

THE GOVERNOR ROBERT McLANE v. UNITED STATES.¹

(Circuit Court, D. Maryland, March 27, 1888.)

SHIPPING—INSPECTION—VESSELS BELONGING TO STATE.

The steam vessels belonging to the state of Maryland, and used by its officers in the enforcement of the state fishery laws in the Chesapeake bay, to protect the state oyster-beds and fishing rights, and to give relief to vessels in distress, are required by sections 4417 and 4418 to have their boilers and hulls inspected by the United States steam-boat inspectors, and are liable to the penalties of section 4499 for non-compliance with the provisions of the United States law regulating steam-vessels.

(Syllabus by the Court.)

Appeal from district court.

This case was a libel of information, filed by the United States against the steamer Governor Robert M. McLane, to subject said steamer to the fine prescribed by section 4499, Revised Statutes, for refusing to permit her hull and boilers to be inspected by the United States local steam-boat inspectors for the port of Baltimore, Md.; sections 4417 and 4418 being the sections of Revised Statutes requiring this inspection annually. The state of Maryland filed its claim as owner of said steamer, and resisted the enforcement of said libel, claiming that the said steamer was used as an instrument of state government, to enforce the laws of the state of Maryland relating to the protection of the oyster-beds of the Chesapeake bay, which were owned by the state; and also that the said steamer, being engaged in no commerce, either foreign or interstate, was not subject to the laws of congress. The opinion of the district court, (MORRIS, J.,) upon which the decree was passed from which the appeal was taken, is reported in 31 Fed. Rep. 763.

Charles B. Roberts, Atty. Gen., for appellant.

The inspectors' charge of \$10 for inspecting hulls and boilers of said steamer is a tax levied by the United States on an instrumentality of state government. 1 Desty, Tax'n, 34, 45; Cooley, Const. Lim. 483. The said steamer was engaged solely in the navigation of the navigable waters of the United States within the territorial limits of the state of Maryland, and was not engaged in foreign or interstate commerce, and hence was not subject to the inspection law of the United States. The said steamer being owned by a sovereign state, and used solely as a police boat on waters within the state of Maryland, to enforce the laws of the state of Maryland, is another ground of exemption of said steamer. *The Seneca*, 8 Ben. 509; *The Oconto*, 5 Biss. 463; *The Bright Star*, Woolw. 274; *The Thomas Swan*, 6 Ben. 42; *The Sylph*, 4 Blatchf. 24; *The Protector*, 20 Fed. Rep. 207; *The Fidelity*, 16 Blatchf. 569; *The Daniel Ball*, 10 Wall. 557; *U. S. v. Moore*, 2 Bond, 34; *Buffington v. Day*, 11 Wall. 113; *Gibbons v. Ogden*, 9 Wheat. 1.

Thomas G. Hayes, U. S. Atty., for the United States.

The charge of \$10 for inspection was not a tax, but only a reasonable compensation for the service rendered. 23 St. at Large, 59; *Packet Co. v. Keo-*

¹Affirming 31 Fed. Rep. 763.

kuk, 95 U. S. 80; *Packet Co. v. St. Louis*, 100 U. S. 423. The fact that the said steamer navigated the public waters of the United States rendered her liable to the requirements of sections 4417, 4418, Revised Statutes, although she was not engaged in foreign or interstate commerce, nor navigated these waters outside of Maryland. The requirements of said sections, being regulations of navigation, were enforceable against all steam-vessels navigating the waters of the United States, irrespective of the fact whether or not they were engaged in any commerce. Congress has the power to subject said steamers to this inspection, both under the commercial and admiralty clause of the constitution. Const. U. S. art. 1, § 8; *Gibbons v. Ogden*, 9 Wheat. 190; *U. S. v. Craig*, 28 Fed. Rep. 795; *Gilman v. Philadelphia*, 3 Wall. 724; *Sherlock v. Alling*, 93 U. S. 99; *The Daniel Ball*, 10 Wall. 566; *U. S. v. Jackson*, 4 N. Y. Leg. Obs. 454; *South Carolina v. Georgia*, 93 U. S. 4; *Hartranft v. Du Pont*, 118 U. S. 223, 6 Sup. Ct. Rep. 1188; Const. U. S. art. 3, § 2; *The Belfast*, 7 Wall. 624; *The Margaret*, 9 Wheat. 421; *U. S. v. Ferry Co.*, 21 Fed. Rep. 332; *Waring v. Clarke*, 5 How. 465. The United States has paramount and exclusive control over the navigable waters of the United States. The fact that a state is the owner of the steam-vessel navigating these waters does not exempt said vessel from the inspection. The state has transferred to the United States the power of regulating the navigation of the public waters. *U. S. v. Duluth*, 1 Dill. 469; *McCready v. Virginia*, 94 U. S. 391; *The Santissima Trinidad*, 7 Wheat. 353.

BOND, J. This cause, on appeal from the district court, having been submitted by the proctors on each side upon their briefs filed herein for the consideration and judgment of the circuit court, we are of opinion that the decision of the district court should be affirmed; and the reasons submitted in the district court in support of its judgment, in its opinion filed in the cause, are so well considered and ample to sustain its judgment, that no further opinion is required in the case, and a decree will be signed affirming that judgment.

THE BITTERNE.¹

CRANDALL v. THE BITTERNE.

(District Court, E. D. New York. July 27, 1883.)

SHIPPING—DAMAGE TO CARGO—NEGLIGENT STOWAGE—RAPE-SEED ABOVE CHALK.

It is negligence in a vessel to stow bags of rape-seed over chalk in the hold of a vessel, in view of the certainty of damage to the chalk in case the bags of seed should be broken.

In Admiralty.

Horace Graves and *R. D. Benedict*, for libelant.

Wing, Shoudy & Putnam, for claimants.

BENEDICT, J. This is an action brought to recover upon a bill of lading for a failure to deliver in like good order a quantity of chalk shipped

¹ Reported by Edward G. Benedict, Esq., of the New York bar.

on board the steam-ship *Bitterne*. The evidence shows that the chalk was stowed in a pile in the hold of the ship, there leveled over, and a sail and canvas spread over it, and upon these pine boards. On the boards bags of rape-seed were stowed. Upon the arrival of the ship in New York, the chalk, when taken into the lighter, seemed to be permeated with black specks, and soon after, when exposed to the air, it became covered with verdure; in fact, a very fair crop was growing upon it, thus rendering it valueless as an article of commerce. The reason of this was that, from some cause or other, the bags of rape-seed stowed over the chalk had broken during the voyage, and so the seed was let down upon the chalk, where of course it germinated, with the results stated. The question of the case is whether it was negligence on the part of the ship to stow bags of rape-seed over chalk. In my opinion it was negligence. The chalk being an earthy substance, common knowledge would inform any one that rape-seed sown upon it would germinate under favorable conditions. The possibility that the bags of rape-seed might be broken in the voyage, and that in that event the seed would fall upon the chalk, was a matter to be taken into account by the master, and it was his duty to guard against the possibility of such an occurrence. The shipper could not know that seed was to be stowed over his chalk, but both he and the master knew that if seed was so stowed a breakage of the seed-bags would sow the chalk with seed. No doubt it was proper to stow the chalk at the bottom of the ship, and no doubt it was proper to stow other merchandise in the same hold; but in my opinion, in view of the certainty of damage to the chalk in case the bags of seed should be broken, it was negligence to stow the chalk under seed, when a breakage of the seed-bags would necessarily result in sowing the chalk with seed. Some effort has been made on the part of the claimant to rest a defense upon a clause in the bill of lading which exempts the ship from liability for wastage, leakage, breakage, or straining of packages, or injury to wrappers, however caused. But this clause does not exempt them from liability for breakage of packages other than the packages named in the bill of lading. It is further suggested in behalf of the claimant that it was the germination of the seed that caused the damage, and that, inasmuch as the seed did not germinate until after the cargo had been discharged, there is no liability on the part of the ship. But the damage was done when the seed was sown upon the chalk; once sown, it could not be separated, and was sure to germinate. The libellant must have a decree for the amount of his damages, with a reference to ascertain the amount.