoever it may belong and by whomsoever it may be enjoyed. Whether this liberty belongs exclusively to the citizens of the State of Maryland or may lawfully be enjoyed

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in common by all citizens of the United States; whether this public use may be restricted by the state to its own citizens, or a part of them, or by force of the Constitution of the United States must remain common to all citizens of the United States; whether the national government, by a treaty or act of Congress, can grant to foreigners the right to participate therein; or what, in general, are the limits of the trust upon which the state holds this soil, or its power to define and control that trust -- are matters wholly without the scope of this case, and upon which we give not opinion."

Upon the question of the admiralty jurisdiction, he said:

"But we consider it to have been settled by this Court in [United States v. Bevans](#), 3 Wheat. 336, that this clause in the Constitution did not affect the jurisdiction nor the legislative power of the states over so much of their territory as lies below high water mark, save that they parted with the power so to legislate as to conflict with the admiralty jurisdiction or laws of the United States. As this law conflicts neither with the admiralty jurisdiction of any court of the United States conferred by Congress nor with any law of Congress whatever, we are of opinion it is not repugnant to this clause of the Constitution."

The court also held that the act was not repugnant to the clause of the Constitution which conferred upon Congress the power to regulate commerce, and that the enrollment and license of the vessel gave to the plaintiff in error no right to violate the statute of Maryland. It is said in the opinion that

"no question was made in the court below whether the place in question be within the territory of the state. The law is in terms limited to the waters of the state,"

and the question therefore did not arise

"whether a voyage of a vessel, licensed and enrolled for the coasting trade, had been interrupted by force of a law of a state while on the high seas and out of the territorial jurisdiction of such state."

The dimensions of Chesapeake Bay do not appear in the report of the case, but it has been said that this bay is "twelve miles across at the ocean." 1 Bish.Crim.Law. 105. It is a bay considerably larger than Buzzard's Bay, and is not wholly within the State of Maryland, although at the point where

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Anne Arundel County bounds upon it, it is wholly in that state. *Haney v. Compton*, 36 N.J.Law 507; *Corfield v. Coryell*, 4 Wash.C.C. 371; *Weston v. Sampson*, 8 Cush. 347; *Mahler v. Norwich & New York Transportation Co.*, 35 N.Y. 352; *United States v. Smiley*, 6 Sawyer 640.

In the case of *Stockton v. Baltimore & N.Y. R. Co.*, 32 F. 9, in the Circuit Court for the District of New Jersey, MR. JUSTICE BRADLEY shows clearly that there is no necessary conflict between the right of the state to regulate the fisheries in a given locality and the right of the United States to regulate commerce and navigation in the same locality. He says that prior to the Revolution, the shore and lands under water of the navigable streams and waters of the Province of New Jersey belonged to the King of Great Britain, and after the conquest, those lands were held by the state, as they were by the King, in trust for the public uses of navigation and fishery. He adds:

"It is true that to utilize the fisheries, especially those of shellfish, it was necessary to parcel them out to particular operators. . . . The power to regulate commerce is the basis of the power to regulate navigation and navigable waters and streams. . . . So wide and extensive is the operation of this power that no state can place any obstruction in or upon any navigable waters against the will of Congress."

The doctrine has always been firmly maintained by this Court that whenever a conflict arises between a state and the United States as to the regulation of commerce or navigation, the authority of the latter is supreme and controlling.

Under the grant by the Constitution of judicial power to the United States in all cases of admiralty and maritime jurisdiction, and under the rightful legislation of Congress, personal suits on maritime contracts or for maritime torts can be maintained in the state courts, and the courts of the United States, merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States. [\*Butler v. Boston & Savannah Steamship Co.\*](#), 130 U.S.

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527; [\*The Belfast\*](#), 7 Wall. 624; [\*The Eagle\*](#), 8 Wall. 15; [\*Leon v. Galceran\*](#), 11 Wall. 185; [\*Steamboat Co. v. Chase\*](#), 16 Wall. 522, 9 R.I. 419; *Schoonmaker v. Gilmore*, [102 U. S. 118](#) ; [\*Insurance Co. v. Dunham\*](#), 11 Wall. 1; *Jones v. United*

States, [137 U. S. 202](#) , [137 U. S. 211](#) . In each of the cases of [United States v. Bevens](#), 3 Wheat. 336, and of *Commonwealth v. Peters*, 12 Met. 387, the place where the offense was committed was in Boston Harbor, and it was held to be within the jurisdiction of Massachusetts according to the meaning of the statutes of the United States which punished certain offenses committed upon the high seas or in any river, haven, basin, or bay "out of the jurisdiction of any particular state." The test applied in *Commonwealth v. Peters*, which was decided in the year 1847, was that the place was within a bay "not so wide but that persons and objects on the one side can be discerned by the naked eye by persons on the opposite side," and was therefore within the body of a county. In *United States v. Bevens*, Marshall, C.J., said:

"The jurisdiction of a state is coextensive with its territory; coextensive with its legislative power. The place described is unquestionably within the original territory of Massachusetts. It is then within the jurisdiction of Massachusetts unless that jurisdiction has been ceded to the United States."

If the place where the offense charged in this case was committed is within the general jurisdiction of Massachusetts, then according to the principles declared in *Smith v. Maryland*, the statute in question is not repugnant to the Constitution and laws of the United States.

It is also contended that the jurisdiction of a state as between it and the United States must be confined to the body of counties; that counties must be defined according to the customary English usage at the time of the adoption of the Constitution of the United states; that by this usage, counties were bounded by the margin of the open sea, and that, as to bays and arms of the sea extending into the land, only such or such parts were included in counties as were so marrow that objects in counties as were so narrow that objects shore to the other by the naked eye. But there is no indication that the customary

law of England in regard to the boundaries of counties was adopted by the Constitution of the United States as a measure to determine the territorial jurisdiction of the states. The extent of the territorial jurisdiction of Massachusetts over the sea adjacent to its coast is that of an independent nation, and except so far as any right of control over this territory has been granted to the United States, this control remains with the state. In *United States v. Bevens*, Marshall, C.J., in the opinion, asks the following questions:

"Can the cession of all cases of admiralty and maritime jurisdiction be construed into a cession of the waters on which those cases may arise? . . . As the powers of the respective governments now stand, if two citizens of Massachusetts step into shallow water when the tide flows, and fight a duel, are they not within the jurisdiction, and punishable by the laws, of Massachusetts?"

The statutes of the United States define and punish but few offenses on the high seas, and, unless other offenses when committed in the sea near the coast can be punished by the states, there is a large immunity from punishment for acts which ought to be punishable as criminal. Within what are generally recognized as the territorial limits of states by the law of nations, a state can define its boundaries on the sea and the boundaries of its counties, and by this test the Commonwealth of Massachusetts can include Buzzard's Bay within the limits of its counties.

The statutes of Massachusetts, in regard to bays at least, make definite boundaries which, before the passage of the statutes, were somewhat indefinite, and Rhode Island and some other states have passed similar statutes defining their boundaries. Public Statutes of Rhode Island, 1882, c. 1, 1, 2; c. 3, 6; Gould on Waters, 16, and note. The waters of Buzzard's Bay are, of course, navigable waters of the United States, and the jurisdiction of Massachusetts over them is necessarily limited, *Commonwealth v. King*, 150 Mass. 221, but there is no occasion to consider the power of the United States to regulate or control, either by treaty or legislation, the fisheries in these waters, because there are no existing treaties or acts of Congress which relate to the menhaden fisheries

within such a bay. The rights granted to British subjects by the Treaties of June 5, 1854, and May 8, 1871, to take fish upon the shores of the United States, had expired before the statute of Massachusetts (St. 1886, c. 192) was passed which the defendant is charged with violating. The fish commission was instituted "for the protection and preservation of the food fishes of the coast of the United States." Title 51 of the Revised Statutes relates solely to food fisheries, and so does the act of 1887. Nor are we referred to any decision which holds that the other acts of Congress alluded to apply to fisheries for menhaden, which is found as a fact in this case not to be a food fish, and to be only valuable for the purpose of bait and of manufacture into fish oil.

The statute of Massachusetts which the defendant is charged with violating is in terms confined to waters "within the jurisdiction of this commonwealth," and it was evidently passed for the preservation of the fish, and makes no discrimination in favor of citizens of Massachusetts and against citizens of other states. If there be a liberty of fishing for swimming fish in the navigable waters of the United States common to the inhabitants or the citizens of the United States -- upon which we express no opinion -- the statute may well be considered as an impartial and reasonable regulation of this liberty, and the subject is one which a state may well be permitted to regulate within its territory in the absence of any regulation by the United States. The preservation of fish, even although they are not used as food for human beings, but as food for other fish, which are so used, is for the common benefit, and we are of opinion that the statute is not repugnant to the Constitution and the laws of the United States.

It may be observed that section 4398 of the Revised Statutes (a reenactment of 4 of the joint resolution of February 9, 1871) provides as follows in regard to the commissioner of fish and fisheries:

"The commissioner may take or cause to be taken at all times in the waters of the seacoast of the United States where the tide ebbs and flows, and also in the waters of the lakes, such fish or specimens thereof as may in his judgment, from time to time, be needful or proper for the

conduct of his duties, any law, custom, or usage of any state to the contrary notwithstanding."

This enactment may not improperly be construed as suggesting that, as against the law of a state, the fish commissioner might not otherwise have the right to take fish in places covered by the state law. The pertinent observation may be made that as Congress does not assert by legislation a right to control pilots in the bays, inlets, rivers, harbors, and ports of the United States, but leaves the regulation of that matter to the states, [Cooley v. Board of Wardens](#), 12 How. 299, so, if it does not assert by affirmative legislation its right or will to assume the control of menhaden fisheries in such bays, the right to control such fisheries must remain with the state which contains such bays. We do not consider the question whether or not Congress would have the right to control the menhaden fisheries which the statute of Massachusetts assumes to control, but we mean to say only that as the right of control exists in the state in the absence of the affirmative action of Congress' taking such control, the fact that Congress has never assumed the control of such fisheries is persuasive evidence that the right to control them still remains in the state.

*Judgment affirmed.*