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Admiralty-Jurisdiction - Statute Extending Admiralty Jurisdiction to Include Amphibious Torts Resulting in Personal Injury

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RECENT DECISIONS

ADMIRALTY — JURISDICTION — STATUTE EXTENDING ADMIRALTY JURISDICTION TO INCLUDE AMPHIBIOUS TORTS RESULTING IN PERSONAL INJURY— Libelant linehandler, injured undocking a vessel, brought a personal injury action against the shipowner. Leave to amend this complaint by naming the city of Los Angeles and a tugboat company as defendants was denied by the federal district court.[1] Libelant then filed suit on the admiralty side of the same district court against the city and the tugboat company on the identical cause of action. In ruling on respondents' exceptions to this libel, *held,* exceptions overruled. Upon establishing the constitutional validity of the Admiralty Extension Act,[2] jurisdiction pursuant to its provisions can properly be exercised in the instant ship-to-shore personal injury litigation. *Fematt v. City of Los Angeles,* 196 F. Supp. 89 (S.D. Cal. 1961).

Difficulties in defining the exact limits of the constitutional grant of admiralty and maritime jurisdiction[3] have persisted throughout this country's history.[4] With the decision in *The Plymouth*[5] in 1865, it was established that admiralty tort jurisdiction was determined by locality. For a tort to be maritime in nature and cognizable in admiralty courts, it was essential that both the commission of the tortious act and the consummation of the damage or injury occur on the high seas or navigable waters, not on land or land extensions.[6] As the volume and complexity of maritime commerce and the frequency of ship-to-shore torts increased, this judicial doctrine was attacked as an arbitrary and illogical historical accident.[7] Nevertheless, relatively few finely-carved exceptions to the locality test developed,[8] and the doctrine retained its vitality with the

1 Fematt v. Nedlloyd Line, 191 F. Supp. 907 (S.D. Cal. 1961). Libelant was apparently ineligible for any seamen's or longshoremen's remedies.

2 62 Stat. 496 (1948), 46 U.S.C. § 740 (1958).

3 U.S. CONST. art. III, § 2.

4 "The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history." The Blackheath, 195 U.S. 361, 365 (1904) (Mr. Justice Holmes).

5 70 U.S. (3 Wall.) 20 (1865).

6 "Every species of tort, however occurring, and whether aboard a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance. . . . [T]he whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends—on the high seas or navigable waters." *Id.* at 36.

7 See Standing Committee on Admiralty and Maritime Law, *Report,* 55 A.B.A. REP. 303, 305 (1930) [hereinafter cited as A.B.A. REP.]; Bruncken, *Tradition and Commonsense in Admiralty,* 14 MARQ. L. REV. 16 (1929); Farnum, *Admiralty Jurisdiction and Amphibious Torts,* 43 YALE L.J. 34 (1933); Olverson, *Admiralty and the Amphibious Tort Problem,* 29 VA. L. REV. 1010 (1943); Ryan, *The Amphibious Tort Problem in Collision Cases,* 13 BROOKLYN L. REV. 129 (1947).

8 An "aid to navigation" exception was enunciated in The Blackheath, 195 U.S. 361

passage of time in both property damage and personal injury[9] amphibious tort[10] situations. No definitive judicial determination was ever made as to whether locality was the sole and exclusive test, or whether the maritime character of the particular tortious act was likewise a relevant jurisdictional consideration.[11]

Grave inequities often developed from a mechanical application of the locality test to varying factual situations.[12] Much agitation ensued for remedial legislative action to enable victims of amphibious torts to utilize admiralty procedures and remedies.[13] Serious practical disadvantages had resulted from the relegation of such suitors, usually owners of damaged land structures, to nonadmiralty tribunals. Writers and scholars focused their attention on the property damage amphibious tort situation,[14] and significantly, the act as originally proposed did not include personal injury torts.[15] With constitutional problems deterring those seeking legislative extension of admiralty tort jurisdiction, a long and difficult statutory gestation period ensued.[16] Finally enacted in 1948, the Admiralty Extension

(1904); *but see id.* at 368 (concurring opinion). Jurisdictional extensions beyond the locality test limits, in regard to seamen's and longshoremen's remedies, are strikingly indicated in O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) and in Strika v. Netherlands Ministry of Traffic, 185 F.2d 555 (2d Cir. 1950).

9 See, *e.g.*, Smith & Son v. Taylor, 276 U.S. 179 (1928); Netherlands American Steam Nav. Co. v. Gallagher, 282 Fed. 171 (2d Cir. 1922); Swayne & Hoyt, Inc. v. Barsch, 226 Fed. 581 (9th Cir. 1915).

10 Coining of the phrase "amphibious torts," to refer to those situations where a wrongful act done afloat results in damage or injury ashore, is usually ascribed to Mr. Justice Brown; see Brown, *Jurisdiction of the Admiralty in Cases of Tort*, 9 COLUM. L. REV. 1, 9 (1909).

11 See ROBINSON, ADMIRALTY 74 (1939); Brown, *supra* note 10, at 8. See generally Atlantic Transport Co. v. Imbrovek, 234 U.S. 52 (1914); Hough, *Admiralty Jurisdiction —Of Late Years*, 37 HARV. L. REV. 529, 531-33 (1924); Shane, *Jurisdiction of the Admiralty over Torts*, 66 U.S.L. REV. 593 (1932); Stumberg, *Tort Jurisdiction in Admiralty*, 4 TEXAS L. REV. 306 (1926).

12 For a detailed discussion of these inequities, and of the sometimes strange results produced, see generally S. REP. No. 1593, 80th Cong., 2d Sess. 4-6 (1948); H.R. REP. No. 1523, 80th Cong., 2d Sess. 2 (1948); Ryan, *supra* note 7, at 137-42; Comment, 24 TUL. L. REV. 453, 457 (1950); Note, 17 GEO. WASH. L. REV. 353, 356-57 (1949).

13 See 55 A.B.A. REP. 303 (1930), 56 A.B.A. REP. 311 (1931), 59 A.B.A. REP. 397 (1934), 60 A.B.A. REP. 411 (1935); Bruncken, *supra* note 7, at 25; Farnum, *supra* note 7, at 35; Olverson, *supra* note 7, at 1020.

14 See, *e.g.*, Farnum, *supra* note 7; Ryan, *supra* note 7, at 137.

15 Note, 42 HARV. L. REV. 563 (1929). Later proposed statutes included personal injury as well as property damage torts. *Compare* 56 A.B.A. REP. 311 (1931) *with* 60 A.B.A. REP. 411 (1935). See also H.R. REP. No. 1523, 80th Cong., 2d Sess. 1, 2 (1948), where it is stated that the congressional purpose in enacting this legislation is to remedy inequities to owners of land structures resulting from a denial of admiralty jurisdiction.

16 See, *e.g.*, Bruncken, *supra* note 7, at 22; Farnum, *supra* note 7; Olverson, *supra* note 7, at 1021-27; Ryan, *supra* note 7, at 142-45. *Compare* 55 A.B.A. REP. 303 (1930) *with* 60 A.B.A. REP. 411 (1935), where a significant shift in attitude toward the constitutionality of the proposed legislation is indicated. Although introduced in the 74th Congress this bill was not passed until 1948 by the 80th Congress.

Act[17] enlarges the admiralty and maritime jurisdiction of federal courts to include those amphibious torts involving either property damage or personal injury which had previously been excluded by the locality doctrine.

With statutory provisions enabling those victims of amphibious torts formerly restricted to common law remedies to utilize, alternatively, the more flexible and effective admiralty processes, inequities resulting from application of the locality test were supposedly eliminated.[18] But, though generally received favorably,[19] doubts as to the act's constitutionality remained[20]—doubts necessitating judicial resolution.[21] Although no Supreme Court determination has as yet been made, two federal court decisions subsequent to the statute's enactment have squarely faced the question of its constitutional validity.[22] In both of these cases the act was upheld as constitutional, as within the implied congressional power to legislate in regard to maritime matters.[23] However, the factual settings of both decisions involved property damage, not personal injury. In the instant case, the court makes a perceptive distinction between property damage and personal injury, in regard to the act's constitutionality.[24] While

17 62 Stat. 496 (1948), 46 U.S.C. § 740 (1958). Pertinent statutory provisions state that the "admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. . . . [S]uit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water. . . ."

18 See Note, 17 GEO. WASH. L. REV. 353, 357-60 (1949), for a discussion of the act's practical effects.

19 See, *e.g.*, Fauver, *The Extension of Admiralty Jurisdiction To Include Amphibious Torts*, 37 GEO. L.J. 252, 259 (1949); Comment, 24 TUL. L. REV. 453, 460 (1950).

20 See Fauver, *supra* note 19, at 259-60; Vogel, *Extension of Admiralty and Maritime Jurisdiction*, 16 BROOKLYN L. REV. 191 (1950); Comment, 24 TUL. L. REV. 453 (1950); Note, 17 GEO. WASH. L. REV. 353, 360-61 (1949). Since the act authorized concurrent and not exclusive admiralty jurisdiction, no jury trial guarantee problem was presented.

21 Three variously stated arguments in favor of the act's constitutionality are: (1) that it does not extend jurisdictional limits nor create any new causes of action, but merely embodies a congressional directive to the courts to exercise already existing jurisdiction; (2) that it merely amends the substantive and procedural maritime law, and does not extend jurisdiction; and (3) that prior court decisions were construing the Judiciary Act, not the constitutional grant of admiralty jurisdiction. On close inspection, all of these arguments are conclusory verbal formulae, begging the essential question of validity.

22 United States v. Matson Nav. Co., 201 F.2d 610 (9th Cir. 1953); American Bridge Co. v. The Gloria O, 98 F. Supp. 71 (E.D.N.Y. 1951).

23 "What constituted an 'admiralty' or 'maritime' case, the founding fathers did not say, but they must have intended those words as embracing the broad subject matter of maritime law according to the general practices relating to it and at all times subject to definite provision by Congress and judicial decision within the reasonable scope of the terms used." United States v. Matson Nav. Co., *supra* note 22, at 612.

24 "None of these cases involved injury to person. There is no mention in the Senate Report or in any of the accompanying letters of injury to person. . . . It may be granted that Congress has the power to set aside, and has in fact set aside, the

several federal courts have exercised jurisdiction under this statute in personal injury situations, in none of these cases was its constitutionality discussed or apparently disputed.[25]

Although a de novo analysis of the act's constitutionality as to personal injury amphibious torts is certainly justifiable, it is extremely doubtful that this statute will be found unconstitutional, as regards either property damage or personal injury situations, when the question is finally adjudicated.[26] Sound and logical bases for its constitutional validity can be predicated. An implied congressional legislative power relating to maritime matters has long been recognized.[27] Valid analogical precedents in which legislative extensions of admiralty jurisdiction were judicially upheld are readily available.[28] Also, the circumstances of necessity out of which this legislation arose,[29] and the general liberality of the Supreme Court are significant operative factors. Even so, the holding in the instant decision, in its carefully-phrased conclusion, is somewhat uncertain and rather restricted to the particular factual situation.[30] It is a reasonable assumption that the Supreme Court, in passing on the act's constitution-

'locality' test for admiralty jurisdiction over ship-to-shore torts. It may not be so quickly granted that the Act is constitutional, at least where the tort results in injury to person." Principal case at 91-92.

25 *E.g.*, Hovland v. Fearnley & Eger, 110 F. Supp. 657 (E.D. Pa. 1952); Valerio v. American President Lines, 112 F. Supp. 202 (S.D.N.Y. 1952).

26 Convincing arguments in favor of its constitutionality have frequently been made. See, *e.g.*, GILMORE & BLACK, THE LAW OF ADMIRALTY 433 (1957); Fauver, *supra* note 19; Knauth, *The Landward Extension of Admiralty Jurisdiction: the 1948 Statute*, 35 CORNELL L.Q. 1 (1949).

27 The gradual development of a judicial recognition of an implied congressional power to modify the maritime law as changed conditions and experience dictated can be traced through various Supreme Court decisions. This implied power is usually grounded on the combination of the jurisdictional grant and the "necessary and proper" clause in the Constitution. See, *e.g.*, Southern Pac. Co. v. Jensen, 244 U.S. 205, 215 (1917); Panama R.R. v. Johnson, 264 U.S. 375, 386 (1924); Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 43-44 (1934); O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 40-41 (1943). An excellent argument favoring such an implication is stated in The Oconee, 280 Fed. 927, 931-32 (E.D. Va. 1922).

28 The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1851); Richardson v. Harmon, 222 U.S. 96 (1911); Detroit Trust Co. v. The Thomas Barlum, *supra* note 27 (significant in upholding the Ship Mortgage Act of 1920); O'Donnell v. Great Lakes Dredge & Dock Co., *supra* note 27. In Richardson v. Harmon, *supra*, the questioned statute was upheld although extending a shipowner's limitation of liability to non-maritime torts. It is noted that the Supreme Court has never held unconstitutional any statute extending admiralty jurisdiction beyond previously established judicial limits.

29 "But a very little history is sufficient to justify the conclusion that the Constitution does not prohibit what convenience and reason demand." The Blackheath, 195 U.S. 361, 367 (1904).

30 "While the proof is far from conclusive, the force of . . . [various authority] is strong enough . . . to hold that the present tort is a maritime one and that Congress could constitutionally place it under the admiralty jurisdiction of the district courts." Principal case at 93.

ality, will likewise limit its application to situations obviously maritime in nature. Such a limitation can be found expressly in the statute's language,[31] or implicitly as a necessary construction to uphold its constitutional validity. Thus, pursuant to the Admiralty Extension Act, the maritime character of the particular amphibious tort has supplanted locality as the jurisdictional test.[32]

Even though held constitutional, the propriety of this jurisdictional extension to include personal injury amphibious torts, and especially of any additional expansion of admiralty jurisdiction, considered in perspective, is questionable. Separate admiralty jurisdiction ostensibly indicates an intelligible national interest in the expeditious and uniform handling, by competent tribunals employing flexible procedures, of the somewhat unique and specialized legal problems arising in the maritime industry.[33] Historically, there was a definite need in an incipient federal state for nationally-unified judicial administration of litigation concerning maritime and navigational matters, as an instrument of foreign policy.[34] Exceptional and efficacious procedures and remedies of ancient origin and traditional usage were common to maritime courts in seafaring countries. These had developed principally because of the peculiar nature of the shipping industry, its devices and modes of operation, and were utilized to insure the continued smooth flow of international maritime commerce. Admittedly, a somewhat consistent trend toward jurisdictional broadening has characterized this country's judicial history. However, with the modern development of other equally unique, world-wide transportation and commercial media, the wisdom of any further enlargements of admiralty jurisdiction is dubious and arguably discriminatory.

Arguments for extension of admiralty jurisdiction to include damage to land structures do not apply with equal force to personal injury cases. As the majority of such personal injury situations which arise are encompassed by seamen's and longshoremen's statutory and other specialized remedies, and injured suitors will usually prefer jury trials in non-admiralty courts, the volume of personal injury suits will be quite small

31 Especially in the phrase "caused by a vessel on navigable water." 62 Stat. 496 (1948), 46 U.S.C. § 740 (1958). Certain interpretative difficulties arising from this statutory language are presented. See Hovland v. Fearnley & Eger, 110 F. Supp. 657 (E.D. Pa. 1952). Regarding some other problems created or not settled by the act, see Note, 17 GEO. WASH. L. REV. 353, 360 (1949). As to ambiguities in regard to the act's effects on longshoremen's statutory remedies, see 30 TEXAS L. REV. 625, 627 (1952).

32 Such had long been the accepted test of admiralty jurisdiction in contractual situations. See Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870).

33 See generally Black, *Admiralty Jurisdiction: Critique and Suggestions*, 50 COLUM. L. REV. 259 (1950); Bruncken, *supra* note 7, at 24-25.

34 THE FEDERALIST No. 80, at 534, 538 (Cooke ed. 1961) (Hamilton); Note, 67 HARV. L. REV. 1214 (1954). See generally Putnam, *How the Federal Courts Were Given Admiralty Jurisdiction*, 10 CORNELL L.Q. 460 (1925).

when compared with the number of property damage cases. The special expertise of admiralty tribunals is little needed in most personal injury amphibious tort situations,[35] and pressure for statutory extension related exclusively to the property damage factual setting. Personal injury litigation in jury-equipped common law courts absolves admiralty judges from the onerous task of handling the difficult damage ascertainment problems often presented, and from writing detailed opinions justifying such determinations. Importantly, providing an option to complainants to sue at law or in admiralty is an open invitation to "forum-shopping," with its insidious effects on the orderly administration of justice.

Although the propriety of including personal injury amphibious torts is arguable, a narrow construction and limited application of the Admiralty Extension Act's provisions will accomplish the needed immediate reform while not unduly enlarging the scope of admiralty jurisdiction. Nevertheless, a purposeful jurisdictional distribution system, beyond the reach of this essentially remedial statute of narrow application, is badly needed in this area of the law.[36] Basically, admiralty and maritime jurisdiction should be confined to those situations in which there exists a real and substantial relationship with the conduct of maritime affairs.[37] While a thoroughgoing reorganization of jurisdictional concepts remains a necessity, history and logic indicate that the expansion of maritime jurisdiction has reached its high water mark with the 1948 statute. Any further enlargement is apt to produce more harm and confusion than concrete and beneficial results.

Francis X. Beytagh

[35] This assertion is grounded principally on the basic difference between the manner in which property damage and personal injuries typically occur. Moving ships or operating equipment thereof usually cause damage to shore structures, with intricate navigational and shiphandling questions often being presented. Personal injuries, on the other hand, arise from a variety of causal factors, with few involving technical issues of a maritime nature.

[36] See Black, *supra* note 33, at 273-80.

[37] *Ibid.*