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### "Power of Attorney" Conferring No Authority

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## COMMENT ON RECENT CASES

AGENCY—"POWER OF ATTORNEY" CONFERRING NO AUTHORITY.—[New York] A point of some novelty, though not of great difficulty, is presented in the late New York case of *Davis v. Dunnet*,<sup>1</sup> decided by the Court of Appeals. It was an action to foreclose a mortgage, purporting to have been executed by the defendant, through her husband as her agent. Under the statute, authority by writing was necessary. A writing was produced and relied upon, which was in the following form:

### "POWER OF ATTORNEY.

"Know all men by these presents, that Emma L. Dunnet, have made, constituted and appointed, and by these presents do make, constitute and appoint Robert H. Dunnet, her true and lawful attorney for my and in my name, place and stead, giving and granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes, as she might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or substitute shall lawfully do or cause to be done by virtue hereof.

"In witness whereof, I have hereunto set my hand and seal the sixth day of June in the year one thousand nine hundred and twenty.

"Emma L. Dunnet."

It had apparently been produced by signing the common printed blank for a power of attorney, after inserting a few pronouns, but wholly omitting to insert any statement whatever as to the act which the agent was to be authorized to do. It was held to be insufficient to authorize the mortgage.

No other case just like this one has been observed. A power of attorney authorizing the attorney to grant, sell, release and convey, and upon such sales to make, seal, acknowledge and deliver deeds, etc., but not stating what was so to be sold and conveyed, has been held to sufficiently show that a conveyance of *land* was intended, though none was named, and to authorize the sale of any which the grantor then owned.<sup>2</sup> A power of attorney to sell "my lot," but not stating what lot or where, has been held insufficient, at least in the absence of proof that the grantor had but one.<sup>3</sup> A power of attorney "to act in all my business, in all concerns, as if I was present myself, and to stand good in law, in all my land and other business," in a certain territory, was held not to authorize a sale of land and the making of binding covenants.<sup>4</sup> A power of attorney with the name of the attorney in blank has been held to be inoperative until the blank has been filled by someone having the grantor's authority

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1. (1925) 239 N. Y. 338 146 N. E. 620.

2. *Marr v. Given* (1843) 23 Me. 55, 39 Am. Dec. 600.

3. *Stafford v. Lick* (1859), 13 Cal. 240.

4. *Ashley v. Bird* (1826) 1 Mo. 640, 14 Am. Dec. 313.

to fill it.<sup>5</sup> These are some illustrations of the cases which have dealt with questions more or less analogous, but not identical. The conclusion reached in the principal case seems unquestionably sound.

FLOYD R. MECHEM.

CONSTITUTIONAL LAW—ADMIRALTY—STATE STATUTE INEFFECTIVE TO CHANGE ADMIRALTY RULE OF NEGLIGENCE IN MARITIME TORT.—[United States] *Robins Dry Dock & Repair Co. v. Dahl*<sup>1</sup> is the latest corollary of the view of admiralty law in the United States expressed by the Supreme Court in *Southern Pacific Co. v. Jensen*<sup>2</sup> and *Knickerbocker Ice Co. v. Stewart*.<sup>3</sup> In the *Jensen* case it was held that the New York Workmen's Compensation Act could not govern a fatal injury to a stevedore employed by a Kentucky steamship company in unloading one of its vessels in New York harbor, the action being brought by a dependent of the stevedore against the steamship company in the New York courts (four justices dissenting). In the *Stewart* case it was held, in a similar suit by an employee against an employing vessel owner, that Congress could not authorize maritime injuries within each state to be governed by the local workmen's compensation acts, because this was a delegation of legislative power to the states which would result in a non-uniformity of maritime rules in the various states which the grant of maritime power to the United States was intended to prevent. Four judges dissented again in an opinion by Mr. Justice Holmes, on the ground that the Constitution did not forbid Congress to make different rules for different states upon maritime matters as it might upon many others,<sup>4</sup> and that the act of Congress could and should be interpreted as adopting *existing* state compensation acts only instead of including *future* acts as well, thus avoiding the objection of delegation of powers.

A later congressional statute which sought to restrict the effect of the *Stewart* case to the masters and crews of vessels was also held void in *Washington v. Dawson & Co.*,<sup>5</sup> a case where the employer was not a vessel-owner but a local corporation doing a stevedoring business as an independent contractor for vessels inside the state, and the employee was a stevedore. The objections to this were strongly put by Mr. Justice Brandeis in his dissenting opinion, in the course of which he said:<sup>6</sup>

"A concern doing a general upholstering business in New York directs one of its regular employees, resident there, to make repairs on a vessel lying alongside a New York dock. The ship, then temporarily out of commission, is owned and enrolled in New York and, when used,

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5. *United States v. Payette Lumber Co.* (1912) 198 Fed. 881, aff. 208 Fed. 231, 125 C. C. A. 431.

1. (1925) 45 Sup. Ct. Rep. 157.
2. (1917) 244 U. S. 205.
3. (1920) 253 U. S. 149.
4. (1911) 219 U. S. 1, 9.
5. (1924) 264 U. S. 219.
6. 264 U. S. at 228-29, 231-32, 234-35.