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ADMIRALTY - UNIFORMITY RULE

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COMMENTS

ADMIRALTY — UNIFORMITY RULE — From the words of the Federal Constitution the federal courts have spelled out the rule that maritime matters shall be governed by a uniform set of laws. These laws consist of the general maritime law at the adoption of the Constitution plus regulations subsequently promulgated by Congress.[1] The decisions which have outlined the "uniformity rule" have concerned themselves with admiralty's interrelationship with interstate com-

[1] The Lottawanna, 21 Wall. (88 U. S.) 558 (1874); Southern Pacific Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524 (1917); The Thomas Barlum, 293 U. S. 21, 55 S. Ct. 31 (1934); ROBINSON, ADMIRALTY 8, 9 (1939).

merce.[2] A recent application of the rule suggests another problem which uniformity is designed to circumvent—the difficulty of enforcing local rules against subjects on navigable waters.[3] The federal courts have not always been precise in their application of the federal admiralty law as opposed to the local state laws,[4] and it is the purpose of this comment to point out that historically the law of admiralty has been developed from a basic pattern of uniformity, and to stress the importance of uniformity in the future regulation of maritime and perhaps air commerce.[5]

The federal government's exclusive control over admiralty originates in the express words of the Constitution, which provide that the power of the federal judiciary shall extend "to all cases of admiralty and maritime jurisdiction," and that "Congress shall have power . . . to regulate commerce with foreign nations and among the several states." This authority was necessarily given to the central government, because the inherent nature of admiralty, with its important ramifications in the sphere of interstate and foreign commerce, requires that its law be uniformly applied. Provincial restrictions on commerce were the very defects in the laws of the thirteen colonies which engendered the Federal Constitution.[6] No mention was made in the Constitution of what was to be included in the admiralty law, but, as in the instances of the common law and equity,[7] the framers contemplated the application of a well-defined body of law already in existence.[8]

By the Judiciary Act of 1789 Congress gave the federal courts exclusive original jurisdiction of all admiralty and maritime cases, "saving to suitors, in all cases, the right of a common law remedy,

[2] See note 1, supra. But see also 33 HARV. L. REV. 300 (1919) for criticism on the ground that Congress has been given express and exclusive authority over interstate commerce, whereas the Constitution merely vests federal courts with jurisdiction over admiralty.

[3] The Friendship II, (C. C. A. 5th, 1940) 113 F. (2d) 105.

[4] The Hamilton, 207 U. S. 398, 28 S. Ct. 133 (1907); Western Fuel Co. v. Garcia, 257 U. S. 233, 42 S. Ct. 89 (1921); Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 42 S. Ct. 157 (1922).

[5] The policing problem in admiralty is present in magnified proportions in the regulation of the air, for "the air is the greatest of all oceans." HEARINGS ON H. R. 5234, 75th Cong., 1st sess. (1938), pp. 65, 66 (Col. Edgar S. Gorrell in discussion of the Civil Aeronautics Act at a hearing before the House Committee on Interstate and Foreign Commerce).

[6] The Lottawanna, 21 Wall. (88 U. S.) 558 (1874); Southern Pacific Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524 (1917).

[7] Fenn v. Holme, 21 How. (62 U. S.) 481 (1858); Thompson v. Railroad Companies, 6 Wall. (73 U. S.) 134 (1867).

[8] The Steamer St. Lawrence, 1 Black (66 U. S.) 522 (1861); The Lottawanna, 21 Wall. (88 U. S.) 558 (1874).

where the common law is competent to give it. . . ."[9] This saving clause operates to allow state courts to entertain all suits except actions in rem in the admiralty sense.[10] However, the admiralty law as contemplated by the Constitution is to be applied in whatever court a maritime case is heard.[11] In the early days under the Constitution state legislation was of slight consequence, and the common law of the states differed little from that of admiralty in most respects; hence infrequent resort to the uniformity rule was made by the courts.[12] Congress itself soon recognized that the local governmental units were best able to regulate characteristic features peculiar to local harbors, including pilotage,[13] and after it had been determined by the Supreme Court that such regulation was not an improper interference with interstate commerce,[14] no objection based on the authority of the federal government over admiralty was made.[15]

I.

What appears to be the first important inroad on the uniformity rule came with the application of state wrongful death acts to maritime torts.[16] It was settled that the general law of admiralty, which gives a plaintiff a right to sue for his personal injuries inflicted by the wrong

[9] 1 Stat. L. 77 (1789), 28 U. S. C. (1934), § 371.

[10] Rounds v. Cloverport Foundry & Machine Co., 237 U. S. 303 at 306, 35 S. Ct. 596 (1915): "The proceeding *in rem* which is within the exclusive jurisdiction of admiralty is one essentially against the vessel itself as the debtor or offending thing,—in which the vessel is itself 'seized and impleaded as the defendant, and is judged and sentenced accordingly.'"

[11] Messel v. Foundation Co., 274 U. S. 427, 47 S. Ct. 695 (1927); Chelentis v. Luckenbach S. S. Co., 247 U. S. 372, 38 S. Ct. 501 (1918).

[12] The Lottawanna, 21 Wall. (88 U. S.) 558 (1874), was the earliest ruling of the Supreme Court upon state legislation as an obstacle to uniformity in the maritime law. Even as late as 1907 in a case which permitted the application of the Delaware wrongful death act to a collision between Delaware vessels on the high seas, the Court's only reference to the rule was a statement that there would be no "lamentable lack of uniformity." The Hamilton, 207 U. S. 398, 28 S. Ct. 133 (1907).

[13] Congress enacted a statute requiring that all pilots should be regulated by the existing laws of the states. 1 Stat. L. 54 (1789), 46 U. S. C. (1934), § 211. In another respect Congress attempted to adopt the workmen's compensation laws of the states, but this was not permitted on the grounds that it was an unlawful delegation of power and a denial of uniformity. Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 40 S. Ct. 438 (1920). It is possible to distinguish these situations by stressing the inherent need of local legislation in the former instance and by the established precedent, at the time of the adoption of the Constitution, which permitted local regulation of harbors and the incidents thereto.

[14] Cooley v. Board of Wardens, of Port of Philadelphia, 12 How. (53 U. S.) 299 (1851).

[15] This might be attributed to the dependency of the authority of the United States over maritime matters upon Congress' power over interstate commerce.

[16] Steamboat Co. v. Chase, 16 Wall. (83 U. S.) 522 (1872); The Hamilton, 207 U. S. 398, 28 S. Ct. 133 (1907).

of another,[17] nevertheless causes that right to abate upon his death.[18] Wrongful death statutes fall into two general categories. First, the act may give a new right to living persons who have been damaged by the wrongful death. Second, the act may revive the cause of action of deceased in favor of his estate for injuries suffered by him. The former creates a right unrecognized by the general maritime law, and does not infringe that law, but bridges an existing gap therein. The latter purports to raise anew a right which the general maritime law has destroyed. As such it would be a denial of the uniformity rule. Even so it is possible to avoid this contradiction on the ground that the early admiralty cases which allowed the application of the state statute involved the first type of act; subsequent cases involving the second type affirmed the operation of the state law on the authority of the former cases without distinguishing the divergent theories of the two classes of statutes.[19] If such interpretation of this latter group of cases be acceptable, there is no denial of the uniformity rule, but the application of state wrongful death acts may be regarded as supplemental to the general maritime law.

The period during the first World War and immediately following saw the development of the uniformity rule in its sharpest outline.[20] *Southern Pacific Co. v. Jensen*[21] was a case involving an attempt to apply the New York Workmen's Compensation Act[22] to a stevedore killed in maritime employment. On the basis of the uniformity approach as set forth in *The Lottawanna*,[23] where a state lien was in issue,[24]

[17] The Osceola, 189 U. S. 158, 23 S. Ct. 483 (1903); Steamboat New World v. King, 16 How. (57 U. S.) 469 (1853).

[18] The Harrisburg, 119 U. S. 199, 7 S. Ct. 140 (1886).

[19] Steamboat Co. v. Chase, 16 Wall. (83 U. S.) 522 (1872) (cause of action given to statutory beneficiaries); The Hamilton, 207 U. S. 398, 28 S. Ct. 133 (1907) (survival statute; affirmed on authority of preceding case without mention of differences between the particular statutes).

[20] During this period every effort was being made to stimulate the shipping industry and to revive the American merchant marine. Hence the resort to the uniformity rule would be a logical protection of this industry against local regulation. ZEIS, AMERICAN SHIPPING POLICY (1938).

[21] 244 U. S. 205, 37 S. Ct. 524 (1917).

[22] 64 N. Y. Consol. Laws (McKinney, 1938); N. Y. Laws (1914), c. 41.

[23] 21 Wall. (88 U. S.) 558 (1874). The maritime law familiar to the lawyers at the adoption of the Constitution was made uniformly operative throughout the country.

[24] No state law can broaden or limit the authority of the United States over admiralty. The Lottawanna, 21 Wall. (88 U. S.) 558 (1874). The Court in this case declared that a state could create a statutory lien applicable to vessels of that state. In Crapo v. Allen, (D. C. Mass. 1849) 6 F. Cas. 763, No. 3360, the district court said: "It is to be observed, that these [enforcement of lien created by state law] were all cases of contract, by which not merely a new remedy, but a new right of property, a jus in re, was created, which might be enforced. . . ." 6 F. Cas. 763 at 763.

the Supreme Court ruled that the application of the New York Workmen's Compensation Act would be inconsistent with the uniform law of admiralty. The Court referred to the pilotage and wrongful death cases,[25] but declared that the state legislation in the principal case was to be distinguished on the ground that it worked material prejudice to the characteristic features of the maritime law.[26] Although there is no reference made in the majority opinion, it should be pointed out that the maritime law had for hundreds of years given seamen a remedy for wages, maintenance and cure in case of injury,[27] a remedy which is not unlike the theory of the workmen's compensation acts. The existence of such a remedy indicates that there is no gap in the maritime law such as that which allowed the infiltration of the state wrongful death statutes. However, the popular approval of shifting the burden of loss due to industrial accidents to the employer,[28] as well as the failure of Congress to legislate adequately for protection of employees injured while working in places within admiralty jurisdiction,[29] caused the courts to establish a limitation upon the rule of the *Jensen* case.[30] The liability created by most workmen's compensation acts looks to the contract between the employee and the employer.[31] As admiralty jurisdiction over contract matters depends upon the nature of the transaction, rather than the locality,[32] the Supreme Court developed the "maritime, but local" rule which allows the application of the state workmen's compensation act where the subject matter of the contract is

[25] A lien upon a vessel for repairs in her own port, pilotage fees, and the right to recover in death cases where provided by state statutes are not invalid modifications of the general maritime law. Southern Pacific Co. v. Jensen, 244 U. S. 205 at 216, 37 S. Ct. 524 (1917).

[26] This would indicate that a contradiction of the maritime law is invalid, although a supplementation would be permitted.

[27] A vessel and her owners are liable, where a seaman in service is injured or becomes ill, for maintenance, cure and wages for the duration of the voyage. The Osceola, 189 U. S. 158, 23 S. Ct. 483 (1903). This case was cited by Holmes in dissent in the Jensen case in order to minimize the inadequacy of the admiralty law. The uniformity rule has been given little regard by Holmes. See The Hamilton, 207 U. S. 398, 28 S. Ct. 133 (1907).

[28] Bohlen, "A Problem in the Drafting of Workmen's Compensation Acts," 25 HARV. L. REV. 328 at 329 (1912).

[29] ROBINSON, ADMIRALTY 99-101 (1939).

[30] Id. 101-109.

[31] State Industrial Comm. of State of New York v. Nordenholt Corp., 259 U. S. 263, 42 S. Ct. 273 (1922); Carlin Construction Co. v. Heaney, 299 U. S. 41, 57 S. Ct. 75 (1936); Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 46 S. Ct. 194 (1926).

[32] Grant Smith-Porter Co. v. Rohde, 257 U. S. 469 at 476, 42 S. Ct. 157 (1922).

nonmaritime although the injury occurs within the territorial limits of admiralty jurisdiction.[33]

Federal legislation over maritime torts resulting in personal injury has been confined principally to the Federal Death Act[34] and the Seamen's Act,[35] litigation over which culminated in the present Harbor Worker's Act.[36] The former applies only to wrongful deaths on the high seas, and permits resort to the state laws where death results from injuries occurring in the territorial waters of a local government.[37] The Seamen's Act has the characteristics of an employer's liability act,[38] but was apparently confined to "seamen." However, this supposed defect was partially disposed of when the Court included stevedores within the term "seamen" when they were engaged in maritime transactions and where the injury occurred within the maritime locale.[39] This construction covers the situation in the *Jensen* case, but it was necessary for Congress to pass the Harbor Worker's Act in order to protect the worker about the docks who could not seek relief under the state workmen's compensation acts.[40]

2.

The chief defect in the application of the "uniformity rule" has been the failure of Congress to keep abreast of the state legislatures in the enactment of wrongful death statutes and workmen's compensation acts operative upon maritime subjects. The proper solution would be

[33] ". . . we recently pointed out [in Western Fuel Co. v. Garcia, 257 U. S. 233, 42 S. Ct. 89 (1921)] that, as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented by state statutes." Grant Smith-Porter Co. v. Rohde, 257 U. S. 469 at 477, 42 S. Ct. 157 (1922).

[34] 41 Stat. L. 537 (1920), 46 U. S. C. (1934), § 761.

[35] 38 Stat. L. 1185 (1915), as amended by 41 Stat. L. 1007 (1920), 46 U. S. C. (1934), § 688.

[36] 44 Stat. L. 1424 (1927), 33 U. S. C. (1934), § 901; as amended by 52 Stat. L. 1164 (1938), 33 U. S. C. (Supp. 1939), § 902; ROBINSON, ADMIRALTY 100, 101 (1939).

[37] ". . . the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this Act." 41 Stat. L. 538 (1920), 46 U. S. C. (1934), § 767. This accepts the view that death acts of local governments do not interfere with uniformity of maritime law. In re Clyne S. S. Co., (D. C. N. Y. 1904) 134 F. 95; Southern Pacific Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524 (1917).

[38] A damage remedy is given and job hazards aside from third-party tortfeasors are shifted to employers. The act is confined to maritime torts. ROBINSON, ADMIRALTY 309 (1939).

[39] International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 S. Ct. 19 (1926). By judicial legislation the Court was getting away from the effects of the Jensen case, but adhering to the uniformity rule. Robinson, "The Seaman in American Admiralty Law," 16 BOST. UNIV. L. REV. 283 (1936).

[40] ROBINSON, ADMIRALTY 100 (1939).

the enactment of more adequate legislation on maritime subjects by Congress, rather than a judicial departure from the "uniformity rule." That the latter rule is still very much alive is evidenced by the decision of the Circuit Court of Appeals for the Fifth Circuit in *The Friendship II*.[41] In this case, passenger-guests received injuries caused by gas from the exhaust of a yacht in Florida territorial waters. The owner died shortly thereafter, and in an action by his administratrix to limit liability[42] to the value of the vessel,[43] the admiralty court held that the principles of admiralty law governed, and that there was no survival of the action in personam in admiralty, although both the common law of Florida and a Florida statute would have allowed a survival of the action against the personal representative.[44] The court properly determined that the question of survival is a limitation on the right of the injured party and is a question of substantive law.[45] On the other hand, the cases which it cited as denying the survival in admiralty of an action for personal injuries after the death of the wrongdoer do not support its conclusion.[46] By denying the applicability of the state law, however, the court makes proper use of the uniformity rule. Once it is decided that in admiralty the right abates with the death of the wrongdoer, then clearly to allow its survival on the basis of the state law would be an infringement upon the superior admiralty law. It is this fact which distinguishes the cases arising under the wrongful death acts. The survival statute attempts to preserve the right which the maritime law takes away, whereas the death statute creates a new right in a person other than the decedent. The "maritime but local" exception is not applicable, for the location of the injury is maritime, and the relation-

[41] (C. C. A. 5th, 1940) 113 F. (2d) 105.

[42] This is an equitable proceeding in an admiralty court and combines the features of a bill to enjoin multiplicity of suits, interpleader and a creditor's bill. In re Statler, (D. C. N. Y. 1929) 31 F. (2d) 767 at 768.

[43] In a suit in rem death of either party does not cause the action to abate. The Ticeline, (D. C. N. Y. 1913) 208 F. 670.

[44] Waller v. First Savings & Trust Co. of Tampa, 103 Fla. 1025, 138 So. 780 (1931). "All courts in this State shall be open, so that every person for an injury done him in his lands, goods, person or reputation shall have remedy, by due course of law. . . ." Fla. Const. (1885), Declaration of Rights, § 4. This provision was held to have abrogated the English common-law limitation on survival of a tort action based on the theory of punitive damages. The court also referred to a statute, Fla. Comp. Gen. Laws (1927), § 4211; Rev. Gen. Stat. (1920), § 2571, which was declared to have specifically provided for survival of the right.

[45] Ormsby v. Chase, 290 U. S. 387, 54 S. Ct. 211 (1933).

[46] Crapo v. Allen, (D. C. Mass. 1849) 6 F. Cas. 763, No. 3360. The court here was faced with the question of survival of the action upon the death of the injured party. In re Statler, (D. C. N. Y. 1929) 31 F. (2d) 767. In this case the court applied the common law of the state of New York and, as in Crapo v. Allen, the decedent was the injured party.

ship between the parties is passenger and owner, which is certainly encompassed by the maritime law.[47]

An interesting feature of the opinion in *The Friendship II* is the emphasis upon the policing problem which confronts a local government in the enforcement of its own laws against maritime subjects.[48] Movement on navigable waters is accomplished with relatively greater freedom than movement on land. A scarcity of monuments and markers on the surface of the water presents a difficult problem in fixing the location of the wrongful act and injury. The uniformity doctrine with its single set of laws does not concern itself with these problems of orientation, for the maritime subject is amenable to the same rule without regard to the place of the occurrence. This convenient approach minimizes the peculiar problem of patrolling and policing navigable waters and has given the uniformity rule a broader scope than the mere prohibition of burdens on interstate commerce. It gives added meaning to the rejection of the local laws when their application would work material prejudice to the general maritime law.[49]

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