State Legislation Extending to Navigable Waters

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NOTE AND COMMENT

STATE LEGISLATION EXTENDING TO NAVIGABLE WATERS.—In Southern Pacific Company v. Jensen, 37 Sup. Ct. —, decided May 21, 1917, the Supreme Court announces a decision in some respects of far reaching importance. It was held therein, Mr. Justice Holmes dissenting, that the WORKMEN'S COMPENSATION ACT of the State of New York did not support an award to the widow and children of a workman killed on board a ship of the Company while at the pier in New York City. Clearly the terms of the New York act covered the case, unless the fact that the accident occurred on navigable waters of the United States had a controlling effect to the contrary.

If the death was tortious, there can be no doubt under Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 59, that it was a maritime tort and within admiralty jurisdiction.

By Art. III, §2 of the Constitution, the judicial power of the United States is extended “To all cases of admiralty and maritime jurisdiction,” and this has been held to confer paramount power upon Congress to fix and determine the maritime law which shall prevail throughout the country. Butler v. Steamship Co., 130 U. S. 527, In re Garnett, 141 U. S. 1. In the latter case the court said: “As the Constitution extends the judicial power of the United States to ‘all cases of admiralty and maritime jurisdiction,’ and as this juris-
diction is held to be exclusive, the power of legislation on the same subject
must necessarily be in the national legislature, and not in the State legisla-
tures."

It is well established, however, that within certain limits, not clearly de-
defined, State legislation in a sense affecting the general maritime law, may be
upheld. *The Lottawanna*, 21 Wall. 558 (lien for repairs upon vessel in
home port); *The J. E. Rumbell*, 148 U. S. 1 (same); *Cooley v. Board of
Wardens*, 12 How. 299 (pilotage fees fixed); *Ex parte McNeil*, 13 Wall. 236
(same). In *Sherlock v. Alling*, 93 U. S. 99, a death act of the State of In-
diana was held to give a cause of action for negligent injury suffered on the
Ohio River; and in *The Hamilton*, 207 U. S. 398, and *La Bourgogne*, 210 U.
S. 95, the laws of Delaware and France, respectively, giving a cause of action
for negligently causing death were recognized and enforced in admiralty
cases, the deaths having been caused on the high seas. Under the general
maritime law there could have been no cause of action for causing death, but
the court enforced rights created by the law of Delaware and France. Ap-
parently these laws were not given the effect of changing the maritime law—
that could be done only by Congress—but as creating rights under the state
municipal law which courts of admiralty would enforce, just as one State
may give recognition to and enforce rights created by the law of another
State or country.

On the other hand, State law cannot authorize proceedings *in rem* as in
will a State statute creating liens for materials used in repairing a foreign
ship under circumstances not sufficient to create a lien under maritime law
be upheld. *The Roanoke*, 189 U. S. 185. And where a certain act would
give rise to a liability under maritime law, a rule of the law of the State
within the territory of which the liability was incurred denying recovery
will be disregarded. *Workman v. Mayor*, 179 U. S. 557.

The *Compensation Act* in the principal case, under the police powers of
the State, created a liability for accidental injury not recognized by maritime
law, just as the law of Delaware considered and upheld in *The Hamilton*,
supra, created a liability for negligently causing death not recognized by
maritime law, and if the court was right in the earlier case in giving effect
in a court of admiralty to such right under the law of Delaware, it would
seem that in the principal case like force should have been given to the
New York statute. It is interesting that Mr. Justice Holmes, who wrote
the unanimous opinion of the court in *The Hamilton*, vigorously dissented
in the principal case. A resulting lack of uniformity seems to have been the
main reason for the majority of the court refusing to recognize the liability
created by the statute. It is said that "If New York can subject foreign
ships coming into her ports to such obligations as those imposed by her com-
ensation statute, other States may do likewise. The necessary consequence
would be destruction of the very uniformity in respect to maritime mat-
ters which the Constitution was designed to establish, and freedom of nava-
tion between the States and with foreign countries would be seriously hampered and impeded". But how about the lack of uniformity under Sher- lock v. Alling, supra, and The Hamilton, supra?

The court in determining whether State law shall stand as against or along with the maritime law, applies the same tests that are applied when the question is between State action and the national control over interstate commerce. In this connection it is interesting to refer to The New York Central Railroad Company v. Winfield, decided the same day, where it was held, Mr. Justice Brandeis and Mr. Justice CLARKE dissenting, that the Compensation Act of New York did not apply to non-tortious injuries to employees of the company, although the Federal Employers' Liability Act covers only negligent injuries. It apparently was conceded by all that but for the Federal Act the State statute would apply to employees engaged in interstate commerce as well as to those not so engaged. Congress, however, having acted, the State action was displaced.

R.W.A.