a tropical climate are more or less liable, just as persons exposed to the other natural causes to which we have referred are liable to disastrous consequences therefrom. The deceased, in the discharge of his ordinary duties about his ship, became thus affected and so died.

We think, for the reasons we have given, that his death must be considered as having arisen from a "natural cause," and not from "accident," within the meaning of this policy. There must be judgment for the defendants.

Judgment for the defendants.

1923. A.C. 633

[487] EX PARTE ANDERSON (*a*). Tuesday, January 15th, 1861. The superior Courts of common law at Westminster have jurisdiction at common law to issue a writ of habeas corpus ad subjiciendum, to all parts of the dominions of the Crown of England, even to those in which an independent local judicature has been established. Such jurisdiction can be taken away only by express legislative enactment.—Accordingly, this Court granted a writ of habeas corpus directed to certain gaolers and others, in the province of Upper Canada, commanding them to bring up the body of A., a British subject, alleged to be illegally in their custody.

[S. C. 30 L. J. Q. B. 129; 3 L. T. 622; 7 Jur. N. S. 122; 9 W. R. 255.]

Edwin James moved that a writ of habeas corpus ad subjiciendum be issued to the sheriff of the county of York, in Canada, and to the Keeper of the gaol of Toronto in that county, to bring up the body of John Anderson.

The motion was made on the affidavit of Louis Alexis Chamerovzow, of 27, New Broad Street, in the city of London, secretary of The British and Foreign Anti-Slavery Society; which stated that John Anderson, of the city of Toronto, in Her Majesty's province of Canada, a British subject domiciled there, was, as the deponent believed, illegally detained in the criminal gaol of the said city against his will, not having been legally accused, or charged with, or legally tried or sentenced for, the commission of any crime, or of any offence against or recognized by the laws in force in the said province, or in any part of Her Majesty's dominions; and not being otherwise liable to be imprisoned or detained under or by virtue of any such laws: and that, unless a peremptory writ of habeas corpus should immediately **[488]** issue, the life of the said John Anderson was exposed to the greatest and to immediate danger.

Edwin James, for the writ. The Crown, through the superior Courts of Westminster, has power to issue the prerogative mandatory writ of habeas corpus to any part of the Queen's dominions, and therefore to Canada. Stat. 14 G. 3, c. 83, "An Act for making more effectual provision for the government of the province of Quebec in North America," recites in the preamble that the "countries, territories, and islands in America," dealt with by the Act, were "ceded to His Majesty by the" "treaty of peace, concluded at Paris on 10th February, 1763"; and, by stat. 31 G. 3, c. 31, s. 2, the province of Quebec is divided into two separate provinces called the province of Upper Canada and the province of Lower Canada. [Hill J. I observe that stat. 14 G. 3, c. 83, enacted, by sect. 8, "that in all matters of controversy, relative to property and civil rights, resort" should "be had to the laws of Canada, as the rule for the decision of the same;" and, by sect. 11, that the criminal law of England was to be continued in force in the province.] There can be no doubt but that the writ of habeas corpus may issue to Canada. In delivering the judgment of this Court in *Leonard Watson's Case* (9 A. & E. 731, 782), Lord Denman C.J. said, "The difficult questions that may arise touching the enforcement

(*a*) In consequence of the decision in this case it has since been enacted, by stat. 25 & 26 Vict. c. 20, s. 1, that no writ of habeas corpus shall issue out of England by authority of any Judge or Court of justice therein, into any colony or foreign dominion of the Crown where Her Majesty has a lawfully established Court or Courts of justice, having authority to grant and issue the said writ, and to insure the due execution thereof throughout such colony or dominion. Sect. 2 provides that the Act shall not affect or interfere with any legally existing right of appeal to Her Majesty in council.

in England of foreign laws, are excluded from this case entirely; for Upper Canada is neither a foreign state, nor a colony with any peculiar customs. Here are no mala prohibita by virtue of arbitrary enactments; the relation of master and slave **[489]** is not recognized as legal: but Acts of Parliament have declared that the law of England, and none other, shall there prevail." No precedent has been discovered of an actual issue of the writ to Canada; but no distinction exists, for this purpose, between that colony and any other part of the dominions of the Crown. In Bac. Abr. tit. Habeas Corpus (B), 2, under the heading, "To what places it may be granted," the law is thus laid down: "It hath been already observed, that the writ of habeas corpus is a prerogative writ, and that therefore, by the common law, it lies to any part of the King's dominions; for the King ought to have an account why any of his subjects are imprisoned, and therefore no answer will satisfy the writ, but to return the cause with paratum habeo corpus, &c. Hence it was holden, that this writ lay to Calais at the time it was subject to the King of England." In delivering the judgment of the Court in *Rex* v. *Cowle* (2 Burr. 834, 855), in which case the question was whether this Court had jurisdiction to issue a certiorari to Berwick-upon-Tweed, Lord Mansfield C.J. said, "Writs, not ministerially directed, (sometimes called prerogative writs, because they are supposed to issue on the part of the King,) such as writs of mandamus, prohibition, habeas corpus, certiorari, are restrained by no clause in the constitution given to Berwick: upon a proper case, they may issue to every dominion of the Crown of England. There is no doubt as to the power of this Court; where the place is under the subjection of the Crown of England; the only question is, as to the propriety. To foreign dominions, which belong to a prince who succeeds to the throne of England, this **[490]** Court has no power to send any writ of any kind. We cannot send a habeas corpus to Scotland or to the Electorate: but to Ireland, the Isle of Man, the Plantations, and, (as since the loss of the Duchy of Normandy, they have been considered as annexed to the Crown, in some respects), to Guernsey and Jersey, we may; and formerly, it lay to Calais; which was a conquest, and yielded to the Crown of England by the treaty of Bretigny." In 1397, a writ of habeas corpus, tested per ipsum regem et concilium in parliamento, was sent to the governor of Calais, to bring up the body of Thomas, Duke of Gloucester, then in custody there, to answer a charge of treason preferred against him by the Duke of Rutland and others (*a*)[1]. [Crompton J. That was a writ ad respondendum, which is on a different footing from the writ ad subjiciendum.] The following entry in 2 Peere Williams's Rep., p. 74, supports Lord Mansfield's statement, already cited, that the writ may go to the Plantations. "Memorandum, 9th of August, 1722, it was said by the Master of the Rolls to have been determined by the Lords of the Privy Council, upon an appeal to the King in council from the foreign plantations, 1st, that if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new found country is to be governed by the laws of England: though, after such country is inhabited by the English, Acts of Parliament made in **[491]** England, without naming the foreign plantations, will not bind them." These dicta are in accordance with the general law of nations. Thus Vattel lays it down (*a*)[2] that "when a nation takes possession of a distant country, and settles a colony there, that country, though separated from the principal establishment, or mother country, naturally becomes a part of the state, equally with its ancient possessions. Whenever, therefore, the political laws, or treaties, make no distinction between them, everything said of the territory of a nation must also extend to its colonies." In *Campbell* v. *Hall* (1 Cowp. 204, 208, 210) Lord Mansfield C.J. pointed out that it is clear that a country conquered by the British arms becomes subject to the Legislature of Great Britain; though the laws of such a country may be changed by the authority of the Crown. He gave as instances, amongst others, Berwick, Gascony, Guienne, Calais and Minorca. [Cockburn C.J. At the time of the decision in *Rex* v. *Cowle* (2 Burr. 834), Berwick was

(*a*)[1] Rymer's Fœdera, vol. 3, part. 4, p. 135 (Hague edition, 1740). James also stated that he had found the following instances of writs having issued to Calais. A writ of amoveas manus, in 1363; of attachment, from the Court of King's Bench, against the mayor, for disobeying a writ, in 1364; and of inquisition, to inquire into the goods of a felon, in 1374.

(*a*)[2] Law of Nations, book 1, ch. 18, sect. 210, p. 100 (Chitty's edition, 1834).

not subject to the laws of Scotland. There was, consequently, no superior Court with power to control proceedings instituted there, unless the superior Courts of Westminster had jurisdiction to do so. Blackburn J. In the course of the judgment, Lord Mansfield C.J. says, (2 Burr. 855), "The charter gives them" (the corporation of Berwick) "power to make ordinances with penalties of fine and imprisonment: so as they be reasonable, and not repugnant to the laws, statutes and customs of England. In short, they have no criminal law, but the law of England; and no criminal jurisdic-**[492]**-tion, but with such a reference to the law of England, as necessarily includes this Court." Can the same be said of Canada? Cockburn C.J. Canada possesses an independent Legislature and an independent judicature. Crompton J. You must make out that we have concurrent jurisdiction with the superior Courts of Canada.] The mere fact that the Crown has granted a local judicature to a colony, with the same jurisdiction, within the colony, that the superior Courts of England have over the whole of the realm, does not, in the absence of express enactment to the contrary, oust the Crown of its right to control the local Courts in the exercise of their jurisdiction. There is a local judicature in Ireland; but, in *Anonymous* (Vent. 357), the Court seemed to be of opinion that a habeas corpus might be sent to Ireland to remove a person taken in execution upon a judgment there. [Hill J. At that time an appeal lay from Ireland to this Court. But appeals from the colonies lie only to the Queen in Council.] There are several instances in which the jurisdiction of the English superior Courts to issue a habeas corpus to the foreign dominions of the Crown has been considered. In *Crawford's Case* (13 Q. B. 613) this Court appears to have thought that the writ, ad subjiciendum, runs at common law to the Isle of Man; at any rate since stat. 5 G. 3, c. 26, by which the island was vested inalienably in the King and his successors, as part of the dominions of the Crown of England. In *Ex parte Lees* (E. B. & E. 828) the Court refused a writ of error to bring up the record of the conviction of the prisoner for a criminal offence, by the Supreme Court of St. Helena, on the ground that the Attorney General's fiat for the writ had not been obtained. Crompton J., however, **[493]** afterwards granted a writ of habeas corpus in that case. [Crompton J. I granted the writ as ancillary to the writ of error, which the Crown had afterwards allowed to issue. Cockburn C.J. At the time of the argument of the question whether the writ of error ought to be granted, the Court seems to have doubted whether a writ of habeas corpus could issue to St. Helena. In delivering the judgment of the Court, Lord Campbell C.J. says (E. B. & E. 834), "No precedent" "of any such proceeding" as a writ of error or certiorari "with respect to a dependency like St. Helena, for several centuries, was brought before us; and it was not at all explained in what manner our writs of error, certiorari or habeas corpus would be enforced in such dependencies."] It has been decided that the writ of habeas corpus ad subjiciendum runs to Jersey; *Carus Wilson's Case* (7 Q. B. 984), *Dodd's Case* (2 De G. & J. 510). [Hill J. Suppose that we issue the writ in the present case, and that the parties to whom it is directed refuse to obey it, what remedy should we have?] The writ might then be enforced by attachment. [Hill J. Could we send our own officer to Canada for that purpose?] Yes, if necessary: and the attachment would be valid. The same difficulty, if it be one, would arise in the case of an issue of the writ to Jersey. In the case before the Court the interests of a British subject are vitally affected. The Court will not, therefore, refuse to exercise, in his favour, a jurisdiction warranted by numerous precedents, merely on the ground that there may be difficulty in enforcing the writ, when granted.

[494] The Court (*a*) retired for consultation. On their return, Cockburn C.J. delivered judgment as follows.

We have considered this matter; and the result of our anxious deliberation is, that we think the writ ought to issue. At the same time, we are sensible of the inconvenience which may result from such a step; and that it may be felt to be inconsistent with that higher degree of colonial independence, both legislative and judicial, which happily exists in modern times. Nevertheless, it is to be observed that, in establishing a local judicature in Canada, our Legislature has not gone so far as expressly to abrogate the right of the superior Courts at Westminster to issue the writ of habeas corpus to that province; which writ, in the absence of any prohibitive enactment, goes

(*a*) Cockburn C.J., Crompton, Hill and Blackburn Js.

to all parts of the Queen's dominions. Lord Coke (*b*), Lord Mansfield (*c*), Blackstone (Commentaries, vol. 3, p. 131) and Bacon's Abridgment (tit. Habeas Corpus (B) 2) all agree that writs of habeas corpus have been and may be issued into all parts of the dominions of the Crown of England, wherever a subject of the Crown is illegally imprisoned or kept in custody. In addition to these dicta of eminent authorities, we have actual precedents of the issue of the writ, in very modern times, into the Islands of Man, Jersey and St. Helena. Inasmuch, therefore, as the power of this Court thus to issue the writ has been not merely asserted as matter of doctrine, but carried into effect in practice; and as the writ has issued even into dominions of the Crown in which there is an independent local judicature; we think that nothing short of **[495]** legislative enactment would justify us in refusing to exercise the jurisdiction, when called upon to do so for the protection of the personal liberty of the subject. It may be that the Imperial Legislature has thought fit to leave the three superior Courts at Westminster the same concurrent jurisdiction in this matter with the colonial Courts that they have inter se. Both upon authority and upon precedent, we think that the writ ought to go.

Writ of habeas corpus granted (*a*).

MILVAIN AND ANOTHER *against* PEREZ AND OTHERS. Friday January 18th, 1861.

By a charterparty made between plaintiffs, shipowners, and defendants, agents in England for foreign charterers, it was agreed that plaintiffs' ship the B. should proceed to J., and there load in regular turn, in the customary manner, from defendants, a full and complete cargo of coke. It was further agreed that, as defendants were acting for foreign principals, "all liability of" defendants "in every respect, and as to all matters and things, as well before and during as after the shipping of the said cargo," should "cease as soon as they" had "shipped the cargo."—Defendants having loaded and shipped the agreed cargo, plaintiffs afterwards sued them in this action for not having shipped it in regular turn. Held, that the action would not lie, for that the charterparty limited defendants' liability to the actual shipment of the cargo, and protected them from responsibility for any irregularity or delay in the shipment.

[S. C. 30 L. J. Q. B. 90; 3 L. T. 736; 7 Jur. N. S. 336; 9 W. R. 269. Referred to, *Bannister* v. *Breslauer*, 1867, L. R. 2 C. P. 500. Discussed, *Christoffersen* v. *Hansen*, 1872, L. R. 7 Q. B. 514. Distinguished, *Francesco* v. *Massey*, 1873, L. R. 8 Ex. 103. Referred to, *Kish* v. *Cory*, 1875, L. R. 10 Q. B. 561; *French* v. *Gerber*, 1876-7, 1 C. P. D. 742; 2 C. P. D. 247; *Dunlop* v. *Balfour*, [1892] 1 Q. B. 511.]

Declaration, upon a charterparty made between plaintiffs and defendants. The charterparty, **[496]** which was set out in full, was, so far as is material, as follows.

"It is this day mutually agreed between Henry Milvain Esquire" (meaning plaintiffs), "owner of the good ship or vessel called The 'Bomarsund,'" "now in the Tyne, and Messieurs Perez, Williams & Bilton" (meaning defendants), "as agents for the charterers, that the said ship, being tight, staunch and strong, and every way fitted for the voyage, shall proceed to Ramsey's Coke Ovens at Jarrow, and there load in regular turn, in the customary manner, from the agents of the said charterers (except in case of riots, strikes, or any other accidents beyond their control, which may prevent or delay her loading), a full and complete cargo of coke;" "and being so loaded shall therewith proceed to Carthagena for orders to discharge there, at Escombreras or Porman, and there discharge the cargo upon being paid freight." "The vessel to be consigned to the charterers' agents at port of discharge, and to pay

(*b*) See *Calvin's Case*, 7 Rep. 20 a.

(*c*) In *Rex* v. *Cowle*, 2 Burr. 834, 855.

(*a*) The writ was directed to the sheriff of the county of York, in Canada, in Her Majesty's province of British North America, and the keeper of the gaol in the city of Toronto, in the said county; to the sheriff of the county of Brant, in Canada aforesaid, and to the keeper of the gaol in the town of Brantford, in the said county; and to all other sheriffs, gaolers, and all constables and others in the said province, having the custody or control of the said John Anderson.