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## ADMIRALTY-SEAPLANE A "VESSEL" FOR PURPOSE OF SALVAGE

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## RECENT DECISIONS

ADMIRALTY—SEAPLANE A "VESSEL" FOR PURPOSE OF SALVAGE—Defendant's seaplane landed at sea out of gasoline and without a compass. The *m/s Batory* took both the pilot and the plane aboard. In a libel for conversion of the seaplane, *held*, a cross-libel for salvage services stated a cause of action because a seaplane is a vessel for purpose of salvage. *Gdynia-American Shipping Lines, Ltd. v. Lambros Seaplane Base, Inc.*, (D.C. N.Y. 1953) 115 F. Supp. 796.

With the exception of an early case holding that land-based aircraft crashing at sea are not subject to salvage<sup>1</sup> and dicta in the *Reinhardt* case<sup>2</sup> to the effect that a seaplane could be a salvageable object, there are no American cases involving salvage of seaplanes. A British court has held that a seaplane is not a "vessel" subject to claim for salvage services.<sup>3</sup> Salvage is not based on statute law but is inherent in the general jurisdiction of the admiralty courts. Yet an object is not subject to salvage merely because it floats on navigable water within the jurisdiction of the admiralty, for "salvage is only spoken of in relation to ships and vessels or their cargoes. . ."<sup>4</sup> In the past, for various purposes other than salvage, it has been held both that a seaplane is and is not a vessel. In the leading case on the status of the seaplane, Judge Cardozo held that a seaplane is a vessel for the purpose of giving the admiralty exclusive jurisdiction over the claim of an employee injured by a floating seaplane.<sup>5</sup> A seaplane has also been held to be a vessel within the meaning of statutes excluding compasses used on naval vessels from tariff duties,<sup>6</sup> requiring mufflers on vessels powered by gasoline engines,<sup>7</sup> and regulating the use of power vessels on inland lakes.<sup>8</sup> But seaplanes are not vessels for the purpose of imposing maritime liens on them for repairs,<sup>9</sup> nor within the meaning of collision clauses in marine insurance policies.<sup>10</sup> It has further been held that they are not vessels for the purpose of statutes limiting the liability of owners of vessels,<sup>11</sup> making it a crime to stowaway on a vessel,<sup>12</sup> and extending criminal

<sup>1</sup> *The Crawford Brothers No. 2*, (D.C. Wash. 1914) 215 F. 269.

<sup>2</sup> *Reinhardt v. Newport Flying Service Corp.*, 232 N.Y. 115, 133 N.E. 371 (1921), 18 A.L.R. 1324 at 1327 (1922).

<sup>3</sup> *Watson v. R.C.A. Victor Co.*, 50 Lloyds List L. R. 77 (1934). The British Air Navigation Act, 1 Edw. VIII, c. 44 (1936), has overruled the holding of this case.

<sup>4</sup> *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625 at 629, 7 S.Ct. 336 (1887); 78 C.J.S., Salvage §28 (1952); ROBINSON, ADMIRALTY §8 (1939).

<sup>5</sup> *Reinhardt v. Newport Flying Service*, note 2 *supra*.

<sup>6</sup> *Treas. Dec. 36,156* (1916).

<sup>7</sup> *People of New York, ex rel. Cushing v. Smith*, 206 App. Div. 726, 198 N.Y.S. 940 (1923).

<sup>8</sup> See [1930] U.S. Av. R. 193.

<sup>9</sup> *United States v. Northwest Air Service*, (9th Cir. 1935) 80 F. (2d) 804; *The Crawford Brothers No. 2*, note 1 *supra*.

<sup>10</sup> *Polpen Shipping Co. v. Commercial Union*, [1943] K.B. 161.

<sup>11</sup> *Dollins v. Pan-American Grace Airways, Inc.*, (D.C. N.Y. 1939) 27 F. Supp. 487; *Noakes v. Imperial Airways, Ltd.*, (D.C. N.Y. 1939) 29 F. Supp. 412. The Warsaw Convention, 49 Stat. L. 3000 (1934), presently limits the liability of owners of aircraft in international commerce. See *Ross v. Pan-American Airways*, 299 N.Y. 88, 85 N.E. (2d) 880 (1949).

<sup>12</sup> *United States v. Peoples*, (D.C. Cal. 1943) 50 F. Supp. 462.

jurisdiction to vessels on the high seas.<sup>13</sup> As used in federal statutes, "the word 'vessel' includes every description of watercraft and other artificial contrivance used, or capable of being used as a means of transportation on water."<sup>14</sup> Salvage is a reward given those whose voluntary efforts result in the saving of life and property from marine peril, and its purpose is to encourage seamen to render prompt service in future emergencies so as to rescue property which might otherwise be lost.<sup>15</sup> In the case of salvage of structures used exclusively on or under the water's surface, "vessel" has been given a liberal interpretation,<sup>16</sup> and it has been broadly stated that "any valuable property may be the subject of a libel for salvage, provided it shall have been saved under conditions which of themselves give the admiralty jurisdiction."<sup>17</sup> In view of the fact that as to seaplanes the courts have given "vessel" a flexible interpretation in other contexts, depending upon the desirability of applying some specific rule to them, it would seem that whether the rescue of seaplanes at sea should be governed by salvage rules would depend upon whether these admiralty rules can be conveniently utilized for this purpose. The policy of giving a salvage award to encourage seamen to try to rescue a *steamship* from marine peril would seem to require the same award if a *seaplane* is saved from the same danger. Like a steamship, a seaplane is a commercial carrier and valuable property, subject to unexpected marine dangers; and help is no more available to it than to steamships in the same distress.<sup>18</sup> In the past, the jurisdiction of the admiralty has expanded as different methods of commerce developed. The steamship and submarine, objects unknown to the admiralty or law of salvage in 1750, are now salvageable. In view of this history of expanding jurisdiction and of the fact that the policy underlying the salvage award applies to aircraft as well as surface vessels,<sup>19</sup> there does not seem to be any reason why in 1954 a seaplane should not be the subject of a salvage claim.<sup>20</sup>

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<sup>13</sup> *United States v. Cordova*, (D.C. N.Y. 1950) 89 F. Supp. 298.

<sup>14</sup> 61 Stat. L. 633 (1947), 1 U.S.C. (Supp. V, 1952) §3.

<sup>15</sup> *The Sabine*, 101 U.S. 384 (1879); 1 *BENEDICT, ADMIRALTY* 334 (1940).

<sup>16</sup> 4 *AIR L. REV.* 432 (1933); principal case at 797.

<sup>17</sup> *Maltby v. Steam Derrick Boat*, (D.C. Va. 1879) 16 Fed. Cas. 564, No. 9,000.

<sup>18</sup> Recognizing this, both the Habana Air Convention, 47 Stat. L. 1901 (1931), and the Brussels Convention on Aircraft Salvage at Sea [see Latchford, *Brussels Air Law Conference*, 10 *J. AIR LAW* 147 (1939)] provide for salvage awards for rescue of aircraft at sea. However, the Habana Convention was superseded by the Chicago Convention on International Civil Aviation, 61 Stat. L. 1180, c. 17 (1947), which does not mention air salvage, and the Brussels Convention, though signed, was never ratified by the United States; neither is now law for the United States.

<sup>19</sup> As seaplanes are designed to land and take off from water, the argument for including them within the admiralty's jurisdiction is stronger than that for the land-based aircraft. Yet once the latter are upon navigable water and so within the peculiar jurisdiction of the admiralty, the policy underlying the law of salvage seems broad enough to include them as well as seaplanes.

<sup>20</sup> See generally Knauth, "Aviation and Salvage," 36 *COL. L. REV.* 224 (1936); 9 *AIR L. REV.* 200 (1938).