BOMBAY HIGH COURT

Kamalakar Mahadev Bhagat

Vs.

Scindia Steam Navigation Co. Ltd

A.F.O. No. 113 of 1958, , against decision of Principal Judge, City Civil Court, Bombay, in Suit No. 2957 of 1954

(Shah, J.)

05.08.1960

JUDGMENT

Shah, J.

1. This is an appeal against an order passed by the learned Principal Judge of the City Civil Court, Bombay, on 29th April, 1958 rejecting the plaint filed by the plaintiff appellant in suit No. 2957 of 1954 in the City Civil Court at Bombay, holding that the City Civil Court had no jurisdiction to entertain the suit.

2. The plaintiff-appellant is a fisherman and at the material time was the owner of a country craft "Pandavi". He filed the above suit against the defendant company as owners of a cargo boat "Jalmanjari" claiming a sum of Rs. 10,000/- as and by way of damages alleged to have been suffered by him on account of a collision at a distance of about 10 miles from Worli Sea Shore between the defendant company's said cargo boat "Jalmanjari" and the plaintiff's country craft "Pandavi", alleged to have occurred due to the negligence of the defendant company, its servants and agents on the said boat resulting in the breaking in two parts and sinking of the plaintiff's country craft.

3. The plaintiff alleged in the plaint that the defendant company was the employer of the Master and the crew of the said cargo boat "Jalmanjari", that on or about 11th January, 1954, his country craft "Pandavi" along with the other fishing country crafts belonging to different fishermen from Worli Village left Worli harbour for deep sea fishing, that he and the other fishermen had gone about 10 miles out on the sea from the shore where the depth of the sea was on an average about 9 fathoms, and that several fishing stakes were provided for tying up country crafts engaged in deep sea fishing at that distance, each stake being about 120 feet in length and 2-1/2 feet in circumstance at the top and showing above sea level about 24 feet during high tide and 36 feet

during low tide. It was further alleged that on the said date the said "Pandavi" along with the other country crafts reached the place near the stakes at about 4 P.M. and the Plaintiff and the other fishermen started spreading nets and their fishing operations at about 7 P. M. The plaintiff then alleged that his country craft and those of others were tied up to the fishing stakes and that they were at their proper place and well outside the prohibited area. He further alleged that all the fishing crafts including his own were showing lights, that it was a noon-lit night, that the weather was clear and the visibility was good, and that the tide being low at that time the fishing stakes were showing about 36 feet about the sea level, so that they could be distinctly visible from a distance. The Plaintiff then went on to allege that at about 9-30 P.M. the defendant company's cargo boat "Jalmanjari" which was then coming from north-west direction deviated from its proper course and it was navigated so rashly and negligently and with such excessive speed that it suddenly came in line with the fishing stakes without giving any warning. When the defendant company's cargo boat was at about 100 yards away, the plaintiff alleged, the occupants of the country crafts which were tied up to the fishing stakes began shouting and warned the defendant company's cargo boat of the danger of collision. The defendant company's cargo boat, however, did not stop its engines or attempt to reduce its speed and negligently proceeded at great speed and ran into three fishing stakes and broke the same, proceeded further in a rash and negligent manner and at excessive speed and dashed forcibly against the plaintiff's country craft "Pandavi" with the result that all the occupants of "Pandavi" were thrown off into the sea and "Pandavi" itself broke into two pieces and sank. It was alleged that in spite of it, the defendant company's cargo boat failed to stop and without caring to see what had happened proceeded further on its voyage with the same excessive speed. The plaintiff then alleged that the occupants of "Pandavi" who were thrown off into the sea on account of the collision were later picked up by the other country crafts and brought to the shore in the early hours of the next morning. He also alleged that as a result of the collision some of the occupants of "Pandavi" were injured and treated in the Sion Hospital for their injuries. One Eknath Dhondu Adelkar, according to the plaintiff, was not found and his body could not be traced and he was, therefore presumably drowned. The occupants of "Pandavi" who were brought to the shore thereafter lodged a complaint with the police. The plaintiff alleged that the said collision was due to the rash and negligent navigation of the defendant company's cargo boat "Jalmanjari" in breach of the legal regulations for preventing collision by those on board her and in the employment of the defendant company. The plaintiff submitted that, in any event the defendant company's cargo boat "Jalmanjari" was navigated without exercise of reasonable care and skill, that the said collision was caused by reason of the negligence of those who were in charge of the navigation thereof and that he had suffered damages estimated at Rs. 10,000/-. The plaintiff further stated that thereafter he carried on correspondence with the Principal Officer, Mercantile Marine Department, and the Director of Fisheries, but he was informed that as they were unable to locate the launch responsible for the damage, the matter could not be pursued further. The Plaintiff repeated his allegation that it was the defendant company's cargo boat "Jalmanjari" that had caused the said damage in the circumstances stated in the earlier paragraphs of the plaint. Thereafter the plaintiff by his attorneys' letter dated 19th January, 1954 called upon the defendant company to pay a sum of Rs.

10,0000/- as damages suffered by him as a result of the said collision. The defendant company, however by its letter dated 20th January, 1954 denied its liability stating that its vessel was never involved in any collision as alleged on 11th January, 1954 or otherwise.

4. The defendant company by its written statement contended that the City Civil Court had no jurisdiction to try the suit. On merits it denied that its cargo boat "Jalmanjari" deviated from her proper course or that it was navigated rashly or negligently or with excessive speed or without any warning or that it came in line with the fishing stakes as alleged by the plaintiff or at all. It is not necessary for the purposes of this appeal and for the purpose of the decision of the question that arises in this appeal to state the further contentions raised by the defendant company in its written statement. It may, however, be stated that the defendant company denied all the allegations made by the plaintiff in his plaint in toto and stated that the plaintiff was not entitled to claim any damages from it as claimed by him in his plaint.

5. On the pleadings, several issues were raised by the learned Judge one of which was, "Whether this Court has jurisdiction to entertain and try the suit". It was suggested by both the learned counsel who appeared for the parties in the suit, that the issue in regard to the jurisdiction of the Court might be tried as a preliminary issue to avoid further costs and inconvenience to the parties.

6. It may be stated at this stage that another suit No, 58 of 1955, was filed against the defendant company in the City Civil Court for damages amounting to Rs. 3,600/- in respect of the damage caused to three of the fishing stakes by the alleged collision. Yet another suit being Pauper Suit No. 725 of 1955 was also filed against the defendant company by the heirs and legal representatives of the fisherman Ekanath Dhondu Adelkar who was alleged to have been presumably drowned and lost his life as a result of the said collision, claiming damages in a sum of Rs. 20,000/-. In these two suits also an issue was raised as to whether the Court had jurisdiction to entertain the suits and the counsel appearing for the parties in those two suits also suggested that the issue in regard to the jurisdiction of the Court might be tried as a preliminary issue. The learned Principal Judge accepted the suggestion and agreed to try the issue as to jurisdiction as a preliminary issue, which, as stated above, was common to all the three suits.

7. Elaborate arguments were advanced by the counsel on both sides on the question as to jurisdiction before the learned Principal Judge and the learned Principal Judge came to the conclusion that the City Civil Court had no jurisdiction in all the three suits holding that the subject-matter of the suits entirely lay within the Admiralty Jurisdiction of the High Court. Accordingly, he passed an order rejecting the plaints in all the three suits and directing that they be returned to the respective plaintiffs for being presented to the proper Court. It is against this order of the learned Principal Judge of the City Civil Court that the present appeal as well as two other appeals being appeals Nos. 114 and 115 of 1958 have been filed in this Court.

8. In support of these appeals, it was contended by Mr. Rangnekar, the learned counsel for the appellants-plaintiffs, that the three suits which were filed by the plaintiffs were all actions in per sonam and as such, they did not fall within the Admiralty Jurisdiction of the High Court and that the City Civil Court could take cognisance of those suits. On the other hand, it was contended by Mr. Nariman, the learned counsel for the respondent defendant company in all the three appeals, that the cause of action in all the three suits was the damage alleged to have been caused by the defendant company's cargo boat in a collision at sea and that, therefore, all those three suits were cognizable only by the High Court as a Court of Admiralty or vice Admiralty or as a Colonial Court of Admiralty and that, accordingly, the City Civil Court could not take cognisance of any of those suits under the provisions of Section 3 of the Bombay City Civil Court Act 40 of 1948.

9. Now, in order to examine the merits of these rival contentions it is necessary in the first instance to refer to Section 3 of the Bombay City Civil Court Act. That section provides :-

> "The State Government may, by notification in the official Gazette, establish for the Greater Bombay a Court, to be called the Bombay City Civil Court. Notwithstanding anything contained in any law, such Court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding ten thousand (now twenty five thousand) rupees in value and arising within the Greater Bombay, except suits or proceedings which are cognizable :-
> (a) by the High Court as a Court of Admiralty or Vice Admiralty or as a Colonial Court of Admiralty or as a Court having testamentary, intestate or matrimonial jurisdiction, or
> (b) by the High Court for the relief of insolvent debtors, or
> (c) by the High Court under any special law other than the Letters Patent, or
> (d) by the Small Cause Court provided that the State Government may, from time to time, after consultation with the High Court, by a like notification extend the jurisdiction of the City Court to any suits or proceedings (which are cognizable by the High Court as a Court having testamentary or intestate jurisdiction or for the relief of insolvent debtors)."

It will appear from this section that if a suit or proceeding is cognizable by the High Court inter alia as a Court of Admiralty or Vice Admiralty or as a Colonial Court of Admiralty, then cognizance of such a suit or proceeding by the City Civil Court is completely barred. So far as the present three suits are concerned, it is not disputed that all of them are of a civil nature, but if it is shown that they are suits which the High Court as a Court of Admiralty can take cognizance of, then in spite of those suits being of a civil nature, the City Civil Court would have no jurisdiction to entertain them. In other words, the City Civil Court could try those suits only if the High Court on its Admiralty Side could not take cognizance of them. It becomes necessary, therefore, to ascertain what precisely is the (Admiralty Jurisdiction, which the High Court of Bombay is entitled to exercise.

10. At the outset, it may be convenient to note that for the first time Admiralty Jurisdiction came

to be invested in the Recorder's Court at Bombay which was established by a Charter dated 20th February, 1798. Prior to that, there was Mayor's Court at Bombay established by Charter dated 8-1-1788 which had only civil, criminal and ecclesiastical jurisdictions. The Recorder's Court, however, was substituted by the Supreme Court of Judicature at Bombay which was established by Letters Patent issued under the Charter of 1823. This Court also had the four Jurisdictions, namely, Civil, Criminal, Ecclesiastical and Admiralty. Clause 53 of these Letters Patent provided as follows :

> "And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature at Bombay shall be a Court of Admiralty, in and for the said Town and Island of Bombay, and the limits thereof, and the Factories subordinate thereto, and all the territories which now are or hereafter may be subject to, or dependant upon the said Government and we do hereby commit and grant to the said Supreme Court of Judicature at Bombay full power and authority to take cognisance of, hear, examine, try and determine all causes, civil and maritime, and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter parties agreements, loading of ships, and all matters and contracts which, in any manner whatsoever, relate to freight or money due for ships hired and let out, transport money, maritime usury, bottomry or respondent, or to extortions, trespasses, injuries, complaints, demands and matters civil and maritime whatsoever, between merchants, owners, and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid, or between others, contracted, done, had or commenced in, upon, or by the high seas or public rivers or ports, creeks, harbours and places overflow within the ebbing and flowing of the sea and high water mark within about, and throughout the Town, Island and territories aforesaid, the cognizance whereof doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergent, and dependencies, annexed and connexed causes whatsoever; and to proceed summarily therein, with all possible dispatch, according to the course of our Admiralty of that part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact and the equity of the Case."

It will appear from this clause that, though several matters are enumerated in respect of which the Supreme Court of Judicature at Bombay had full power and authority to take cognizance, the jurisdiction of the Admiralty Side of the Supreme Court was the same as was used and exercised in that part of the Great Britain called England. In other words the Supreme Court of Judicature at Bombay was invested with the same jurisdiction on its Admiralty Side as the Jurisdiction which was exercised by the High Court of Admiralty in England. Apart from this, however, it may be noted that clause 53 specifically gave jurisdiction to the Supreme Court of Judicature at Bombay to try and determine all causes, civil and maritime and all matters which inter alia related to injuries between owners and proprietors of ships and vessels or between others which

were done upon the high seas. These words might include the claim for damages which was made in the three suits out of which the present appeals have arisen, inasmuch as all these claims are based upon the injuries suffered by the plaintiffs on account of the collision between the defendant company's cargo boat "Jalmanjari" and the country craft "Pandavi" on the high seas. Prima facie, therefore, it will appear that if the jurisdiction conferred upon the Supreme Court of Judicature at Bombay by clause 53 of the Letters Patent continued to be the jurisdiction of this High Court, then these three suits would clearly be cognizable by this High Court on its Admiralty Side, and in that event the City Civil Court would have no jurisdiction to take cognizance thereof. It was contended, however by Mr. Ragnekar, the learned counsel for the plaintiffs, that whatever the description of the matters in clause 53 of the Letters Patent, the Jurisdiction of the Supreme Court of Judicature at Bombay was no more than the jurisdiction which the High Court of Admiralty had in England at that time and that, therefore, it was necessary to ascertain the precise limits of the jurisdiction of the High Court of Admiralty in England at that time. The contention is undoubtedly well founded but I will consider the question of jurisdiction of the High Court of Admiralty in England a little later. For the present it is necessary further to consider as to whether the jurisdiction which was conferred upon the Supreme Court of Judicature at Bombay by the Letters Patent under the Charter of 1823 continued intact down to date.

11. The Supreme Court of Judicature at Bombay which was established in 1823 as aforesaid was superseded by the High Court of Judicature at Bombay established by the Letters Patent of 1862. Clause 31 of the Letters Patent provided as follows :

> "Admiralty and Vice Admiralty Jurisdiction : and we do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said Supreme Court as a Court of Admiralty or by any Judge of the said Court as Commissary to the Vice Admiralty Court, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as is now vested in any Commissioner or Commissioner appointed by Us or Our predecessors under the powers given by an Act passed in the Session of Parliament, held in the Thirtyninth and Fortieth years of the Reign of his late Majesty King George the Third, "for establishing further regulations for the Government of the British territories in India and the better administration of justice within the same."

From this clause it is clear that in addition to the jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as was vested in any Commissioner appointed under an Act passed by the Imperial Parliament, the High Court was empowered to exercise the Admiralty and Vice Admiralty jurisdiction which was then exercised by the Supreme Court as a Court of Admiralty or by any Judge of the Supreme Court as a Commissary to the Vice Admiralty Court. It may be noted that the Chief Justice had Vice Admiralty Jurisdiction under the Commission of the 19th July, 1822 and all or any of the Judges of the Supreme Court could be appointed Commissioners under the provisions of 39 and 40 Geo. III C.

79, SC. 25 for the trial and adjudication of prize causes and other maritime questions arising in India. It may further be noted that the Indian High Courts Act, 1861, abolished the Supreme Courts at Calcutta, Madras and Bombay and the Company's Courts of appeal at those places and provided for the establishment by charter of High Courts at those places. It was in pursuance of this Act that the High Court of Judicature at Bombay was established by Letters Patent in the year 1862.

12. The Letters Patent of 1862 were once again superseded by Letters Patent of 1865 and clause 32 of these Letters Patent provided as follows :

> "And we do further ordain that the High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court".

13. By these Letters Patent, it will appear the Admiralty Jurisdiction of the High Court of Bombay was not expanded, but it was the same as could be exercised by it under the Letters Patent of 1862.

14. In 1890 the British Parliament passed a Act called the Colonial Courts of Admiralty Act, 1890 (53, 54 Victoria Chapter 27) providing that the legislature of British India may declare certain courts to be Colonial Courts of Admiralty and the Courts so declared shall have the Admiralty jurisdiction declared under the Act. In exercise of the powers conferred by this Act, the Indian Legislature passed Act 16 of 1891, Section 2 whereof declared the High Courts at Calcutta, Madras and Bombay and some other Courts to be Colonial Courts of the Admiralty and these Courts were invested with such Admiralty Jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise. It will appear from the provisions of the Colonial Courts of Admiralty Act of 1890 that, whatever may have been the Admiralty Jurisdiction of the High Court of Judicature at Bombay prior to its being declared as a Colonial Court of Admiralty by Act 16 of 1891, as from the date of that High Court being declared' as a Colonial Court of Admiralty it exercised only such Admiralty Jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise. It is on account of this provision that it becomes absolutely necessary to consider the extent and nature of the Admiralty Jurisdiction of the High Court of Admiralty in England which existed at the time when the Colonial Courts of Admiralty Act of 1890 was passed by the British Parliament. The Admiralty jurisdiction of the Supreme Court of Judicature at Bombay under clause 53 of the Letters Patent of 1823 was undoubtedly inherited by the High Court of Bombay which was established by the Chapter of 1862 and later continued under the Letters Patent of 1865. But, as I will point out later, the Jurisdiction of the High Court of Admiralty in England had in the meantime been considerably expanded inter alia by the Act of 1840 and the Act of 1861 and this extension of the

jurisdiction of the High Court of Admiralty in England was not made applicable to the High Court of Bombay though it was established in 1862. It seems, therefore, that in order to bring about a uniformity between the jurisdiction of the High Court of Admiralty in England and the jurisdiction of the High Courts of Admiralty in India as well as in other British possessions, the British Parliament found it necessary to enact the Colonial Courts of Admiralty Act of 1890 inter alia providing that the Legislature of British India may declare certain Courts to be Colonial Courts of Admiralty and the Courts so declared shall have the Admiralty jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise. In view of this legislation, therefore, it would be relevant to consider as to what the extent of the Admiralty Jurisdiction of the Supreme Court of Judicature at Bombay was under the charter of 1823 or of the High Court at Bombay in 1862 and 1865 respectively.

15. The next in point of time comes the Indian Independence Act of 1947. By Section 18(1) and 18(3) of that Act the existing laws were continued in force until other provision was made by the appropriate legislature of India and Pakistan or other authority having power in that behalf. This was followed by the India (Consequential Provision) Act, 1949, Section 1 whereof continued all the existing laws and thereafter by Article 372 of the Constitution it was provided that notwithstanding the repeal of the Indian Independence Act, 1947 all the laws in force in India immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent Legislature or other competent authority. The Indian Independence Act, 1947, it may be noted, was repealed by Article 395 of the Constitution of India. It will thus be seen that the High Court of Judicature at Bombay in particular being one of the Colonial Courts of Admiralty under Act 16 of 1891 today exerciser the same admiralty Jurisdiction as was exercised by the High Court of Admiralty in England in 1890 when the Colonial Courts of Admiralty Act was passed by the British Parliament. We have therefore, to examine and ascertain as to what was the scope and nature of Jurisdiction of the High Court of Admiralty in England either under any statute or otherwise in the year 1890, because, it would be just that jurisdiction which is exercisable by the High Court of Judicature at Bombay down to date.

16. Now, the Admiralty jurisdiction in England has had an ancient origin and has passed through several vicissitudes during the past several centuries. Although the present jurisdiction of the Admiralty Division of the High Court in England is based partly on statutes, primarily and mostly it is based on principles previously adopted by the Admiralty Court from the general law of the sea, observed by Western nations, instanced in early time, e.g. by the laws of Oleron, and in later times widely followed in the general practice of continental nations. It had been characteristic of English Judges exercising admiralty jurisdiction to look to "the general law of the sea" for two allied, but distinct, purposes; first, to resolve doubts on a question of English law by adopting what they believed to be the relevant rule of the "general law"; and secondly, as a principle of judicial policy in order to avoid creating divergence from the general law. The importance to maritime commerce of uniformity in all seas, the world over, seems to have

received frequent emphasis both before the Judicature Acts and thereafter. It was upon these principles that the High Court of Admiralty in England, wherever there was no proper judicial precedent to be followed, resorted to "the general law of the sea in order to resolve doubts, if any, about the English law of Admiralty and preserve international uniformity in maritime law.

17. Reference at this stage may be made to a passage in "Roscoe's Admiralty Practice", 5th Edition, at pages 2 and 3 which explains the genesis of the High Court of Admiralty in England. That passage is as follows :

> "In medieval times not only was there a Lord High Admiral, but also Admirals for different portions of the seas around the British Islands; there was, for instance, an Admiral of the West and an Admiral of the North. These officers necessarily possessed disciplinary powers over vessels under their command, and in addition were in a sense sea magistrates, for they were the only maritime officials with both authority and power. They had especially to determine disputes in regard to the capture at sea of enemy property; in other words, in regard to prize. By a natural evolution they became also arbitrators in maritime disputes. It was an obvious step from the exercise of a personal jurisdiction of rude legal kind by officials whose functions were primarily executive to the appointment of deputies who became recognized judges. Finally there emerged from among these deputies a personage who, from deputy of the Lord High Admiral, became the appointed judge of the English High Court of Admiralty, who had criminal jurisdiction, who in time of war fulfilled duties as a judge or the Prize Court and exercised in the Instance Court jurisdiction finally limited to certain maritime causes. The germs of these two jurisdictions, which eventually became quite separate, we have already noted in the functions in medieval times of the Lord High Admiral and his fellows. This is in a few lines an epitome of the genesis of the High Court of Admiralty which struggled on for centuries side by side with the Common Law and Chancery Courts of England the one seeking to enlarge, the others to limit its jurisdiction".

18. It was on account of this rivalry between the High Court of Admiralty and the Court of common Law in regard to their respective jurisdictions that an Act was passed in 1389 entitled "An Act concerning what things the Admiral and his deputy shall meddle". It provided

> "That the Admirals and their deputies shall not meddle from henceforth of anything done within the realm, but only of a thing done upon the sea as it hath been used in the time of our noble prince King Edward grand father of our Lord the King that now is".

It appears, however, that although this statute was intended to prevent the Court exercising any jurisdiction except concerning things wholly and exclusively done upon the sea, the Admiralty Court did not scent to have acquiesced in any such interpretation of it. The Civil lawyers stoutly contended that the statute did not apply to contracts, and the Court continued to assert the

disputed jurisdiction; so that after a little time the legislature found it necessary to pass another statute couched in more explicit language. In 1391 an Act was passed which enacted as follows :

> "It is declared, ordained and established that of all manner of contracts, pleas, and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the Admiral's Court shall have no manner of cognizance, power, nor jurisdiction; but all such manner of contracts, pleas, and quarrels and all other things rising within the bodies of counties, as well by land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before nor by the Admiral nor his lieutenant in any wise".

19. By this Act the jurisdiction of the High Court of Admiralty was restricted only to things done upon the high seas and the High Court of Admiralty had no jurisdiction whatever to similar things arising within the body of a county. These two enactments undoubtedly raised a formidable barrier against the encroachments of the Admiralty on the jurisdiction of the Common Law Court, but the judges of the Court nevertheless cherished the idea of general jurisdiction over maritime causes, and refused obedience to statutes which according to them were not in accordance with the principles of justice. Accordingly, whenever an opportunity offered, they attempted to assert forbidden jurisdiction and although the proceedings in the Court were frequently stayed by the writs of prohibition, it was found necessary to provide a more effectual check. Another Act, therefore, was passed to give a direct remedy to persons wrongfully pursued in the Court. It enacted that the statute and the Common Law be holden against the Admiral and his lieutenant and that the party grieved shall have his action on the case against him that doth unlawfully pursue. It appears that after this enactment was passed the contest for jurisdiction became altogether unequal, but it was not completely abandoned. The fact, however, remained that the efforts of the Court to assert its powers were for a long time only feeble and intermittent.

20. A reference may also (be made to another passage in "Roscoe's Admiralty Practice" at page 8, to show what eventually happened in regard to the respective jurisdictions of the Common Law Court and the High Court of Admiralty. That passage runs as follows :

> "To examine the various cases of prohibition relating to the Admiralty, which are to be found in the early reports, would be a long and tedious labour. It is sufficient to observe that although the common lawyers were not able always to hold, firmly and consistently, the ground which they had taken, they seem, so far as they could, to have acted upon the broad rule that nothing was to be left to the Admiralty of which the common law could conveniently take cognizance. This principle, though not always avowed, and often hidden behind quaint arguments, and sometimes only losely enforced, seems to have been the guiding principle of all the early decisions. Had the system of common law procedure been more elastic than it was, doubtless it would have been made to embrace the whole jurisdiction of the Admiralty, and one great anomaly in our law would thus have been removed. But the technical process of the Courts of common law limited their

jurisdiction, and hampered their procedure; and it was impossible, with any show of justice, to prohibit suitors from resorting to the Admiralty in cases where that Court alone could afford a satisfactory remedy. So that as matters at last adjusted themselves, the Admiralty judges, although compelled to abandon all claim to general maritime jurisdiction, were yet suffered to exercise undisputed authority in all maritime cases where the common law could not give redress.

"The Admiralty Court was left in possession of its jurisdiction over torts committed on the high seas, for that had never been disputed, and in suits of salvage also its authority prevailed, for that was regarded as a branch of the royal prerogative, with the exercise of which the Court was properly entrusted. The Court had jurisdiction over tortious acts done upon the high seas. This jurisdiction has not been affected or altered by modern legislation, and has been exercised by the High Court in recent times to restrain such acts by injunction. In suits of possession the Admiralty acquired jurisdiction because it afforded a summary process unknown to the common law, by which the possession of the very thing in dispute was at once dealt with. Again, in cases of hypothecation the Admiralty was suffered to exercise jurisdiction, because the contract of hypothecation was not recognized by the common law, and it was only in the Admiralty that the thing hypothecated could be directly proceeded against. Over seamen's wages the Court, though only after a severe struggle, obtained jurisdiction, apparently, on the grounds that as the crew could sue together in the Admiralty Court, the remedy there was more convenient than at law, and that seamen were entitled to the advantage the Admiralty afforded them of having the ship itself arrested as a security for their wages. These were the principal matters left within the jurisdiction of the Court, and even as to some of these the Admiralty judges were compelled to move within very narrow limits....."

From this passage it is quite clear that among other things the jurisdiction of the Court of Admiralty over all torts committed on the high seas, which it always enjoyed, was never disputed even by the Common Law Courts. These torts would naturally include cases of collision between ships on the high seas and damage done to person or property as a result thereof. It seems, however, that barring the enactments which have been already noted above, there was no statutory recognition of the different matters over which the High Court of Admiralty exercised its jurisdiction.

21. In 1648, it appears, an Ordinance was passed which provided :-

"That the Court of Admiralty shall have cognizance and jurisdiction against the ship in all causes which concern the repairing, victual ling, and furnishing provisions for the setting of such ships to sea; and in all cases of bottomry, and likewise in contracts made beyond the seas concerning shipping, or navigation, or damages happening thereon, or arising at sea in any voyage; and likewise in all cases of charter-parties or contracts for freight, bills of lading, mariners' wages, or damages to goods laden on board ships, or other damages done by one ship or vessel to another, or by anchors or want of buoys."

At the Restoration, however, this ordinance was set aside, as of no validity, but a bill was introduced into the Parliament to carry out in legal form the same provisions. The bill was, however, thrown out by the Parliament in spite of a very elaborate argument in support of it by Sir Leoline Jenkins, who was heard at the Bar of the House of Lords. Thereafter, it appears, the High Court of Admiralty fell into a feeble and neglected condition, and for long its proceedings excited no attention. But when in the eighteenth century England was engaged in great maritime wars, constant appeal was made to the jurisdiction which the Court exercised in prize causes, and the learning and ability of Lord Stowell both in Prize cases and Instance cases, raised the Court to a position of the highest importance. It was only from this time onwards that the maritime jurisprudence of the Court as a definite and reasoned body of law began.

22. In 1833 a Select Committee of the House of Commons, appointed to consider the question, presented a report recommending the extension of the jurisdiction of the Court. The recommendation of the committee, however, was not acted upon until the year 1840, when an Act of Parliament was passed to improve the practice and extend the jurisdiction of the Court. One purpose of this Act was to get rid of the common law veto on the exercise of the common law jurisdiction within the body of county, so that the High Court of Admiralty could also take cognisance of the things arising within the body of a county as much as common law courts themselves and by Clause 23 of that Act it was provided :-

> "That nothing herein contained shall be deemed to preclude any of Her Majesty's Courts of Law or Equity now having Jurisdiction ever the several subject matters and causes of action hereinbefore mentioned from continuing to exercise such Jurisdiction as fully as if this Act had not been passed."

This Act, however, was confined only to pleas of damages "received by ships" probably because, damage otherwise than by collision between ships was not in the mind of the Parliament. Under this Act, therefore, it was open to contend that the Courts of Common Law and Equity had concurrent jurisdiction with the High Court of Admiralty in regard to matters arising within the body of a County which were referred to in the Act, particularly with regard to cases of damage "received by ships". But when the limited scope of the reforms introduced by this Act of 1840 was appreciated, the Parliament made it quite clear by the preamble to the Act of 1881 that its object was to enlarge the extension of jurisdiction of the High Court of Admiralty effected by the Act of 1840 still further. That Act was, therefore, again an Act to extend the jurisdiction and improve the practice of the High Court of Admiralty and conferred jurisdiction on the High Court of Admiralty with regard to claims of building equipping etc. of ships, claims for necessaries supplied to any ship, claims for damage to cargo imported into the country and claims for damage done "by any ship". It also conferred jurisdiction on that Court to decide questions as to ownership, possession, employment and earning of any ship, as to claims for salvage of life from any ship or boat within the limits of the United Kingdom, as to claims for

wages and disbursements by the Master of the ship and as to claims in respect of mortgages and several other matters. It may be noted that the Act also conferred upon the High Court of Admiralty same powers as were conferred upon the High Court of Chancery in England in regard to certain other matters and it also provided that the High Court of Admiralty shall be a Court of Record for all intents and purposes. By clause 35 of that Act it was provided that "the jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam". It would appear from the provisions of this Act that, though the High Court of Admiralty in certain matters had the same jurisdiction as the Court of Chancery, there were certain other matters and claims over which it was given an exclusive jurisdiction and one of such claims was a claim for damage done "by any ship" as provided in clause 7 of the Act. It has been stated that this Act was only complementary to the Act of 1840 because, whereas the latter only provided for jurisdiction in respect of damage "received by a ship" the former provided for jurisdiction in respect of damage "done by a ship". Be that as it may, it is important to remember that whereas under the Act of 1840 the High Court of Admiralty and the Courts of Common law and Chancery had concurrent jurisdiction over certain of the matters specified in the Act, there was no such concurrent jurisdiction provided in the Act of 1861 particularly in regard to damage done "by any ship". It is clear, therefore, that so far as the claim based upon a damage caused by a ship to person or property on the high seas is concerned, the High Court of Admiralty under the Act of 1861 had exclusive jurisdiction and such jurisdiction could be exercised under clause 35 of that Act either by proceedings in rem or by proceedings in personam. Accordingly, it seems clear to me that, in cases of damage done by a ship on the high seas either to any person or to any property, a claim for damages in respect thereof could at the choice of the party aggrieved be preferred in the High Court of Admiralty either by proceedings in rem, that is, against the body of the ship, or by proceedings in personam, that is, against the owners of the ship. In any event, in my opinion, the common law courts could not have any jurisdiction in respect of any such claim.

23. It was, however, contended by Mr. Rangnekar, the learned counsel for the plaintiff, that the interpretation which I am inclined to put upon the aforesaid provisions of the Act of 1861, would not be correct inasmuch as the common law courts would have effective jurisdiction in respect of claims for damages - even though the damage was done by a ship on the high seas - against the owners of the ship who were within their jurisdiction and that therefore, although the claimant might have an option of proceeding in the High Court of Admiralty in rem or in personam, when he elects to proceed in personam in a common law court it could not be said that the common law court had no jurisdiction to entertain the claim. In other words, he contended that in regard to actions in personam in respect of damage done by a ship on the high seas to a person or property, both the High Court of Admiralty and the common law courts had concurrent jurisdiction and that, therefore, the three suits which were filed by the plaintiff in the City Civil Court could not be said to be beyond the jurisdiction of the City Civil Court under Section 3 of the City Civil Court Act. I am afraid, I am unable to accept this contention for the reasons I will presently set out.

24. It would be well to remember that the jurisdiction of a Court does not depend upon the reliefs claimed in a suit or proceeding. It depends upon the question as to whether the cause of action which forms the basis of the reliefs has arisen within its jurisdiction. It may be argued, however, that in so far as the jurisdiction of the common law court is concerned, it is not necessary that the cause of action should invariably arise within its jurisdiction. It would be enough if the defendant resided or carried on business within its jurisdiction and in that case even if the cause of action arose elsewhere the common law court would have jurisdiction to entertain the action in respect thereof and grant the relief claimed therein. It is certainly true that in the ordinary civil courts suits need not necessarily be filed only if the cause of action on which they are based arises within their jurisdiction. The Admiralty law, however, is both in its scope and nature a peculiar one. Not only that its origin in the past, but also its basis largely depended upon the principles of the law of the sea. One of the first principles of this law which is very far-reaching in its effects is the "maritime lien", and it is on account of this maritime lien that the claim for damage done by a ship on the high seas to a person or property can be enforced only by an Admiralty Court. Common Law Courts are simply incapable of giving any effect to or enforce this maritime lien. It can only be enforced by the Admiralty Court by proceedings in rem and it was only by virtue of the later development of the law of Admiralty that a choice was given to the person aggrieved either to enforce the maritime lien in his favour in respect of the damage done to him or to his property by a ship on the high seas, or to proceed in personam against the owners of the ship. Thus, although it is open to such a person to proceed in personam, it is only as an alternative to his original claim to proceed in rem. But for the maritime lien to which he is entitled by the law of the sea he would not be able to sue either in rem or in personam. There have been judicial pronouncements of high authorities as to the nature and effect of maritime lien. In Harmer v. Bell; Boldent of the Privy Council, observed at page 284 as follows :

> "Having its origin in this rule of the civil law, a maritime lien is well defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Story (1 Sumner, 78) explains that process to be a proceeding in rem, and adds, that wherever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding in rem, and indeed is the only court competent to enforce it. A maritime lien is the foundation of the proceeding in rem, a process to make perfect a right inchoate from the moment the lien attaches".

Again, in Hamilton v. Baker; The Sara[1]*,* Lord Macuaghten said at page 225 as follows :

> "'A maritime lien', *as was observed in Johnson v. Black; The Two Ellens*[2]*,* must be something which adheres to the ship from the time that the facts happened which gave the maritime lien, and then continues bidding on the ship until it is discharged.....It commences and there it continues binding on the ship until it comes to an end". In the Ripon City, (1897) P. 226, Corel Barnes, J., reviewed the history of the maritime lien in the English Law in a long judgment from which there has been no subsequent dissent. The following extracts at pages 241, 242 and

244 of the Report describe the essential characteristics of a maritime lien. The learned Judge

[1](1889) 14 AC 209

[2](1872) 4 PC 161

observed :The definition of a maritime lien as recognized by the law of maritime given by Lord Tenterden has thus been adopted. It is a privileged claim upon a thing in respect of service done to it or injury caused by it, to be carried into effect by legal process.... The result of my examination of these principles and authorities is as follows : The law now recognizes maritime liens in certain classes of claims, the principal being bottomry, salvage, wages, mates' wages, disbursements and liabilities, and damage. According to the definition above given, such a lien is a privileged claim upon a vessel in respect of service done to it, or injury caused by it, to be carried into effect by legal process. It is a right acquired by one over a thing belonging to another a jus in re aliena. It is, so to speak, a subtraction from the absolute property of the owner in the thing."

The learned Judge further observed as follows :-

> "In my opinion, it is right in principle and only reasonable, in order to secure prudent navigation, that third persons whose property is damaged by negligence in the navigation of a vessel by those in charge of her should not be deprived of the security of the vessel.. .. ."

25. Thus, the positive principle of the automatic attachment to the ship of the creditor's lien on it is, at least, as indubitably a rule of substantive law in admiralty as the negative principle is at common law and there is no reason why the admiralty principle should give way to the common law rule. The lien consists in the substantive right of putting into operation the Admiralty Court's executive function of arresting and selling the ship, so as to give a clear title to the purchaser, and thereby enforcing distribution of the proceeds amongst the lien Creditors in accordance with their several priorities, and subject thereto, rateably. This function of the Court may well be called "executive" because, once the lien is admitted, or is established by evidence of the right to compensation for damage suffered through the defendant ship's negligence, there is then no further judicial function for the Court to perform, except as regards priorities, quantum and distribution of the sale proceeds. When the Court has thus discharged the whole of the secured claims the balance, if any, of the proceeds will, if there be no limitation of liability to present it, go to the unsecured creditors and the final surplus, if any, to the owners.

26. Again, it may be noted that the Admiralty jurisdiction is an integral whole, and cannot be divided up into water-tight compartments. As Scott, L.J., observed in The Tolten, (1946) P. 135 at p. 147 :-

> "In my view the law maritime of "damage", as administered in our admiralty Court, vests a right of action in any person, who suffers an injury anywhere in the world either to his person or to his property, whether moveable or immovable afloat or ashore, when caused

by the maritime fault of the owner of a ship, he being responsible for the acts or defaults of his servants.....If the substantive law administered by our admiralty Court be what I have stated, it follows, at least logically, that it must be the same whether the procedure be in rem or in personam."

27. In regard to the exclusive jurisdiction of the Court of Admiralty in respect of torts committed on the high seas His Lordship observed at page 158 of the Report as follows :-

"There was never any attempt by the common law Courts, even before the Admiralty Court Act, 1840, to prohibit the admiralty Court dealing with a 'Cause of damage' in respect of damages caused in English territorial waters unless the scene lay inside "the body of a county"; and for this purpose the body of a county ended at low water mark; seawards of that boundary was accepted as the exclusive jurisdiction of the Admiral. Every tort on the high seas was within admiralty jurisdiction. The struggle with the common law Courts was not about the kind of claim but about the geographical area of admiralty jurisdiction, and then it was only to keep it outside the body of the county that they fought so hard; but they construed that expression geographically as defined not by the limit of terrritorial waters or by the fauces terrae, but by the line of low water mark. Whatever doubts Dr. Lushington may have had about the kind of Cases within "the jurisdiction" were dispelled by the Act of 1861."

These passages, in my opinion, make it very plain that not only the Courts of Admiralty have complete and exclusive jurisdiction over torts committed on the high seas but they also have exclusive jurisdiction to grant reliefs in respect of those torts by virtue of the maritime lien either in proceedings in rem or in proceedings in personam. The common law courts cannot, in my opinion, claim to have any jurisdiction in respect of any of these torts even if the proceeding is in personam against the owners of the ship.

28. For the proposition that the High Court of Admiralty had exclusive jurisdiction in respect of torts committed on the high seas, a passage may be quoted from the 3rd volume of Blackstone's Commentaries (106) where the law is thus stated :-

"Admiralty Courts have jurisdiction and power to try and determine all maritime causes; or such injuries, which though they are in their nature of common law cognizance, yet being committed upon the high seas, out of the reach of our ordinary Courts of Justice, are therefore to be remedied in a peculiar Court of their own...."

This passage was quoted with approval by Lord Herschell, L. C. in the "Zeta", (1893) AC 468 at p. 482. In that case, the question was as to whether the County Courts' Admiralty Jurisdiction which was provided by the County Courts Admiralty Jurisdiction Amendment Act, 1869 was extended to a claim for damages caused to the ship by collision with an object which was not a ship, e. g. a pierhead, and it was held, reversing the decision of the Court of Appeal and restoring

the decision of Sir C. Butt, that that jurisdiction included a claim for damage to a ship by collision with such an object and that it was not necessarily confined to a damage by collision with a ship. In course of the judgment, it was observed by Lord Herschell, L. C. at page 478 of the Report as follows :-

> "It is enough to say that the proposition that the Act of 1861 applies to damage done by a ship to persons and things other than ships has been well established by many authorities, the correctness of which I see no reason to question."

While pointing out that the jurisdiction of the Admiralty Courts in cases of tort was not confined in practice to those which involved a collision between two ships, His Lordship cited several cases in which damages were awarded to seamen in respect of assaults and ill-treatment by the Master. Sir William Scott in the Ruckers, 4 Ch. Rob. 73, in which the cause of damage was in respect of a personal assault by the master of the vessel on a passenger, while speaking of the action as being "in a cause of damage", said :-

> "Looking to the locality of the injury, that it was done upon the high seas it seemed to be fit matter for redress in that Court, that if research had shown that the precedents had been only such as related to persons in the capacity of mariners he should have been unwilling to appear to extend the jurisdiction, though perhaps unable to assign any legal ground for such a limitation; but having regard to the report of the registrar he received the libel."

29. A reference may also be made to another case, The Hercules, (1819) 2 Dods 353 at p. 371, which was a proceeding to obtain restitution of the proceeds in the hands of the Court of Admiralty of property which had been practically taken. Sir William Scott observed as to the jurisdiction of the Court as follows :-

> "Now, that this Court had originally cognizance of all such wrongs, in short, of all transactions, civil and criminal, upon the high seas, in which its own subjects were concerned (and the present parties complained of are so described), is no subject of controversy, for all history of English law supports it. In the reign of King Henry VIII (28 H. 8 c. 15) its criminal jurisdiction was in a great part removed by statute to a mixed commission, where it still continues to reside, But that was the only part so removed. All the civil authority remained as before, for neither that statute nor any other affected it. All practice of its civil authority since that enactment proves the existence of the same practice before, for nothing occurred to give it new powers. All theory regarding the constitution of the Court establishes the conclusion that it must have been so."

Lord Herschell, L. C. in The Zeta, 1893 AC 468 categorically observed as follows (at page 485) :-

> "My Lords, some light is, I think, thrown upon the question of Admiralty jurisdiction by a

study of the cases in which prohibitions were issued by the Common Law Courts. They were frequently granted upon the ground that the wrong complained of arose, not on the high seas, but within the ordinary jurisdiction of the common law; but no case was cited to your Lordships in which a prohibition had been granted to restrain the exercise of jurisdiction by the Admiralty Court in relation to a wrong committed upon the High seas."

30. A' reference may also be made to the case of The Tubantia, (1924) P. 78 for the purpose of showing that the jurisdiction of the Admiralty Court over torts committed on the high seas was never disputed by the Common Law Courts and that the Admiralty Courts had an exclusive jurisdiction in respect thereof. Sir Henry Duke in course of the judgment in that case observed at page 86 as follows :-

"To some subjects of great juristic interest which were debated I shall refer only in passing. That the Court has jurisdiction over the matters in question I cannot doubt, A suit in respect of injurious acts done upon the high seas was within the undisputed jurisdiction of the Court of Admiralty, as appears upon reference to Comyn's Digest (Comyn's Digest, Tit. "Admiralty" (F. 7)), and to Blackstone's Commentaries, iii, 106."

31. In Halsbury's Laws of England, 3rd Edition, Vol. 1, under Section 9 entitled "Damage by Collision" the extent of jurisdiction of the Admiralty Court is stated as follows :-

"The High Court of Justice acquired from the High Court of Admiralty jurisdiction over all wrongs committed by or to British subjects on the High seas. By statute the High Court has also Admiralty jurisdiction in rem and in personam over any claim for damage received by a ship whether within the body of a county or on the high seas and over any claim for damage done by a ship.....

Damage "done by a ship" includes a claim for loss of life, or for personal injuries, but it does not incude a claim for an indemnity in respect of statutory compensation paid either for personal injuries or for loss of life," In regard to the exercise of jurisdiction by the High Court of Admiralty in England, at page 48 under Section 2 entitled "Exercise of Jurisdiction" of the same volume of Halsbury's Laws of England, it is stated as follows :-

"88. Arrest of defendant or his property :- The jurisdiction possessed by the High Court of Admiralty seems at first to have been ordinarily exercised by means of the arrest of the person of the defendant, who was required to give bail both to enter an appearance and to answer judgment in the cause. Where a defendant was not arrested, there was apparently always an alternative method of proceeding, by arresting any property belonging to him in tida waters, and then citing the debtor and all parties interested in the goods attached to appear at the suit of the plaintiff."

The origin of actions in rem in respect of torts committed on the high seas is explained at page 49 of the Volume as follows :-

> "These methods of procedure became obsolete, but the Admiralty Court succeeded in establishing a right to arrest property the subject-matter of a dispute, and to enforce its judgments against the property so arrested, on the theory that a preexisting maritime lien to the extent of the claim attached to the property from the moment of the creation of such claim. Such an action became known as an action in rem. It is difficult to determine the exact source from which the present law as to maritime liens is derived, but whatever may have been the origin and process of development of a maritime lien for damage - and the same is equally true for all claims within the inherent jurisdiction of the Court of Admiralty, such as damage, salvage, bottomry, and wages - there is no doubt that the doctrine of such a lien is now established; and the right to enforce it differs from the ancient right of arrest to compel appearance and security in this, that it is confined to the property by which the damage was caused or in relation to which the claim arose, and may be enforced against that property in the hands of an innocent purchaser. A maritime lien has been defined as a privileged claim upon a thing in respect of service done to it or injury caused by it and is carried into effect by legal process."

31-a. Then on the same page is explained what is meant by proceeding in personam :-

> "The inherent jurisdiction possessed by the Court of Admiralty was not only exercised by proceedings in rem brought to enforce the maritime liens attaching to the res in each case; but, where the ship was lost or for some other reason could not be arrested, a plaintiff having a claim cognizable by the Court, other than a claim on a bottomry or respondentia bond or to the possession of the ship, might take proceedings in personam against the owners of the property which would have been arrested if the proceedings had been in rem Subsequently, in 1854, the High Court of Admiralty was empowered by statute to institute proceedings by personal service of a monition upon fee owners of the property the subject-matter of the dispute, without the necessity of issuing a warrant to arrest the property."

As regards the liability of the defendant in an action in personam it is stated at page 50 of the same volume that the defendant in an Admiralty action in personam is liable, as in other Divisions of the High Court, for the full amount of the plaintiff's proved claim, and that, in the case of an action in rem also, a defendant who appears and puts in bail is now liable for the full amount of damages and costs, even though these exceed the value of the res and of the bail provided. As regards the nature of the law administered in Admiralty, at the same page of the same volume it is stated as follows :-

> "The law administered in Admiralty actions is not the ordinary municipal law of England, but is file law which by Act of Parliament or reiterated decisions, traditions, and

principles, has become the English maritime law."

32. It will appear from these various passages, which have been quoted above, firstly, that the High Court of Admiralty has an exclusive jurisdiction over torts committed on the high seas, particularly in respect of damage caused by a ship to any person or property; secondly, that proceedings in rem or in personam can be instituted to recover compensation in respect of the damage caused by torts, and thirdly, that the High Court of Admiralty has an exclusive jurisdiction to entertain an action in personam where proceedings in rem could have been taken.

33. It may be noted that, as pointed out by Scott, L.J., in The Token, (1946) P. 135 at p. 142, the difference between the proceedings in Admiralty in personam and the proceedings in rem is only that in the former procedure the defendants are named as in a King's Bench writ; in the latter, the writ is addressed to "the owners of the.... ship" as defendants; the proceeding is against the ship, and no personal service is required. In other words, the proceeding of either nature would be exclusively in the Admiralty and would not lie in any other Court. This, therefore, was the extent and scope of the jurisdiction of the High Court of Admiralty in 1861 and for all practical purposes that is the jurisdiction which is now being exercised by the High Court of Justice in England in its Admiralty Division.

34. It may be recalled at this stage that it was in this very year, namely 1861, that an. Act was passed by the British Parliament for the constitution of a High Court inter alia at Bombay in supersession of the Supreme Court which was established by Letters Patent in 1823 and that the High Court was in fact established by the Letters Patent in 1862 and that High Court inherited the same Admiralty Jurisdiction as was exercised by the Supreme Court. Thereafter fresh Letters Patent were issued in 1865 in respect of the same High Court, but there was no change in the nature and extent of its Admiralty Jurisdiction. Accordingly, the two Acts of 1840 and 1861 which were passed by the British Parliament in regard to the Admiralty in England were not extended to the High Court of Bombay so far as its Admiralty Jurisdiction was concerned. This fact has been borne out by two of the decisions of the Bombay High Court reported in 5 Bom HCR 64, In re, "The Asia" and 10 Bom HCR 110, Bardot v. The Augusta. The former was the case in which an action was filed on the Admiralty Side of the High Court at Bombay to recover the amount in respect of the necessaries supplied to a foreign ship. It was held that Section 6 of the English Act of 1861 which provided for an action of that nature, did not confer any jurisdiction on the High Court of Bombay on its Admiralty Side, because that statute was not extended to India. It was pointed out that the jurisdiction of the High Court on its Admiralty Side was the same as that exercised by the Court of Admiralty in England prior to the passing of the two statutes of 1840 and 1861 respectively. In Bordot's case, 10 Bom HCR 110 the suit had been brought on the Admiralty Side of the High Court by the owner and the master of the French barque "Antares" against the American ship "Augusta" (then lying in Bombay Harbour), the freight due for her cargo, and her owners. The cause of action alleged by the plaint was a collision between the two vessels on the 11th December, 1872 at 2.40 a, m. in Latitude 20-1/2

south and Longitude 32'"35' west, whereby the "Antares", her cargo, and the money, clothes, and private effects of her master and crew were sunk and totally lost. She was bound from Callao to the Havannah with a cargo of guano. The amount of damages claimed was Rs. 93,600/-. The plaint prayed for an arrest of the "Augusta" and her freight in order to answer that claim. A warrant of arrest having, pursuant to the prayer, been issued and executed against her, counsel on behalf of the owners of the "Augusta" and of the Vice-consul of the United States of America (to whom notice of the institution of the suit was given by the plaintiffs solicitors on the day on which the plaint was filed - the 1st the current month of April) had moved the Court that the warrant of arrest be discharged. It was held by the Court that the statutes of 1840 did not increase or in any wise affect the jurisdiction of the High Court at Bombay either in Admiralty or Vice-Admiralty, inasmuch as those statutes were not made applicable to the High Court at Bombay and that if the Court had jurisdiction to entertain the suit, that jurisdiction had to be sought for outside those statutes. The Court thereafter proceeded to consider as to whether the High Court of Admiralty in England would, before the passing of the Statute of 1840 and the subsequent statutes, have taken cognisance of a suit founded upon a collision between two foreign vessels upon the high seas. On examination of authorities it was held that the High Court of Admiralty in England would have done so and that, therefore, the High Court at Bombay had jurisdiction under the common Maritime law to entertain a suit in respect of a collision upon the high seas between two foreign vessels, although that collision might not have occurred in British or Anglo-Indian waters, and notwithstanding the opposition of the Counsel of the State to which the "Augusta" belonged. In the result, the Court refused the Motion to discharge the warrant of arrest and directed the costs of that Motion to be costs in the cause. Apart from showing that the two statutes of 1840 and 1861 passed by the British Parliament were not extended to the High Court at Bombay until the Colonial Courts of Admiralty Act of 1890 was passed, this decision emphatically shows that this Court on its Admiralty Side had undoubted jurisdiction to entertain an action in respect of damage done by a collision between two ships on the high seas.

35. In 1873, the British Parliament passed an enactment entitled the Supreme Court of Judicature Act, 1873. Until this enactment was passed the High Court of Admiralty was a distinct institution by itself. This enactment, however, brought into existence one Supreme Court of Judicature for the whole of England comprising the several Courts, namely, the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes and the London Court of Bankruptcy. All these Courts were united and consolidated together and constituted one Supreme Court of Judicature in England. By section 4 of that Act it was provided that "the Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal", shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal." By Section 5 of that Act Her Majesty's

High Court of Justice was constituted and by Section 31 the High Court was given 5 Divisions each consisting of such number of Judges as mentioned in the section. One of the Divisions of the High Court assisted of the Probate, Divorce and Admiralty jurisdiction and the causes that were assigned to this Division have been mentioned in Section 34 of the Act. They are; (1) All Causes and matters pending in the Court of Probate, or in the Court of Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of the Act, and (2) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if the Act had not been passed. Thus, the Probate, Divorce and Admiralty Division of the High Court of England had the jurisdiction inter alia to entertain all causes and matters which would have been within the exclusive cognizance of the High Court of Admiralty. The causes which were within the exclusive cognizance of the High Court of Admiralty were not described by the Judicature Act, and, therefore, they had to be ascertained with reference to the law that prevailed prior to the Judicature Act of 1873. It has already been seen that under the Act of 1861, exclusive jurisdiction was conferred upon the High Court of Admiralty inter alia in respect of damage done by a ship and, therefore, the High Court of Justice in England constituted under the Judicature Act of 1873 among other things had the exclusive jurisdiction to take cognizance of all causes in which damages were claimed on account of damage done by a ship. The Act of 1873 was superseded by the Act of 1925, but it appears that there has been no substantial change in the jurisdiction of the High Court of Justice in its Admiralty Division. We need not, however, go to the Act of 1925 at all because by the Act of 1890 entitled "the Colonial Courts of Admiralty Act of 1890", the Legislature of British India, as already observed, was empowered to declare certain Courts to be Colonial Courts of Admiralty and the Courts so declared were given the same Admiralty jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise. It was under this Act that in 1891 the High Court of Bombay was declared as a Colonial Court, and, therefore, eyes since that date the High Court of Bombay on its Admiralty Side had the same jurisdiction as was exercised by the High Court of Admiralty in England at that date. We have seen that the High Court of Admiralty in England as constituted under the Judicature Act of 1873 had the exclusive jurisdiction in regard to certain matters under the Act of 1861. Consequently, the Colonial Court at Bombay, that is to say, the High Court of Bombay had a similar jurisdiction from and after 1891. It has already been observed that this Legislation has been continued under Article 372 of the Constitution of India. It would appear, therefore, that if the High Court of Justice in its Admiralty Division in England had an exclusive jurisdiction in regard to certain matters, the High Court at Bombay even now has the same jurisdiction. As stated above, under the Act of 1861, the High Court of Admiralty was given an exclusive jurisdiction in respect of causes based on damage done by a ship. The High Court at Bombay, accordingly, on its Admiralty Side also has a similar exclusive jurisdiction.

36. The suit out of which ' the present appeal wises, it was not disputed, is in respect of damage done to the plaintiff's country craft "Pandavi" by the defendant company's cargo boat "Jalamanjari". The High Court of Bombay on its Admiralty Side, therefore, has an exclusive

Jurisdiction to entertain that suit. It will follow, therefore, that that suit could not be filed on any other side of the High Court, much less in the City Civil Court at Bombay.

37. Mr. Rangnekar, the learned counsel for the plaintiff, however, contended that there was a decision of the Bombay High Court itself to the effect that a suit for damages on account of collision could lie on the Ordinary original Side of the High Court, reported in 6 Bom HCR O. C. 98, Muhammad Yusuf v. Peninsula and Oriental Steam Navigation Co. From the facts of that case, however, it appears that the damage in respect of which the suit was filed had occurred within the territorial waters of the City of Bombay. At p. 99 of the Report a summary of file plaint is given and it says :-

> "The plaint also alleges that the collision 'occurred on the evening of the 24th of November, 1866, in the harbour of Bombay, near the fishing stakes off Mazgaon, where the bagalo was lying at anchor for several days before and at the time of the collision'; and 'the Emeu being then navigated by the servants of the defendants, steamed up the harbour on the said evening after sunset, and struck the said bagalo so as to cut down the same to the water's edge; and the said bagalo immediately afterwards turned over and sank : ..... and the said bagalo was, at the time aforesaid, anchored in a proper place in the said harbour.'"

Thus, it will appear that the suit that was filed on the Original Side of the High Court did not relate to any damage done on the high seas, but to a damage which had occurred on account of collision within the harbour itself. Therefore, this case cannot support Mr. Rangnekar's contention that a suit for damages in respect of damage Caused by a ship on the high seas could lie on the Ordinary Original Side of the High Court. On the other hand, Mr. Nariman for the defendant company invited my attention to another case reported in 4 Bom HCR O. C. 149, Bombay Coast and River Steam Navigation Co. v. Rene Heleux. In that case the suit was filed for damages caused to the plaintiffs' ship "the Lord Clyde" by a collision at sea. The plaint stated the fact of the Collision and that it was caused by the negligence of the defendant and his crew; and submitted that the defendant was subject to the jurisdiction of the Court on the ground that he had instituted a suit against the plaintiff's "the Lord Clyde," for damages caused by the same collision. It will appear, however, that the suit was filed on the Admiralty Side of the High Court. The Trial Court had rejected the plaint on the ground that the suit did not lie on the Admiralty Side of the High Court. In appeal, it was contended that it was competent for the plaintiff to proceed in rem against the ship or in personam against the master or the owners. The ship was not in Bombay when the plaint was presented and it was contended for the plaintiffs that the Admiralty jurisdiction of the Court was the same as that of the Supreme Court at Bombay and a reference was made to clauses 53 and 54 of the Supreme Court Charter of 1823. It was held that the order rejecting the plaint should be set aside and that the plaint should be received and filed on the Admiralty Side of the High Court. This case supports the contention of Mr. Nariman that a suit for damages in respect of damage caused by a collision on the high seas should be filed on

the Admiralty Side of the High Court, the only condition being that a proceeding in rem could have been instituted if the ship were in the harbour. Inasmuch as, however, the ship in that case was not in the harbour a proceeding in rem could not be taken and a proceeding in personam was held to be competent as being within the cognisance of the Admiralty Side of the High Court. It will be clear from this decision that it is not correct to say that in cases of torts committed on the high seas or injuries caused by a ship on the high seas a suit for damages in respect thereof could be tried on the Ordinary Original Side of the High Court either to the exclusion of or concurrently with the Admiralty Side thereof. The test for such actions is not, as already observed in the earlier part of the judgment, whether the suit in personam is filed against the owners of the ship or it is a suit in rem against the body of the ship. The test is as to whether the suit is in respect of a tort or injury committed on the high seas and whether a proceeding in rem would be competent if the ship had been in the harbour. If a proceeding in rem is competent in the event of the ship which caused the damage being in the harbour exclusively on the Admiralty Side of the High Court, a suit for damages in personam at the option of the plaintiff in respect of the same tort or injury would also be exclusively cognizable by the Admiralty Side of the High Court, even if the ship which had done the damage was in the harbour and a proceeding in rem could be instituted.

38. Mr. Rangnekar then relied upon a decision reported in (1868) 2 PC 193 Liverpool, Brazil and River Plate Steam Navigation Co. Ltd v. Henry Benham. That was a case in which the cause of collision was promoted by the owners of a Norwegian Barque, against a British Steamer, in the High Court of Admiralty in England, for damage done in Belgian waters, alleged to have been occasioned by the negligent and improper navigation of the steamvessel. The owners of the steamship pleaded that the vessel was in charge of a pilot whom they were compelled by the Belgian law to employ. The owners of the Barque replied, that by the Belgian law it was provided that the owners of a ship which had done damage to another by collision were liable for the damage notwithstanding the vessel was in charge of a compulsory pilot, and although the damage was occasioned by his negligence or want of skill. The owners of the steamship objected to this plea saying that even if the article pleaded were true, they would not be liable in the Court of Admiralty in England. The Trial Court of Admiralty admitted the plea of the Belgian law, but in appeal, the Judicial Committee reversed the decision of the Court of Admiralty and held that the claim being founded on a tort committed in the territory of a Foreign State, the part claiming reparation in a British Court was not entitled to the benefit of the Foreign law against the admitted provisions of the Statute Law of England, and the practice of the High Court of Admiralty in respect of compulsory pilotage, by which no such liability as provided by the Belgian law existed as it was contrary to principle and authority to hold that an English Court would enforce a Foreign Municipal law, and give a remedy in the shape of damage, in respect of an act which, according to its own principles, imposed no liability on the person from whom the damages were claimed. This case, it may be noted, has been cited in Halsbury's Laws of England, 3rd Edition, Vol.1, at page 503 under the Chapter entitled "Rights, Duties and Disabilities of Alien Friends". I do not see how this case supports Mr. Rangnekar in his

contention that a suit for damages in respect of damage caused by a ship on the high seas could lie on the Ordinary Original Side of the High Court of Bombay. The action In that case was in fact brought in the High Court of Admiralty in England and the only question that was raised in that action was as to whether the plaintiffs who were the owners of a Norwegian Barque could claim damages from the owners of the British ship in respect of damage done by the latter's vessel in Foreign waters and all that was decided by the Judicial Committee was that whatever might have been the Belgian Law, the English Court of Admiralty would not enforce any Foreign Municipal law when the English Law itself did not impose any such liability on the owners of a British ship in respect of any damage done by their ship in Foreign waters. This case, in my opinion, is entirely beside the point and offers no assistance to Mr. Rangekar in the contention that he has raised.

39. Mr. Rangnekar then relied upon a passage in Marsden's "Collisions at Sea", 10th Edition, at page 52 under the heading "Liability of the Shipowner" which runs as follows :-

> "The actual wrongdoer being commonly a seafaring man of small means, can seldom give adequate redress, and may be not worth suing. In such cases the substantial remedy is to be sought, either in Admiralty against the ship, or at common law against the employer of the actual wrongdoer." It may be noted, however, that this passage falls under the Chapter entitled "Liability" and the liability that is considered in that Chapter is essentially of the actual wrongdoers on board the ship. The utmost that could be said on the basis of this passage is that where a wrong has been done by any of the employees of the owner of a ship and the actual wrongdoer being commonly a seafaring man of small means can seldom give adequate redress and may not be worth suing, the person suffering the damage has either of the two mutually exclusive remedies : (1) in Admiralty against the ship itself which had actually caused the damage and (2) at common law against the employer of the actual wrongdoer under the law relating to Master and Servant. This passage, however, docs not refer to the alternative remedy by proceeding in. personam in a case where a proceeding in rem could be instituted. As a matter of fact, the Admiralty Jurisdiction of the High Court of Justice in respect of torts committed on the high seas is dealt with at pages 326-329 in that volume. At page 327 the learned Author says as follows :-
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> "The Admiralty jurisdiction of the High Court of Justice, which may be exercised in proceedings in rem or in personam, is co-extensive, geographically, with that of the late High Court of Admiralty from the coming into force of the Admiralty Court Act, 1840, until the jurisdiction of the latter Court was, by the Judicature Act, 1873, Section 16, transferred to the High Court of Justice; the geographical extent of the jurisdiction is world-wide. The jurisdiction of the Court of Admiralty originally extended to every sort of collision and damage to property occurring upon the high seas and upon tidal waters not within the body of a county. By the Admiralty Court Act, 1840, Section 6, its

> jurisdiction was extended to (amongst other things) claims for damage received by "any ship or seagoing vessel" within the body of a county; and by the Admiralty Court Act, 1861, Sections 2, 7, it was further extended to claims for damage done by "any description of vessel used in navigation not propelled by oars." It appears that these statutes covered every case of collision between craft of all sorts, except a Collision within the body of a county between lighters or other craft both of which were propelled by oars only."

It will be clear from this passage that where a case falls within the Admiralty jurisdiction of the High Court of Justice, as for example, in case of damage done by a ship on the high seas, the proceeding to recover the damages in respect thereof could either be in rem or in personam. The distinction between a proceeding in rem and a proceeding in personam has already been noted in the earlier parts of the judgment with reference to the weighty pronouncements of the learned Judges both of the High Court of Justice and of the House of Lords. Accordingly, in my opinion, where a damage is caused by a ship on the high seas, the person complaining of the damage has the option of proceeding either in rem against the ship or in personam against the owners thereof irrespective of whether the owner could be sued in a Common Law Court for the damage caused by the negligence of any specific employee of the owner of the ship under the ordinary law relating to Master and Servant. In my opinion, an action can lie for damages in the Kings Bench Division of the High Court against the owner of a ship instead of his employee where damages are sought in respect of the tortious act of such employee himself. But such an action can have no relation to an action in Admiralty which is confined to damage caused by the ship itself, in, which case the person suffering the damage is given an option by the statute itself either to sue in rem or in personam. Accordingly, Mr. Rangnekar cannot successfully contend on the basis of that passage quoted from Marsden's "Collisions at Sea" that the present suit having even filed in respect of the damage caused by the defendant company's cargo boat on the high seas could be entertained on the Ordinary Original Side of the High Court of Bombay. The present suit does not complain of any negligent act on the part of any particular employee or employees of the defendant Company on board its ship. It only complains of the damage done by the ship itself irrespective of who were responsible for the collision with the plaintiff's country craft. In my opinion, therefore, the present suit falls within the exclusive Admiralty jurisdiction of the High Court and Could not have been filed on the Ordinary Original Side of the High Court, much less in the City Civil Court. In this view of the matter, I am unable to agree with the view expressed by the learned Principal Judge of the City Civil Court that actions in personam" used to be entertained in the Common Law Courts in England in respect of damage done by a ship on high seas and that even at present in England it is open to a suitor to file an action in personam in the King's Bench Division in respect thereof. In my opinion, no such action ever lay in the Common Law Courts of England, nor can it ever lie in the Queen's Bench Division of the High Court of England at the present time. If we remember that the origin of the jurisdiction of the High Court of Admiralty lay in the maritime lien that a person under the general law of the sea acquired over the ship that did the damage to him or to his property and by section 35 of the Act of 1861 choice

was given to such person either to enforce that lien by proceeding in rem or to recover the damages from the owners of the ship by proceeding in personam in respect of such damage and the Act of 1861 did not contain a provision that the jurisdiction of Common Law Courts or Courts of Chancery, if they had any jurisdiction in the matter at all, was not affected by the provisions of section 35 of that Act, particularly read with section 7 thereof, there can be no doubt that the jurisdiction to entertain an action either in rem or in personam in respect of such damage is only with the Admiralty Division of the High Court of Justice in England and correspondingly with the Admiralty Side of the High Court of Bombay and consequently, neither the Queen's Bench Division of the High Court of Justice in England nor the Ordinary Original Side of the High Court of Bombay has any jurisdiction to entertain an action in personam in respect of such damage.

40. Reverting to Section 3 of the Bombay City Civil Court Act, 1948, it is clear that the City Civil Court cannot take cognizance of any suit or proceeding which is cognizable inter alia by the High Court as the Court of Admiralty or Vice Admiralty or as a Colonial Court of Admiralty. On the plain wording of the section it is not necessary that the Admiralty Side of the High Court should have an exclusive jurisdiction in respect of suit or proceedings seeking to recover damages for damage caused by a ship on the high seas. Accordingly, even if it be held that an action in personam in respect of such damages lies as well on the Ordinary Original Side of the High Court as on the Admiralty Side, in so far as such suits or proceedings can be taken cognizance of by the Admiralty Side of the High Court, the City Civil Court will have no jurisdiction to entertain it in any event. If the construction of that section were otherwise, Section 12 of the City Civil Court Act would have no effect and would be nugatory. Section 12 says :-

> "Notwithstanding anything contained in any law the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court."

41. According to this section, if a suit or proceeding is held to be cognizable by the City Civil Court by virtue of the provisions of Section 3 of the Act, the High Court is completely debarred from having any jurisdiction in respect of such suit or proceeding, with the result that if a suit or proceeding in respect of damage caused by a ship on the high seas can be said to lie within the jurisdiction of the City Civil Court, such suit or proceeding shall not be cognizable by the Admiralty Side of the High Court at all. That, however, does not seem to be the effect which is sought to be achieved by enacting Section 3 of the City Civil Court Act. On the contrary, the provisions of Section 12 of the Act lead one to the conclusion that when Section 3 speaks of suits or proceedings which are cognizable by the High Court as a Court of Admiralty, such suits or proceedings would be exclusively cognizable by such Court and that the City Civil Court should have no right whatever to entertain it. Accordingly, in either event of it being held that the jurisdiction of the Admiralty Side of the High Court in respect of such suit or proceeding is exclusive or concurrent with that of the Ordinary Original Side of the High Court, the City-Civil Court will have no jurisdiction at all to take cognisance thereof.

42. For these reasons, I agree with the conclusion of the learned Principal Judge that the City Civil Court has no jurisdiction to entertain the suit filed by the plaintiff. The appeal is accordingly dismissed with costs.

Appeal dismissed.