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Admiralty -- Limitations Period Where Jones Act and Unseaworthiness Counts Joined

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NOTES AND COMMENTS

Admiralty—Limitations Period Where Jones Act and Unseaworthiness Counts Joined

In a recent assertion[1] of the supremacy of federal maritime law the Supreme Court of the United States took a new look at a thoroughly settled doctrine[2] and had relatively little difficulty deciding that insofar as that doctrine allowed a state procedural limitation to impinge upon a federally created right it could not be applied.

Briefly, the question before the Court was whether or not a state court can apply a two-year state personal injury statute of limitations as a bar to an action based on unseaworthiness that is joined with an action for negligence under the Jones Act.[3]

Petitioner was a crew member on respondent's vessel. He was injured in a shipboard fall allegedly caused by the unseaworthy condition of the vessel. Almost three years after the accident occurred he brought suit in a Texas court, claiming damages under the Jones Act for negligence and under the general maritime law for unseaworthiness and for maintenance and cure. The trial court found for the petitioner only on the maintenance and cure count. The intermediate appellate court affirmed,[4] refusing to review any assignments of error regarding the unseaworthiness count, since in its opinion that count was barred by the two year state statute of limitations.[5] The Jones Act claim was not appealed. The Texas Supreme Court denied petitioner's application for a writ of error. The U.S. Supreme Court in "view of the importance of this ruling for maritime personal injury litigation in the state courts" granted certiorari.[6]

[1] McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958).

[2] Lex fori.

[3] Merchant Marine Act, 1920 (Jones Act), 41 STAT. 1007, 46 U.S.C. § 688 (1958). In keeping with its traditional flexibility in granting relief, admiralty courts have applied the doctrine of laches—absent any limiting statute—in determining the timeliness of the bringing of claims. The early decisions were made with reference to the "particular equitable circumstances of the case," see The Key City, 81 U.S. (14 Wall.) 653 (1871), and indeed, still are today, see Gardner v. Panama R. Co., 342 U.S. 29, 30 (1951). However, even though generally no definite time is adopted, the usual practice today is to follow by analogy the applicable state statute of limitations and to bar the claim if the statute has run, unless the libellant can show that his delay is excusable and there has been no prejudice to the defendant. See Redman v. United States, 176 F.2d 713 (2d Cir. 1949).

[4] McAllister v. Magnolia Petroleum Co., 290 S.W.2d 313 (Tex. Civ. App. 1956).

[5] TEX. CIV. STAT. art. 5526 § 6 (Vernon Supp. 1958). The maintenance and cure count was not barred. This, probably because that action is considered contractual in nature and therefore subject (by analogy) to the state statute of limitations applicable to contract actions. Claussen v. Mene Grande Oil Co., 163 F. Supp. 779 (D. Del. 1958).

[6] McAllister v. Magnolia Petroleum Co., 352 U.S. 1000 (1956).

Upon review the judgment was vacated and the cause remanded (three justices dissenting).

The Chief Justice, speaking for the majority, assumed this position: the question of whether the state statute should be applied in this action "must be determined with an eye to the practicalities of admiralty personal injury litigation."[7] Under the holding of *Baltimore S.S. Co. v. Phillips*,[8] *viz.*, that unseaworthiness and Jones Act negligence are but two aspects of a single cause of action so that a judgment on one is res judicata as to the other, it became necessary for the injured seaman to bring these two actions jointly.[9] Congress gave the seaman a full three years in which to prosecute his Jones Act claim,[10] but has remained silent as to the unseaworthiness action. But if a state applies a shorter period than three years to the unseaworthiness action it means that a seaman can join the two actions only during the shorter period. This, according to the Chief Justice, effects a limitation on the Jones Act right; a seaman is not getting "full benefit" of the maritime law if he is compelled of practical necessity to prosecute a claim within a shorter period than Congress has allotted him.[11] Since the Texas statute produced this effect it was held not to apply.

Justice Whittaker, dissenting, argued: (1) that the Jones Act and unseaworthiness rights of action are separate and distinct; (2) the state court is "bound to" apply the statute of limitations of its own state; (3) that since the majority holding is confined to those cases where the two actions are joined, the state statute will continue to apply where an unseaworthiness action is brought alone, thereby producing inconsistencies in the application of limitations periods.

Justice Brennan, in a concurring opinion, denied that the majority intended to apply the three year limitation only where the Jones Act and unseaworthiness actions were brought concurrently. He concluded that, in order to avoid a course that would be "disruptive of the desired uniformity of enforcement of maritime rights," the "three-year limitation on the Jones Act remedy . . . is the ready and logical source to draw

[7] 357 U.S. at 224.

[8] 274 U.S. 316 (1927).

[9] Not within the scope of this note, but worth mentioning, is that the long bothersome rule—gleaned from the "at his election" clause of the Jones Act—requiring election between the two "inconsistent" remedies of unseaworthiness and the Jones Act, Pacific S. S. Co. v. Peterson, 278 U.S. 130 (1938), is laid quietly at rest in the principal case by a footnote, 357 U.S. at 222, n. 2. Actually, the Court's action is little more than a post mortem "rest in peace" to a doctrine hamstrung by the circuit courts almost a decade ago. See McCarthy v. American Eastern Corp., 175 F.2d 724 (3d Cir. 1949).

[10] See 357 U.S. at 225, n. 6.

[11] Evidently, the "full benefit" doctrine, as used here by the Chief Justice, must mean that a seaman is not getting everything he should out of his Jones Act claim if (1) he is not allowed to join an unseaworthiness count with it (2) at any time during a full three years. See discussion of humanitarian doctrine in text following note 36 *infra*.

upon [by analogy] for determining the period within which this federal right may be enforced."[12]

So went the court. The holding, standing by itself, is clear enough; but whether the broad intendment of Justice Brennan can be read into it is a question of great importance to prospective litigants, who will no doubt be more than curious to know what limitations—by analogy or otherwise—will likely be applied to their claim. An analysis of the objections urged by the dissent may yield some clue, something better than a guess, as to whether the majority opinion should be sweepingly or narrowly construed.

I

One of the principal objections to the majority holding is that it is violative of the choice-of-law doctrine which here would require that whenever an unseaworthiness action is being prosecuted, the local statute of limitations governing personal injury actions be applied whether the forum be state or federal. But this doctrine merely allows the interests of the state to be interpolated into the litigation of federally created rights wherever the Congress and the judiciary have remained silent.[13] Local interests become secondary however, when such supplementation places a burden on the free exercise of such rights. Unfortunately, there exists no hard and fast rule which indicates when that burden becomes oppressive, but the broad precepts of supremacy and uniformity of the federal maritime law have provided a potent one-two combination used invariably, if not with consistent results, by the Court in resolving federal-state conflicts.[14]

A brief survey of the conflicts decisions reveals that little encroachment by the states on the maritime law has been allowed. The supremacy doctrine was used initially to declare that a state could not extend its workmen's compensation act to cover seamen.[15] Subsequently it has been employed to hold: (1) that a seaman cannot have recourse against his employer through a common law negligence action;[16] (2) that a state Statute of Frauds cannot prevent the enforcement of an oral

[12] 357 U.S. 229, 230.

[13] Holmberg v. Armbrecht, 327 U.S. 392, 395 (1946).

[14] See Garrett v. Moore-McCormack Co., 317 U.S. 245 (1942). But see Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310 (1955).

[15] Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917). Justice McReynolds set forth in broad terms the supremacy rule: "[No state] legislation is valid if it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Id.* at 216.

[16] Chelentis v. Luchenback S. S. Co., 247 U.S. 372 (1918). The court, following the *Jensen* case, *supra* note 15, held that such an action was not a "right" known to the maritime law, nor a "remedy" within the "saving to suitors" clause of the Judiciary Act of 1789.

maritime contract;[17] (3) that a state burden-of-proof rule regarding releases must yield to a contrary maritime rule;[18] (4) that a strict state rule regarding the relation back of pleadings amendments must yield to a more flexible admiralty rule (even though an admiralty court is enforcing a state-created right);[19] and (5) that a state court cannot apply the common law contributory negligence doctrine to bar a seaman's claim, but must apply instead the maritime comparative negligence rule.[20]

On the other hand the court has held that actions brought in admiralty under state wrongful death acts are subject to defences available under the laws of the state whose statute gives the right of action.[21] Likewise, a state statute providing for the survival of a cause of action against a deceased maritime tortfeasor was found to be permissible.[22] And recently the court, finding no "established admiralty rule" with regard to marine insurance, decided that regulation of it would remain "where it has been—with the states."[23]

Without attempting to reconcile the various approaches of the court to the supremacy doctrine, it is sufficient to say that it is clear that substantive and procedural infringements, even if merely tending to restrict the flexibility of the admiralty, must yield to the maritime law. The "practical" infringement of the present case seems no less susceptible to the supremacy doctrine. The local law is no longer compatible, even in a supplemental sense,[24] when it becomes restrictive of a federal right.

II

The second objection raised by the dissent is that unseaworthiness and Jones Act actions are separate and distinct causes of action.

Admittedly the Jones Act was passed in order to give a seaman redress for injury occasioned by the negligence of officers or crew members, the older unseaworthiness action arising only from injuries caused by defects in the ship or its appliances.[25] But, however great the gap filled in by the Jones Act may once have been, for most practical purposes it ceased to exist upon the handing down of *Mahnich v. Southern S.S. Co.*, [26] which held that injury to a seaman caused by unseaworthiness brought about by the negligence of an officer of the ship, was grounds for an unseaworthiness action. This extension of the doctrine to cover operating negligence resulting in unseaworthiness, coupled with the

[17] Union Fish Co. v. Erickson, 248 U.S. 308 (1919).
[18] Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942).
[19] Levinson v. Deupree, 345 U.S. 648 (1953).
[20] Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953).
[21] Western Fuel Co. v. Garcia, 257 U.S. 233 (1921).
[22] Just v. Chambers, 312 U.S. 383 (1941).
[23] Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310 at 321 (1955).
[24] Just v. Chambers, 312 U.S. 383 (1941). See text at note 22 *supra*.
[25] See 357 U.S. at 321 (discussion and citations therein).
[26] 321 U.S. 96 (1944).

assertion by Justice Stone that the shipowner had an absolute duty to furnish a seaworthy ship,[27] and with the subsequent broad interpretations of what constitutes unseaworthiness, has all but swallowed up the functions of the Jones Act.[28]

There being little left to distinguish the two actions, it is difficult to sustain the proposition voiced by the dissent that "each creates a separate and independent cause of action not covered or made redressable by the other."[29] Of greater significance however is the fact that the unseaworthiness action has virtually supplanted the Jones Act as a recovery device.[30] This being so, uniformity in its application becomes an increasingly fit object for judicial contemplation.

III

The third objection raised by the dissent is the one with the most far reaching implications; it is that the holding of the court invites inconsistency in the application of a federal maritime law.[31]

It is convenient to discuss the inconsistency objections in the light of the two doctrines invoked by the Court—supremacy and uniformity—and a third, which is impliedly observed, the humanitarian doctrine.

Inconsistent results will follow as a matter of course if a narrow view of the holding prevails, because literally interpreted it says no more than that a state limitation cannot restrict a seaman's "right" to join an unseaworthiness count with a Jones Act count as long as the latter is available. It follows that if an unseaworthiness action is brought separately no conflict could exist and hence no objection to the limitation. Thus the present case would seem to be one merely of conflicts, calling upon the supremacy of the general maritime law is its ratio decidendi.

[27] *Id.* at 103-04.

[28] "The only case which is today clearly outside the scope of the unseaworthiness doctrine is the almost theoretical construct of an injury whose only cause is an order improvidently given by a concededly competent officer on a ship admitted in all respects to be seaworthy." GILMORE AND BLACK, ADMIRALTY § 6-39, at 320 (1957).

[29] 357 U.S. at 230. Cf. Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952), wherein it was held (with reference to section 1441(c) of the Judicial Code which provides for the removability of Jones Act actions to federal courts when coupled with a removable action) that an unseaworthiness count was not a sufficiently "separate and independent claim or cause of action" to communicate its removability to the Jones Act count.

[30] "It is safe to predict, unless the Supreme Court reverses its field a second time, that in another ten years the Jones Act will have become a faint and ghostly echo and the law of recovery for maritime injuries will be stated in terms of unseaworthiness alone." GILMORE AND BLACK, ADMIRALTY § 6-38, at 316 (1957).

[31] Suppose, for example, that in the instant case a stevedore had been injured in the same fall with McAllister, it being determined subsequently that the injuries were proximately caused by the unseaworthy condition of the ship. McAllister, by tacking on a Jones Act count had, by virtue of this decision, a full three years in which to prosecute his unseaworthiness claim; but the stevedore, since he would have had no claim under the Jones Act, would have had to bring his unseaworthiness claim separately, subject therefore to the Texas limitations period of two years.

But Justice Brennan would insert a uniformity requirement[32] to avoid the bugaboo of inconsistency, even though the case does not turn on that point and such a result is heedless of the lex fori doctrine. Yet, it would seem that the result asked for is clearly sound and amply justified. Although the majority opinion apparently addresses the problem strictly from the supremacy side, the supremacy doctrine has as its principal basis the desirability of uniformity, so that if the Jones Act limitation period is to be drawn upon, either directly or by analogy, it would be desirable for the result to be as uniform as possible.[33] Furthermore, the pre-eminent position to which the unseaworthiness action has vaulted would seem to justify clothing it with the dignity of uniformity. Finally, it may be said that local standards as to the staleness of injury claims based on federally created maritime rights are no longer competent to be applied and that the unseaworthiness action should be freed altogether from the vagaries of fifty-odd legislative opinions.

If, then, the uniformity requirements laid down in the concurring opinion are followed, the limitation period applied to unseaworthiness actions would be the same in all cases and inconsistency objections would be obviated.

One other factor remains to be considered along with the supremacy and uniformity doctrine. It stems from the long clung-to principle that seamen are wards of the admiralty.[34] This paternal attitude is invoked as the "humanitarian" doctrine, the effect of which has been largely to insure that these "poor and friendless" wards recover for all their maritime injuries. The net result is that humanitarian considerations have played a major part in shaping the present law governing recovery for maritime injury,[35] and it may well be that such considerations prevail over all others.[36] Indeed, it would seem that the ultimate basis for the decision in the instant case is the humanitarian doctrine, the supremacy doctrine being merely adjunctive to the result. It has been noted that this case resolves a conflicts problem; but in order for a conflict to be established with a state law there must be, of course, some federal maritime rule with which it competes. Allowance of the joinder of unseaworthiness and Jones Act counts *so long as* the latter is available has never been held a federal right. But apparently, the Court, thinking it desirable to give the seaman this benefit, fashioned a new

[32] Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917) and Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942). See discussion 357 U.S. at 230.

[33] See Garrett v. Moore-McCormack Co., 317 U.S. 239, at 244, 245 (1942).

[34] See 321 U.S. at 103-104.

[35] *Id.*

[36] "Since the court has repeatedly emphasized the humanitarian grounds for its decisions in this field since the early 1940's, it seems arguable that the Hawn rule is not so much a rule of federal supremacy as a rule that seamen are to have the advantage in any court of whatever rules of law, substantive, or procedural, may be most favorable to them." GILMORE AND BLACK, ADMIRALTY § 6-60, at 384 (1957).

rule to that effect, determined that the state rule conflicted therewith, and by virtue of the supremacy doctrine held that the state rule could not be applied.

CONCLUSION

It would seem that an injured seaman's attorney has a choice of courses to pursue, and may stress any one or a combination of the three doctrines, depending upon the position of his client. If, for instance, he is seeking to prosecute an unseaworthiness claim (not joined with a Jones Act count) after the local statute of limitations has run but before three years had passed from the date of his injury, he could stress the uniformity argument advanced by Justice Brennan, contending that the three year limitation period of the Jones Act was intended to be applied to all unseaworthiness actions, conjoined with a Jones Act count or not. If, on the other hand, he is attempting to prosecute a claim before the state statute has run, but after three years time, he could point out that the holding of *McAllister* is confined to situations in which unseaworthiness counts are joined with Jones Act counts and is therefore inapplicable to his case. In either case he could probably successfully invoke the "humanitarian" doctrine, contending in the first instance, that the *McAllister* decision was intended to give all maritime workers the benefit of at least three years time in which to begin the prosecution of their claims, and in the second instance that if he isn't allowed to prosecute his claim beyond three years, as the state statute allows, he is being deprived of "full benefit" of his federal right.

However, if supremacy and uniformity are to mean anything at all, it is submitted that a court called upon to construe this decision should use Justice Brennan's opinion as a guide, and strictly apply the three year Jones Act limitation by analogy. The security to litigants, if not deference to Congress, afforded by this approach would more than justify giving such a "legislative" interpretation to the holding. Certainly, in the light of the recent judicially-wrought metamorphosis of the maritime law, it would cause few blushes.

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Civil Procedure—Additur—Power of Court to Increase Jury Award

Generally, courts have long accepted remittitur[1] as a procedural device by which they can, with the plaintiff's consent,[2] reduce the

[1] Neese v. Southern Ry., 350 U.S. 77 (1955); Gila Valley, G. & N. Ry. v. Hall, 232 U.S. 94 (1914); Blunt v. Little, 3 Fed. Cas. 760, No. 1578 (C.C.D. Mass., 1822); New Hampshire Fire Ins. Co. v. Curtis, 264 Ala. 137, 85 So. 2d 441 (1955); Stallcup v. Rathbun, 76 Ariz. 63, 258 P.2d 821 (1953); Hyatt v. McCoy, 194 N.C. 760, 140 S.E. 807 (1927); Tice v. Mandel, 76 N.W.2d 124 (N.D. 1956).

[2] Defendant's consent is not needed. If both plaintiff and defendant consent to the judgment, the need for remittitur is eliminated and the court may enter