

in the first instance, to resort to admiralty process." Following the above quoted decisions, I hold that the procedure authorized by the statute is a summary and cumulative remedy given to the seaman, which he may at his option pursue, but that the statute does not deprive him of the right in the first instance to the ordinary admiralty process against the vessel upon a direct application to the court or judge.

2. The second reason assigned in support of the motion to dismiss the libel raises the question whether a steam ferry-boat, plying between points on the opposite sides of the Ohio river, within the same state and county, is subject to admiralty jurisdiction?

Many of the cases bearing upon this question, cited in support of the motion to dismiss, are without authority, since the more recent decisions of the supreme court, which declare that the admiralty jurisdiction of the federal courts extends to all navigable waters. *Hine v. Trevor*, 4 Wall. 555; *The Eagle*, 8 Wall. 15.

Navigability, so far as water is concerned, is now the only test of admiralty and maritime jurisdiction. *Id.*; *The General Cass*, 1 Brown's Ad. Rep. 334. It is immaterial, therefore, that the *F. B. Nimick* plied wholly within the county of Allegheny, nor is it material, it seems to me, that in the course of her navigation she merely crossed and recrossed the Ohio river; for admiralty jurisdiction does not depend upon the length of the voyage. *The General Cass, supra.*

The subject-matter of this libel being of a maritime nature, viz., wages earned by an employe upon a vessel navigating waters within admiralty jurisdiction, does the jurisdiction of the court fail merely because the vessel upon which the libellant was employed was engaged in running as a ferry-boat? Clearly not, it seems to me. It is not the form, size, construction, equipment, or means of propulsion, that establishes the jurisdiction. *Ben. Ad. § 218; The General Cass, supra.* In *Ex parte Easton*, 5 Otto, 68, it was held that a district court has jurisdiction in admiralty to enforce *in rem* a claim for wharfage against a canal-boat or barge.

Mr. Benedict, in his work on admiralty, (§ 218,) says: "A scow, a lighter, a ferry-boat, and probably a raft or timber-ship, under certain circumstances, would be held to be a ship or vessel, and subject to the same maritime law as other vessels." A steam ferry-boat of the capacity of the F. B. Nimick transports on a large scale both passengers and freight, and is as much engaged in maritime commerce and business as if her voyages were longitudinal, instead of across the stream.

In this connection it is worthy of observation that by section 4426 of the Revised Statutes, title, "Regulation of Steam Vessels," the hull and boilers of every ferry-boat propelled by steam are subject to inspection under the provisions of said title, and such boats, for certain purposes, are made subject to the regulations of the boards of supervising inspectors; and the act provides that "no such vessel shall be navigated without a licensed engineer and a licensed pilot."

I am aware that in *Thackery v. The Farmer*, Gilpin's Rep. 524, there is an *obiter dictum*, and in *Harris v. Nugent*, 3 Cir. C. Rep. 649, it was ruled that a ferry-boat is not amenable to the jurisdiction of the United States district courts sitting in admiralty. But these cases were decided at an early day, when the admiralty jurisdiction of these courts was supposed to lie within comparatively narrow limits.

On the other hand, in *Chesman v. Two Ferry-Boats*, 2 Bond, 363, and in *Gate City*, 5 Biss. 200, it was held that ferry-boats propelled by steam are subject to the jurisdiction of the national courts in admiralty, when running between localities in different states. But, as already seen, it is not essential to admiralty jurisdiction that a vessel should be engaged in inter-state commerce.

In a recent case in this district, *The Monongahela Navigation Co. v. The Steam Tug Bob Connell*,* 10 Pittsburgh Legal Journal, (N. S.) 123, the circuit judge (McKenna) held that lockage in the Monongahela river is of a maritime nature, and cognizable in a court of admiralty, and in his

*S. C. 1 FED. REP. 218. See also, *Malony v. City of Milwaukee*, Id. 611.

opinion he remarks upon "the growing tendency of the decisions of the supreme court towards the expansion of admiralty jurisdiction in this country."

I but follow in the line of these decisions in holding that the claim of this libellant against the steam ferry-boat F. B. Nimick is cognizable in admiralty.

The motion to quash proceedings and dismiss libel is overruled, and fourteen days allowed within which to file answer.

HOBEN and others v. STEAMER WESTOVER.

(District Court, D. Maryland. April 2, 1880.)

COLLISION—STEAMER AND VESSEL—UNCERTAINTY AS TO COURSE OF VESSEL.—When the lights of a sailing vessel are fluctuating, a steamer must in due time slacken her speed, and if necessary stop and back, and neither proceed nor change her course until the course of the sailing vessel has been ascertained.

In Admiralty.

Mister & Bear, for libellants.

Barton & Wilmer, for claimants.

MORRIS, D. J. Collision between the schooner *Ella Kirkman* and the steamer *Westover*.

The libel alleged that on November 3, 1879, the schooner *Ella Kirkman*, an oyster puny of 26 58-100 tons, laden with 800 bushels of oysters, was proceeding up the Chesapeake bay, bound for Baltimore, her proper lights burning, the wind blowing hard from north-west, the schooner close hauled on her port tack, steering north-east, making three to four knots an hour, under double reefed mainsail and foresail, and bonnet out of the jib, when between 8 and 9 o'clock p. m., near the mouth of the Patapsco river, about a mile south by east from the seven-foot knoll, the lookout saw the lights of the steamer *Westover*, coming down the river towards the schooner, a mile and a half off; that the schooner kept her