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to fill it.⁵ 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*¹ 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*² and *Knickerbocker Ice Co. v. Stewart*.³ 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,⁴ 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.*,⁵ 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:⁶

"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,

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.

is employed only within the state. While on the vessel, engaged in making the repairs, the employee is injured without the fault of anyone, and is disabled for life. A statute of New York provides that, in such a case, he and his dependents shall receive compensation out of funds which employers are obliged to provide. To such state legislation Congress has, in express terms, given its sanction. Under the rule announced by the court, the federal Constitution prohibits recovery. If, perchance, the accident had occurred while the employee so engaged was on the dock, the Constitution would permit recovery.⁷ Or, if happily he had been killed, and the accident had been due to the employer's negligence, recovery (which is provided for by another state statute) would likewise be permitted under the Constitution, even though the accident had occurred on board the vessel.⁸ . . .

"How can a law of New York, making a New York employer liable to a New York employee for every occupational injury occurring within the state, mar the proper harmony and uniformity of the assumed general maritime law in its interstate and international relations, when neither a ship nor a shipowner is the employer affected, even though the accident occurs on board a vessel on navigable waters? The relation of the independent contractor to his employee is a matter wholly of state concern. The employer's obligation to pay and the employees' right to receive compensation are not dependent upon any act or omission of the ship or of its owners. To impose upon such employer the obligation to make compensation in case of an occupational injury in no way affects the operation of the ship. Nor can it affect the shipowners in any respect, except as every other tax, direct or indirect, laid by a state or municipality, may affect, by increasing the cost of living and of doing business, everyone who has occasion to enter it and many who have not.⁹ This is true of the application of the Workmen's Compensation law, whether the service rendered by the independent contractor is in its nature non-maritime, like upholstering, or is inherently maritime, like stevedoring. The requirement by the state is a regulation of the business of upholstering or stevedoring. It is not a regulation of shipping. It in no respects attempts to modify, or deal with, admiralty jurisdiction or procedure, or the substantive maritime law. It is but an exercise of the local police power.¹⁰ To impose upon the independent employer the obligation to provide compensation for accidents occurring on a vessel in port, while the vessel is made fast to the dock, in fact cannot conceivably interfere with the proper harmony and uniformity of the general maritime law in its international or interstate relations. . . .

"A further assumption is that Congress, which has power to make and unmake the general maritime law, can have no voice in determining which of its provisions require adaption to peculiar local needs, and as to which absolute uniformity is an essential of the proper harmony of

7. *State Industrial Commission v. Nordenholt Corp.* 259 U. S. 263: a stevedore.

8. *Great Lakes Dredge & Dock Co. v. Kierejewski* 261 U. S. 479: a member of the crew; *Western Fuel Co. v. Garcia* 257 U. S. 233: a stevedore. See also *American S. B. Co. v. Chase* 16 Wall. 522; *Sherlock v. Alling* 93 U. S. 99; *The Hamilton (Old Dominion S. S. Co. v. Gilmore)* 207 U. S. 398.

9. That the obligation to contribute to the compensation fund may be deemed a tax, see *Mountain Timber Co. v. Washington* 243 U. S. 219, 237.

10. Compare *New York v. Miln* 11 Pet. 102; *Hoooper v. California* 155 U. S. 648.

international and interstate maritime relations. This assumption has no support in reason; and it is inconsistent (at least in principle) with the powers conferred upon Congress in other connections. The grant 'of the . . . judicial power . . . to all cases of admiralty and maritime jurisdiction' is, surely, no broader in terms than the grant of power 'to regulate commerce with foreign nations and among the several states.' Yet, as to commerce, Congress may, at least in large measure, determine whether uniformity of regulation is required or diversity is permissible.¹¹ Likewise, Congress is given exclusive power of legislation over its forts, arsenals, dockyards, and other needful places and buildings. But it may permit the diverse laws of the several states to govern the relations of men within them.¹² Congress has exclusive power to legislate concerning the Army and Navy of the United States, to declare war, to determine to what extent citizens shall aid in its prosecution, and how effective aid can best be secured. But state legislation directly affecting these subjects has been sustained.¹³ In respect to bankruptcy, duties, imposts, excises, and naturalization the Constitution prescribes uniformity. Still, the provision in the Bankruptcy law giving effect to the divergent exemption laws of the several states was held valid.¹⁴ Absolute uniformity in things maritime is confessedly not essential to the proper harmony of the maritime law in its interstate and international relations. This is illustrated both by the cases which hold constitutional state regulation of pilotage and liens created by state laws in aid of maritime contracts, and by those which hold that there are broad fields of maritime activity to which admiralty jurisdiction does not extend. A notable instance of the latter is the liability in tort for injuries inflicted by a ship to a dock, or to maritime workers on the dock, engaged in the inherently maritime operation of stevedoring.¹⁵

In the principal case Dahl was employed by a New York corporation (not a vessel owner) to make repairs on a vessel in New York harbor. A New York statute made it the absolute duty of an employer to furnish a safe scaffold for workmen, which was not done, and Dahl was injured thereby. The jury was instructed that Dahl must prove his employer negligent in a maritime case like this, but that the unfulfilled requirement of a safe scaffold might be taken into account in deciding whether negligence existed. A verdict for Dahl based upon this instruction was upheld by the New York Appellate Division¹⁶ and was reversed by the United States Supreme Court on the ground that such an effect could not be constitutionally given to a state statute in a case arising under the general maritime law. The objections urged by Mr. Justice Brandeis

11. See *Southern P. Co. v. Jensen* 244 U. S. 205, 244-251; *Clark Distilling Co. v. Western Maryland R. Co.* 242 U. S. 311; *Re Rahrer* 140 U. S. 545, 564.

12. Compare *Ft. Leavenworth R. Co. v. Lowe* 114 U. S. 525; *Chicago, R. I. & P. R. Co. v. McGlinn* 114 U. S. 542; *Western U. Teleg. Co. v. Chileš* 214 U. S. 274; *Omaechevarria v. Idaho* 246 U. S. 343.

13. *Gilbert v. Minnesota* 254 U. S. 325. Compare *Moore v. Illinois* 14 How. 13; *Halter v. Nebraska* 205 U. S. 34.

14. *Hanover Nat. Bank v. Moyses* 186 U. S. 181. See *Knickerbocker Ice Co. v. Stewart* 253 U. S. 149, 168.

15. (1922) 197 N. Y. Supp. 463; (1923) 202 N. Y. Supp. 922.

in the *Dawson* case seem applicable here, but the present court is disinclined to make the distinctions there suggested.

JAMES PARKER HALL.

CONSTITUTIONAL LAW—ALIEN LAND LAWS—CROPPER'S AGREEMENT.—[California] Ever since the federal Supreme Court sustained various features of the Pacific Anti-Alien Land Laws, particularly those of California,¹ both American citizens with lands to cultivate by means of alien labor and ineligible aliens, whether Japanese or Hindu, have been zealous to form some sort of an agreement which will circumvent these statutory provisions. Perhaps certain expressions in the federal Supreme Court cases,² as well as direct holdings by the same court in allied fields,³ and a decision by the California Supreme Court,⁴ have given hope to the citizen and the ineligible alien that some loophole in the alien land law statutes might be found.

In *Truax v. Raich*,⁵ decided 1915, the Supreme Court of the United States overthrew a state statute which interdicted the employment by private employers of more than 20 per cent alien labor, on the ground that it denied to aliens the equal protection of the laws, for which there was no reasonable basis, saying:

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure . . . If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."⁶

Moreover, in *Webb v. O'Brien*,⁷ the Supreme Court of the United States, in upholding that provision of the California alien land law which denied to the American citizen the power to make a contract by which an interest in land was passed to the ineligible alien, used these words:

"The right to make and carry out cropper contracts such as that before us is not safeguarded to ineligible aliens by the Constitution . . . The practical result of such contract is that the cropper has use, control, and benefit of land for agricultural purposes, substantially similar to that granted to a lessee."⁸

1. *Porterfield v. Webb* (1923) 263 U. S. 225, 44 S. Ct. Rep. 21, 68 L. ed. 278; *Webb v. O'Brien* (1923) 263 U. S. 313, 44 S. Ct. Rep. 112, 68 L. ed. 318; *Frick v. Webb* (1923) 263 U. S. 326, 44 S. Ct. Rep. 115, 68 L. ed. 323; Comments by Judge Bruce ILL. LAW REV. 18:398.

2. *Webb v. O'Brien* supra note 1.

3. *Truax v. Raich* (1915) 239 U. S. 33, 36 S. Ct. Rep. 7, 60 L. ed. 131.

4. *In re Okahara* (1923) 191 Cal. 353, 216 Pac. 614.

5. *Supra*, note 3.

6. *Supra* note 3 p. 41.

7. *Supra* note 1 p. 315.

8. *Supra* note 1 p. 316.