

sengers in excess of the number stated in his certificate could be sustained upon proof that he had no certificate authorizing him to carry any passengers whatever, and that he therefore could not have carried passengers in excess of any number "stated" in the certificate of inspection? If the language of the section had been, "a greater number of passengers than allowed by law," it might with more plausibility have been applied to the facts alleged in this case. But the language is "a greater number of passengers than is stated in the certificate of inspection." It seems clear, therefore, that some number must be so stated before the number actually carried can be deemed to be in excess of it. My opinion, therefore, is that the libel is properly brought under section 4499, which subjects to a penalty of \$500 all steamers "navigated without complying with the terms of this title, for which sum the vessel navigated shall be liable, and may be seized and proceeded against in any district court of the United States having jurisdiction of the offense." A direct and primary liability of the vessel for the penalty imposed is thus created, and the seizure and proceeding *in rem* are expressly authorized by the statute.

I do not feel called upon, nor hardly at liberty, to consider the very important question raised at the bar as to the constitutional right of congress to require the inspection of steamers, or in any way regulate the use of vessels employed on the navigable waters of the United States, but not engaged in foreign or interstate commerce. The validity of the laws regulating the use, equipment, and navigation of vessels used on the navigable waters of the United States, as well as those engaged in foreign or interstate commerce, has long and almost universally been acquiesced in. They are in their object and effect salutary, and, in some particulars, indispensable, to the safety of the foreign and interstate commerce, which congress has the unquestioned right to regulate, and the effect of a decision adverse to their validity would be so momentous and far-reaching, that I consider it to be my duty, as district judge of the United States, to assume their constitutionality, and to leave the question of their validity, in whole or in part, under the constitution, to be passed upon by a higher tribunal.

DE COLANGE v. THE CHATEAU MARGAUX.¹

(District Court, S. D. New York. December 18, 1888.)

CARRIERS—OF PASSENGERS—DEVIATION—DAMAGES.

Libelant purchased a passage ticket on steamer Chateau Margaux from New York to Bordeaux. The ticket, like the company's prospectus, expressly stated that the passage would be direct. After the sale of the ticket, the steamer took cargo for Santander, Spain, and sailed direct for that port, without notice to libelant, and was consequently six days longer in reaching Bordeaux. Libelant proved no special damage arising from the delay, except loss of time and the annoyance incident thereto. *Held*, on suit brought to recover damages for the delay, that the deviation was a breach of the contract, and that libelant should recover the amount of passage money paid.

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

In Admiralty. Libel for damages for deviation of vessel.
Newell Martin, for libelant.
Wing, Shoudy & Putnam, for claimants.

BROWN, J. The libelant, a gentleman of 70 years of age, with his wife, and two children between 4 and 12 years old, purchased from the claimants on the 12th of April, 1886, a ticket for himself and family for a passage from New York to Bordeaux on board the steamer *Chateau Margaux*. The ticket expressly stated that the voyage was to be direct; and the prospectuses of the company stated the same thing, emphasizing the shortness and directness of their route, as inducements for invalids to travel by their line. The vessel sailed on the 24th of April. A few days before sailing she took a quantity of cargo to deliver at Santander, and, though notice of this fact was published in a maritime newspaper, the intended deviation was not made known to the libelant, though the company had his address; and he did not learn that the vessel was to go to Santander until a few days out. The steamer would naturally have arrived at Bordeaux a little sooner than at Santander. She remained three days at the latter place, and was three days more in proceeding from Santander to Bordeaux. The libelant claims \$2,000 special damages for the detention and the annoyances arising from it. He had written to a gentleman at Turin to meet him at Paris on the 6th of May on business, who attended at the time, and, after waiting, departed before the steamer reached Bordeaux, which was on the 12th of May.

There is no sufficient proof of special damage. The appointment was not kept, but no pecuniary loss thereby is proved. The deviation was, however, a breach of contract, and the libelant is entitled to reasonable compensation for the loss of time, and the inconvenience and annoyance directly and naturally arising from the violation of the contract. When it was determined to send the vessel to Santander, there was plenty of time to apprise the libelant of the fact before sailing; and he would have been entitled to a return of his passage money, had he chosen to demand it. At Santander, the master, by authority of the owners at Bordeaux, offered transportation to the libelant and his family by rail, or by one of the transatlantic steamers, which was to leave Santander the day after the libelant's arrival there, which would have saved two or three days of the delay. The libelant preferred to remain on board his vessel, rather than suffer the inconveniences incident to such a change; and he did not telegraph or write to the person whom he expected to meet at Paris. The comfort, and even the pleasures, of the libelant and of his family were ministered to with marked consideration by the master of the vessel while at Santander; and the proof does not show any actual pecuniary damage. But the defendants had no right, contrary to their contract, to take the libelant upon a route to which he never assented. I therefore allow as damages the amount of the passage money paid, viz., \$200, with interest, for which a decree may be taken, with costs.

NEPTUNE STEAM NAV. CO. v. SULLIVAN TIMBER CO.

(District Court, S. D. New York. November 26, 1888.)

ADMIRALTY — JURISDICTION — SUITS BETWEEN NON-RESIDENTS — SERVICE ON AGENT OF CORPORATION.

Admiralty courts have a discretion as to entertaining suits between foreigners; and a transaction taking place in Florida, where all the officers of defendant corporation resided, and the libelant being an English corporation, held, that no comity or reasons of justice or of superior convenience, so far as appeared, demanded relief in this district, and service on a limited agent here was set aside.

In Admiralty. Motion to set aside service of process on an alleged agent of a Florida corporation.

Seward, Da Costa & Guthrie, for libelant.

L. Laflin Kellogg, for defendant.

BROWN, J. Upon the language of the marshal's return, stating service only on Bailey, as well as upon the affidavits of Bailey and Carlan, I cannot find that the citation was served upon Carlan. Mr. Elliott's affidavit says it has always been understood that Carlan was the defendant's "managing agent." The directory does not indicate Bailey as agent, and the card attached to the affidavit does not so represent him. I cannot, therefore, find service on Bailey sufficient.

Had Carlan been served the question would have been more embarrassing. Under the New York Code (section 1780) it would seem that no action would lie in the present case in the state courts, for both parties are non-resident, the cause of action did not arise here, and the defendant has no property here. Courts of admiralty have a discretion as to entertaining suits between foreigners. This whole dealing being in Florida, where all the officers reside, and the libelant being an English corporation, no comity, or reasons of justice or of superior convenience, are shown to demand relief here, when full relief is easy within the jurisdiction where the transaction was had. Besides that, I doubt if an agent whose authority is limited to a distinct branch of business here, represents the corporation as to matters wholly outside of that branch of business, so that, as respects the latter business done elsewhere, he can be held to be in any sense such a "managing agent" as to make the corporation "found" in his person within this state. Admiralty Rules; 2, 3, 25. See *St. Clair v. Cox*, 106 U. S. 350, 356, 359, 1 Sup. Ct. Rep. 354; *Hat Sweat Co. v. Davis*, 31 Fed. Rep. 294.

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