

## Syllabus.

unreliable. In 1861 Captain Humphreys and Lieutenant Abbott, of the corps of Topographical Engineers, submitted to the proper bureau of the War Department, a report based on actual surveys and investigations, upon the physics and hydraulics of the Mississippi River, which they were directed to make by Congress. In speaking on the subject of the changes in the river,\* they say: "These changes have been constantly going on since the settlement of the country, but the old maps and records are so defective, that it is impossible to determine much about those which occurred prior to 1800." In the face of this report, authorized by the government, and prepared with great learning and industry, how can we allow the books and maps published prior to this century, to have any weight in the decision of this controversy?

Without pursuing the investigation further, on full consideration of all the evidence in the case, we are satisfied the State of Missouri has no just claim to the possession of Wolf Island.

It is therefore ordered that the bill be

**DISMISSED.**

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**THE MONTELLO.**

1. A river is a navigable water of the United States when it forms, by itself or by its connection with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.
2. If a river is not of itself a highway for commerce with other States or foreign countries, or does not form such highway by its connection with other waters, and is only navigable between different places within the State, then it is not a navigable water of the United States, but only a navigable water of the State.
3. The acts of Congress providing for the enrolment and license of vessels only apply to vessels employed upon the navigable waters of the United States.

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4. Congress has not prescribed any regulations governing commerce between the States, except so far as it is conducted in vessels on the navigable waters of the United States.

APPEAL from the Circuit Court for the District of Wisconsin.

This case was heard on the libel of information, as amended, filed by the United States against the steamer Montello, and the exception to it taken by the claimants. The object of the proceeding was to recover two penalties alleged to have been forfeited to the United States; one by the neglect of the owners or captain of the vessel to procure her enrolment and license whilst she was engaged in navigating Fox River, in the State of Wisconsin, between Oshkosh and Portage City, and in transporting passengers and merchandise between those places; and the other, by their failure to put upon the boilers of the steamer an additional safety-valve prescribed by the board of supervising inspectors, and to provide a good and reliable water-gauge for the boilers.

For the first penalty claimed the libel alleged in its first article in substance, that the owners of the vessel, which was propeled in whole or part by steam, and was of twenty tons burden and upwards, on the 1st of October, 1867, transported in her, passengers and merchandise on the bays, rivers, and other navigable waters of the United States; and that, in carrying passengers, they navigated Fox River, in the State of Wisconsin, between the ports of Oshkosh and Portage City, and that prior to that period they were engaged in transporting between those places merchandise consisting of the products of Wisconsin, which were destined for use and consumption in other States of the Union and in foreign countries, and also in transporting merchandise consisting of the products of other States, brought from those States to Wisconsin, and destined to different places within her limits, without having the steamer enrolled and licensed, as required by the act of Congress of July 7th, 1838, and the amending act of August 30th, 1852.

For the second penalty claimed the libel alleged in its

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second article that an additional safety-valve, of such dimensions and arrangement as had been prescribed by the board of supervising inspectors, had not been placed upon the boilers of the steamer as required by law, and that a good and reliable water-gauge had not been provided for the boilers.

The act of July 7th, 1838,\* above referred to, provides, in its second section, that it shall not be lawful for the owner, master, or captain of any vessel, propelled in whole or in part by steam, to transport any merchandise or passengers upon "the bays, lakes, rivers, or other navigable waters of the United States," after the 1st of October of that year, without having first obtained from the proper officer a license under existing laws; that for every violation of this enactment the owner or owners of the vessel shall forfeit and pay to the United States the sum of five hundred dollars; and that for this sum the vessel engaged shall be liable, and may be seized and proceeded against summarily by libel in the District Court of the United States.

The act of August 30, 1852,† which is amendatory of the act of July 7th, 1838, provides for the inspection of vessels propelled in whole or in part by steam and carrying passengers, and the delivery to the collector of the district of a certificate of such inspection, before a license, register, or enrolment, under either of the acts, can be granted, and declares that if any vessel of this kind is navigated with passengers on board, without complying with the terms of the act, the owners and the vessel shall be subject to the penalties prescribed by the second section of the act of 1838.

The act requires, among other things, that the supervising inspectors, appointed under its provisions, shall satisfy themselves that the safety-valves of the boilers on the steamers are of suitable dimensions, sufficient in number, well arranged and in good working order, and that there is a suitable number of gauge-cocks properly inserted, and a suitable water-

\* 5 Stat. at Large, 304.

† 10 Stat. at Large, 61.

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gauge and steam-gauge indicating the height of the water and the pressure of the steam,\* before giving their certificate to the collector.

The exception of the claimants to the libel was, that the court had no jurisdiction of the matters contained in the articles, on the ground that they were not matters of admiralty and maritime jurisdiction, in this, that the steamer Montello was employed wholly on the inland waters of the State of Wisconsin at the time of the seizure and previously, and was not engaged in the coasting trade, or in foreign commerce, or in commerce between the States.

The District Court sustained the exception, and dismissed the libel. The Circuit Court affirmed the decision, and the United States brought the case here on appeal.

*Mr. Akerman, Attorney-General, for the United States,* cited the case of *The Daniel Ball.*† No one appeared for the claimants in this court.

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The libel does not impart any information as to the character of Fox River, or its connection with other waters, and it is only from the general allegation of the libel that the vessel transported passengers and merchandise upon the navigable waters of the United States, preceding the allegation as to the transportation on Fox River, that we are justified in inferring that the libel intended to state that Fox River was a navigable water of the United States.

We are supposed to know judicially the principal features of the geography of our country, and, as a part of it, what streams are public navigable waters of the United States. Since this case was presented we have examined, with some care, such geographies and histories of Wisconsin as we could obtain from the library of Congress, to ascertain, if possible, the real character of Fox River, and to render the

\* 10 Stat. at Large, § 9, second head, p. 64.

† 10 Wallace, 557.

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fiction of the law, as to our supposed knowledge of the navigable streams in that State, a reality in this case; but from such examination we are still in doubt whether Fox River has any such connection with other waters as to form with them a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water. It can only be deemed a navigable water of the United States when it forms, by itself or by its connection with other waters, such a highway. If it form such a highway, the case presented is directly within the ruling made in the case of the steamer *Daniel Ball*, decided at the present term.\* If, however, the river is not of itself a highway for commerce with other States or foreign countries, or does not form such highway by its connection with other waters, and is only navigable between different places within the State, then it is not a navigable water of the United States, but only a navigable water of the State, and the acts of Congress, to which reference is made in the libel, for the enrolment and license of vessels, have no application. Those acts only require such enrolment and license for vessels employed upon the navigable waters of the United States.

The fact that the steamer, in so far as she was employed in transporting the products of Wisconsin, which were destined for use and consumption in other States and foreign countries, and in transporting the products of other States brought to Wisconsin, and destined to different places within her limits, was engaged in commerce between the States, does not affect the question under consideration, for Congress has not prescribed any regulations governing such commerce, except so far as it is conducted in vessels on the navigable waters of the United States.

As the decree must be reversed, and the cause remanded to the court below for further proceedings, the parties will be able to present, by new allegations and evidence, the

\* 10 Wallace, 597.

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precise character of Fox River as a navigable stream, and not leave the matter to be inferred by construction from an imperfect pleading.

**DECREE REVERSED, AND THE CAUSE REMANDED  
FOR FURTHER PROCEEDINGS.**

MONCURE *v.* ZUNTS.

1. The provisions of the Code of Procedure of Louisiana concerning sales of real estate under execution require that the sale shall be advertised in a newspaper published in the parish where the land is situated.
2. The policy of Congress, as shown by numerous statutes, has been to adopt for the several courts in suits at common law, the processes and modes of proceeding of the State courts in which they are held.
3. The act of May 26, 1824 (4 Stat. at Large, 62), not only adopts the mode of proceedings then established in the State of Louisiana, but requires the Federal courts to conform to such changes as may be made in that State; and limits very materially the power of the Federal courts to modify or change those rules, as that power exists in the courts of other districts.
4. The seventh section of the act of Congress of March 2, 1867 (14 Stat. at Large, 466), applies only to such advertisements as may be published in behalf of the government, and are to be paid for out of the Federal treasury. It does not affect advertisements for sale of lands under judicial process in suits between individuals.
5. A sale of lands in such cases, under execution from the Federal court in Louisiana, should be set aside in a proper proceeding for that purpose, when it has not been advertised in a newspaper of the parish, and when there is a paper published in such parish.

ERROR to the Circuit Court for the District of Louisiana; the case being thus:

Deas obtained a judgment in the court below against Moncure and others, heirs of Doyal, and, under an execution issued on this judgment, certain real estate was sold lying in the parish of Ascension, of which Zunts, the present defendant in error, became the purchaser. The laws of Louisiana authorize a proceeding by a purchaser at judicial sale somewhat in the nature of a bill of peace to quiet and con-