connecting company. In a recent case[5] the commission says that it can not assent to the argument that when a railroad is required to transport cars to and from another's terminals, it is giving that company the use of its tracks and terminals within the meaning of section three. It adds "The contention made by the defendant, if admitted, would completely nullify the power given the commission to establish through rates". While this decision is doubtless not in harmony with the weight of judicial authority as it now stands, it certainly seems to be a step in the right direction, and the principal case following so closely on its heels gives rise to the hope that the courts and the commission will eventually construe section three so as to give it a meaning instead of completely nullifying it.

A. H. C.

ADMIRALTY: AEROPLANE NOT A SUBJECT OF ADMIRALTY JURISDICTION.—The case of *The Crawford Bros. No. 2*[1] has the distinction of being the first attempt in this country to enforce in a court of admiralty a libel *in rem* against an aeroplane. The libeled air craft had fallen into the waters of Commencement Bay, and after its rescue, the libelant was employed to repair it, for which service he claimed a maritime lien.

It is difficult to perceive the theory upon which the libelant founded his claim for a maritime lien, unless it be the fact that, there being no general jurisdiction capable of dealing with all questions arising out of aerial navigation, courts of admiralty should take upon themselves the burden of solving all of these problems as they arise. The libelant insisted that the proposed code of aerial navigation, as adopted by the International Juridic Committee on Aviation,[2] shows a striking similarity to the laws governing navigation upon the seas, and that the two jurisdictions could well be exercised by one court.[3] But this theory overlooks the fundamental fact that courts of admiralty in this country are, by the federal constitution, only given jurisdiction over admiralty and maritime causes, and that for a case to be cognizable in admiralty, it must arise out of transportation and navigation upon waters within the court's jurisdiction.

The air craft in this case was exclusively non-aquatic, and totally incapable of navigation upon water. But one section of the proposed code of aviation contemplates the navigation by air craft, of the waters within the bodies of states, and should such

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[5] St. Louis, S. and P. R. R. Co. et al. v. Peoria & Pekin Union Ry. Co. (1913), 26 I. C. C. 226.

[1] (June 27, 1914), 215 Fed. 269.

[2] (April 14, 1914), 18 Law Notes 5-7, 2 Docket 1161-1166.

[3] The possibility of adaptation of admiralty laws to aerial navigation is pointed out by Prof. Chessex in an article in 36 Clunet's Journal (1909), 681, 687, in which he suggests the allowance of a maritime lien for services in the nature of salvage, rendered to an aeroplane.

navigation become feasible for the purposes of transportation, it seems that admiralty jurisdiction should be held to extend to a tort committed by a hydro-air craft upon navigable waters; and, since it has been held that, if a craft is capable of being navigated upon water for the purposes of transportation, it is a subject of admiralty jurisdiction, irrespective of its size, form, capacity, or means of propulsion, in the case of a contract for the provisioning and equipping of a hydro-aeroplane, which was thus engaged, a nice question might be presented to a court of admiralty to determine whether the subject matter of this contract was maritime in its nature. But whatever questions may arise in connection with the use of hydro-aeroplanes, it is clear that in the principal case, no element of jurisdiction was present, and that the maintenance of a libel against the air craft was obviously impossible.

In its opinion in the principal case, the court suggests the possibility of an extension of admiralty jurisdiction through the aid of legislation, but it is clear that any such attempt would raise insurmountable constitutional difficulties. Even though no constitutional question were involved, an extension to aerial navigation of the maritime jurisdiction *in rem* would seem to be a matter of doubtful policy.[4]

The maritime lien, upon which the jurisdiction *in rem* is founded is an outgrowth of the necessities of commerce as carried on during a period when credit facilities and means of communication were little developed. Under such conditions, the ship itself was often the only security available for obtaining credit. But the necessities of commerce demanded that the ship should not be detained, and at the same time, financial considerations required that the ship should serve as security. To satisfy these conflicting demands, a lien divorced from possession was required. Today, though these necessities have to a large extent disappeared, the maritime lien still persists. Since these liens are secret, and are valid as against all the world without the necessity of recordation, it seems that their scope should be strictly limited to cases where the necessities of commerce have called them into existence, and should not be extended into other fields, where no necessity for their allowance exists.

J. D. R.

BILLS AND NOTES: NEGOTIABILITY AS AFFECTED BY PROVISIONS DESIGNED TO ADD SECURITY TO THE INSTRUMENT.—It has been said that a negotiable instrument is a "courier without lug-

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[4] A code drafted by the American Bar Association contains no suggestion of depriving courts of general jurisdiction of control over aerial navigation. This code was not approved by the Association's committee on Jurisprudence and Law Reform, because not relating to a subject of sufficient present importance to warrant federal legislation. (1911), 36 Am. Bar Assn. Rep. 381.