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Jurisdictional Bases of Maritime Claims Founded on Acts of Congress

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COMMENTS

JURISDICTIONAL BASES OF MARITIME CLAIMS FOUNDED ON ACTS OF CONGRESS

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I. INTRODUCTION

On February 24, 1959, the Supreme Court of the United States held in *Romero v. International Terminal Operating Co.*[1] that a cause of action invoking principles of the general maritime law[2] is not within the federal question jurisdiction conferred on United States district courts by the Judiciary Act of 1875.[3] The Court thereby settled an important issue concerning the construction of this statute, but did so in terms which give rise to another question regarding its scope.[4]

In his opinion for the majority, Mr. Justice Frankfurter argued that Congress did not intend to include "cases of admiralty and maritime jurisdiction" within the federal question jurisdiction conferred by the Judiciary Act of 1875, now section 1331 of the Judicial Code.[5] Did he

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1. 358 U.S. 354 (1959).

2. The "general" maritime law in the United States, insofar as it remains unmodified by statute, contains, then, two parts. First and by far the most important, is the corpus of traditional rules and concepts found by our courts in the Eupropean authorities, and applied here with no more variation than is normal when purportedly identical bodies of law are applied in decision by courts in different cultural ambients without common appellate review (*cf.* the "common law" in England and Kansas). Second are rules and concepts improvised to fit the needs of this country, including, of course, modifications of the first component. GILMORE & BLACK, THE LAW OF ADMIRALTY 42 (1957) [hereinafter cited as GILMORE & BLACK].

The general maritime law is federal law, with the possible exception of instances where states have been permitted to "supplement" it. See *Romero supra* note 1, at 374, n.42; GILMORE & BLACK §§ 1-17, 1-18.

3. Act of March 3, 1875, § 1, 18 Stat. 470. This act, with increased requirements of jurisdictional amount and minor modifications in language, which do not change its meaning, is now 28 U.S.C. § 1331 (1958). See Reviser's Note to 28 U.S.C. § 1331. 28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States." The jurisdiction conferred by § 1331 is called general federal question jurisdiction since it extends, with certain exceptions, to cases involving questions of federal as opposed to state law. Congress has made specific provision for cases arising under certain classes of statutes, *e.g.*, acts relating to patents, copyrights and trademarks. When specific provision is made, the jurisdictional amount of § 1331 is normally not required. In addition, Congress has incorporated jurisdictional grants in the body of certain regulatory statutes. See generally MOORE, COMMENTARY ON THE JUDICIAL CODE 135-48 (1949).

4. For a discussion of the significance of the *Romero* case with respect to federal jurisdiction in general see Kurland, *The Romero Case and Some Problems of Federal Jurisdiction*, 73 HARV. L. REV. 817 (1960).

5. 358 U.S. 354, 378: "When we apply to the statute, and to the clause of Article III from which it is derived, commonsensical and lawyerlike modes of construction, and the

mean that *all* "cases of admiralty and maritime jurisdiction" were excluded from the grant of section 1331?[6] If so, the *Romero* case provides authority for a surprising proposition: Section 1331 of the Judicial Code does not grant jurisdiction over maritime claims based on acts of Congress.[7]

Such an interpretation of section 1331, which grants to federal district courts jurisdiction over cases arising under the "laws of the United States," would violate the "plain meaning" rule of statutory construction and, as will be shown, would be opposed to the weight of authority. Therefore, a careful analysis of Justice Frankfurter's opinion must be made before such an interpretation can be attributed to it.

In addition to the *Romero* case, several cases, including Supreme Court cases, have touched upon the question of whether the jurisdiction conferred by section 1331 extends to admiralty claims founded on acts of Congress.

Before examining the *Romero* opinion, however, and the other cases relevant to the issue in question, some preliminary observations are necessary.

Federal district courts have two principal branches of civil jurisdiction. One is frequently called a jurisdiction at law or a common-law jurisdiction and embraces cases which involve diversity of citizenship

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evidence of history and logic, it becomes clear that the words of that statute do not extend, and could not reasonably be interpreted to extend, to cases of admiralty and maritime jurisdiction." See also 358 U.S. at 367 n.23.

6. Cases arising under federal statutes which modify and are incorporated into the maritime law are maritime cases for purposes of federal jurisdiction. Panama R.R. v. Johnson, 264 U.S. 375 (1924). Congress has paramount power to determine the maritime law which shall prevail throughout the country under Article III, section 2 of the Constitution, which extends the judicial power of the United States "to all cases of admiralty and maritime jurisdiction" and Article I, section 8, which gives Congress power to make all laws "necessary and proper" for carrying into execution all powers "vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." The Thomas Barnum, 293 U.S. 21, 42 (1934). Federal maritime statutes include, *e.g.*, the Jones Act, quoted *infra* note 18. See generally BENEDICT, ADMIRALTY § 32 (1940) (with cumulative supplement).

7. One commentator on *Romero* has said:

> This result was based principally upon statutory construction of Section 1331 of the Judicial Code, which confers "arising under" jurisdiction, thus foreclosing any attempt to distinguish the instant case should maritime causes of action based upon federal statute be urged as a grounds for jurisdiction at law. . . . Relying upon conventional statutory construction techniques, the court has ended, presumably forever, any contention that admiralty or maritime matters are within the proper construction of the "arising under" grant of jurisdiction at law of sec. 1331 of the Judicial Code. Note, 45 IOWA L. REV. 632, 634, 639 (1960).

Other commentators on *Romero*, however, have interpreted Justice Frankfurter's opinion as extending only to maritime claims based on the general maritime law. Currie, *The Silver Oar and All That: A Study of the Romero Case*, 27 U. CHI. L. REV. 1, 13-14, 37 (1959); Kurland, *supra* note 4, at 825; Note, 13 STAN. L. REV. 321, 337 (1961); Note, 54 NW. U.L. REV. 500 (1959).

or present some federal question.[8] The other is called an admiralty jurisdiction and embraces all maritime claims.[9]

These two jurisdictions are separate but not always mutually exclusive.[10] Many maritime claims can be brought at law under the "saving clause" of section 1333 of the Judicial Code, if supported by a non-maritime grant of federal jurisdiction.[11] This category includes maritime claims wherein the suitor is seeking a common-law remedy such as damages.[12] When a case involving such claims is brought under the

8. See generally MOORE, FEDERAL PRACTICE RULES AND OFFICIAL FORMS § 2 (1961).

9. 28 U.S.C. § 1333 (1958) provides: "The district courts shall have original jurisdiction exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." One court outlined the principal subject matter included within this jurisdiction as follows: "The admiralty jurisdiction of the federal courts embraces two principal subjects—maritime contracts and maritime torts. The latter . . . are civil wrongs committed on navigable waters. The place where torts are committed, and not their nature, is decisive on the question of admiralty jurisdiction. The Belfast v. Boon, 74 U.S. (7 Wall.) 624, 637." Berwind-White Coal Mining Co. v. City of New York, 135 F.2d 443, 446 (2d Cir. 1943). In *Romero*, Justice Frankfurter declared: "All suits involving maritime claims, regardless of the remedy sought, are cases of admiralty and maritime jurisdiction within the meaning of Article III whether they are asserted in the federal courts or, under the saving clause, in the state courts." 358 U.S. at 367 n.23.

10. "The statutes, the Rules of Civil Procedure, and the decisions of the courts all clearly recognize that jurisdiction in admiralty is quite separate and apart from jurisdiction at law. Admiralty is still a separate field of law and has its own rules, methods, and procedure." Rowley v. Sierra S.S. Co., 48 F. Supp. 193, 195 (N.D. Ohio 1942). For a rigid application of the theory of separate jurisdictions see Higa v. Transocean Airlines, 230 F.2d 780 (9th Cir. 1955), discussed in Currie, *supra* note 7, at 36-38.

11. In § 9 of the Judiciary Act of 1789, 1 Stat. 76, 77, Congress provided: "the district courts . . . shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it . . . ." This provision is now found in somewhat altered language in 28 U.S.C. § 1333, quoted *supra* note 9. At the time of the adoption of the Constitution, suitors could enforce certain maritime claims in state common law courts. That right was preserved by the above "saving to suitors" clause. The federal courts, upon the creation of their common-law jurisdiction, were, according to most authorities, given the right to hear saving clause cases if independent grounds of federal common-law jurisdiction, such as diversity of citizenship, should appear. See 1 BENEDICT, ADMIRALTY § 20 (1940); GILMORE & BLACK § 1-13. Cases upholding federal common-law jurisdiction when diversity of citizenship is shown include: *Romero, supra* note 1; Seas Shipping Co. v. Sieracki, 328 U.S. 85, 88-89 (1946); Leon v. Galceran, 78 U.S. (11 Wall.) 185 (1870). Judge Dimock's concurring opinion in Paduano v. Yamashita Kisen Kabushiki Kaisha, 221 F.2d 615, 619 (2d Cir. 1955), has been interpreted as holding that federal district courts have no common-law jurisdiction over saving clause cases, even when diversity of citizenship is present. See Currie, *supra* note 7, at 23 n.98; Note, 24 FORDHAM L. REV. 691, 692 (1956); Note, 28 FORDHAM L. REV. 350 (1959), Comment, 32 TUL. L. REV. 696, 700 (1958).

12. "Examination of the legislative history of the Judiciary Act of 1789 does not disclose precisely what its framers had in mind when in section 9 they used the phrase 'common law remedy.'" C. J. Hendry Co. v. Moore, 318 U.S. 133, 148-49 (1943). However, it has been determined that, "the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property." Leon v. Galceran, 78 U.S. (11 Wall.) 185, 191 (1870). Further, "The 'right of a common-law remedy' . . . includes remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law." Red Cross Lines v. Atlantic Fruit Co., 264 U.S. 109, 123-24 (1924).

district court's common-law jurisdiction, it is properly called, for jurisdictional purposes, a common-law case and not an admiralty case.[13]

Why would a litigant want to bring his maritime claims at law rather than in admiralty? The answer lies in the different procedures used at law and in admiralty. Cases at law are governed by the Federal Rules of Civil Procedure, which normally provide the right of jury trial.[14] In admiralty, however, special Admiralty Rules apply and the court normally determines questions of fact.[15] Litigants often want a jury, especially in personal injury cases, because federal juries are usually more generous than federal judges in awarding damages.

However, the practical problem of whether a party can get a jury in cases arising under federal maritime statutes has been solved by Congress in the statutes themselves.[16] In addition, most federal maritime statutes prescribe the courts and procedures to be used in adjudicating actions arising under them.[17]

Yet there are definite elements of practical significance in the question of whether suits invoking such statutes fall within the district court's general federal question jurisdiction. For example, are actions under the Jones Act subject to the jurisdictional amount required by section 1331?[18] Can cases brought in state courts under the Carriage of Goods

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Where the claim asserted is in the nature of a maritime lien, enforceable in admiralty by *in rem* process only a court of admiralty may take jurisdiction. The Moses Taylor, 71 U.S. (4 Wall.) 411 (1867); The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1867).

13. In Knapp, Stout & Co. v. McCaffrey, 177 U.S. 638, 648 (1900) the Court said:

> The true distinction between such proceedings as are and such as are not invasions of the exclusive admiralty jurisdiction is this: If the cause of action be one cognizable in admiralty, *and* the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, *or* if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (sec. 563) of a common law remedy.

According to one commentator, "A maritime action brought under the saving clause is 'a suit of a civil nature, at law or in equity.' If it were a suit in admiralty it could not be brought in a state court. Cf. 28 U.S.C. sec. 71 (1940)." Currie, *supra* note 7, at 16 n.57. See also Stamp v. Union Stevedoring Corp., 11 F.2d 172, 174 (E.D. Pa. 1925).

14. FED. R. CIV. P. 1, 38.

15. For an excellent discussion of the nature and importance of the different procedures used at law and in admiralty, see Currie, *supra* note 7.

16. "It is also significant that in the entire history of federal maritime legislation, whether before the passage of the Act of 1875 (*e.g.*, the Great Lakes Act—also a general jurisdictional statute and one often termed an anomaly in the maritime law because of its jury trial provision) or after (the Jones Act), Congress has not once left the availability of a trial on the law side to inference. It has made specific provision." Frankfurter, J., in *Romero*, 358 U.S. at 371. One notable exception to the above statement is the Carriage of Goods by Sea Act, 49 Stat. 1207 (1936), 46 U.S.C. §§ 1300-15 (1958).

17. See, *e.g.*, the Suits in Admiralty Act, 46 U.S.C. §§ 741-52 (1958).

18. 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1958). This act provides:

> Any seaman who shall suffer personal injury in the course of his employment may,

by Sea Act be removed to federal district courts?[19] Must an action brought at law in a federal district court under the Death on the High Seas Act be dismissed for lack of jurisdiction?[20] The answers to these and other questions depend in part on whether the federal courts have general federal question jurisdiction over maritime actions based on acts of Congress.

II. THE ROMERO OPINION

Romero was a Spanish subject who was injured on a Spanish ship berthed in the Port of New York. He filed suit on the law side of the federal district court for the southern district of New York.[21] The complaint named four defendants. Claims under the Jones Act, for unseaworthiness[22] and for maintenance and cure[23] were made against Compania Transatlantica, a Spanish corporation which owned the ship. The same claims were brought against Garcia & Diaz, a New York corporation acting as the ship's husbanding agent while it was in the Port of New York, with the addition of a claim for simple maritime tort. Claims for

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at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . . Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

See generally GILMORE & BLACK LAW OF ADMIRALTY ch. VI (1957).

19. 46 U.S.C. §§ 1300-15 (1958). For discussion of this act, see generally, GILMORE & BLACK ch. III. Removal from state to federal courts of suits based on federal law is authorized by 28 U.S.C. § 1441(b) (1958), which provides:

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

As will be seen subsequently, the Carriage of Goods by Sea Act has been held to be within the jurisdiction conferred by § 1337 rather than that conferred by § 1331. Section 1337 confers federal question jurisdiction over a special class of cases, those based on acts regulating commerce. The important difference between § 1337 and § 1331 is that the former dispenses with the requirement of jurisdictional amount.

20. 46 U.S.C. §§ 761-68 (1958). This act provides that proceedings under it can be brought only in admiralty. In criticizing Higa v. Transocean Airlines, 230 F.2d 780 (9th Cir. 1955), which held that the district court had no jurisdiction of a suit at law under the Death on the High Seas Act, Professor Currie observes:

> [T]he case was within the jurisdiction of the "law side" of the district court because it was one arising under the laws of the United States, cognizable under Section 1331 of the Judicial Code. . . . True, the act of Congress provides for a proceeding in admiralty, but it creates the right of action, which did not exist under the general maritime law, and the case presented a substantial question relating to the construction and application of the act. Currie, *supra* note 7, at 37.

21. 142 F. Supp. 570 (S.D.N.Y. 1956). For a detailed analysis of the case see Currie, *The Silver Oar and All That: A Study of the Romero Case*, 27 U. CHI. L. REV. 1 (1959).

22. The general maritime law imposes liability on a shipowner for injuries caused to seamen by an unseaworthy ship. For a discussion of the scope of this liability, see generally GILMORE & BLACK § 6-38.

23. The shipowner's liability for maintenance and cure resembles in certain ways that of an employer subject to a workmen's compensation act. See generally GILMORE & BLACK § 6-6.

maritime tort were also made against International Terminal Operating Company, a Delaware corporation, and Quinn Lumber Company, a New York corporation. Jurisdiction was urged under the Jones Act, and under sections 1331 and 1332 of the Judicial Code.[24] The district court dismissed the complaint for lack of jurisdiction; the court of appeals affirmed.[25]

The Supreme Court granted certiorari[26] because of a conflict among the courts of appeals as to proper construction of section 1331. On the issue of jurisdiction the Court held as follows: (1) The district court had jurisdiction to determine whether a cause of action had been stated under the Jones Act; (2) The claims based on the general maritime law were not cognizable under section 1331; (3) The actions for unseaworthiness and maintenance and cure could be heard by virtue of the doctrine of "pendent jurisdiction," since the district court had jurisdiction of the Jones Act claims; (4) "Since the Jones Act provides an independent basis of federal jurisdiction over the non-diverse respondent . . . the rule of *Strawbridge v. Curtiss*, 3 Cranch 267, does not require dismissal of the claims against the diverse respondents."[27]

In reaching the above conclusions, the Court was not faced with the contention that section 1331 extended to maritime claims based on federal statutes. It is difficult, therefore, to ascertain whether by using the broad phrase "cases of admiralty and maritime jurisdiction" in connection with its holding under section 1331 the Court meant to include statutory maritime claims. In light of this, the best way to determine whether *Romero* can be considered authority for excluding such claims from the jurisdiction conferred by this statute is to examine the Court's discussion of section 1331 in connection with the nonstatutory maritime claims presented as well as its treatment of the Jones Act claims involved.

Concerning the Jones Act, the Court held that the district court had jurisdiction at law over the action under the Jones Act against the non-diverse defendant, thereby determining that Jones Act claims can be brought under the district court's federal question jurisdiction. Does this not conclusively establish that cases resting on federal maritime statutes are section 1331 cases? Unfortunately it does not. Mr. Justice Frankfurter made no mention of section 1331 in connection with the Jones Act claim in question; therefore, the opinion could be interpreted

24. 28 U.S.C. § 1332(a) (1958) provides:
The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and is between: (1) Citizens of different States; (2) Citizens of a State, and foreign states or citizens or subjects thereof; and (3) Citizens of different States and in which foreign states or citizens or subjects thereof are additional parties . . . .

25. 224 F.2d 409 (2d Cir. 1957).

26. 355 U.S. 807. In addition, the Court wanted to settle an important conflict-of-laws question raised by one of the Jones Act claims involved in the case. See *Romero*, 358 U.S. at 358.

27. 358 U.S. at 381.

as holding that the district court's jurisdiction was conferred by provisions in the Jones Act itself. Under this interpretation, it could still be maintained that the Court considered section 1331 as not extending to maritime claims based on federal statutes.

The Court next made several arguments in support of its holding that section 1331 did not confer jurisdiction over Romero's claims based on the general maritime law. Do these arguments force the conclusion that statutory maritime claims also are excepted from the grant of section 1331?

The Court began its analysis of this issue by stating that Chief Justice Marshall's decision in *American Ins. Co. v. Canter*[28] had established the climate of opinion under which Congress acted when passing the Judiciary Act of 1875.[29] In that case Marshall declared:

> A case in admiralty does not, in fact, arise under the Constitution or laws of the United States. *These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise.*[30]

As revealed by this passage, Marshall was concerned only with nonstatutory maritime cases. Therefore, even if Congress acted with Marshall's interpretation in mind, this does not show that statutory maritime claims were excluded from the grant contained in the Judiciary Act of 1875.

Justice Frankfurter next maintained that since one of the principal purposes in enacting the Act of 1875 was to provide a federal forum for federally created rights, maritime claims could not be considered within its scope because these claims had been enforceable in federal courts since 1789.[31] This argument seems to apply with equal force to both statutory and nonstatutory maritime claims. But it does not compel the conclusion that Congress intended to except maritime claims based on federal statutes from the reach of section 1331. On the contrary, it is reasonable to conclude that Congress in this statute made a distinction between statutory and nonstatutory maritime actions. The word "laws" is usually held to include statutes. On notable occasion, however, courts and presumably legislatures have understood "laws" not to embrace judge-made rules.[32]

28. 26 U.S. (1 Pet.) 511 (1828).

29. 358 U.S. at 365-67. The *Romero* case did not deny Congressional authority to confer federal question jurisdiction over claims based on the general maritime law. "The decision is not a construction of Article III of the Constitution and is not placed on constitutional grounds. The authority of Congress to treat maritime cases as cases arising under federal law is expressly recognized. 358 U.S. at 379." Currie, *supra* note 21, at 12 n.42.

30. *Supra* note 28, at 545-46. (Emphasis added.)

31. 358 U.S. at 368-69.

32. See, *e.g.*, Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842).

The Court then observed that until a 1950 dictum in *Jansson v. Swedish Am. Line*,[33] judges, lawyers, and scholars had made the "unquestioned assumption" that nonstatutory maritime claims were not embraced within section 1331.[34] As will be shown in the next section, the opposite has been assumed by most authorities where statutory maritime causes have been concerned.

Justice Frankfurter next noted the "important difficulties of judicial policy" which would result from a contrary interpretation of section 1331. If maritime cases were within the jurisdiction conferred by this statute the "historic option of a maritime suitor pursuing a common law remedy to select his forum, state or federal, would be taken away" because then under section 1441 of the Judicial Code these cases could be removed from state to federal courts. Consequently, inroads would be made into the concurrent jurisdiction of state courts in admiralty matters, which was preserved by the saving of clause of 1789.[35] This result would not follow a holding that statutory maritime claims were covered by the grant of section 1331 because most federal maritime statutes specify the courts in which actions under them may be brought.[36]

Justice Frankfurter then contended that if maritime actions were held within the grant of section 1331 federal courts would frequently be called upon to determine whether a given maritime action was based on state or federal law, since states can "supplement" the maritime law. This was considered undesirable because "determinations of this nature are among the most difficult and subtle that federal courts are called upon to make."[37] For obvious reasons this objection does not apply to maritime claims arising under federal statutes.

Finally, the Court reasoned that if nonstatutory maritime actions were held within section 1331, then, by virtue of section 1391(b) of the Judicial Code, more restrictive venue requirements would apply in saving clause cases wherein diversity of citizenship exists. Thus, litigants in such cases would be hindered in their search for a federal forum.[38] Most federal maritime statutes, however, have their own venue requirements, thus obviating this result where statutory maritime claims are concerned.[39]

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33. 185 F.2d 212, 217-18 (1st Cir. 1950).

34. 358 U.S. at 369.

35. *Id.* at 371-72. The seriousness of these consequences was questioned by Justice Brennan in his dissent. See generally Currie, *supra* note 21.

36. See, *e.g.*, the Death on the High Seas Act, 46 U.S.C. §§ 761-68 (1958). Jones Act cases are not removable. Pate v. Standard Dredging Corp., 193 F.2d 498, 1952 Am. Mar. Cas. 287 (5th Cir. 1952).

37. 358 U.S. at 375.

38. 358 U.S. at 377. Under 28 U.S.C. § 1391(b), where jurisdiction is not founded solely on diversity of citizenship the action can be brought only where all defendants reside. Under § 1391(a), when diversity is the sole jurisdictional basis, the case can be brought "where all plaintiffs or all defendants reside." 28 U.S.C. § 1391 (1958).

39. See, *e.g.*, the Death on the High Seas Act, *supra* note 36.

In conclusion, the Court's treatment of the Jones Act claims involved, in no way implies that statutory maritime claims are excluded from the grant of section 1331. Moreover, most of the reasons advanced by the Court in support of its holding that section 1331 does not confer jurisdiction over nonstatutory maritime claims would not require a similar holding with respect to statutory maritime actions. The arguments of the Court which would suggest such a holding are counterbalanced by arguments of equal persuasion. It is reasonable to conclude, therefore, that Justice Frankfurter's use of broad language was inadvertent and not intended to imply that maritime claims based on federal statutes are without the jurisdiction conferred by section 1331.[39a]

III. The Jones Act Cases

One of the most important federal statutes modifying the general maritime law is the Jones Act.[40] It gives seamen actions against their employers for negligent acts resulting in personal injuries and is frequently invoked.[41] Jones Act cases, therefore, can be expected to aid in answering the question presented.

Unfortunately, the courts have disagreed as to the jurisdictional basis of a Jones Act claim brought on the common-law side of a federal district court. Some of the interpretations advanced are clearly erroneous, reflecting a basic misunderstanding of the Jones Act. Others, though more defensible, seem incorrect. Finally, one line of authority is both persuasive and widely supported. While considering these conflicting opinions our principal question should be kept firmly in mind: Did Congress intend in section 1331 to confer jurisdiction on district courts over maritime causes based on federal statutes?

The first important case to consider the jurisdictional requirements of a Jones Act claim was *Panama R.R. v. Johnson*.[42] In that case, plaintiff brought suit for negligence under the Jones Act on the common-law side of a federal district court located outside the district of the defendant's residence or principal office. The defendant moved to dismiss the complaint for lack of jurisdiction under the concluding provision of the Jones Act, which states: "Jurisdiction of such actions shall be under the

39a. In the recent case of Devlin v. Flying Tiger Lines, Inc., 220 F. Supp. 924, 925 (S.D.N.Y. 1963), the district court viewed the *Romero* holding concerning § 1331 as applying only to nonstatutory maritime claims, by stating that:

> The action instituted in the New York State court is based upon the Federal Death on the High Seas Act, 46 U.S.C.A. § 761 et seq. Thus, this is not a problem of jurisdiction of a tort action arising under the general maritime law of the United States *cf.* Romero v. International Terminal Operating Co. . . .
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> It is clear that this court would have had original jurisdiction of the matter, for the case arises under the laws of the United States, and so satisfies the removal requirements of § 1441(b).

40. 46 U.S.C. § 688 (1958). See *supra* note 18.

41. See generally Gilmore & Black ch. VI.

42. 264 U.S. 375 (1924).

court of the district in which the defendant employer resides or in which his principal office is located." The district court held that this provision established only a venue requirement, which had been waived by defendant's general appearance. The jury returned a verdict for the plaintiff and judgment was entered thereon. There followed an affirmance by the court of appeals.

In the Supreme Court the defendant made two arguments: (1) The above-quoted provision of the Jones Act deprived the district court of jurisdiction; and (2) The Jones Act was unconstitutional because it was in conflict with section 2 of Article III of the Constitution, which extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction."

On the first issue the Court held that the district court had jurisdiction because "the case arose under a law of the United States and involved the requisite amount, if any was requisite."[43] The Court further held that the above-quoted provision of the Jones Act referred only to venue.

The second issue was more involved. The defendant argued that Congress in the Jones Act had withdrawn a maritime cause of action from the admiralty jurisdiction conferred on federal courts by section 2 of Article III of the Constitution. The argument was twofold. First, in applying to Jones Act cases statutes modifying or extending the common-law rights and remedies of railroad employees in personal injury cases, Congress had withdrawn a maritime cause from the reach of the maritime law, which section 2 of Article III required to be applied in maritime cases. Second, the Jones Act gave a remedy only at law, thereby depriving the federal courts of admiralty jurisdiction over this type of maritime claim.

The Court rejected both contentions. Answering defendant's first objection, the Court replied:

> Rightly understood the statute neither withdraws injuries to seamen from the reach and operation of the maritime law, nor

43. *Id.* at 383-84. In support of its statement that the case arose under a law of the United States, the Court cited the first subdivision of § 24 of the Judicial Code, 36 Stat. 1091 (1911), which conferred original jurisdiction on federal district courts "where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made under their authority . . . ." It is difficult to determine the source of the Court's doubt on the question of jurisdictional amount. In its footnote citing the above provision, the Court also referred to the third subdivision of the Judicial Code, which conferred on federal courts exclusive admiralty jurisdiction, saving to suitors the right of a common-law remedy. The Court thereby indicated that the case fell within the saving clause. It is possible that the Court doubted whether a saving clause case based on a federal statute was subject to the jurisdictional amount required in the first subdivision. The source of such doubt could have been the concluding provision of the first subdivision of § 24, which stated: "*Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section."

> enables the seamen to do so. On the contrary, it brings into that law new rules drawn from another system and extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules.[44]

The Court further held that Congress could, consistent with section 2 of Acticle III, permit federal courts to enforce maritime rights "on the common-law side of the courts—that is to say, through proceedings *in personam* according to the course of the common law."[45]

The Court rejected defendant's second argument on the grounds that Congress in the Jones Act did not intend to exclude actions under it from the district court's admiralty jurisdiction; Jones Act cases could be brought in admiralty.

In short, the *Johnson* case established that a Jones Act claim is based on federal maritime law and can be brought in district courts in admiralty under the Congressional grant of admiralty jurisdiction or at law under what is now section 1331. The Court apparently did not decide whether any jurisdictional amount is required when a Jones Act case is brought at law.

The holding of the *Johnson* case that Jones Act cases arise under a law of the United States within the meaning of what is now section 1331 of the Judicial Code is both simple and sound. The Jones Act is unquestionably a "law" of the United States in any generic sense of the term. In addition, no overriding policy or precedent exists which requires exclusion of Jones Act cases from the grant of section 1331. Therefore, this holding in *Johnson* was based on sound principles of statutory construction.

For some unknown reason, the *Johnson* case has not been relied on in subsequent cases to support the proposition that Jones Act cases brought at law are within the jurisdiction granted by section 1331. Nevertheless, as will be shown, the great majority of cases decided after *Johnson* have agreed with its interpretation of section 1331 and the Jones Act.

The next cases to adumbrate the jurisdictional basis of a Jones Act claim were a pair of Supreme Court decisions handed down in the same term in 1926. In *Engel v. Davenport,*[46] the Court held that a Jones Act claim could be brought, under the saving clause, in state courts. In response to vigorous argument, the Court reconsidered the question in *Panama R.R. v. Vasquez.*[47] In affirming its holding in *Engel,* the Court declared:

> [A]n action *in personam* to recover damages for tort is one of

44. 264 U.S. at 388.
45. *Ibid.*
46. 271 U.S. 33, 37 (1926).
47. 271 U.S. 557 (1926).

> the most familiar of the common-law remedies; and it is such a remedy at law that is contemplated by amended sec. 20 of the Seamen's Act and invoked in this case.
>
> The defendant insists that the saving clause refers only to rights recognized by the maritime law as existing in 1789, when the clause first was adopted, and therefore does not include rights brought into the maritime law by subsequent legislative changes. We think the clause has a broader meaning, looks to the future as well as the past and includes new as well as old rights, if only they are such as readily admit of assertion and enforcement in actions *in personam* according to the course of the common law.[48]

Jones Act cases, therefore, are saving clause cases.

The first case to discuss whether the jurisdictional amount required by section 1331 was necessary in a Jones Act case brought at law was *Rowley v. Sierra S.S. Co.*[49] There, without citing the *Johnson* case as authority, the court held that a Jones Act claim arises under a law of the United States within the meaning of section 1331 and therefore the jurisdictional amount provided in that statute is required. The court specifically rejected the argument that the Jones Act itself granted jurisdiction at law irrespective of jurisdictional amount.

The *Rowley* case confirmed the basic holding in *Johnson* that Jones Act cases arise under a "law of the United States" and added the logical corollary that such cases are subject to the jurisdictional amount of section 1331.

The combined holdings of *Johnson*, *Vasquez*, and *Rowley* establish the following proposition: A Jones Act case is a saving clause case which can be brought at law in a federal district court under section 1331 of the Judicial Code.

That this proposition is sound is attested by the fact that the vast majority of cases decided subsequent to *Rowley* and dealing with the issue involved have held that Jones Act cases can be brought at law under section 1331 if the requirements of that statute are complied with.[50]

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48. *Id.* at 561.

49. 48 F. Supp. 193 (N.D. Ohio 1942), criticized in 56 HARV. L. REV. 1161 (1943). In a memorandum decision the court in Christianson v. Luckenback S.S. Co., 1941 Am. Mar. Cas. 542 (S.D.N.Y. 1941) held that the jurisdictional amount in § 1331 was required in a Jones Act case brought at law.

50. Wade v. Rogala, 270 F.2d 280 (3d Cir. 1959); Bartholomew v. Universe Tankships, Inc., 263 F.2d 437, 443 (2d Cir. 1959); Turner v. Wilson Line of Mass., Inc., 242 F.2d 414, 417 (1st Cir. 1957); Jordine v. Walling, 185 F.2d 662, 669 (3d Cir. 1950); McCarthy v. American E. Corp., 175 F.2d 724, 727 (3d Cir. 1949); Mullen v. Fitz Simons & Connell Dredge & Dock Co., 172 F.2d 601, 603 (7th Cir. 1949); O'Neill v. Cunard White Star, 160 F.2d 446, 447 (2d Cir.), *cert. denied*, 332 U.S. 773 (1947); Branic v. Wheeling Steel Corp., 152 F.2d 887, 890 (3d Cir. 1946); Jenkins v. Roderick, 156 F. Supp. 299, 300 (D. Mass. 1957); Nilsson v. American Oil Co., 118 F. Supp. 482 (S.D. Tex. 1954).

Moreover, most of the leading authorities who have considered the problem have assumed that Jones Act cases are within the jurisdictional grant of section 1331.[51]

Finally, and most important of all, Congress has specifically indicated that it considers section 1331 as extending to cases arising under the Jones Act. Both the House and Senate Reports on the 1958 amendments to section 1331 expressly state that Jones Act cases are within the jurisdiction conferred by this statute and subject to its jurisdictional amount.[52] The issue, therefore, should be considered settled.[53]

Another line of authority, however, has accepted the view specifically rejected in *Rowley* and contends that the Jones Act itself confers jurisdiction at law regardless of jurisdictional amount. Professor Moore, the leading proponent of the this position, states:

> The Jones Act, 46 U.S.C. sec. 688 makes the Federal Employers' Liability Act generally applicable and provides: "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." The simplest view is that this covers both venue and jurisdiction, and as to the latter gives the federal district court jurisdiction, as it has under the FELA, irrespective of the amount involved or the character of the parties.[54]

The difficulty with Moore's position is that it seems to contradict the holding in *Panama R.R. v. Johnson*[55] that the Jones Act provision relied on refers solely to venue and is therefore without jurisdictional significance.[56]

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51. Currie, *supra* note 7; GILMORE & BLACK § 6-62; HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 786 (1953); 2 NORRIS, THE LAW OF SEAMEN, § 667 (1952) (with cumulative supplement); Kurland, *supra* note 4; MCCORMICK, CHADBOURN & WRIGHT, FEDERAL JURISDICTION 73 n.2 (4th ed. 1962); Friedenthal, *New Limitations on Federal Jurisdiction*, 11 STAN. L. REV. 213, 217-18 (1959).

52. H. R. REP. No. 1706, 85th Cong., 2d Sess. 5 (1958); SEN. REP. No. 1830, 85th Cong., 2d Sess., 1958; 1958 U.S. CODE CONG. & AD. NEWS 3099, 3103.

53. But, that doubt still exists on this issue, see Cooper v. Sinclair Ref. Co., 199 F. Supp. 655, 656 (S.D.N.Y. 1961). An authoritative textbook states: "Indeed the Jones Act cases may be regarded as an anomaly about which the final word has not been spoken." MCCORMICK, CHADBOURN & WRIGHT, *op. cit. supra* note 51.

54. 5 MOORE, FEDERAL PRACTICE ¶ 38.35(4) n.19 (1951) (with cumulative supplement). See also 4 BENEDICT, ADMIRALTY § 612 (Cum. Supp. at 42, 1963). Moore has reaffirmed his position in MOORE, FEDERAL PRACTICE RULES AND OFFICIAL FORMS 1118 (1961).

55. 264 U.S. 375 (1924).

56. As quoted above, text with note 54 *supra*, Professor Moore also believes that a provision in the Federal Employers' Liability Act, similar to the Jones Act provision in question, serves both as a venue and as a jurisdictional grant to federal district courts. See also 1 MOORE, FEDERAL PRACTICE 622 (1961). This interpretation with respect to the FELA has been expressly rejected in Imm v. Union R.R., 289 F.2d 858, 859 (3d Cir. 1961), in which the court stated:

> The defendant makes two points. The first has to do with Section 6 of the FELA which provides that: "an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of

Several cases appear to support Moore's position. In *Kuhlman v. W. & A. Fletcher Co.*,[57] the court held that the Jones Act provision relied on by Moore conferred jurisdiction at law on the district court irrespective of diversity of citizenship. The court, however, was not faced with the question of jurisdictional amount and did not refer to the construction placed on the provision in question by the *Johnson* case.

The *Kuhlman* case was cited in *Van Camp Sea Food Co. v. Nordyke*,[58] a case relied upon by Moore. This case reveals the confusion that has plagued so many courts in dealing with the jurisdictional basis of actions under the Jones Act. The plaintiff in *Van Camp* brought an action in two counts under the Jones Act on the law side of a federal district court. The first count alleged damages in the sum of $15,000; the second count was for less than $3,000. Defendant contended that since there was no diversity of citizenship the court had no jurisdiction at law. The court rejected defendant's contention, seemingly finding jurisdiction at law under the concluding provision in the Jones Act. The court then stated:

> The complaint alleged and demanded general damages in the sum of $15,000, and the method adopted by the seaman of pleading the aggregate of additional special damages in the second cause of action at an amount not in excess of $3,000 in no manner impaired the jurisdiction of the District Court under the Jones Act to, as was done in the court below, hear and determine the whole case.[59]

In support of this latter holding the court cited cases stating that a claim for maintenance and cure could be heard at law, absent diversity, when joined with an action under the Jones Act. The court, therefore, must have felt that the jurisdictional amount required by section 1331 was applicable in Jones Act cases. This conclusion is fortified by the fact

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action arose, or in which the defendant shall be doing business at the time of commencing such action . . . ." 45 U.S.C.A. sec. 56. The railroad contends that this is a venue provision and does not have anything to do with jurisdiction. It was called a venue provision by the Supreme Court in Baltimore & O.R. Co. v. Kepner . . . 314 U.S. 44. . . . The legislative history furnished us by the appellant's careful research and discussed in the case just cited shows pretty clearly that what Congress had in mind was an amendment to the statute following the decision of Cound v. Atchison . . . 173 F. 527. The holding of the Court in that case required an injured plaintiff to sue his employer in the state of incorporation, an obvious hardship in some cases. So we agree with the appellant that Section 6 is a venue provision only even though very eminent authority has implied it has wider significance. [Citing HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 730, 731 n.39 (1953).]

Congress has, on occasion, conferred on federal district courts jurisdiction at law over claims related to maritime matters irrespective of diversity of citizenship or jurisdictional amount. See, *e.g.*, the Ship Mortgage Act, 46 U.S.C. § 911, 941(c), 951 (1958).

57. 20 F.2d 465, 467-68 (3d Cir. 1927).

58. 140 F.2d 902 (9th Cir. 1944).

59. *Id.* at 905.

that a subsequent case cited *Van Camp* as authority for the proposition that a Jones Act case falls within section 1331.[60]

Most of the remaining cases which could be cited in support of Moore's "special grant" theory did not deal specifically with the question of jurisdictional amount.[61] Some of them reveal the same confusion that is evident in *Van Camp*.[62] On the whole these cases provide tenuous support for Professor Moore's interpretation.

A third line of authority appears to hold that even when brought "at law" a Jones Act claim is tried under the district court's admiralty jurisdiction. This theory was advanced in a casenote in the *Harvard Law Review* in 1943.[63] More recently, Judge Dimock in his concurring opinion in *Paduano v. Yamashita Kisen Kabushiki Kaisha*[64]seems to adopt this position.

Though they do not say so explicitly, these authorities appear to feel that the Jones Act is similar in effect to the Great Lakes Act,[65] which amended the procedure in admiralty to provide for the right of jury trial in certain specified cases.

One of the two cases cited for support in the Harvard casenote does not, it is contended, sustain its position. In *Sevin v. Inland Waterways Corp.*,[66] nothing more was meant than that a Jones Act claim, whether brought at law or in admiralty, was based on maritime law. This case was simply stating a fact made clear in the *Johnson* case.[67]

The other case cited by the casenote, however, does tenuously support its theory. In *McMenamin v. McCormick S.S. Co.*,[68] the court seemed to hold that even when brought "at law" a Jones Act case is heard under the court's admiralty jurisdiction. The court apparently failed to recognize that a maritime claim, when brought at law and sup-

60. Mullen v. Fitz Simons & Connell Dredge & Dock Co., 172 F.2d 601, 603 (7th Cir. 1949).

61. See Linquist v. Dilkes, 127 F.2d 21, 25 (3d Cir. 1941) (indicated special grant in Jones Act but on theory different from Moore's); McDonald v. Cape Cod Trawling Corp., 71 F. Supp. 888, 890 (D. Mass. 1947); Ritchie v. Atlantic Ref. Co., 7 F.R.D. 671 (D. N.J. 1947) (through quoting from *Van Camp*, the court seemed to hold that the Jones Act claim was brought under § 1331); Serbokov v. Great Lakes Transit Corp., 37 F. Supp. 411 (W.D.N.Y. 1941) (a cryptic opinion which seemed to hold that no jurisdictional amount was required in a Jones Act case brought at law).

62. See, *e.g.*, Ritchie v. Atlantic Ref. Co., *supra* note 61.

63. 56 HARV. L. REV. 1161 (1943).

64. 221 F.2d 615, 619 (2d Cir. 1955).

65. 28 U.S.C § 1873 (1958).

66. 88 F.2d 988 (5th Cir. 1937).

67. The court in Mullen v. Eastern Transp. Co., 25 F. Supp. 62 (E.D. Pa. 1938) also used ambiguous language which might lead one to conclude that the court believed that claims under the Jones Act brought at law were within the district court's admiralty jurisdiction. A scrutiny of the whole opinion, however, reveals that the court meant only that a Jones Act case is based on maritime law.

68. 37 F. Supp. 908 (N.D. Cal. 1941).

ported by nonadmiralty grounds of jurisdiction is tried under the district court's common-law jurisdiction.

Judge Dimock, in his concurring opinion in *Paduano*, appears to support the proposition that Jones Act claims brought "at law" are tried under the district court's admiralty jurisdiction. In *Paduano* he stated:

> These words "civil causes of admiralty and maritime jurisdiction" undoubtedly had the same meaning as the words in Article III, section 2 of the Constitution, "all Cases of admiralty and maritime Jurisdiction." The effect of the decision in Panama R.R. Co. v. Johnson . . . is that those words embrace not only maritime remedies to enforce maritime substantive law but common law remedies to enforce maritime substantive law.[69]

A reading of the whole opinion reveals that by "common law remedy" Judge Dimock was referring to the right of jury trial, although strictly speaking, the right of jury trial is not a remedy but a procedural matter. He reads *Johnson* as holding that the district courts' admiralty jurisdiction is broad enough to permit the enforcement of the maritime substantive law by common-law remedies and that a Jones Act claim is enforced in admiralty even when a jury trial is permitted.

The *Johnson* case, it is submitted, did not hold as Judge Dimock interpreted it. What *Johnson* held was that Jones Act claims could be brought in admiralty under the district courts' admiralty jurisdiction, but that when such a claim is brought at law it is heard under the district courts' common-law jurisdiction conferred by what is now section 1331 of the Judicial Code.[70]

A fourth position concerning the jurisdictional requirements in a Jones Act case was adopted in *Lima v. A. L. Burbank & Co.*[71] In that case plaintiff brought an action under the Jones Act on the law side of the district court, alleging damages in excess of 3,000 dollars. The court dismissed the complaint for lack of jurisdiction, holding that diversity of citizenship was necessary to bring a Jones Act claim at law. In support of its holding the court cited, *inter alia*, *Erlich v. Wilhelmsen*,[72] a case which used broad language as to the necessity of diversity in saving

69. 221 F.2d at 620.

70. That there is nothing in logic which dictates that an admiralty case must fall exclusively within the district court's admiralty jurisdiction was amply shown by Justice Brennan in his dissenting opinion in *Romero*, in which he stated:

> A matter affecting an ambassador or a consul is not *per se* an action "arising under" just as it is not *per se* a maritime action. But could not a case involving a consul be also a case of admiralty jurisdiction under certain fact situations? And could not a suit by or against a consul happen, perchance, to be also one "arising under"? The fact that the jurisdictional categories are separate and distinct, as Marshall demonstrates, does not mean that a particular action could not come under the heading of more than one of them. 358 U.S. at 403.

71. 69 F. Supp. 678 (S.D.N.Y. 1946).

72. 44 F. Supp. 414 (E.D.N.Y. 1942).

clause cases brought at law, but which did not appear to involve the Jones Act. Paradoxically, the court also cited the *Rowley* case[72a]—one which was directly opposed to its holding.

This case seems clearly wrong. There is nothing to indicate that Congress intended to incorporate the requirement of diversity of citizenship in the Jones Act.[73] Realizing this, the courts have ignored the *Lima* decision.

A fifth theory regarding the jurisdictional basis of a Jones Act case was suggested recently in *Imm v. Union R.R.*,[74] which held that no jurisdictional amount was required in an FELA case because the Federal Employers' Liability Act was an act regulating commerce within the meaning of section 1337 of the Judicial Code. The court reasoned that all statutes based on Congress's commerce power fell within this statute. In its concluding paragraph the court stated:

> All that we are deciding in this case is that a suit under the FELA is based upon a statute which is a regulation of interstate commerce coming under 28 U.S.C. sec. 1337 and that the jurisdictional amount of Section 1331 is not required. The impact of Section 1337 on the Jones Act cases will be considered when the problem presents itself.[75]

If the above-suggested theory is advanced, it is believed that it will be rejected. Although conceivably the commerce power could support the Jones Act, the usual interpretation is that it was enacted under Congress's admiralty power derived from the judicial grant in section 2 of Article III and the "necessary and proper" clause in section 8 of Article I.[76] This fact will probably persuade the courts that Congress did not intend section 1337 to apply to Jones Act cases.

The holding in the *Imm* case could be used indirectly to support an argument that no jurisdictional amount is required in Jones Act cases. It might be argued that because the Jones Act incorporates by reference the provisions of the FELA, Congress intended to place seamen in as favorable a position as railroad workers. Since, under the *Imm* holding, these workers may sue in federal courts without the requirement of jurisdictional amount, seamen likewise should have this privilege. In support of this position it could be observed that the same statute of limitations applies to both classes of workers.[77] Further, the provision in the FELA prohibiting removal from state to federal courts of suits

72a. Note 49 *supra*.

73. Kuhlman v. W. & A. Fletcher Co., 20 F.2d 465, 467-68 (3d Cir. 1927).

74. 289 F.2d 858 (3d Cir.), *cert. denied*, 368 U.S. 833 (1961).

75. 289 F.2d at 861.

76. See Engel v. Davenport, 271 U.S. 33 (1926); Panama R.R. v. Johnson, 264 U.S. 375 (1924).

77. GILMORE & BLACK at 299.

by railroad employees under the act has been held to have been incorporated into the Jones Act, thereby conferring on seamen the same benefit.[78]

Ironically, the holding in the *Imm* case can also be used to defeat this argument. The counter argument would be that federal jurisdiction over a claim under the FELA is based not upon a provision contained in that act but upon a separate statute, section 1337 of the Judicial Code. Therefore, there is no jurisdictional provision in the FELA capable of being incorporated into the Jones Act. Speaking practically, the courts will probably be unwilling to proliferate further the various theories regarding the jurisdictional basis of a Jones Act case.

In summary, of the authorities discussed in this section, only Judge Dimock appears to reject the proposition that maritime claims arising under federal statutes are within the jurisdiction conferred by section 1331 of the Judicial Code. Professor Moore's position that the Jones Act contains a special grant of jurisdiction at law does not, in itself, contravene the above proposition. The Harvard casenote can be fairly regarded to concern only the desirability of interpreting the Jones Act as not requiring any jurisdictional amount when cases arising under it are brought at law. The *Lima* decision, which required diversity of citizenship in Jones Act cases brought at law, can at best be considered a holding that Congress intended this result when passing the Jones Act. And the holding in the *Imm* case that FELA cases arise under section 1337 of the Judicial Code, with the implication that the same might be true in Jones Act cases, supports, rather than rejects, the position that claims under the Jones Act arise under a law of the United States for purposes of federal jurisdiction.

IV. CASES UNDER OTHER FEDERAL MARITIME STATUTES

In addition to the cases under the Jones Act, several cases involving actions under other federal maritime statutes sustain the contention that statutory maritime claims are within the district courts' general federal question jurisdiction.

In *Crispin Co. v. Lykes Bros. S.S. Co.*,[79] the plaintiff brought suit in a state court under the Carriage of Goods by Sea Act[80] to recover for damage to a shipment of burlap which the defendant transported by one of its vessels. The defendant removed the action to a federal district court and the plaintiff made a motion to remand the case to the state court, on the grounds that a saving clause case could not be removed. The district court denied the plaintiff's motion, holding that the Carriage of Goods by Sea Act was an "act of Congress regulating com-

78. Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952).
79. 134 F. Supp. 704 (S.D. Tex. 1955).
80. 46 U.S.C. §§ 1300-15 (1958).

merce" within the meaning of section 1337 of the Judicial Code and that the saving clause affords litigants a choice of remedies, not of forums.[81] The maritime nature of the claim, therefore, did not withdraw it from the court's federal question jurisdiction.

In *O'Neill v. Cunard White Star*,[82] Judge Learned Hand held in effect, that both the Jones Act and the Death on the High Seas Act were "laws of the United States" within section 1331. He stated this holding as follows:

> Although the district court did not have substantive jurisdiction over the claim by reason of diverse citizenship, since it is based upon the Jones Act and the "Wrongful Death Act," it "arises" under the "laws of the United States."[83]

The Longshoremen's and Harbor Workers' Compensation Act[84] was held to be a "law of the United States" within section 1331 in *City Stores Co. v. Shull*.[85] Although the case involved a statute making the Longshoremen's Act applicable in the District of Columbia, the court based its jurisdiction over the case on the grounds that the Longshoremen's Act was a law of the United States within section 1331.

At first blush, *Leonard v. Liberty Mut. Ins. Co.*[86] might seem contrary to *City Stores*. In *Leonard*, plaintiff sought a declaratory judgment, asking the federal district court to declare the rights, duties, and obligations of the plaintiff and defendant under the Longshoremen's Act. Concerning its jurisdiction to entertain the suit, the court stated:

> We have also examined whether or not the jurisdictional amount of $3,000 or more is necessary to sustain the jurisdiction of this court. Since the instant case primarily comes under the admiralty or maritime law, it is our conclusion that jurisdiction is derived through Article III, section 2 of the Federal Constitution and 28 U.S.C.A. sec. 1333(1). The Court having exclusive admiralty jurisdiction, no specific amount in controversy is necessary.[87]

This statement might be thought to support the view that cases under the Longshoremen's Act do not fall within section 1331. Probably all the court meant, however, was that it chose to treat plaintiff's claim as having been filed in admiralty.[88]

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81. 28 U.S.C. § 1337 (1958) confers original jurisdiction on federal courts over cases arising under acts of Congress regulating commerce.

82. 160 F.2d 446 (2d Cir.), *cert. denied*, 332 U.S. 773 (1947).

83. 160 F.2d at 447. See also Turner v. Wilson Line of Mass., Inc., 242 F.2d 414, 418 (1st Cir. 1957).

84. 33 U.S.C. §§ 901-50 (1958). See generally GILMORE & BLACK ch. VI.

85. 161 F. Supp. 459, 465 (D. Md. 1958).

86. 165 F. Supp. 154 (E.D. Pa. 1958).

87. *Id.* at 157.

88. Other cases which seem to support the view that federal statutes affecting mari-

V. CONCLUSION

By using broad language in holding that claims based on the general maritime law were not cognizable in federal courts under section 1331 of the Judicial Code, the Supreme Court in *Romero v. International Terminal Operating Co.* created doubt as to whether the jurisdiction conferred by this statute extended to maritime claims based on federal statutes. A close analysis of the opinion, however, reveals that *Romero* cannot be considered authority for excluding statutory maritime claims from the jurisdictional grant of section 1331.

With the exception of a twenty-year-old casenote and possibly Judge Dimock's concurring opinion in the *Paduano* case, there seems to be no authority for excluding maritime claims based on acts of Congress from the jurisdictional grant of section 1331 of the Judicial Code. Most of the leading cases and most of the commentators have held that actions based on the Jones Act are cognizable under section 1331. In addition, claims under other federal maritime statutes have been held within the district courts' general federal question jurisdiction.

It is felt, therefore, that section 1331 of the Judicial Code should be regarded as conferring jurisdiction on federal district courts over maritime claims based on acts of Congress.

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time matters are "laws of the United States" within § 1331 include: Davis v. United States Line Co., 153 F. Supp. 912, 914 n.6 (E.D. Pa. 1957); American Cotton Oil Co. v. United States Shipping Bd. Emergency Fleet Corp., 270 Fed. 296 (E.D. La. 1921); Ingram Day Lumber Co. v. United States Shipping Bd. Emergency Fleet Corp., 267 Fed. 283 (S.D. Miss. 1920).