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Admiralty - Jurisdiction - Action for Wrongful Death on the High Seas Limited to Admiralty

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RECENT DECISIONS

ADMIRALTY—JURISDICTION—ACTION FOR WRONGFUL DEATH ON THE HIGH SEAS LIMITED TO ADMIRALTY—Plaintiff as widow and administratrix seeks damages from the United States for the alleged wrongful death of her husband on the high seas. Action was brought at law under the Federal Tort Claims Act.[1] Government's motion to dismiss was sustained. There is no common law cause of action for wrongful death on the high seas. The federal Death on the High Seas Act[2] gives a remedy to the representative only "in Admiralty," and thus jurisdiction is lacking at law in the district court. *Kunkel v. United States,* (S.D. Cal. 1956) 140 F. Supp. 591.

Maritime jurisdiction, given to the Federal Government by the Constitution,[3] has, since the first Judiciary Act of 1789, been shared with state courts.[4] The current act provides that "the district courts shall have original jurisdiction, exclusive of the courts of the States, of: any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."[5] The effect of the saving-to-suitors clause has been to provide a choice of tribunals for plaintiffs bringing suits under maritime law. An action may be brought in admiralty court or, if only a common law damage remedy is sought, the action may be heard in a state or federal court with a jury. Contrary to the interpretation of the principal case, the clause has not ordinarily been held to save to suitors only common law causes of action. The admiralty courts do have exclusive jurisdiction for a libel in rem (an action against the vessel), as this was not a common law remedy;[6] but personal actions—even those based on a substantive maritime right—may be heard in any court where jurisdiction is obtained over the person.[7] For example, such common law maritime rights as maintenance and cure[8] (a duty on the master to provide for the maintenance and cure of seamen who fall sick or are injured in the service of the ship) and unseaworthiness[9] (an implied warranty to seamen that ship and equipment are free from defect) may be brought as personal actions at law in state courts or federal courts as well as in admiralty. These actions were traditionally brought in admiralty courts, yet the saving-to-suitors clause afforded an opportunity to use a common law damage remedy in any court

1 28 U.S.C. (1952) §§2671 to 2680.
2 41 Stat. 537 (1920), 46 U.S.C. (1952) §§761 to 768.
3 U.S. CONST., art. III, §2.
4 1 Stat. 76 (1789).
5 28 U.S.C. (1952) §1333 (1).
6 The Moses Taylor, 4 Wall. (71 U.S.) 411 (1866).
7 See, 1 BENEDICT, ADMIRALTY, 6th ed., 35 (1940), and ROBINSON, ADMIRALTY 22 (1939), for discussions on the choice of remedies in maritime law.
8 Leon v. Galceran, 11 Wall. (78 U.S.) 185 (1870); Cuccia v. United States Shipping Board, (N.Y. 1928) 1928 A.M.C. 435; Compton v. Hammond Lumber, (Ore. 1936) 1936 A.M.C. 552, revd. 1936 A.M.C. 844.
9 Larson v. Alaska Shipping Co., 96 Wash. 665, 165 P. 880 (1917). See The Osceola, 189 U.S. 158 (1903), for discussion of unseaworthiness, maintenance and cure, and a general history of maritime law.

having jurisdiction over the parties. The Seamen's Act of 1920[10] added to the substantive maritime law by giving seamen various new rights. For the first time seamen were given an action for injury due to negligence, and their representatives were given an action for wrongful death. According to the statute, these new rights could be enforced by personal actions at law in state and federal courts, but the Supreme Court in a situation analogous to that of the principal case held that admiralty jurisdiction is open to the adjudication of all maritime cases as a matter of course according to the Constitution. The Court also held that a resort to common law remedies is a matter of grace stemming from the judiciary acts and the pattern of maritime jurisdiction which has grown up in this country.[11] The federal Death on the High Seas Act (DHSA) provides that "whenever the death of a person shall be caused by wrongful act . . . on the high seas . . . the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty . . . against the vessel, person, or corporation which would have been liable if death had not ensued."[12] The principal case interprets the clause "may maintain a suit . . . in admiralty" as limiting the remedy for a wrongful death action exclusively to admiralty courts.[13] State and federal courts have split on this interpretation. The contrary view is that Congress provided a right of action which may be enforced in any court, and in addition, the wrongful death action may be enforced in admiralty with all admiralty remedies including a libel in rem.[14] The Seamen's Act was passed a few months prior to the DHSA. Nothing appears in the language of the DHSA, the committee reports, or the *Congressional Record* to indicate that Congress intended the remedies of the two acts to vary.[15] Thus a seamen has a complete choice of

[10] 41 Stat. 988 (1920), 46 U.S.C. (1952) §688 (often referred to as the Seamen's Act of 1920 or the Jones Act).

[11] Panama Ry. v. Johnson, 264 U.S. 375 at 390 (1924). State courts were held to have jurisdiction also in Panama Ry. v. Vasquez, 271 U.S. 557 at 560 (1926). "This clause . . . [the saving to suitors clause] . . . has always been construed as permitting substantive rights under the maritime law . . . to be asserted and enforced in actions *in personam* according to the course of common law . . . [a]nd it uniformly has been regarded as permitting such action to be brought in either the federal courts or the state courts, as the possessor of the right may elect."

[12] 41 Stat. 537 (1920), 46 U.S.C. (1952) §761.

[13] *Accord:* Higa v. Transocean Airlines, (9th Cir. 1955) 230 F. (2d) 780; Wilson v. Transocean Airlines, (N.D. Cal. 1954) 121 F. Supp. 85; Iafrate v. Compagnie Generale Transatlantique, (S.D. N.Y. 1952) 106 F. Supp. 619; Birks v. United Fruit, (S.D. N.Y. 1930) 48 F. (2d) 656; Egan v. Donaldson Atlantic Lines, (S.D. N.Y. 1941) 37 F. Supp. 909; Echavarria v. Atlantic & Caribbean Steam Navigation, (E.D. N.Y. 1935) 10 F. Supp. 677; Dall v. Cosulich Societa Triestina Di Navigazione, (S.D. N.Y. 1928) 1936 A.M.C. 359.

[14] Sierra v. Pan American World Airways, (D.C. Puerto Rico 1952) 107 F. Supp. 519; Bugden v. Trawler Cambridge, 319 Mass. 315, 65 N.E. (2d) 533 (1946); Wyman v. Pan American Airways, 181 Misc. 963, 43 N.Y.S. (2d) 420 (1943), affd. 293 N.Y. 878, 59 N.E. (2d) 785 (1944), cert. den. 324 U.S. 882 (1945); Batkiewicz v. Seas Shipping, (S.D. N.Y. 1943) 53 F. Supp. 802; Choy v. Pan American Airways, (S.D. N.Y. 1941) 1941 A.M.C. 483; Elliott v. Steinfeldt, 254 App. Div. 739, 4 N.Y.S. (2d) 9 (1938); The Saturnia, (S.D. N.Y. 1936) 1936 A.M.C. 469.

[15] 59 CONG. REC. 4482 (1920); S. Rep. 216, 66th Cong., (1920); H. Rep. 264, 66th Cong. (1920).

forums in which to bring an action for an injury to himself, as does his representative in bringing an action for the seaman's wrongful death. Under the saving-to-suitors clause, a passenger who is injured on the high seas has a similar choice,[16] but if he dies, the principal case would restrict his representative to a remedy only in admiralty. The pattern of maritime jurisdiction has been to provide plaintiffs with an opportunity to enforce maritime rights by common law damage remedies in law courts where a jury is available, as well as in admiralty courts. If Congress had desired to change this pattern in the DHSA, definite language would have been used. A court should not give this section of the statute a meaning inconsistent with the over-all legislative pattern. There is no apparent reason why seamen and passengers should be treated differently when personal representatives sue for their wrongful death. The clause saving to suitors the right to a remedy at law has been liberally interpreted in all prior instances, and no special reasons appear for the restrictions imposed on it by the principal case.

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[16] Schoonmaker v. Gilmore, 12 Otto. (102 U.S.) 118 (1880); Jansson v. Swedish American Line, (1st Cir. 1950) 185 F. (2d) 212.