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WORKMEN'S COMPENSATION - ADMIRALTY JURISDICTION

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WORKMEN'S COMPENSATION — ADMIRALTY JURISDICTION — The deceased, a structural steelworker, was employed to dismantle an abandoned drawbridge which spanned a navigable river. At the time of the accident, he was examining steel which had been cut from the bridge and lowered into a barge used to haul it to the storage point and from this barge "he either fell or was knocked into the river." The company which employed him was a contributor to the Washington Compensation Fund,[1] a compulsory act for employers engaged in the type of work for which the deceased had been employed. In this proceeding the widow appealed on writ of certiorari from a decision in which the Washington Supreme Court [2] held that she could not, consistently with the federal Constitution, recover an award under the state compensation law for the death of her husband. The opinion of the Washington court was based on the ground that to allow the state law to operate in this case would work material prejudice to the characteristic features of the general maritime law. *Held*, the state court is reversed. In view of the difficulty involved in formulating any guiding, definite rule to determine the extent and limits within which state laws may validly provide compensation for employees injured on navigable waters, the courts will rely "heavily" on the presumption of constitutionality in favor of the

[1] Wash. Rev. Stat. (Remington, 1932), §§ 7674, 7693a. The act applies to "all employees or workmen . . . engaged in maritime occupations for whom no right or obligation exists under the maritime laws." The Longshoremen's and Harbor Workers' Act, 44 Stat. 1424 (1927), 33 U. S. C. (1940), § 901 et seq., applies only "if recovery . . . may not validly be provided by state law." Both acts, therefore, show clearly that neither was intended to intrude into the field occupied by the other.

[2] Lower court decision, 12 Wash. (2d) 349, 121 P. (2d) 365 (1942).

state enactments and in each case presume that the jurisdiction in which the action is brought is the correct one. *Davis v. Department of Labor and Industries of State of Washington*, 317 U. S. 249, 63 S. Ct. 225 (1942).

For a quarter of a century the uncertainties and complexities inherent in the so-called uniformity rule [3] have plagued both federal and state courts, indicating that it is virtually impossible to determine with exactness when, as the rule provides, state legislation is unconstitutional because its application "works material prejudice to the characteristic features of the general maritime law." [4] This rule began its turbulent career, when in *Southern Pacific Co. v. Jensen*,[5] the Supreme Court declared that state workmen's compensation could not, consistently with the requirement of uniformity, be extended to stevedores injured on navigable waters. Numerous cases, however, decided both before and after the *Jensen* decision have recognized the necessity and convenience of permitting state laws to apply to many matters of a maritime nature. Some of these intrusions have been justified under the saving clause [6] of the Judicial Act of 1789 [7] and others by virtue of a relatively new principle, the "doctrine of local concern." [8] In 1917,[9] just five months after the *Jensen* decision, and again in 1922 [10] an attempt was made by congressional amendment to bring state workmen's compensation laws within the saving clause. In each case the effort was declared unconstitutional.[11] *Grant Smith-Porter Ship Co. v. Rohde*,[12] however, established that in certain instances where the subject matter of the employment is

[3] The rule was established in Southern Pacific Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524 (1917). Numerous articles have discussed this doctrine, including: Cunningham, "Is Every County Court in the United States a Court of Admiralty?" 53 AM. L. REV. 749 (1919); Dodd, "The New Doctrine of the Supremacy of Admiralty over the Common Law," 21 COL. L. REV. 647 (1921); FELL, RECENT PROBLEMS IN ADMIRALTY JURISDICTION (1922) (Johns Hopkins Univ. Studies in Historical and Political Science, Ser. 40, No. 3); Palfrey, "The Common Law Courts and the Law of the Sea," 36 HARV. L. REV. 777 (1923); Wright, "Uniformity in Maritime Law," 73 UNIV. PA. L. REV. 123, 223 (1925); Morrison, "Workmen's Compensation and the Maritime Law," 38 YALE L. J. 472 (1929); Conlen, "Ten Years of the Jensen Case," 76 UNIV. PA. L. REV. 926 (1928).

[4] Southern Pacific Co. v. Jensen, 244 U. S. 205 at 216, 37 S. Ct. 524 (1917).

[5] Id.

[6] Cooley v. Board of Wardens, 12 How. (53 U. S.) 299 (1851); Morgan's Louisiana & T. R. & S. S. Co. v. Louisiana Board of Health, 118 U. S. 455, 6 S. Ct. 1114 (1886); Steamboat Co. v. Chase, 16 Wall. (83 U. S.) 522, (1872); Western Fuel Co. v. Garcia, 257 U. S. 233, 42 S. Ct. 89 (1921); Cummings v. Chicago, 188 U. S. 410, 23 S. Ct. 472 (1903); Huse v. Glover, 119 U. S. 543, 7 S. Ct. 313 (1886).

[7] Judiciary Act of 1789, 1 Stat. L. 76. Cf. Rev. Stat. (1874), § 563, and 28 U. S. C. (1940), § 41.

[8] Established in Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 42 S. Ct. 157 (1922). See Hatch, "The 'Maritime' Twilight Zone from the Standpoint of Compensation Administration," 11 AM. LAB. LEG. REV. 148 (1921).

[9] 40 Stat. L. 395 (1917), 28 U. S. C. (1940), § 41 (3).

[10] 42 Stat. L. 634 (1922), 28 U. S. C. (1940), § 41 (3).

[11] Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 40 S. Ct. 438 (1920); Washington v. W. C. Dawson & Co., 264 U. S. 219, 44 S. Ct. 302 (1924).

[12] 257 U. S. 469, 42 S. Ct. 157 (1922).

essentially of local concern the application of state law will not interfere with the proper harmony and uniformity of the maritime law. When a state could and when it could not extend the protection of its compensation laws to employees injured on navigable waters became, by the *Rohde* decision, a perplexing problem which turns upon the somewhat nebulous doctrine of local concern.[13] The Longshoremen's and Harbor Worker's Act[14] merely perpetuated this jurisdictional difficulty by making the federal law applicable only if recovery could not validly be provided by state law.[15] This much seems to be definite: if the accident occurred on navigable waters and the subject matter of the employment is maritime, then the state laws are excluded;[16] but if the accident occurred on land[17] or if the character of the employment is of local concern,[18] then the state laws may validly apply and the federal act is inoperative. The greatest difficulty arises in determining when the character of the employment is of local concern. By the *Jensen* decision, basic conditions are factual and since they are necessarily jurisdictional facts, an appeal from the findings of either state or federal compensation commissions entitles the appellant to a trial de novo upon these facts.[19] The burden thus placed upon the tribunals and litigants is manifest. Before bringing his action, the employee must determine with certainty factual questions over which the courts themselves are in substantial disagreement, and in case of error he may not only suffer financial loss but discover

[13] See Horowitz, "How Far Workmen's Compensation Acts Can Apply to Maritime Law," 19 PROCEEDINGS OF THE ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, 119 (1933) (Bureau of Labor Statistics, Bull. No. 577).

[14] 44 Stat. L. 1424 (1927), 33 U. S. C. (1940), §§ 901-950.

[15] See supra, note 1.

[16] Northern Coal & Dock Co. v. Strand, 278 U. S. 142, 49 S. Ct. 88 (1928); Wheeler Shipyard v. Lowe, (D. C. N. Y. 1935) 13 F. Supp. 863; Robins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449, 45 S. Ct. 157 (1925); John Baizley Iron Works v. Span, 281 U. S. 222, 50 S. Ct. 306 (1930); Moore Dry Dock Co. v. Pillsbury, (C. C. A. 9th, 1938) 100 F. (2d) 245. See also Motor Boat Sales v. Parker, (C. C. A. 4th, 1941) 116 F. (2d) 789.

[17] Admiralty has no jurisdiction in such cases.

[18] Johnson v. Swonder, 84 Ind. App. 155, 150 N. E. 615 (1926); Madderns v. Fox Film Corp., 205 App. Div. 791, 200 N. Y. S. 344 (1923); Travelers Ins. Co. v. Bacon, 30 Ga. App. 728, 119 S. E. 458 (1923); United Dredging Co. v. Industrial Comm., 92 Cal. App. 110, 267 P. 763 (1928); In re Herbert, 283 Mass. 348, 186 N. E. 554 (1933); Dewey Fish Co. v. Dept. of Labor and Industries, 181 Wash. 95, 41 P. (2d) 1099 (1935); Jones v. International Mercantile Marine Co., 252 App. Div. 347, 300 N. Y. S. 238 (1937); McBride v. Standard Oil Co., 196 App. Div. 822, 188 N. Y. S. 90 (1921); Grant Smith-Porter Ship Co. v. Rohde, 257 U. S., 469, 42 S. Ct. 157 (1922).

[19] Crowell v. Benson, 285 U. S. 22 at 55, 52 S. Ct. 285 (1931), stated: "Not only is navigability itself a question of fact, as waters that are navigable in fact are navigable in law, but, where navigability is not in dispute, the locality of the injury, that is, whether it has occurred upon the navigable waters of the United States, determines the existence of the congressional power to create the liability prescribed by the statute."

that his claim in the proper forum has been barred by the statute of limitations.[20] Such a situation is intolerable in a field where definite, speedy and inexpensive remedies are so highly desirable. To cope with this situation, the court in the principal case adopts a well-recognized doctrine which has been applied elsewhere in our law when the interests of two jurisdictions clash. It relies heavily on the presumption of constitutionality in favor of state legislation by resolving all doubts in favor of the act.[21] Similarly, when a federal commission has taken jurisdiction there is a presumption in favor of its findings if supported by sufficient evidence.[22] While these presumptions undoubtedly benefit the employee, they place a greater burden upon the employer, since in doubtful cases he may be held accountable under either the federal or the state acts and must, therefore, comply with both. Indeed, it would seem that so long as the *Jensen* decision is followed, and perhaps even if it is overruled, either the employee or the employer must suffer the burden of determining in each case with which jurisdiction he should comply. The court in the principal case feels that it is more nearly equitable to place the burden upon the employer since he is the one best able to sustain it. In his dissenting opinion, Chief Justice Stone indicated that, while he was entirely sympathetic with any effort to lessen the uncertainties and complexities which have resulted from the *Jensen* decision, any solution which creates a "dual system of presumptions" and construes the state and federal acts so that their coverage overlaps is clearly neither permissible nor practicable. His objections to the majority opinion are threefold: first, it is logically absurd that two mutually exclusive jurisdictions should overlap; secondly, it places an undue burden upon the employer; and thirdly, it controverts the express terms of the federal statute. He also pointed out that the Court would find itself in a very embarrassing situation if both jurisdictions were to deny their authority to grant compensation and the Court were compelled to presume both were correct. The majority of the Court, however, indicated that they are not entirely satisfied with their solution and will in the future lend sympathetic consideration to any plan devised to eliminate this unfortunate situation, even though it involves overruling the *Jensen* decision.

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[20] See dissent in principal case.

[21] South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510 (1938); Southern Ry. v. King, 217 U. S. 524, 30 S. Ct. 594 (1910); Pure Oil Co. v. Minnesota, 248 U. S. 158, 39 S. Ct. 35 (1918).

[22] Parker v. Motor Boat Sales, 314 U. S. 244, 62 S. Ct. 221 (1941).