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Sandberg Vs. Mcdonald

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Appellant : Sandberg

Respondent : Mcdonald

Judgement :

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Sandberg v. McDonald

No. 392

Argued November 5, 1918

Decided December 23, 1918

248 U.S. 185

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

SYLLABUS

Section 11 of the Seaman's Act of 1915, c. 153, 38 Stat. 1164, prohibits, under criminal penalties, the payment of wages in advance to any seaman; provides that in no case shall such advancements absolve vessel, master, or owner from full payment of wages when actually earned, or be a defense to a libel or action for their recovery; applies "as well to foreign vessels while in waters of the United States, as to vessels of the United States;" makes the master, owner, consignee, or agent of any foreign vessel who violates its provisions liable to the same penalty as if the vessel were domestic; and, requiring exhibition of shipping articles, denies clearance from our ports to any vessel of either class unless the provisions of the section have been complied with. *Held* not to apply to advancements made to alien seamen shipping abroad on a foreign vessel, pursuant to contracts valid under the foreign law, and that such advancements may be allowed for in paying such seamen in a port of the United States. P. 248 U. S. 195 .

A provision in this act for the abrogation of inconsistent treaty provisions is not opposed to the above construction, since it may properly be referred to other parts of the act abolishing arrest for desertion and conferring jurisdiction on our courts over wage controversies arising in our jurisdiction. P. 248 U. S. 196 .

The construction here adopted is the same as that adopted by the State Department in consular instructions, and the reports and

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proceedings attending the legislation in Congress, so far as they may be considered, do not require a different conclusion. P. 248 U. S. 197 .

248 F. 670 affirmed.

The case is stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case brings before us for consideration certain features of the so-called "Seaman's Act," 38 Stat. 1165. The act is entitled:

"An act to promote the welfare of American seamen in the merchant marine of

the United States, to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto, and to promote safety at sea."

It contains numerous provisions intended to secure better treatment of seamen and to secure for them better conditions of service.

The libel charges a demand in Mobile, Alabama, for one-half part of the wages then earned by the seamen, and the refusal of the master to pay the amount which the libelants claimed to be due. The master paid each of them what he conceived to be due, deducting certain advances made to the men at Liverpool, England, where the seamen were signed.

The facts are:

The *Talus* is a British ship, and the libelants and petitioners citizens or subjects of nations other than the United States, and at the time of employment by the ship and before boarding her, they received certain advances at Liverpool by the ship or its agents, a practice usual and customary and not forbidden by the laws of Great Britain. The advance did not, as to any libelant, exceed the amount of a month's wages.

The libelants boarded the ship at Dublin, Ireland, December 1, 1916, and remained in her service until they left her at Mobile, Alabama.

The ship arrived in American waters on February 11, 1917, off Port Morgan, from whence she proceeded immediately to Mobile, where she remained until after

February 24th, and unloaded and loaded cargoes. During the voyage and at Mobile prior to February 22, libelants received certain payments from the ship in cash and in articles purchased from it.

On February 22, libelants demanded of the master of the ship payment of one-half of the wages earned by them to that date. The master then paid to them a sum which, with the cash paid them and the price of the articles

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purchased as stated above, together with the advances made in Liverpool, equaled or exceeded the one-half of the wages then earned by each of them from the commencement of his service for the ship. It was less, however, than such one-half wages if the advances at Liverpool had not been included in the credits. The master claimed that those advances should be deducted from the one-half wages, and did deduct them, and the sum or sums paid by the master to the libelants exceeded the amount of wages earned by them for the eleven days the ship had been in American waters. The libelants quit the ship February 24, 1917, and were logged as deserters on the same day.

Under the foregoing statement of facts, the question for decision is: was the master entitled to make deduction from the seamen's pay in the amount of the advancements made at Liverpool? The district court held that these advancements could not be deducted. 242 F. 954. The circuit court of appeals reached the opposite conclusion. 248 F. 670. The pertinent section of the act for consideration reads:

"Sec. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine

of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the

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owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

" * * * *"

"(e) That this section shall apply as well to foreign vessels while in the waters of the United States as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

The genesis and history of this legislation is found in U.S. Compiled Statutes 1916, vol. 7, 8323, annotated.

The Dingley Act of June 26, 1884 (23 Stat. 55, 56), which is the origin of this section, contains terms much like those found in this act. That statute, as the present one, in the aspect now before us, was intended to prevent the evils arising

from advanced payments to seamen, and to protect them against a class of persons who took advantage of their necessities and through whom vessels were obliged to provide themselves with seamen. These persons obtained assignments of the advanced wages of sailors. In many instances, this was accomplished with

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little or no service to the men who were obliged to obtain employment through such agencies. In the Dingley Act, it was made unlawful to pay seamen's wages before leaving the port at which he was engaged. In the present act, it is made unlawful to pay seamen's wages in advance of the time when he has actually earned the same. The Act of 1884, by its terms, applied as well to foreign vessels as to the vessels of the United States, and masters of foreign vessels violating the law were refused clearance from any port of the United States. The present statute is made to apply as well to foreign vessels while in the waters of the United States as to vessels of the United States.

In the present statute, in the section from which we have just quoted, masters, owners, consignees, or owners of foreign vessels are made liable to the same penalties as are the like persons in case of vessels of the United States. Such persons in case the vessels are those of the United States or foreign vessels, seeking clearance in ports of the United States, are required to present their shipping articles at the office of clearance, and no clearance is permitted unless the provisions of the statute are complied with.

The Act of 1884 came before the United States District Court for the Southern District of New York in the case of *The Maine,* 22 F. 734. In a clear and well reasoned opinion by Judge Addison Brown, the law was held not to apply to the shipment of seamen on American vessels in foreign ports. After some amendments in 1898, not important to consider in this connection, the matter came before this Court in the case of *Patterson v. Bark Eudora,* 190 U. S. 169 , and it was held to apply to a British vessel shipping seamen at an American port, and, furthermore, that the act, as thus applied to a foreign vessel in United States waters, was constitutional.

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While the Seaman's Act of 1915 contains many provisions for the amelioration of conditions as to employment and care of seamen, in the aspect now involved, we have called attention to the state of legislation and judicial decision when that act was passed. Did Congress intend to make invalid the contracts of foreign seamen so far as advance payments of wages is concerned, when the contract and payment was made in a foreign country where the law sanctioned such contract and payment? Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States. The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels "while in the waters of the United States."

Legislation is presumptively territorial, and confined to limits over which the lawmaking power has jurisdiction. *American Banana Co. v. United Fruit Co.,* 213 U. S. 347, 213 U. S. 357. In *Patterson v. Bark Eudora, supra,* this Court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that

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there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel who violates the provision of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction, a purpose so wholly futile is not to be attribution to Congress. *United States v. Freeman,* 239 U. S. 117 , 239 U. S. 120 . The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States.

It is true the act provides for the abrogation of inconsistent treaty provisions, but this provision has ample application treating the statute to mean what we have here held to be its proper construction. It abolishes the right of arrest for desertion. It gives to the civil courts of the United States jurisdiction over wage controversies arising within our jurisdiction. These considerations amply account for the treaty provision. *See* Treaties in Force, ed.1904, index p. 969.

It is said that the advances in foreign ports are against the policy of the United States, and therefore not to be

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sanctioned here. As we have construed this section of the statute, no such policy as to foreign contracts legal where made is declared.

We have examined the references in the briefs of counsel to the reports and proceedings in Congress during the progress of this legislation so far as the same may have weight in determining the construction of this section of the act. We find nothing in them, so far as entitled to consideration, which requires a different meaning to be given the statute. We may add that the construction now given has the sanction of the Executive Department, as shown in Instructions to Consular Officers, promulgated through the medium of the State Department.

We are of opinion that the circuit court of appeals reached the right conclusion as to the meaning and interpretation of this section of the act, and its judgment is

Affirmed.

MR. JUSTICE Mc KENNA, with whom concur MR. JUSTICE HOLMES, MR. JUSTICE BRANDEIS, and MR. JUSTICE CLARKE, dissenting.

This is a libel in admiralty under the Seamen's Act of 1915 (38 Stat. 1165-1168), especially involving 11.

The libel was filed by petitioners here and others. It was dismissed as to the latter, and they have acquiesced in the judgment. The facts are set out in the opinion of the Court.

With this case were submitted others that present the act of Congress in different aspects. Among these was No. 361, *Dillon v. Strathearn S.S. Co., post,* 248 U. S. 182 . It was a libel by a seaman who had shipped on a British vessel and was based on a demand for wages not due at the time of the demand under the terms of the shipping articles signed by him. Section 4 of the act, *infra* was especially involved in consideration, and its constitutionality

was attacked by the ship. The Circuit Court of Appeals for the Fifth Circuit, to which the case had gone, presented the question to this Court in two aspects, first generally, and second more particularly that provision which makes the section "apply to seamen on foreign vessels while in the harbors of the United States."

In the present case, the ship is also British and the libelants and petitioners citizens or subjects of nations other than the United States, and the controversy is as to the right of the master to deduct from the wages, of which the law authorizes the demand, advances made to the seamen in Liverpool, England. To make such advances was a practice usual and customary, and not forbidden by English law. It would seem, therefore, that the constitutional question is as much involved in one case as in the other. But, under the Court's construction of the act, that question can be pretermitted. Under our construction, it would seem to be not only of ultimate but of first insistence. The Court, however, is of opinion that the question of the constitutionality of the act was not certified in such manner as to be subject to its consideration. From that conclusion we are not disposed to dissent, and shall assume, as the Court does, that the legislation is valid, and pass to its consideration.

The instant case, the facts not being in dispute, is brought to the question of the right of the master to deduct the Liverpool advances, the ship asserting the right and the libelants denying it. The solution of the question necessarily depends upon the construction of the act, or, more precisely, its application. It is conceded, yielding to the authority of *Patterson v. The Bark Eudora,* 190 U. S. 169 , that the act applies to American seamen shipping in an American port upon foreign vessels, but it is contended from that case and other cases that it ought

"to seem plain on principle and authority that the advancement on principle and authority that the advancement

made to seamen within the territorial jurisdiction of the United States."

And, indeed, it is insisted that Congress " *ex industria* in terms confined the application to the waters of the United States." The conclusions are deduced from the cases which are reviewed and the language of the act is quoted. We give the quotation as it amplifies the contentions:

"That this section shall apply as well to foreign vessels *while in waters of the United States* [counsels' emphasis], as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

The quotation is but a part of 11. * It is preceded by

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the explicit declaration that it is "unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same or to pay such advance wages." There is no limitation of place or circumstances, and the universality of the declaration is given emphasis and any implication of exception is precluded with tautological care by the provision that

"the payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages."

To qualify these provisions or not to take them for what they say would, in our opinion, ascribe to the act an unusual improvidence of expression. And 4 should be considered in connection. It is hence important that we give it in full. And it may be said that it is an amendment to 4530, Rev.Stats. It is as follows:

"Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such

vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided,* such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and

he shall be entitled to full payment of wages earned. And when the voyage is ended, every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: . . . *And provided further,* that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This section and the others we have quoted express something more than particular relations of ship and seaman; they express the policy of the United States which no private conventions, no matter where their locality of execution, can be adduced to contravene. *The Kensington,* 183 U. S. 263 ; *United States v. Chavez,* 228 U. S. 525 ; *United States v. Freeman,* 239 U. S. 117 . Nor are we called upon to assign the genesis of the policy or trace the evolution of its remedy to the act in controversy, and besides it has been done elsewhere. It is enough to say that the act itself demonstrates that it is intended as a means in the development of the merchant marine, and it hardly needs to be added, to quote counsel for the government, "that the welfare of the seaman is remarkably interrelated with that of the merchant marine." This certainly was the conception of Congress, and answers the contentions based on contrary opinion and deductions. It is manifest also from the title of the act, which declares its purpose to be

"to promote the welfare of American seamen in the merchant marine of the United States, to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of treaty provisions in relation thereto, and to promote safety at sea."

Its efficacy as a means or the policy of the means is not submitted to our judgment. Ours is the simple service of interpretation, and there is no reason to hesitate in its exercise because of supposed consequences. The policy

of the act was so insistent that Congress did not hesitate to abrogate opposing treaties. Certainly, therefore, we cannot give a controlling force to the suggestion that to construe the act as the ship construes it and others supporting the ship construe it is to "impose our conception of the rights of seamen upon the whole world in violation of the comity of nations." The reply is immediate: it was for Congress to estimate this and other results and to consider how far they were counterpoised or overcome by other considerations. If the section was ambiguous, the asserted results might be invoked to resolve its meaning; but we do not think it is ambiguous.

It must be conceded -- indeed, it is conceded -- that the words of the sections are grammatically broad enough to include all seamen, foreign as well as American, and advances and contracts, wherever made, and to the contention that Congress had in mind and was only solicitous for American seamen, the answer is again immediate: the contention would take us from the certainty of language to the uncertainties of construction dependent upon the conjecture of consequences; take us from the deck to the sea, if we may use a metaphor suggested by our subject. Language is the safer guide, for it may be defined; consequences brought forward to modify its meaning may be in fact and effect disputed -- foreseen, it may be, and accepted as necessary to the achievement of the purpose of the law. And the purpose is resolute, has been maintained for many years with increasing care, and the ship, being in the waters of the United States, not the nationality of the seamen, selected as its test. And, lest there might be impediment in treaties, they are declared, so far as they impede, to be abrogated.

But authority may be adduced against the contentions. In *Patterson v. Bark Eudora, supra,* the Seamen's Act came under consideration, and it was contended, as it is contended now, that the title determined against the body

of the act, and that therefore the act did not apply to foreign vessels notwithstanding its explicit words. The contention was declared untenable, and the reasoning of the court exhausts discussion on that and the other contentions as to the purpose and power of Congress. Of the first it was said that it was to protect sailors against certain wrongs practiced upon them, one of the most common being the advancement of wages; of the second, it was said, quoting Chief Justice Marshall:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute; it is susceptible of no limitation not imposed by itself."

The Exchange, 7 Cranch 116. The nationality of the seamen does not appear, but the vessel was foreign, and the application of the statute to the latter constituted the ground of controversy.

Of course, the language of an act, though universal, may find limitation in the jurisdiction of the legislature; but certainly a ship within the harbors of the United States is within the jurisdiction of the United States, and making its exercise "apply to seamen on foreign vessels," and "the courts of the United States . . . open to such seamen for its enforcement" was the judgment of Congress of the way to promote its purpose.

These considerations, we think, answer as well other contentions -- that is, that the act

"should be construed as applicable only to seamen shipping in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo"

or "to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment."

It is enough to say of the contentions, in addition to what has been said, that they impose on the statute qualifications and limitations precluded by its words and the

purpose they express. There is a great deal said, and ably said, upon these contentions and the more pretentious one that the act would violate the Constitution of the

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United States unless so "construed as not to apply to foreign seamen shipped on a foreign vessel in a foreign port, under a contract, valid where made. . . ."

We cannot concede the qualification, nor doubt the power of Congress to impose conditions upon foreign vessels entering or remaining in the harbors of the United States. And we think that the case of *The Eudora* declares the grounds of decision. Its principle is broader than its instance, and makes the vessel and its locality in the waters of the United States the test of the application of the act, and not the nationality of the seamen nor their place of shipment, nor contravening conventions, and precludes deductions of advances.

Nor is there obstacle in the penal provisions of the act. They may be distributively applied, and such application has many examples in legislation. It is justified by the rule of *reddendo singula singulis.* By it, words and provisions are referred to their appropriate objects, resolving confusion and accomplishing the intent of the law against, it may be, a strict grammatical construction. *United States v. Simms,* 1 Cranch 252; *Comm'n v. Barber,* 143 Mass. 560; *Quinn v. Lowell Electric Light Co.,* 140 Mass. 106. The Seamen's Act especially invokes the application of the rule. The act applies to foreign vessels as explicitly and as circumstantially as it does to domestic vessels. Let the foreign vessel be in the waters of the United States and every provision of the act applies to it as far as it can apply. In other words, it gives the right to a seaman on a foreign vessel to demand from the master one-half part of the wages which he shall have earned at every port, and makes void all stipulations to the contrary. And the remedy of the seaman in such case is made explicit. If his demand be refused ("failure on the part of the master to comply" are the words of the act), the seaman is released from his contract and he is entitled to the full payment of wages earned. And he is

given a remedy in the courts of the United States. The defense of an advance payment is precluded, and clearance of the foreign vessel is forbidden. And thus the act has completeness of right and remedy, and, we think, precludes judicial limitation of either. Its provisions are simple and direct, there is no confusion in their command, no difficulty in their obedience. Of course, a "master, owner, consignee or agent of" any foreign vessel, to quote the words of the act again, cannot violate any provision of it if he be not in the United States. If there be provisions that cannot reach him, that with which this case is concerned can reach him.

We are therefore of opinion that the district court was right in refusing to allow the Liverpool advances, and the circuit court of appeals was wrong in reversing the ruling.

* Section 11 was an amendment of 24 of the Act of December 21, 1898, and 24 was an amendment of 10 of the laws of 1884 as amended in 1886, and, as it now stands as far as pertinent, is as follows:

"Sec. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman . . . or from any person on his behalf,

any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

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