vision. That is not an open question in this court. Whenever it has been presented, the ruling has been that, in cases of bonds issued by municipal corporations, under a statute upon the subject, ratification by the legislature is in all respects equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in its execution.* The same principle has been applied in the courts of the States.† This court has repeatedly recognized the validity of private and curative statutes, and given them full effect, where the interests of private individuals were alone concerned, and were largely involved and affected.‡ The earlier and more important of these authorities are so well known to the profession and are so often referred to, that it would be waste of time to comment upon them. We hold this objection also fatal to the appellant's case.

Several other important propositions have been discussed by the learned counsel for the appellee. They have not been considered, and we express no opinion in regard to them.

DECREE AFFIRMED.

THE BELFAST.

1. In all cases where a maritime lien arises, the original jurisdiction to enforce it by a proceeding *in rem*, is exclusive in the District Courts of the United States, as provided by the ninth section of the Judiciary Act of 1789.
2. State legislatures have no authority to create maritime liens; nor can they confer jurisdiction upon a State court, to enforce such a lien by a suit or proceeding *in rem*, as practised in admiralty courts.
3. Upon an ordinary contract of affreightment, the lien of the shipper is a maritime lien; and a proceeding *in rem*, to enforce it, is within the ex-

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* Gelpcke *v.* Dubuque, 1 Wallace, 220; Thomson *v.* Lee County, 3 Id. 327.

† Wilson *v.* Hardesty, 1 Maryland Ch. Decisions, 66; Shaw *v.* Norfolk Co. R. R. Co., 5 Gray, 180.

‡ Satterlee *v.* Matthewson, 2 Peters, 380; Wilkinson *v.* Leland, Id. 627; Leland *v.* Wilkinson, 10 Id. 294; Watson *v.* Mercer, 8 Id. 88; Charles River Bridge *v.* Warren Bridge, 11 Id. 420; Stanley *v.* Colt, 5 Wallace, 119; Croxall *v.* Shererd, Id. 268.

Statement of the case.

clusive original cognizance of the District Courts of the United States, albeit the contract be for transportation between ports and places within the same State, and all the parties be citizens of the same State, provided only that such contract be for transportation upon navigable waters to which the general jurisdiction of the admiralty extends.

4. The "saving," in the ninth section of the Judiciary Act, "to suitors, in all cases, of the right of a common law remedy, where the common law is competent to give it," does not authorize a proceeding *in rem*, to enforce a maritime lien, in a common law court, whether State or Federal. Common law remedies are not applicable to enforce such a lien, but are suits *in personam*, though such suits, under special statutes, may be commenced by attachment of the property of the debtor. Proceedings in a suit at common law, on a contract of affreightment, are the same as in suits on contracts not regarded as maritime, wholly irrespective of the fact that the injured party might have sought redress in the admiralty. The judgment in such a case is not against the vessel, as the offending thing, but against the parties who have violated their contract; and can only affect the vessel so far as the defendants may have property therein.

5. These principles applied to the provision of the statute of 7th October, 1864, of the State of Alabama, under which contracts of affreightment are authorized to be enforced *in rem* through courts of the State, by proceedings, the same in form, as those used in courts of admiralty of the United States; and the statute held unconstitutional and void.

ERROR to the Supreme Court of Alabama.

The case was thus: The Constitution ordains that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction." And the ninth section of the Judiciary Act of 1789, provides that the District Courts of the United States

"Shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, . . *saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it.*"

In this state of Federal law, fundamental and statutory, the State of Alabama, by enactments, entitled "PROCEEDINGS IN ADMIRALTY,"* provided that there should be a lien on all vessels for work and materials done or furnished, and for all debts contracted by the master, owner or consignee,

* Code, §§ 2692, 2708.

and for the wages of the officers, crew, &c., in preference to other debts due from the owners thereof. By the terms of the code, the lien is to be asserted by filing a complaint in any county in which the vessel may be found, stating the amount and nature of the claim, and praying a seizure of the vessel. Thereupon the clerk is to issue a writ commanding the sheriff to seize the vessel, her tackle, apparel and furniture. At any time before judgment, the master, owner or other persons may release the vessel by entering into bond in double the amount of the claim, stipulating to pay the amount of the judgment. Any number of persons may unite in the same complaint, and if more than one complaint be filed the court must consolidate them, and render but one judgment against the vessel, which is to be considered several as to each complainant. If a stipulation be entered into, the stipulators are defendants. If none, the court must render a judgment *ex parte* condemning the boat, tackle, &c., to be sold in satisfaction of the claim; and the affidavit of complainant is made presumptive evidence of the justice of the demand.

Finally, the code provides that, "unless where otherwise provided in this chapter, the proceedings to enforce the lien shall be the same as in the *courts of admiralty* of the United States, *but either party may have any question of fact decided by a jury, upon an issue* made up under direction of the court."

By the act of 7th October, 1864, "to amend the *admiralty laws* of the State," these provisions are extended to the contract of *affreightment.*

Under this statute, Boone & Co. filed their libel, March 30, 1866, in the *City Court of Mobile*, claiming $5800 for the loss of certain bales of cotton, shipped to them from Vienna, *in the State of Alabama*, to Mobile, *in the same State*, and prayed "*process in admiralty*" for the seizure of the steamboat Belfast.

In the same court a libel was also filed by J. & S. Steers, claiming compensation for other bales, shipped by them from Columbus, *Mississippi*, to Mobile, in *Alabama*, already mentioned. And a libel by Watson & Co. claiming it for cotton shipped by them, from and to the same points.

Statement of the case.

All the navigation which was the subject of the case, was upon the Tombigbee River, navigable water of the United States.

Under these several libels, the sheriff, by virtue of writs of seizure, took the steamer into possession, and posted his monitions, and the causes, under the statute, were consolidated and heard together. The answer, applicable to the three cases alike, set forth that the steamer was duly enrolled and licensed, in pursuance of laws of the United States, and that on the 15th January, 1866, she was regularly cleared at Mobile, Alabama, for Columbus, Mississippi, and that on her downward trip the cotton claimed was lost, and therefore, that the City Court had *no jurisdiction.*

A decree was rendered on 28th July, for the three libellants. Appeal was taken to the Supreme Court of Alabama, where one assignment of errors was: "That the City Court erred in overruling the protest to the jurisdiction." The decree of the City Court was, however, affirmed by the Supreme Court; and deciding, as that court thus did, in favor of the validity of a statute of a State drawn in question on the ground of its being repugnant to the laws of the United States, the case was brought here under the twenty-fifth section of the Judiciary Act.

Not much contesting the point that if the court had no jurisdiction in the two cases where the carriage was not wholly within one State no agreement below could authorize what it did about these two (jurisdiction being of course to be conferred by the law alone), the matter of debate was reduced, here, chiefly to the first case, that, namely, of Boone & Co., where the whole carriage was within the State of Alabama, and to the question of constitutional law arising upon *it*, to wit:

Whether the contract, made as it was, for the transportation of goods from one place to another, both in the same State, and without the goods being carried *in transitu*, into or through any other State or foreign dominion, was a contract which could be enforced by a proceeding in admiralty in the Federal courts alone?

If the State court had no jurisdiction in that case, *a fortiori*, it could have none in the two others.

Mr. P. Phillips, for the appellant:

It is matter of universal knowledge, that the admiralty jurisdiction of the Federal courts has undergone several changes since the establishment of this government, and we need not discuss at all the familiar cases of *The Thomas Jefferson*,* *Waring* v. *Clarke*,† *The Lexington*,‡ *The Genesee Chief*,§ and some others of a past day. Whether they be all reconcilable or not, is unimportant now. The only thing important to be inquired into by us now, is the judgment of this court, as settled in its *most recent* decisions, determining the character and limit of the admiralty jurisdiction. And we have here two leading cases on this point. In *The Moses Taylor*,‖ the action was on a contract for personal transportation. The court held that this was a maritime contract; that it was not distinguishable from a contract for the *transportation of freight*, and that the breach of either is the appropriate subject of admiralty jurisdiction.

And, further, that the clause of the Judiciary Act, which saves to suitors a common law remedy, does not save a proceeding *in rem*, as used in the admiralty courts. Such a proceeding not being a remedy afforded by the common law.

In *The Hine* v. *Trevor*,¶ the action was for a collision occurring on the Mississippi, near St. Louis. The record "raised distinctly the question how far the jurisdiction in admiralty was exclusive, and to what extent the State courts could exercise a concurrent jurisdiction," and, owing to the importance of the principles involved, the "case was held under advisement for some time, in order that every consideration which could influence the result might be deliberately weighed." The court affirm the judgment given in *The Moses Taylor*, and reassert the doctrine declared in the case of *The Genesee Chief*, that the "principles of admiralty ju-

* 10 Wheaton, 428. † 5 Howard, 441. ‡ 6 Id. 390.
§ 12 Id. 457. ‖ 4 Wallace, 424. ¶ Ib. 556.

risdiction, as conferred on the Federal courts by the Constitution, extend *wherever ships float*, and *navigation successfully aids commerce, whether internal or external.*" It further declares that the grant of this power under the act of 1789, is exclusive not only of all other Federal courts, but of all other State courts, and, therefore, State statutes which confer upon State courts a remedy for marine torts *and marine contracts*, by proceeding strictly *in rem*, are void.

The provisions of the Alabama code are those of the acts quoted in the above recent cases, and are subject to the same condemnation. Judgment, therefore, must be reversed.

Mr. Carlisle, contra:

1. The case arose in, and concerned alone, *the internal commerce of the State of Alabama*, and therefore it was one with which the laws of that State only could deal. It lay wholly beyond the region of Federal powers. And it is quite unimportant in what form, or by what system of pleading and evidence, the State might provide a remedy in such a case. The mere form cannot affect the substance. If the power exercised be one belonging to the State, and not to the Federal government, it does not concern the Federal government whether it be exercised in one form or another; or whether the proceeding be called a libel in admiralty, a bill in equity, or an action at common law; whether given by modern statute, or to be found in the Year Books.*

2. The particular remedy given by the Alabama statute, and adopted in these cases, is within the saving in the ninth section of the Judiciary Act. What is meant, as well in the act of 1789, as in the Constitution itself, by the "*common law*," has been settled by this court. The language of the seventh amendment is:

"In *suits at common law*, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

* Gibbons *v.* Ogden, 9 Wheaton, 204.

The language of the ninth section, and that just quoted, is obviously used in the same sense. Now in *Parsons* v. *Bedford*,* the court say:

"By 'common law,' the framers of the amendment meant what the Constitution denominated in the third article 'law;' not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered; or where, as in admiralty, a mixture of public law and of maritime law and equity were often found in the same suit. Probably there were few, if any, States in the Union in which some new legal remedies, differing from the old common law forms, were not in use; but in which, however, the trial by jury intervened, and the general regulations in other respects were according to the course of the common law. Proceedings *in cases of partition and foreign and domestic attachment* might be cited as examples variously adopted and modified."

To show that the case at bar is a "civil cause of admiralty and maritime jurisdiction," shows nothing to the purpose, if it also appear that there was a common law remedy at the option of the suitors, and that they elected that remedy. They are the very persons who under the statute had the right to do so.

It is not necessary to make a case one at common law, that the suit be begun by the service of process, or by actually bringing into court, in any other way, the party whose rights are to be affected by the proceeding. A defendant may be brought into court as well by seizing his property, and bringing it into court, under circumstances giving him plain and reasonable notice of the cause of its seizure. If the statute makes provision for his personal appearance, and a day is given to him in court, with the right of trial by jury, then it is as much a common law case as if it had begun by a

* 3 Peters, 446-7.

capias ad respondendum, instead of a seizure of his property. And, on the other hand, though the suit be begun by a capias, and proceeded in throughout according to the most exact forms of a common law suit in all things but one, to wit, *the trial by jury*, if that be denied, it is no true case at common law. It is this distinctive quality alone which the Constitution guarantees and preserves from all innovation. And there is no instance in this court in which, where the subject-matter was the adjudication of purely legal rights, and the right of the trial by jury has been "preserved," in which the case has been treated as other than a common law case, whether a concurrent remedy existed, either in admiralty or in equity, or not, and whatever may have been the mere *form* of the proceedings.

The Hine v. *Trevor* is no exception to this rule. There, as the report shows, there was, and could be, *no jury trial*. The Iowa statute, on which that case rested, made no provision to protect the owner of the vessel, and afforded him no opportunity, by his personal appearance, of converting the proceeding into a common law trial by jury. The proceeding was begun, continued, and ended, and could only be so, as a civil law proceeding *in rem*.

Mr. Justice CLIFFORD delivered the opinion of the court.

Persons furnishing materials or supplies for ships or vessels, within the State of Alabama, have a lien by the law of that State on the same for all debts contracted by the master, owner, or consignee thereof for the work done, and for the materials and supplies furnished, in preference to other debts due and owing from the owners of such ships or vessels. By the code of that State it is also provided, under the title, "proceedings in admiralty," that whenever any steamboat or other water-craft shall receive on board, as a common carrier, any goods or merchandise as freight, to be delivered at any specified place, and shall fail to deliver the same as directed in the bill of lading or other contract of shipment, the owner or consignee of such goods or merchandise shall have a lien on such boat or other water-craft

for his loss or damage, to be enforced in the same manner and subject to the rules and regulations prescribed in relation to similar liens for labor, materials, and supplies furnished to such steamboats or other water-craft, as described in the antecedent provision.*

Pursuant to those statutory rules and regulations of the State, the libel in this case was filed in the City Court of Mobile, and the libellants alleged that they, on the twenty-third of January, 1866, shipped on board the steamboat Belfast, then lying at Vienna in that State, one hundred bales of cotton, to be transported to Mobile, in the same State, and there to be delivered to certain consignees, they paying freight therefor at the rate of five dollars per bale, the dangers of the river excepted; that on the way down the river, below Vienna, twenty-nine bales of the cotton were lost, not by the dangers of the river, and were never delivered to the consignees, whereby the libellants suffered loss to the amount of five thousand eight hundred dollars. Introductory allegations of the libel, also, are the same as in a libel *in rem* in the District Courts of the United States; and in conclusion, the "libellants pray process in admiralty" against the steamer, "her tackle, apparel, and furniture," and that the same may be condemned to satisfy their damages and costs. Process was accordingly issued, commanding the sheriff to seize and take the steamer, &c., into his possession, and to hold the same until released by due course of law. Respondents appeared as claimants, and alleged that they were the owners of the steamer, and they admitted that the cotton was shipped on board at the time and place, and on the terms and for the purpose alleged in the libel; but they excepted to the jurisdiction of the court, and alleged that the steamer, at the time the cotton was shipped, was duly enrolled and licensed under the laws of the United States; that she was then and there regularly engaged in commerce and navigation between the city of Columbus, in the State of Mississippi, and the city of Mobile, in

* Revised Code, §§ 3127, 3142.

the State of Alabama, and that the cotton described in the libel was lost in her trip down the river from the former city to her port of destination. Defence of the respondents upon the merits was, that the steamer and cargo were captured by a band of robbers in the trip down the river, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States, and without any negligence or fault on the part of the officers and crew of the steamer. They also set up the defence, that it was agreed between the master and the shippers that the vessel should not be liable for the loss of the cotton, if it was captured by armed men during the voyage, withou any negligence or fault on the part of the carrier. Libellants excepted to that part of the answer denying the jurisdiction of the court, as insufficient and invalid; and they also excepted to the defence, as pleaded, that the steamer was robbed of the cotton, as no bar to a recovery in the case, and the court sustained the views of the libellants in both particulars, and the respondents excepted to the respective rulings of the court.

Two other consignments of cotton were also on board the steamer at the time the alleged robbery occurred. Ninety bales were shipped by J. H. Steers & Company, at Columbus; and one hundred bales were shipped by John Watson & Company, at the same place. Both shipments were to be transported to the port of Mobile, and there to be delivered to certain consignees under a similar contract of affreightment as that alleged in the first case, except as to the price to be paid for the transportation. Steers & Company lost thirty-four bales of their shipment, and Watson & Company lost thirty bales, as alleged by the respective parties. Libels in the same form were also filed by those parties about the same time, in the same court, and the owners of the steamer appeared in each case as claimants, and pleaded the same defences in the three cases.

Evidence was introduced by the respective libellants, proving that the entire cotton lost, and not delivered, was of the value of four thousand dollars. They also introduced

the several bills of lading, and the respondents admitted the shipments as alleged in the respective libels. On the other hand, the libellants admitted that the steamer was robbed, as alleged in the answer, and without any neglect or fault of the owners of the steamer, or those in charge of her navigation.

Agreement of the parties, as stated in the bill of exceptions, was that the three cases should be tried together, and they were all submitted at the same time and upon the same issues. Finding of the court was that the whole loss in the three cases was four thousand dollars, and of that sum the decree of the court allowed one thousand dollars to the libellants in the first case, fourteen hundred dollars to the libellants in the second case, and sixteen hundred dollars to the libellants in the third case, with costs to the prevailing party.

Exceptions were seasonably tendered by the respondents to the rulings and decision of the court, and the exceptions were duly allowed by the court. Appeals were then taken by the respondents to the Supreme Court of the State, where the objections to the jurisdiction of the court were renewed in the formal assignment of errors. The parties were heard, but the court overruled the objections to the jurisdiction of the court, and affirmed the respective decrees rendered in the subordinate court. Writs of error were then sued out under the twenty-fifth section of the Judiciary Act, and the respective causes were removed into this court.

Jurisdiction of this court to re-examine the questions presented in the pleadings may be assumed as existing without discussion, as it is conceded that the questions are the same as were raised and decided in the State courts, and it is not controverted that the questions are such as may be re-examined here under the twenty-fifth section of the Judiciary Act.

Theory of the respondents is, that the respective libels were libels *in rem* to enforce a maritime lien in favor of the shippers of the cotton, under contracts of affreightment for the transportation of goods and merchandise from one port

to another upon navigable waters, and that the State courts have no jurisdiction to employ such a process to enforce such a lien in any case; that the jurisdiction to enforce a maritime lien by a proceeding *in rem* is exclusively vested in the Federal courts by the Constitution of the United States and the laws of Congress. But the libellants controvert that proposition, and insist that the State courts have concurrent jurisdiction in these cases under that clause in the ninth section of the Judiciary Act, which saves "to suitors in all cases the right of a common law remedy where the common law is competent to give it."*

2. They also contend, if their first proposition is not sustained, that inasmuch as the three cases were heard together, under an agreement that they should be tried upon the same issues, and that the libel filed by W. C. Boon & Company, as stated in the bill of exceptions, was selected as the case to be tried in the court where the suits were commenced, the rights of the parties in the other two cases must abide the decision of this court in that case.

Assuming that to be so, then they contend that the State court had jurisdiction in the first case, because the contract of affreightment was for the transportation of goods and merchandise between ports and places in the same State. Impliedly, the argument admits that the rule is otherwise where the contract is for the transportation of goods and merchandise between ports and places in *different* States; but the proposition is, that where the contract is between citizens of the same State, for the transportation of goods and merchandise from one port to another in the same State, the case is not one within the jurisdiction of the admiralty courts of the United States, unless it becomes necessary, in the course of the voyage, to carry the goods or merchandise into or through some *other* State or foreign dominion.

Obviously the questions presented are questions of very great importance, as affecting the construction of the Federal Constitution, and the rights and remedies of the citizens

* 1 Stat. at Large, 77.

engaged in an important and lucrative branch of commerce and navigation.

Judicial power to hear and determine controversies in admiralty, like other judicial power, was conferred upon the government of the United States by the Federal Constitution, and, by the express terms of the instrument, it extends to all cases of admiralty and maritime jurisdiction; which, doubtless, must be held to mean all such cases of a maritime character as were cognizable in the admiralty courts of the States at the time the Constitution was adopted.*

Admiralty jurisdiction, as exercised in the Federal courts, is not restricted to the subjects cognizable in the English courts of admiralty at the date of the Revolution, nor is it as extensive as that exercised by the continental courts, organized under, and governed by, the principles of the civil law.†

Best guides as to the extent of the admiralty jurisdiction of the Federal courts, are the Constitution of the United States, the laws of Congress, and the decisions of this court.

Two of the contracts of affreightment in these cases, were for the transportation of cotton between ports and places in different States; but as the contract alleged in the libel filed in the first case, was for the transportation of cotton from one port to another, in the same State, it becomes necessary to determine, irrespective of the questions presented in the other cases, whether such a contract is cognizable in the admiralty courts of the United States, because, if not, the libellants, in any view of the case, must prevail, as there would be, in that state of the case, no jurisdiction in this court to re-examine the decision of the State court in that case.

Much controversy has existed as to the true extent of the admiralty and maritime jurisdiction of the Federal courts, but great aid will be derived in the solution of this question by an examination of the decisions of this court at different periods since the judicial system of the United States was organized.

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* Waring et al. *v.* Clarke, 5 Howard, 454.

† Bags of Linseed, 1 Black, 108.

Opinion of the court.

Principal subjects of admiralty jurisdiction are maritime contracts and maritime torts, including captures *jure belli*, and seizures on water for municipal and revenue forfeitures.

(1.) Contracts, claims, or service, purely maritime, and touching rights and duties appertaining to commerce and navigation, are cognizable in the admiralty.*

(2.) Torts or injuries committed on navigable waters, of a civil nature, are also cognizable in the admiralty courts.

Jurisdiction in the former case depends upon the nature of the contract, but in the latter it depends entirely upon locality. Mistakes need not be made if these rules are observed; but contracts to be performed on waters not navigable, are not maritime any more than those made to be performed on land. Nor are torts cognizable in the admiralty unless committed on waters within the admiralty and maritime jurisdiction, as defined by law.†

Such jurisdiction, whether of torts or of contracts, was, and still is, restricted in the parent country to tide-waters, as they have no large fresh-water lakes or fresh-water rivers which are navigable. Waters where the tide did not ebb and flow, were regarded in that country as not within the admiralty and maritime jurisdiction; and such was the decision of this court in the case of *The Jefferson*,‡ and the rule established in that case was followed for more than a quarter of a century.

Attempt was subsequently made to restrict the jurisdiction of the admiralty courts in torts to cases arising on the high seas, but this court held that it extended to all waters within the ebb and flow of the tide, though *infra corpus comitatus*, and as far up the rivers emptying into the sea or bays and arms of the sea, as the tide ebbed and flowed. And that rule, ever after it was promulgated, prevailed, and was universally applied by the District Courts in cases of collision.§

Application of that rule was made by the Federal courts

* 1 Conklin's Admiralty, 19.

† The Commerce, 1 Black, 579; 2 Story on the Constitution (3d ed.), §§ 1666–1669.

‡ 10 Wheaton, 428.

§ Waring et al. *v.* Clarke, 5 Howard, 549.

in collision cases arising upon the Hudson, the Penobscot, the Kennebec, the Merrimac, the Alabama, and many other rivers navigable only between ports and places in one State.

Exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, was conferred upon the District Courts by the ninth section of the Judiciary Act, including all seizures under the laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden, within their respective districts as well as upon the high seas.

Remedies for marine torts, it is conceded, may be sought in the admiralty courts under that provision, although committed within the body of a county, but it is denied that redress can be obtained in the admiralty for the breach of a contract of affreightment in a case where the port of shipment and the port of destination are in the same State.

Repeated attempts were made at an early day to induce the court to hold that seizures on water were not cases of admiralty cognizance, and that contracts of affreightment were exclusively cognizable in the courts of common law; but this court refused to adopt either proposition, and held that the entire admiralty power of the Constitution was lodged in the Federal courts, and that Congress intended by the ninth section of the Judiciary Act to invest the District Courts with that power as courts of original jurisdiction; that the phrase, "exclusive original cognizance," was used for that purpose, and was intended to be exclusive of the State courts as well as the other Federal courts.*

When the case of *The Lexington* was decided, it was still supposed that the admiralty jurisdiction was limited to waters affected by the ebb and flow of the tide, but the case is a decisive authority to show that the jurisdiction of the admiralty, in matters of contract, was understood to be coextensive with the jurisdiction in cases of marine torts.

* The Lexington, 6 Howard, 390; The Vengeance, 3 Dallas, 297; The Betsey, 4 Cranch, 443; The Samuel, 1 Wheaton, 9; The Octavia, Ib. 20.

Opinion of the court.

Subject-matter of the suit in the case of *Waring et al.* v. *Clarke*, was that of a collision, and the subject-matter in the case of *The Lexington* was a loss of specie *in transitu*, under a contract of affreightment. Viewed in any light, those two cases settle the question that where the voyage and transportation are over tide-waters, the jurisdiction of the admiralty is the same in matters in maritime contracts as in marine torts.

Such was the state of the law upon the subject, as decided by this court, when the case of *The Genesee Chief** was brought here for re-examination; and in that case this court held that the jurisdiction in admiralty depended, not upon the ebb and flow of the tide, but upon the navigable character of the water; that if the water was navigable, it was deemed to be public, and if public, that it was regarded as within the legitimate scope of the admiralty jurisdiction conferred by the Constitution.

Prior to that decision, the Western lakes and navigable rivers of the United States, above tide-waters, were not supposed to be waters within the admiralty and maritime jurisdiction of the Federal courts. Strange as that proposition may now appear to one familiar with the provision contained in the ninth section of the Judiciary Act, it is nevertheless true that the rule restricting admiralty jurisdiction to tide-waters had prevailed from the organization of the judicial system to that date, but the effect of that decision was to dispel that error and place the admiralty jurisdiction upon its true constitutional and legal basis, as defined in the Constitution of the United States and the laws of Congress.

Subsequent decision of this court, in the case of *The Magnolia*, was, that the admiralty jurisdiction of the Federal courts extends to cases of collision upon navigable waters, although the place of the collision may be within the body of a county and above the ebb and flow of the tide; and this court also held in that case that the District Courts exercise jurisdiction over fresh-water rivers, "navigable from the

* 12 Howard, 457.

sea," by virtue of the ninth section of the Judiciary Act, and not as conferred by the act of the 26th of February, 1845, which is applicable only to the "lakes, and navigable waters connecting said lakes."*

Direct proposition of the respondents in the case of *The Commerce*† was, that the case before the court, which was a collision on the Hudson River, was not a case cognizable in the admiralty, because it did not appear that either of the vessels was engaged in foreign commerce, or in commerce among the several States; but the court held that judicial power in all cases of admiralty and maritime jurisdiction was conferred by the Constitution, and that in cases of tort the question of jurisdiction was wholly unaffected by the considerations suggested in that proposition; and we reaffirm the rule there laid down, that locality is the true test of admiralty cognizance in all cases of marine torts; that if it appears, as in cases of collision, depredations upon property, illegal dispossession of ships, or seizures for the violation of the revenue laws, that the wrongful act was committed on navigable waters, within the admiralty and maritime jurisdiction of the United States, then the case is one properly cognizable in the admiralty.‡

Navigable rivers, which empty into the sea, or into the bays and gulfs which form a part of the sea, are but arms of the sea, and are as much within the admiralty and maritime jurisdiction of the United States as the sea itself.

Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it cannot be made to depend upon the power of Congress to regulate commerce, as conferred in the Constitution. They are entirely distinct things, having no necessary connection with one another, and are conferred, in the Constitution, by separate and distinct grants.§

Congress may regulate commerce with foreign nations

* The Magnolia, 20 Howard, 296; 5 Stat. at Large, 516.

† 1 Black, 578.

‡ 2 Story on the Constitution, § 1669.

§ The Genesee Chief, 12 Howard, 452.

and among the several States, but the judicial power, which, among other things, extends to all cases of admiralty and maritime jurisdiction, was conferred upon the Federal government by the Constitution, and Congress cannot enlarge it, not even to suit the wants of commerce, nor for the more convenient execution of its commercial regulations.*

Remarks, it is conceded, are found in the opinion of the court in the case of *Allen et al.* v. *Newberry*,† inconsistent with these views; but they were not necessary to that decision, as the contract in that case was for the transportation of goods on one of the Western lakes, where the jurisdiction in admiralty is restricted, by an act of Congress, to steamboats and other vessels . . . . employed in the business of commerce and navigation, between ports and places in different States and Territories.‡

No such restrictions are contained in the ninth section of the Judiciary Act, and consequently those remarks, as applied to a case falling within that provision, must be regarded as incorrect.

Such a rule, if applied to the commerce and navigation of the Atlantic coast, would produce incalculable mischief, as the vessels in many cases, even in voyages from one port in a State to another port in the same State, are obliged, in the course of the voyage, to go outside of any particular State, and it would not be difficult to give examples where more than half the voyage is necessarily upon the high seas. Unless the admiralty has jurisdiction, in such a case, to enforce the maritime lien, in case of a collision or jettison, it is difficult to see to what forum the injured party can resort for redress. Piracy, it is said, is justiciable everywhere, but it cannot be admitted that maritime torts are justiciable nowhere.

Unable to deny that the admiralty has jurisdiction over marine torts, though the voyage is between ports and places in the same State, the advocates of the more restricted juris-

* The St. Lawrence, 1 Black, 526.

† 21 Howard, 245.

‡ The Hine *v.* Trevor, 4 Wallace, 555.

diction over maritime contracts set up a distinction, and contend that the admiralty jurisdiction over such contracts is limited by the power granted to Congress to regulate commerce. Reference may be made to the case of *Maguire* v. *Card*,* as one where that distinction was adopted; but the decisive answer to that case, and the one preceding it in the same volume, will be found in the later cases already referred to, and in the case of *The Mary Washington*,† where the opinion was given by the present Chief Justice. All three of the cases, therefore, as well the case of W. C. Boon & Company as the other two, are cases within the admiralty and maritime jurisdiction of the Federal courts.

II. Suppose that to be so, then, it is contended by the libellants, in the second place, that all three of the original actions were well brought in the State court as a court of concurrent jurisdiction with the District Courts of the United States in admiralty, and that the particular remedy, given by the statute of the State, and adopted in these cases, is within the true intent and meaning of the saving clause in the ninth section of the Judiciary Act.

Wherever a maritime lien arises the injured party may pursue his remedy, whether for a breach of a maritime contract or for a marine tort, by a suit *in rem*, or by a suit *in personam*, at his election. Attention will be called to three classes of cases only as examples to illustrate that proposition; but many more might be given to the same effect.

Shippers have a lien by the maritime law upon the vessel employed in the transportation of their goods and merchandise from one port to another, as a security for the fulfilment of the contract of the carrier, that he will safely keep, duly transport, and rightly deliver the goods and merchandise shipped on board, as stipulated in the bill of lading or other contract of shipment.‡

Owners of vessels damaged by collision, occasioned without fault on their part, and wholly through the fault of those

* 21 Howard, 249. † 14 American Law Register, 692.

‡ The Bird of Paradise, 5 Wallace, 545; The Eddy, Ib. 481; Bags of Linseed, 1 Black, 112; Maude & Pollock on Shipping, 254.

in charge of the colliding vessel, also have a maritime lien on the vessel in fault as a security for such damages as may be awarded to them in the admiralty for the injury thereby caused to their vessel, and they may proceed *in rem* to enforce their claim for the damages, or they may waive the lien and bring their suit *in personam* against the master or owners of the vessel.*

Material-men, also, who furnish materials or supplies for a vessel in a foreign port, or in a port other than a port of the State where the vessel belongs, have a maritime lien on the vessel as a security for the payment of the price of all such materials and supplies. They have such a lien because, upon the principles of the maritime law, such materials and supplies are presumed to be furnished on the credit of the vessel, and consequently they are entitled to proceed *in rem* in the admiralty court to enforce the lien, but they are not compelled to do so, as they may waive the lien and bring their suit *in personam* against the master or owners, as they are also liable as well as the vessel.†

None of these principles are controverted, but the libellants contend that the State courts have concurrent jurisdiction to afford the parties the same remedies in all such cases. No warrant for that proposition, however, is found in the ninth section of the Judiciary Act, nor in any other part of that fundamental regulation of our judicial system. On the contrary, the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction is, by the very terms of that section, conferred upon the District Courts of the United States, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it." Nothing is said about a concurrent jurisdiction in a State court or in any other court, and it is quite clear that in all cases where the parties are citizens of different States, the injured party may pursue the common law remedy here

* Sturgis *v.* Boyer et al., 24 Howard, 117; Chamberlain *v.* Ward, 21 Id. 553.

† The St. Lawrence, 1 Black, 529; Manro *v.* Almeida, 10 Wheaton, 473; The Reindeer, 2 Wallace, 384; The General Smith, 4 Wheaton, 438.

described and saved, in the Circuit Court of the district as well as in the State courts.

Original cognizance is exclusive in the District Courts, except that the suitor may, if he sees fit, elect to pursue a common law remedy in the State courts or in the Circuit Court, as before explained, in all cases where such a remedy is applicable. Common law remedies are not applicable to enforce a maritime lien by a proceeding *in rem*, and consequently the original jurisdiction to enforce such a lien by that mode of proceeding is exclusive in the District Courts.*

State legislatures have no authority to create a maritime lien, nor can they confer any jurisdiction upon a State court to enforce such a lien by a suit or proceeding *in rem*, as practised in the admiralty courts. Observe the language of the saving clause under consideration. It is to suitors, and not to the State courts, nor to the Circuit Courts of the United States. Examined carefully it is evident that Congress intended by that provision to allow the party to seek redress in the admiralty if he saw fit to do so, but not to make it compulsory in any case where the common law is competent to give him a remedy. Properly construed, a party under that provision may proceed *in rem* in the admiralty, or he may bring a suit *in personam* in the same jurisdiction, or he may elect not to go into admiralty at all, and may resort to his common law remedy in the State courts or in the Circuit Court of the United States, if he can make proper parties to give that court jurisdiction of his case.

Undoubtedly most common law remedies in cases of contract and tort, as given in common law courts, and suits *in personam* in the admiralty courts, bear a strong resemblance to each other, and it is not, perhaps, inaccurate to regard the two jurisdictions in that behalf as concurrent, but there is no form of action at common law which, when compared with the proceeding *in rem* in the admiralty, can be regarded as a concurrent remedy.

* The Moses Taylor, 4 Wallace, 411.

Consignees or shippers may proceed in the admiralty *in rem* against the vessel to enforce their maritime lien, or they may waive that lien and still proceed in the admiralty *in personam* against the owners of the vessel to recover damages for the non-fulfilment of the contract, or they may elect to bring a common action against the owners to recover damages, as in other cases for the breach of a contract to be executed on land.

Proceedings in a suit at common law on a contract of affreightment are precisely the same as in suits on contracts not regarded as maritime, wholly irrespective of the fact that the injured party might have sought redress in the admiralty. When properly brought, the suit is against the owners of the vessel, and in States where there are attachment laws the plaintiff may attach any property not exempted from execution, belonging to the defendants.

Liability of the owners of the vessel under the contract being the foundation of the suit, nothing can finally be held under the attachment except the interest of the owners in the vessel, because the vessel is held under the attachment as the property of the defendants, and not as the offending thing, as in the case of a proceeding *in rem* to enforce a maritime lien. Attachment in such suits may be of the property of non-residents or of defendants absent from the State, as in suits on contracts not maritime, and the same rules apply in respect to the service of process and notice to the defendants.

Applying these rules to the cases before the court, it is obvious that the jurisdiction exercised by the State court was of the precise character which is exclusive in the District Courts of the United States sitting in admiralty. Authority does not exist in the State courts to hear and determine a suit *in rem* in admiralty to enforce a maritime lien.

Such a lien does not arise in a contract for materials and supplies furnished to a vessel in her home port, and in respect to such contracts it is competent for the States, under the decisions of this court, to create such liens as their legislatures may deem just and expedient, not amounting to a

regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement.*

Contracts for shipbuilding are held not to be maritime contracts, and, of course, they fall within the same category, but in all cases where a maritime lien arises, the original jurisdiction to enforce the same by a proceeding *in rem* is exclusive in the District Courts of the United States, as provided in the ninth section of the Judiciary Act.†

Respective decrees REVERSED, and the several causes remanded, with instructions to

DISMISS THE RESPECTIVE LIBELS.

WHITE'S BANK *v.* SMITH.

1. Under the act of Congress of July 29th, 1850, enacting—

> "That no bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part of any vessel, of the United States, shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such bill of sale, mortgage, hypothecation, or conveyance, be recorded in the office of the collector of the customs where such vessel is registered or enrolled,"

a recording of a mortgage in the office of the collector of the home port of the vessel has the effect, by its own force and irrespective of any formalities required by a State statute to give effect to chattel mortgages, to give the mortgagee a preference over a subsequent purchaser or mortgagee.

2. The home port of the vessel is the port in the office of whose collector the bill of sale, mortgage, &c., should be recorded; not the port of last registry or enrolment when not such home port.
3. The act is constitutional.

ERROR to the Circuit Court for the Northern District of New York.

The case was this:

An act of Congress, "providing for the recording of con-

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* The General Smith, 4 Wheaton, 438; The St. Lawrence, 1 Black, 529.

† Ferry Company *v.* Beers, 20 Howard, 402.