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ADMIRALTY-JURISDICTION OVER TORTS-PERSONAL INJURIES CAUSED BY A FALL FROM VESSEL TO DOCK

RECENT DECISIONS

ADMIRALTY — JURISDICTION OVER TORTS — PERSONAL INJURIES CAUSED BY A FALL FROM VESSEL TO DOCK — Plaintiff, a longshoreman, was employed by the defendant terminal company in unloading a vessel in a Great Lakes port. While working on the deck of the vessel he was struck by a swinging hoist, precipitated upon the wharf and injured. He sought compensation under the state workmen's compensation act, but the state supreme court vacated the commission's award on the ground that the federal law controlled. *Held*, by the United States Supreme Court, that the cause of action arose on the vessel where the blow was struck and was governed by the maritime law. *Minnie v. Port Huron Terminal Co.*, (U. S. 1935) 55 S. Ct. 884.

The libelant was a passenger on the ship, *The Admiral Peoples*, and was injured while disembarking at the port of destination by a fall from the gangplank onto the dock. In a libel against the vessel, he alleged negligence in the failure of the claimant to provide a hand rope along the gangplank at the shore end, and in the failure to place the plank flush with the dock, or to warn the libelant of the six-inch step which was left between gangplank and dock. The judgment of the federal district court dismissing the action on the ground of lack of jurisdiction was affirmed by the circuit court of appeals, and certiorari was taken to the United States Supreme Court. *Held*, that the libel presented a case within admiralty jurisdiction. *Kenward v. The "Admiral Peoples,"* (U. S. 1935) 55 S. Ct. 885.

From an early date jurisdiction of the admiralty in the United States over torts has been made to depend upon the locality of the tort.[1] Likewise the situs of the cause of action is of vital importance in determining whether or not state workmen's compensation law may govern injuries received in "amphibious" employment.[2] In defining locality, the courts could have adopted as the criterion one or more of at least three possibilities: (1) the place of origin of the negligent act or omission; (2) the place where the negligence took physical effect upon the aggrieved party or his property; (3) the place where the infliction of the

[1] Thomas v. Lane, Fed. Cas. No. 13,902 (1813); De Lovio v. Boit, Fed. Cas. No. 3,776 (1815). Generally on jurisdiction of federal courts in admiralty see Brown, "Jurisdiction of the Admiralty in Cases of Tort," 9 COL. L. REV. 1 (1909); Shane, "Jurisdiction of the Admiralty over Torts," 66 U. S. L. REV. 593 (1932).

[2] Southern Pac. Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524, L. R. A. 1918C 451 (1917); Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 42 S. Ct. 157 (1922). Comments, 27 YALE L. J. 255 (1917), 27 YALE L. J. 924 (1918); 27 MICH. L. REV. 191 (1928). The requirement of uniformity announced in the Jensen case and subsequently developed precluded recovery under state workmen's compensation acts by a workman (1) whose cause of action arose on navigable waters and (2) whose employment was maritime and had a direct relation to commerce and navigation. These requirements are incorporated into the Longshoremen and Harbor Workers Act (federal compensation act) which provides that the act applies only, "if recovery for the disability may not validly be provided by state law." See 43 YALE L. J. 640 (1934); 23 CAL. L. REV. 129 (1935).

injury was completed.[3] In the leading American case, *The Plymouth*, (2) and (3) were both on land and the Supreme Court held that the case was not one for admiralty jurisdiction, saying, "the wrong and injury complained of must have been committed wholly upon the high seas or navigable waters, or, at least, the substance and consummation of the same must have taken place upon these waters to be within the admiralty jurisdiction."[4] This language has provided a workable formula in cases involving injury to property where (2) and (3) above usually coincide.[5] In the personal injury field the lower federal courts, in response to the language of *The Plymouth*, have paid lip service to the doctrine that the place of completion of the tort is determining, but the actual decisions indicate the adoption of the second criterion, since the point selected is the one at which the negligence first objectively affected the injured party.[6] The decision in the instant case, *Minnie v. Port Huron Terminal Co.*, is directly in line with this result and marks the acceptance of *The Strabo* decision by the Supreme Court.[7] But this test alone has been found unsatisfactory in situations where the negli-

[3] The same problem has arisen in the question of territorial jurisdiction over torts and crimes. See Berge, "Criminal Jurisdiction and the Territorial Principle," 30 MICH. L. REV. 238 (1931); Cook, "The Logical and Legal Bases of the Conflict of Laws," 33 YALE L. J. 457 (1924); comment, 44 YALE L. J. 1233 (1935).

[4] 3 Wall. (70 U. S.) 20 at 35 (1865). This was a libel for damages to storehouses on a wharf by the spread of a fire negligently started aboard a ship in navigable waters.

[5] This is usually true of cases involving injury to property through impact with a moving ship, where it is held that the damages to the ship are a subject for admiralty jurisdiction but that the damages to the land object struck must be remedied by common law courts. Philadelphia, W. & B. R. R. v. Philadelphia & Havre de Grace Steam Towboat Co., 23 How. (64 U. S.) 209 (1859); The Maud Webster, Fed. Cas. No. 9,302 (1877); Cleveland T. & V. R. Co. v. Cleveland S. S. Co., 208 U. S. 316, 28 S. Ct. 414 (1907). A modification to allow recovery in admiralty for an injury to an object, which, although attached to land, is a direct aid to navigation, has been adopted. The Blackheath, 195 U. S. 361, 25 S. Ct. 46 (1904); The Raithmoor, 241 U. S. 166, 36 S. Ct. 514 (1916). Generally and for suggested legislative changes see Farnum, "Admiralty Jurisdiction and Amphibious Torts," 43 YALE L. J. 34 (1933).

[6] Farnum, "Admiralty Jurisdiction and Amphibious Torts," 43 YALE L. J. 34 (1933). In The Strabo, (C. C. A. 2d, 1900) 98 F. 998, the libelant fell from the vessel to the dock due to the failure to secure the ladder at the ship end, and it was held that there was admiralty jurisdiction. In an earlier decision, The H. S. Pickands, (D. C. Mich. 1890) 42 F. 239, where the alleged negligence was in the failure to fasten a ladder at the shore end, admiralty jurisdiction was denied. The two preceding cases are, however, distinguishable in that in the former there was the additional fact that the negligence occurred on navigable waters. In Smith & Son v. Taylor, 276 U. S. 179, 48 S. Ct. 228 (1928), the injured party was, while on the dock, struck by a sling and knocked into the water, where he was later found dead. It was held that the cause of action was to be governed by the state workmen's compensation act.

[7] (U. S. 1935) 55 S. Ct. 884. Notice, however, that in the Minnie case, since a blow was received by the plaintiff while aboard the ship, it is not so clearly fictional to say, as did Shipman, J., in The Strabo, "It is highly probable that the libelant sustained some damage from nervous shock while precipitated through the air, and before he fell upon the wharf." 98 F. 998 at 1000. Cf. Smith & Son v. Taylor, 276 U. S.

gence became effective while the injured party was on a structure attached to both land and boat, such as a gangplank. In these cases the lower courts adopted an additional arbitrary test based on the direction in which the person was proceeding.[8] The decision in *Kenward v. The Admiral Peoples* tacitly recognizes the importance of direction, but language in the opinion emphasizes the fact that the gangplank was part of the equipment of the vessel. The net result would seem to be one of uncertainty. The decision carries the presumption of injury made in *The Strabo* [9] to absurd lengths, though at the same time adhering to the "place of injury" test by its emphasis on the ownership and control of the gangplank. The opinion prompts questions: What would have been the result had the libelant been proceeding from the dock to the ship? What if the gangplank had been owned and put in place by an independent dock company?

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179, 48 S. Ct. 228 (1928), which the court in the Minnie case declared to be the converse situation, but which could only be such if the court in the Minnie case were adopting the second criterion named in the text, under which it would be immaterial whether the person were knocked from the dock into the water or onto the ship.

[8] Maritime Tort, The Atna, (D. C. Wash. 1924) 297 F. 673 (fall from defective ladder while descending from ship to dock); Merchants' & Miners' Transp. Co. v. Norton, (D. C. Pa. 1929) 32 F. (2d) 513 (same, application of Longshoreman's Act). Land Tort, The Albion, (D. C. Wash. 1903) 123 F. 189 (gangplank removed, libelant walked off dock after dark); The Brand, (D. C. Ore. 1928) 29 F. (2d) 792 (workman going onto ship fell upon gangplank). Cf. The Aurora, (D. C. Ore. 1908) 163 F. 633; (D. C. Ore. 1910) 178 F. 587 (fall from gangplank to deck of ship while going aboard) where admiralty jurisdiction was allowed—a more faithful adherence to the "place of injury" doctrine. See also L'Hote v. Crowell, (C. C. A. 5th, 1931) 54 F. (2d) 212.

[9] (C. C. A. 2d, 1900) 98 F. 998. See n. 6, supra.