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# THE FOREIGN SEAMAN AND THE JONES ACT

STANLEY DONALD MORRISON\*

## INTRODUCTION

The Jones Act,<sup>1</sup> as an amendment to the LaFollette-Furuseth Seamen's Act of 1915,<sup>2</sup> broadly provides that:

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

This legislation affords "any seaman" or his representatives a right of action ". . . for such injury or death resulting in whole or in part from the *negligence* of any of the officers, agents, or employees of such carrier . . ." <sup>3</sup> (Italics supplied).

Insofar as the Act is a beneficent innovation supplementing the General Maritime Law of the United States, it has been held that the statute is to be liberally construed.<sup>4</sup> Thus, as early as 1926, the word "seaman" was held to embrace a longshoreman injured while working momentarily aboard a vessel.<sup>5</sup> Nor has the word "negligence" been limited either to omissions of duty or to neglectful commissions of acts. Hence, the word has been held to comprehend a wilful assault upon a member of the crew<sup>6</sup> and even upon a

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1. 41 STAT. 1007 (1920), 46 U.S.C. § 688 (1946).

2. 38 STAT. 1164 (1915), 46 U.S.C. § 569 (1946); 38 STAT. 1164, 1165 (1915), as amended, 41 STAT. 1006, 46 U.S.C. §§ 596, 597 (1946); 38 STAT. 1165 (1915), 46 U.S.C. § 656 (1946); 38 STAT. 1166 (1915), as amended, 53 STAT. 1147, 46 U.S.C. § 701 (1946); 38 STAT. 1167 (1915), 46 U.S.C. § 712 (1946).

3. 35 STAT. 65 (1908), 45 U.S.C. § 51 (1946).

4. *DeZon v. American President Lines*, 318 U.S. 660 (1943); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942); *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424 (1939); *Alpha S.S. Corp. v. Cain*, 281 U.S. 642 (1930); *Jamison v. Encarnacion*, 281 U.S. 635 (1930); *International Stevedoring Co. v. Haverly*, 272 U.S. 50 (1926); *Panama R.R. v. Johnson*, 264 U.S. 375 (1924); *O'Neill v. Cunard White Star*, 160 F.2d 446 (2nd Cir. 1947), *cert. denied*, 332 U.S. 773 (1947). Mr. Justice Reed, in *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 790 (1949), said: "The Jones Act was welfare legislation, that created new rights in seamen for damages arising from maritime torts. As welfare legislation this statute is entitled to a liberal construction to accomplish its beneficent purposes."

In considering similar legislation in other fields, we have concluded that Congress intended that the purpose of such enactments *should not be restricted by common law concepts.*" (Italics supplied).

5. *International Stevedoring Co. v. Haverly*, 272 U.S. 50 (1926).

6. *Alpha S.S. Corp. v. Cain*, 281 U.S. 642 (1930).

longshoreman.<sup>7</sup> But the broadest word—the word “any” prefixing the word “seaman”—has been read with a questionable amount of judicial frugality, so much so as to lead to express declarations of abstinence in several cases upon which discussion is here being undertaken.<sup>8</sup>

At the outset, it is to be remembered that a Court of Admiralty has a broad territorial jurisdiction which it may exercise in *its discretion*.<sup>9</sup> Thus, the problem of seamen suing for injuries under the General Maritime Law largely is one of *forum non conveniens*.<sup>10</sup> The cases illustrating this proposition are many and multiform.<sup>11</sup> However, with the Jones Act, the question becomes one of whether the *foreign* seaman can sue under the Act as a matter of right, and *not* whether he can avail himself of its fruits in the discretion of the court, although the court be guided by the principles of

7. *Jamison v. Encarnacion*, 281 U.S. 635 (1930).

8. Circuit Judge L. Hand, in *O'Neill v. Cunard White Star*, 160 F.2d 446, 448 (2d Cir. 1947), *cert. denied*, 332 U.S. 773 (1947), said: “Perhaps Congress might go even so far as that, granted an occasion pressing enough; but surely there should be the clearest warrant of its purpose to do so, for it is as extreme an exercise of power as one can well imagine . . .” Circuit Judge Swan, in *The Paula*, 91 F.2d 1001, 1004 (2d Cir. 1937), *cert. denied*, 302 U.S. 750 (1937), said: “We think the intention to legislate for alien seamen who have signed articles abroad on a foreign ship ought to be clearly expressed before the courts extend the statute to them.”

9. *Canada Malting Co. v. Paterson Steamships Ltd.*, 285 U.S. 413 (1932); *The Belgenland*, 114 U.S. 355 (1885); *Mason v. The Blaireau*, 2 Cranch 240 (U.S. 1804); *The Diana*, 1 Lush. 539, 167 Eng. Rep. 243 (1862); ROBINSON, ADMIRALTY 14-20 (1939). A sterling example of this territorial jurisdiction is *The Kaiser Wilhelm der Grosse*, 175 Fed. 215 (S.D.N.Y. 1909), where District Judge Hough assumed jurisdiction when a German vessel collided with a British vessel within the territorial waters of France, in consequence of which one of the passengers, an Austrian subject, was injured and, thereafter, filed a libel here after the British courts had held the German vessel solely the fault of the collision.

10. Bickel, *The Doctrine of Forum Non Conveniens As Applied in the Federal Courts in Matters of Admiralty*, 35 CORNELL L. Q. 12, 19-31 (1949). See Coffey, *Jurisdiction Over Foreigners in Admiralty Courts*, 15 CALIF. L. REV. 93 (1925). The tort occurring in our waters by itself and without more is not sufficient to see a discretionary assumption of jurisdiction. *Canada Malting Co. v. Paterson Steamships Ltd.*, 285 U.S. 413 (1932). Cf. *Heredia v. Davies*, 12 F.2d 500 (4th Cir. 1926).

11. *Jurisdiction assumed*: *The Troop*, 128 Fed. 856 (9th Cir. 1904) (transportation); *The City of Carlisle*, 39 Fed. 807 (D. Ore. 1889) (inability to travel and no consular remedy); *The Noddleburn*, 28 Fed. 855 (D. Ore. 1886), *aff'd*, 30 Fed. 142 (9th Cir. 1887) (doctors here treated the libellant); *Heredia v. Davies*, 12 F.2d 500 (4th Cir. 1926) (no remedy alleged under foreign law); *The Navarino*, 7 F.2d 743 (E.D. N.Y. 1925) (question presented on merits and court assumed jurisdiction then); *Klaassen v. Peursum*, 1925 Am. Mar. Cas. 498 (S.D.N.Y. 1925) (ill libellant, destitute, and witnesses here); see *Hanna Nielsen*, 25 F.2d 984 (W.D. Wash., 1928) (no one factor is given, but as a matter of conflict of laws the court could apply general maritime law rather than Norwegian law); ROBINSON, ADMIRALTY, 18, n. 10 (1939). *Jurisdiction refused*: *The Ivaran*, 121 F.2d 445 (2d Cir. 1941) (dismissal conditioned on foreign consulate giving compensatory remedy); *The Lynghaug*, 42 F. Supp. 713 (E.D. Pa. 1941) (foreign consulate would hopefully do justice); *The Astra*, 34 F. Supp. 152 (D. Md. 1940) (consul would hear claim); *The Estrella*, 102 F.2d 736 (3rd Cir. 1938) (foreign law best determined by foreign authorities); *Bonsalem v. Byron S.S. Co.*, 50 F.2d 114 (2d Cir. 1931) (conflict of laws principles; flag law and territorial waters foreign); *Pettersen v. The Bertha Brovig*, 92 F. Supp. 895 (S.D.N.Y. 1950) (foreign law gave remedy); *Radovic v. The Prince Pavle*, 45 F. Supp. 15 (S.D.N.Y. 1942); *The Marchen Maersk*, 1937 Am. Mar. Cas. 1531 (S.D.N.Y. 1938) (consul had already assumed jurisdiction); cf. *The Leontios Teryazos*, 45 F. Supp. 618 (E.D.N.Y. 1942) (dismissed as could not prove case, but with leave to renew). Older cases are collected in Robinson, *supra*, and Coffey, note 10 *supra*. The best discussion is Bickel, note 10 *supra*. In all, however, there is no clear basis throughout the entire problem of when the courts will assume jurisdiction. Similar principles apply to the seamen wage cases, though here jurisdiction

maritime law.<sup>12</sup> As a result, if a foreign forum gives a remedy, no matter how little or how much that remedy is worth, it is completely inapposite when suit under the Jones Act is brought by a foreign seaman serving on a foreign flagship.

#### BEFORE AND AFTER THE JONES ACT

After the passage of the Jones Act in 1920, the first case to raise a substantial question was *Stewart v. Pacific Steam Navigation Co.*,<sup>13</sup> in 1924. Here the seaman was British and had signed on a British flag vessel owned by the defendant British corporation which had an office and a place of business within the Southern District of New York. Stewart was injured while he was on the deck of the vessel when it was in the Panama Canal. He sued in the Southern District Court of New York seeking damages under the Jones Act. A motion to set aside the service of summons was made inasmuch as suit was brought against a foreign corporation. Brought into play, therefore, was the question of the meaning of the last sentence of the Act. If construed as a bestowal of jurisdiction, the action necessarily would have had to fail as the corporation did not reside in the United States nor was its principal place of business in New York. In consequence, the Jones Act would only be limited to actions against United States corporations. Then District Judge Learned Hand felt the argument untenable, reasoning that the broad wording of the last sentence was to be construed "not as a question of the affirmative bestowal of jurisdiction, but merely as a question of venue."<sup>14</sup> In this assertion, he was not without the support of the United States Supreme Court, which had just upheld the constitutionality of the Jones Act in *Panama R. R. v. Johnson*,<sup>15</sup> in which case the seaman, an American citizen on a domestic vessel, was injured while in the territorial waters of Ecuador. Judge Hand then said:

... there is no indication of any purpose to limit it to U. S. corporations, and it would be highly unreasonable to impute any such purpose to Congress for the result would be not only to deprive American seamen of the protection *which the act was meant to give them when serving on foreign ships*, but to give advantage to such ships as against American ships. We all know that the purpose of Congress is directly the opposite. (Italics supplied).

With the *Stewart* result, we can also say that where a claim sounded in tort, the ancient maritime law principle of the application of the law of the flag<sup>16</sup> had begun to yield under the superior mandate of the Jones Act.

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is more freely assumed as most foreign governments have automatic compensation laws for seamen suffering personal injury. But in both the personal injury and wage cases, the assumption of jurisdiction is in no way dependent upon whether or not the seaman signed articles in a port of the United States. See *The Navarino*, *supra*; 2 HACKWORTH, DIGEST OF INTERNATIONAL LAW 230 (1941).

12. See *Panama R.R. v. Johnson*, 264 U.S. 375 (1924).

13. 3 F. 2d 328 (S.D.N.Y. 1924).

14. *Id.* at 329.

15. 264 U.S. 375 (1924).

16. *LaBourgogne*, 210 U.S. 95 (1908); *United States v. Rodgers*, 150 U.S. 249 (1893); *In re Ross*, 140 U.S. 453 (1891); *The Belgenland*, 114 U.S. 355 (1885); *The Scotland*, 105 U.S. 24 (1881); *Cain v. Alpha S.S. Corp.*, 35 F.2d 717 (2nd Cir.

Though nothing of this was expressly made in the opinion, it could never be said that the principle of the law of the flag was read in terms of absolute application. Of necessity, the courts have pierced through foreign flags flown at the stern of some vessels. As an example, in *Gerradin v. United Fruit Co.*,<sup>17</sup> the plaintiff, an American citizen, signed articles for shipment in New York on a vessel which was owned by an American corporation, but which was registered under the flag of Honduras and then bareboat chartered back to the United Fruit Company. Gerradin was injured through the negligence of a fellow-servant while the vessel was at sea under voyage articles from New York to Honduras and return. Suit was brought under the Jones Act. It was held that Gerradin could sue for his injuries under the American law. Judge A. N. Hand said:

There can be no doubt about the power of Congress to impose a liability upon its own citizens for acts done on the high seas or at other places outside its territorial jurisdiction. Section 33 of the Merchant Marine Act has done this in the case of American citizens who own ships on which seamen are injured through their negligence and it seems but a slight disregard of the symbol of foreign registry to apply an ordinary rule of torts to a shipowner who bears such an illusory shield.<sup>18</sup>

Prior to *Gerradin* it had been held that where the ship's flag and the domicile of the vessel's owner differ, the law of the latter would apply.<sup>19</sup> Also, where a ship is registered in one state of the United States and owned in another, the law of the place of ownership would apply.<sup>20</sup> *Gerradin*, however, could not be so simply resolved as this suit was brought under the Act. Thus, for purposes of the Act, was one to be considered a "seaman" if he was serving on an American owned, but foreign registered, vessel? The Jones Act says nothing expressly. But it did amend the Seamen's Act of 1915 which applies to "vessels of the United States."<sup>21</sup> This latter Act is amendatory of the Act of 1872 which defines a seaman as a person employed on a vessel belonging to a citizen of the United States.<sup>22</sup> In turn, this was the definition for *Gerradin*. The practical usage of the test of ownership, no doubt, is to prevent the avoiding of our legislation by

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1929); *Grand Trunk R.R. v. Wright*, 21 F.2d 814 (6th Cir. 1928); *Rainey v. N.Y. & P.S.S. Co.*, 216 Fed. 449 (9th Cir. 1914); *Thompson Towing & Wrecking Ass'n v. McGregor*, 207 Fed. 209 (6th Cir. 1913); *Queen v. Anderson*, 1 Cr. Cas. Res. 161 (1868); *RESTATEMENT, CONFLICT OF LAWS*, §§ 45, 405, 406 (1934).

17. 60 F.2d 927 (2nd Cir. 1932), *cert. denied*, 287 U.S. 642 (1932); 31 *COL. L. REV.* 1360; 45 *HARV. L. REV.* 582.

18. 60 F.2d 927, 929 (1932).

19. *Bjostad v. Pacific Coast S.S. Co.*, 244 Fed. 634 (N.D. Cal. 1917). British authority would seem to be similar. *Chartered Merc. Bk. of India v. Netherlands etc. Co.*, 10 Q.B.D. 521 (1883).

20. *Int. Nav. Co. v. Lindstrom*, 123 Fed. 475 (2nd Cir. 1903).

21. 38 *STAT.* 1164, 1184, 1185 (1915), 46 *U.S.C.* §§ 80, 673 (1946); *cf.* 38 *STAT.* 1165 (1915), 46 *U.S.C.* § 597 (1946). From the indications in the *Congressional Record* it would appear that foreign registered, but American owned, vessels were not thought within it. 51 *CONG. REC.* 14343, 14354 (1914); 52 *CONG. REC.* 4650 (1915); *cf.* 52 *CONG. REC.* 4803 (1915).

22. 17 *STAT.* 277 (1872), 46 *U.S.C.* § 713 (1946).

the sham device of foreign registry. And the test of ownership can not be limited to cases where the claimant is an American citizen or where he signed articles in an American port.

In *Carroll v. U. S.*,<sup>23</sup> the libellant was an alien who signed on board in Erie for a voyage to New York. The vessel was American owned, but was under Panamanian registry. Carroll was allowed to sue under the Jones Act for injuries he had received.

Proceeding inward from the results in *Gerradin* and *Carroll* we come to the situation where, rather than a single ownership, there is a multiple ownership. In *Torgersen v. Hutton*,<sup>24</sup> the vessel, a schooner, was half owned by American defendants and half owned by a German corporation. It was, therefore, ineligible for registry in the American merchant fleet and could not fly our flag. The plaintiff, a Norwegian, hired as a member of the crew, was injured through the negligence of a fellow-servant. He sued under the Jones Act. The New York Court of Appeals allowed the suit. However, where an American corporation sets up a foreign corporation, holding one hundred per cent stock interest in that corporation, the result will be different because the corporate entities are separate. The vessels of the foreign corporation will fly the foreign flag, only here the foreign flag does not yield.

In the fairly recent decision of *Sonnesen v. Panama Transport Co.*,<sup>25</sup> the plaintiff, a Danish seaman who signed ship's articles in New York, was injured by a tort while the vessel was on the high seas. The defendant, the Panama Transport Company, was a Panamanian corporation which registered its ships under the Panamanian flag. Sonnesen sued under the Jones Act for defendant's failure to furnish prompt medical attention, in consequence of which a tubercular condition was aggravated. Recovery was denied him. But one of the interesting features of the case is the fact that the Panama Transport Company is well known to be a wholly owned subsidiary of the Standard Oil Company of New Jersey. It was begotten as a creature to allow Standard Oil to run a fleet of its tankers to France and England in circumvention of the United States Neutrality Law, which did not touch Panamanian flagships. Concededly, there was no showing of an attempt to avoid the provisions of the Seamen's Act as amended by the Jones Act, but clearly there was the attempt to avoid the Neutrality Law. Though the device of foreign incorporation creates a separate entity, when this is designed particularly at the evasion of United States law, it is difficult to see why there is not a sufficiently strong domestic policy to compel the law of the flag to yield<sup>26</sup>—especially when the law of the flag principle

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23. 133 F.2d 690 (2nd Cir. 1943).

24. 267 N.Y. 535, 196 N.E. 566 (1935), cert. denied, 296 U.S. 602 (1935).

25. 298 N.Y. 262, 82 N.E.2d 569 (1948), cert. denied, 337 U.S. 919 (1949); 17 GEO. WASH. L. REV. 549 (1949).

26. Under Panamanian Law the seaman signing aboard a Panamanian vessel consents to have all his rights adjudicated under the laws of Panama. Berguido, *The Rights of a Seaman on a Ship Under Panamanian Registry*, 19 TEMP. L. Q. 458

has been asserted to be one of comity only.<sup>27</sup> At times the purpose behind foreign incorporation can not be so clearly known as in *Sonnesen*. Then, it is submitted that the facts which should be examined are the identity of the directors and/or the incorporators, or the nationality of the management and/or the controlling stockholders.<sup>28</sup>

The situation, then, being clear that American owned ships placed under foreign registry are subject to the provisions of the Jones Act—the foreign flag here yielding—the case of the American or foreign seaman shipping on an American flagship and injured on the high seas or in the territorial waters of a foreign state still sees him the beneficiary under the Act.<sup>29</sup> The law of the flag prevails where the American flag flies. The Supreme Court has never regarded the occasion of the locus of the tort in the territorial waters of a foreign state as being determinative where the flag is American and suit is brought under the Jones Act.<sup>30</sup>

Traditionally, the statement of the application of the law of the flag meant that the flag flown at the vessel's stern would be determinative of legal rights in cases of tort. Therefore, if an American seaman was on a British ship, he was to be considered as if he were a Britisher in point of law, at least when the vessel was on the high seas. This proposition is supported by many cases.<sup>31</sup> We have seen an exception to the principle in *Gerradin, Carroll, and Hutton*. Another now follows.

In *Western Fuel Co. v. Garcia*,<sup>32</sup> a stevedore, an American citizen, was killed in 1916, four years before the enactment of the Jones Act, while

(1946). But nearly all articles signed for service on foreign ships are of the same effect. *Kyriakos v. Goulandries*, 151 F.2d 132 (2nd Cir. 1945) (no application for certiorari); *Cambra v. Bergoty*, 132 F.2d 414 (2nd Cir. 1942), *cert. denied*, 319 U.S. 742 (1943) (no application for certiorari). But it has very recently been decided that such a provision is to be given full effect on the basis of choice of law. See *Lauritzen v. Larsen*, 345 U.S. 571 (1953). Domestic policy could also see the undoing of the intent of the parties.

27. *In re Ross*, 140 U.S. 453 (1891); *Wildenhuss' Case*, 120 U.S. 1 (1885); *Grand Trunk R.R. v. Wright*, 21 F.2d 814 (6th Cir. 1928); 2 BEALE, *CONFLICT OF LAWS*, § 405.1 (1935); *Draft Conv. Research in Int. Law*, 23 AM. J. INT'L LAW (Special Supp.) 307 (1929). The above cases and texts all go to "internal economy," where no statute of the territorial sovereign is involved.

28. 17 GEO. WASH. L. REV. 549 (1949).

29. *Alpha S.S. Corp. v. Cain*, 281 U.S. 642 (1930), *affirming Cain v. Alpha S.S. Corp.*, 35 F.2d 717 (2nd Cir. 1929); *Panama R.R. v. Johnson*, 264 U.S. 375 (1924); *Wenzler v. Robin S.S. Co.*, 277 Fed. 812 (D.C. Wash. 1921).

30. *Ibid*; ROBINSON, *ADMIRALTY*, 328-329 (1939).

31. *In re Ross*, 140 U.S. 453 (1891); *The Belgenland*, 114 U.S. 355 (1885); *Rainey v. N.Y. & P. S.S. Co.*, 216 Fed. 449 (9th Cir. 1914); *Hogan v. Hamburg-Amer. Line*, 152 Misc. 405, 272 N.Y. Supp. 690 (City Ct., N.Y. 1934); *Resigno v. Jarka Co.*, 221 App. Div. 214, 223 N.Y. Supp. 5 (1st Dep. 1927), *reversed* by 248 N. Y. 225, 162 N.E. 13 (1928); *Clark v. Montezuma*, 217 App. Div. 172, 216 N.Y. Supp. 295 (2nd Dep. 1926). Cf. *Plamals v. Pinar del Rio*, 277 U.S. 151 (1928). In *Thompson Towing v. McGregor*, 207 Fed. 209 (6th Cir. 1913), the law of the flag applied because the dispute affected "internal economy" of the vessel. See also *Carrington v. Panama Mail Co.*, 136 Misc. 850, 241 N.Y. Supp. 347 (Sup. Ct. 1929). But when the vessel is in our waters the result may be different. *The Cuzco*, 225 Fed. 169 (D. Wash. 1915); cf. *Bennett v. Connelly*, 122 Misc. 149, 202 N.Y. Supp. 568 (Sup. Ct. 1923); *Geohegan v. Atlas S.S. Co.*, 3 Misc. 224, 22 N.Y. Supp. 749 (N.Y. City & Cty. Ct. 1893); *Wingert v. Carpenter*, 101 Mich. 395, 59 N.W. 662 (1894).

32. 257 U.S. 233 (1921).

working in the hold of a Norwegian vessel which was at anchor in San Francisco Bay. The vessel was under charter to the Western Fuel Co.—the employer of the decedent—and flew the Norwegian flag. In an opinion by Mr. Justice McReynolds, a champion of the “maritime but local” doctrine, the wrongful death statute of California was applied without any reference being made to the application of the law of the flag. Allowing such an action under the statute of California did not work any material prejudice to the characteristic features of a general and uniform maritime law.<sup>33</sup>

But with the passage of the Jones Act the problem of the stevedore—whether alien or American—injured on board a foreign vessel in the territorial waters of the United States or the Panama Canal Zone began to vex the courts. In 1926, in *International Stevedoring Co. v. Haverty*,<sup>34</sup> the voice of Mr. Justice Holmes spoke loudly when he proclaimed that a stevedore injured on an American ship was a “seaman” for purposes of a Jones Act suit against his employer-stevedoring company. But in 1928, in *Resigno v. Jarka Co.*,<sup>35</sup> an American stevedore died as a result of injuries sustained while he was working on a German flag vessel in New York harbor. His administrator sued the employer under the Jones Act for negligence in failing to provide a safe place in which to work. The New York Court of Appeals, speaking through Judge Cardozo, though admitting that the decedent was a “seaman” under *Haverty*, denied recovery limiting the Act’s application to *domestic* vessels.

At the time of *Resigno*, or soon thereafter, however, the lower federal courts were contrary and rejected its thinking. On similar facts they agreed that the stevedores involved were “scamen” under *Haverty*. But they disagreed with the limitation of the Act to domestic vessels. In so doing they became the procreators of the “privity” doctrine which stated that as the stevedore had no privity with the vessel, the Act could be applied against the employing stevedoring company.<sup>36</sup> The decisions of the state courts of Washington were similar to the results of the lower federal courts.<sup>37</sup> One decision in the New York state court machinery refused to follow *Resigno* while that case was in its appellate stage.<sup>38</sup>

Yet the Supreme Court had not spoken. However, there was no compulsion upon the federal courts to follow the state law under *Erie R. R. v.*

33. See *Washington v. Dawson*, 264 U.S. 219 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920); *Southern Pac. Co. v. Jensen*, 244 U.S. 205 (1917). The concept of a maritime uniformity can roughly be traced back to some dictum of Mr. Justice Bradley in *The Lottowanna*, 88 U.S. 558 (1874). Cf. *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922); *The Hamilton*, 207 U.S. 398 (1907).

34. 272 U.S. 50 (1926).

35. 248 N.Y. 225, 162 N.E. 13 (1928).

36. *Mahoney v. Int. Elev. Co., Inc.*, 23 F.2d 130 (E.D. N.Y. 1927); *Zarowitch v. Jarka*, 21 F.2d 187 (E.D. N.Y. 1927); *Williams v. Oceanic Steve. Co.*, 27 F.2d 905 (S.D. Tex. 1928), 42 HARV. L. REV. 273; *Schotis v. North Coast Steve. Co.*, 24 F.2d 591 (W.D. Wash. 1927).

37. *Ranstrom v. Int. Steve. Co.*, 152 Wash. 332, 277 Pac. 992 (1929); *McGinn v. North Coast Steve. Co.*, 149 Wash. 1, 270 Pac. 13 (1928).

38. *Muti v. Hocv*, 221 App. Div. 688, 224 N.Y. Supp. 662 (2d Dep’t 1927).



*Tompkins*,<sup>39</sup> inasmuch as the maritime power is federal. The principle of *Erie* is thereby inverted to say that the state courts should follow the decisions of the federal tribunals. Hence, no federal court was bound to accept and follow *Resigno*. It was left only to the United States Supreme Court to overthrow *Resigno*. This occurred in the case of *Uravic v. Jarka Co.*<sup>40</sup> in which a stevedor, an American citizen, was injured on board a German flag vessel while he was helping to unload it in New York harbor. The injury later led to his death. Suit was brought by his administratrix against the stevedoring company asserting as the cause of the injury the negligence of a fellow-servant. Recovery in the New York courts was denied on the authority of *Resigno*. In reversing the court of appeals, Mr. Justice Holmes, speaking for an unanimous court, stated a far broader doctrine as to the Act's coverage. The decedent was held to be covered though he was on board a German flag vessel. It was contended by counsel for the respondents that the words "any seaman" were defined to mean "seamen employed upon a vessel belonging to a citizen of the United States." To this Mr. Justice Holmes replied:

But that section [R. S. Sec. 4612] merely provides that for purposes of the chapter 'seaman' shall include persons who otherwise might be deemed not to be seamen. It is directed to extension not to restriction . . . Then it is argued that the grant of jurisdiction to the Court of the District in which the defendant employer resides or has his principal office, without granting a proceeding *in rem* in the case of tramp steamers from abroad, shows that seamen on a foreign vessel were not contemplated. But the question is not whether they were thought of for the purpose of inclusion, *but whether they were intentionally excluded from a description that on its face includes them.*<sup>41</sup> (Italics supplied).

Then continuing, he said:

But we may go further. Here we are dealing with the conduct of persons within the jurisdiction affecting the safety of other persons within it. If the rule is wise there is no reason why it should not be universal. Wise or not, it is the law and the question is why *general words should not be generally applied*. What would be the alternative? Hardly that German law should be adopted. It always is the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own.<sup>42</sup> (Italics supplied).

And, in concluding his opinion, as if to mark that small outer periphery where the Act would *not* apply:

If it should appear that, by *valid contract* or *special circumstances*, seamen on a foreign ship should *not* be protected by the statute, it will be time enough to consider the exception when it is presented.<sup>43</sup> (Italics supplied.)

39. 304 U.S. 64 (1938).

40. 282 U.S. 234 (1931), 31 COL. L. REV. 505, 16 CORNELL L. Q. 371, 26 ILL. L. REV. 72, 5 ST. JOHN'S L. REV. 260.

41. *Id.* at 239.

42. *Id.* at 239-240.

43. *Id.* at 241.

But to all other seamen, foreign or national, when on foreign vessels, with no "contract" or "special circumstances" interfering, the Act would apply—especially if that vessel is in the waters of the United States.

With this demolition of *Resigno*, with the broad reading of the statute that was made in *Uravic*, the foreign flag did bow when it was within the waters of the Panama Canal Zone<sup>44</sup> or the nation that begot the Jones Act. Therefore, if an actual American seaman is injured while working on a foreign flagship within the waters of the United States, he can avail himself of the Jones Act remedy. This was the holding in *Shorter v. Bermuda & West Indies S. S., Ltd.*<sup>45</sup> But the fact that in *Uravic* and *Shorter* the claimants were American citizens could not really be regarded as decisive because the statute makes utterly no distinction on the basis of nationality. Indeed, several cases have held that the nationality of the claimant is of no consequence.<sup>46</sup> Thus, it has been held that a longshoreman of uncertain nationality injured while on a French ship in the Canal Zone could assert his claim under the Act.<sup>47</sup> The result is consonant with *Uravic* and gave rise to the following interesting language:

It is to be presumed that in adopting Section 33 of the Merchant Marine Act Congress intended that an injured seaman should have a convenient forum in the United States in which to assert his action against an alien corporation in a foreign country . . . .  
 . . . the right of action is give to all seamen regardless of nationality.<sup>48</sup>

But it is to be remembered that in *Uravic*, and the cases following it, the contract of employment, or the signing of ship's articles, was always made in the United States. This was pointed out in *Uravic* by Mr. Justice Holmes. Also, in *Uravic*, counsel did contend that if the Act was not to be applied to seamen of a foreign vessel, it was because Congress did not intend to legislate with respect to vessels which were in the United States only "transiently."

Before the decision in *Uravic* there had been clear assertions of the application of flag law in the New York state courts which left a very positive impression on the minds of some federal judges. Thus, a seaman who had signed articles in a United States port on a foreign vessel was held not to be able to sue under the Act for injuries received while the vessel was on the high seas,<sup>49</sup> and notwithstanding the fact that the seaman was a

44. *Panama Agencies Co. v. Franco*, 111 F.2d 263 (5th Cir. 1940), where quoting from *Panama R.R. v. Johnson*, 264 U.S. 375 (1924), Circuit Judge Sibley said: "The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform." *Arthur v. Compagnie Gen. Trans.*, 72 F. 662, (5th Cir. 1934); *Sandoval v. Fruit Express Co.*, 1944 Am. Mar. Cas. 580 (D. Canal Zone 1944).

45. 57 F.2d 313 (S.D.N.Y. 1932).

46. *Kyriakos v. Goulandries*, 151 F.2d 132 (2nd Cir. 1945); *Gambera v. Bergoty*, 132 F.2d 414 (2nd Cir. 1942).

47. *Arthur v. Comp. Gen. Trans.*, 72 F.2d 662 (5th Cir. 1934).

48. *Id.* at 664.

49. *Hogan v. Hamburg-Amer. Line*, 152 Misc. 405, 272 N.Y. Supp. 690 (N.Y. City Ct. 1934). Cited, in the refusal to apply the Act because articles were signed here, was

resident of the state of New York. That articles were signed in New York was inconsequential, as the contract provided that the law which was to prevail was not that of the place where the contract was made.<sup>50</sup> This assertion overlooks the fact that a statutory imposition could change ordinary conflict of laws principles.<sup>51</sup> But the extension of the principle was to be seen in *Clark v. Montezuma Transport Co.*<sup>52</sup> In this case an American seaman began working, without formally signing articles,<sup>53</sup> on a British vessel which was tied to a wharf in the waters of the United States. He was injured on the vessel and sought recovery under the Act. This was denied. Only British law was competent to give a remedy. Accordingly, an American seaman injured on a foreign vessel while it was within the waters of a foreign nation could not sue under the Act.<sup>54</sup>

The lower federal courts were neither slow nor loath to pick up the thinking of the New York state courts. When the United States Supreme Court had an opportunity to speak, it abstained from so doing. This occasion arose in *Plamals v. The Pinar Del Rio*<sup>55</sup> where a Spanish seaman, belonging to the crew of a British vessel, was injured through the negligence of a fellow-servant while the ship was at anchor in Philadelphia. The action was brought *in rem* under the Jones Act. The Second Circuit Court of Appeals held that the Jones Act did not give an *in rem* proceeding. Mr. Justice McReynolds speaking for a unanimous court said:

We agree with the view of the Circuit Court of Appeals and find it unnecessary now to consider whether the provisions of Section 33 are applicable where a foreign seaman employed on a foreign ship suffers injuries while in American waters.<sup>56</sup>

Thus the question was left wholly unanswered.

A case illustrating the dependence upon New York state court thinking was *The Seirstad*.<sup>57</sup> There the libellant was a Norwegian who had signed articles on a Norwegian ship in Philadelphia for a voyage from Philadelphia to Cuba and return. While the vessel was proceeding up the Delaware River he was injured. He sued on three grounds, one of which was the Jones Act for alleged negligence. This was denied by District Judge

Oehler v. Hamburg-Amer. Line, 84 Misc. 272, 145 N.Y. Supp. 1090 (Sup. Ct. 1914), a pre-Jones Act case which refused to apply the New York law as the contract was to be governed by the law of the place of performance, which was on a German vessel.

50. Oehler v. Hamburg-Amer. Line, 84 Misc. 272, 145 N.Y. Supp. 1090 (Sup. Ct. 1914).

51. See 49 HARV. L. REV. 319 (1935). An equally ambiguous statute in this respect was applied to foreign vessels during prohibition. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1923). This, however, was done to effectuate the National Prohibition Act.

52. 217 App. Div. 172, 216 N.Y. Supp. 293 (2nd Dep't 1926).

53. Nor formally signing articles would not stop the assertion of Jones Act rights if they existed. *The Falco*, 20 F.2d 362 (2nd Cir. 1927); *Ververis v. Marathon S.S. Co.*, 1952 Am. Mar. Cas. 147 (S.D.N.Y. 1951); 1 NORRIS, LAW OF SEAMEN § 91 (1951).

54. *Maia v. Lamport & Holt, Ltd.*, 141 Misc. 140, 252 N.Y. Supp. 201 (2nd Dep't 1931). Cf. *Bonsalem v. Byron S.S. Co.*, 50 F.2d 114 (2nd Cir. 1931).

55. 277 U.S. 151 (1928).

56. *Id.* at 155.

57. 27 F.2d 982 (E.D. N.Y. 1928).

Campbell who saw *Plamals* as not decisive of the question, but as *Clark* and *Resigno* had answered the question of *Seirstad*, he felt "constrained" to hold that the Act was only to be applied to seamen at work on domestic vessels.<sup>58</sup> Of course, Judge Campbell could not foresee that *Resigno* would be overturned in *Uravic* and that thereby a substantial hole would be drilled into *Clark*. Nor did Judge Campbell look far enough into the authorities upon which *Clark* was based. If so, he would have observed that all the cases cited there *ante-dated* the Act. They stood for the proposition that the contract of employment related to performance; as the performance was to be on a foreign ship it was that law which governed, not the law of the place of the making of the contract. But the Act could have changed these rules as it was arguably conceived to equalize the operating costs between American and foreign shipping.

But with *Seirstad* deadened by *Uravic* its place was left to be taken by another Federal Court decision even more restrictive. It will be recalled that in *Uravic* the decedent was an American citizen injured while he was on a foreign ship. *Clark*, *Resigno*, and *Seirstad* all refused to apply the Act feeling that it was only intended to cover seamen on American vessels. This line of thinking was crippled by *Uravic*. Thus, on the basis of *Uravic*, the Act should only be applied to *American citizens*. Support for this conclusion could be mustered from the title of the Seamen's Act of 1915 which literally covered American seamen. Hence, if the seaman was foreign, he could not sue under the Act. This was the holding in *The Magdapur*,<sup>59</sup> in which case a Britisher signed on a British ship in Ceylon and was hurt while the vessel was in Baltimore. District Judge Patterson refused the remedy saying:

The Jones Act was passed for the welfare of *American seamen*.<sup>60</sup>  
(Italics supplied).

This decision was handed down in 1933 and relied heavily on the results in *Shorter* and *Uravic*, at least to the extent that those two cases concerned American citizens. Yet, in *Uravic*, Mr. Justice Holmes did not say that citizenship was the basis of the decision. Indeed, he gave the Act a far broader reading than a nationality basis would tolerate. As for *Shorter*, articles were signed in New York whereas in *Magdapur* articles were signed in Ceylon, though nothing was made of these facts in either opinion. *Shorter* would then be consonant with *Uravic* as in the latter case the contract of employment was American also.

*Magdapur* concerned a foreign seaman who signed foreign articles, but who was injured on the vessel while it was within the waters of the United States. Recovery was denied solely on the basis of nationality. A more significant case, denying the Jones Act remedy, on similar facts, is the 1937

58. District Judge Campbell said the decisions in *Resigno* and *Clark* were approved by the Second Circuit Court of Appeals. He cited no cases in which this "approval" had been made. No such cases can be found.

59. 3 F. Supp. 971 (S.D.N.Y. 1933).

60. *Id.* at 973.

Second Circuit Court of Appeals decision in *The Paula*.<sup>61</sup> In this case, the seaman was a German national who signed articles for shipment in Chile aboard a Danish vessel. The facts in the opinion are not clear, but it appears that the vessel's voyage was from South America to Florida to New York. From there it is not certain whether the vessel was to go to Europe or not. The seaman was injured while aboard the vessel in Jacksonville. He sued under the Jones Act *in rem* and *in personam* with writ of admiralty attachment when the vessel was found in New York some two months later. The rationale of Circuit Judge Swan's opinion is confusing, but decisive in its denial of Jones Act usage. So far as the action was brought under the General Maritime Law, Judge Swan first decided that a United States-Denmark Treaty giving the "consular officer . . . exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country . . ." did not apply because a personal injury was not a "controversy" arising out of the vessel's internal order. But then he declined to reverse the court below which had refused to take jurisdiction in its discretion because the mere fact that the cause of action arose in our waters was not decisive of an exercise of discretionary jurisdiction. Furthermore, Danish Law afforded a remedy. Then Judge Swan proceeded to the Jones Act aspect of the case:

He asks us to rule that this applies to an alien seaman on a foreign ship who signed on at a foreign port, if he sustains injury in a port of the United States through the negligence of a fellow seaman. This question was left open [citing *Plamals*]. Precise authority on it is meager. Such as there is has answered the question in the negative [citing *Seirstad* and *Magdapur*]. But an American stevedore injured in a foreign ship at an American port may claim the benefit of the Jones Act [citing *Uravic*]. So also may an American seaman [citing *Shorter*]; and in *Arthur*,<sup>62</sup> the Act was held applicable to a stevedore of unproven citizenship injured on a foreign ship in the Canal Zone. At page 664, there is dictum that 'the right of action is given to all seamen regardless of nationality.' Likewise the Act applies to an American owned vessel, though under foreign registry [citing *Gerradin*. See also *Hutton*] . . . Whether an *American seaman* on a foreign ship, who had *signed on at a foreign port*, could claim under the Jones Act is not entirely clear. In the *Uravic* opinion, Justice Holmes remarked:

'If it should appear that, by valid contract or special circumstances, seamen on a foreign ship should not be protected by the statute, it will be time enough to consider the exception when it is presented.'

It is even *less* clear that a foreign seaman who had signed on at a foreign port should have the benefit of the Act. We think the intention to legislate for *alien seamen* who have *signed articles abroad* on a *foreign ship* ought to be clearly expressed before the courts extend the statute to them.<sup>63</sup> (Italics supplied).

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61. 91 F.2d 1001 (2nd Cir. 1937). See *Neset v. Skibs A/S Oil Express Co. of Moss, Norway*, 93 F. Supp. 530 (E.D. N.Y. 1950).

62. *Arthur v. Comp. Gen. Trans.*, 72 F.2d 662 (5th Cir. 1934).

63. 91 F.2d 1001, 1003-1004.

Three observations may be made as to this discussion by Judge Swan:

First, he cited *Magdapur* where Jones Act usage was denied because the seaman was not an American citizen. It should follow that if the Act were to protect American seamen, then it would be of no consequence where the articles were signed. Also, no mention was made that the *Seirstad* result was crushed by *Urvic*.

Secondly, though quoting the important language from *Urvic*, it is submitted that its application was misunderstood as Judge Swan did not notice the significance of the word "not." This language says that the Act applies to *all* seamen, foreign or American, on foreign ships unless "valid contract" or "special circumstances" prohibits the application of the Act. What was meant by "valid contract" or "special circumstances" is impossible to say with specificity. But, at any rate, in *Paula*, there was no contract provision prohibiting the usage of the Act or any "special circumstances" save a fear of judicial legislation.

Thirdly, at the end of the opinion, Judge Swan spoke in terms of legislation for "alien seamen who have signed articles abroad on a foreign ship." Surely, if it is an alien seaman signing on an *American* vessel in a foreign port, then the Act applies. Under *Magdapur*, if the seaman is American, but the articles are signed abroad on a foreign vessel, then the Act should apply also. But did Judge Swan mean to say that if the seaman were an alien who *signed articles* on a foreign vessel in an *American port* the Act would also apply? The implication of Judge Swan's language is that the Act would apply unless all the elements are foreign saving the locus of the tort. Thus, a principle of contract would apply over a principle of tort, notwithstanding that the statute is aimed at delict and not contract breach. And though there it not one word in the Act justifying such a result, it does show that the enactment of the statute did mean to change the ordinary rules of conflict of laws which prevailed before 1920.

Application for the writ of certiorari was made in *Paula* and was denied.<sup>64</sup> The principle of the law of the flag still flew with a measure of its old imperial color and majestic dignity.

#### WORLD WAR II AND AFTER

With the Second World War years, it became necessary for many foreign shipowners to shift their shipping industries from the original seats of their occupations. In the invaded countries that were maritime, principally Norway and Greece, those shipowners who could escape the Nazi scourge came to New York to survive and reorganize their maritime activities, most of which required setting up offices in New York. The shipping chiefly operated out of New York; however, the ships still retained their foreign flags. The question then arose as to how the courts would construe the Jones Act with the new impact that the war had created on maritime commerce? Though it had been held that a Jones Act suit would

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64. *Cert. denied*, 302 U.S. 750 (1939).

have to be dismissed where the libel did not allege *the place of signing on* and the ports of call of the vessel,<sup>65</sup> a new and rather interesting twist came upon the scene in *Gambera v. Bergoty*.<sup>66</sup> In this case, an action was brought under the Act in Admiralty *in rem* and *in personam*. The former had to be dismissed as *Plamals* had held the Jones Act to create no *in rem* right of action. The libellant was an Italian citizen who had signed articles in New York for service aboard a Greek vessel. He had, however, been in the United States for some twenty years and in 1937 had taken out first naturalization papers. The voyage of the vessel began and ended in the United States: it was from Trenton to Philadelphia, then to Norfolk and New York. Gambera was injured on the leg of the voyage between Trenton and Philadelphia. The Jones Act remedy was held to apply. In discussing *Paula*, Judge L. Hand incorrectly stated the facts by saying the seaman there was German, who had signed on in Germany, on a German ship, for a voyage *to begin and end in Germany*. But the principle of *Paula* still stood, though it was distinguishable from *Gambera*, since in the latter the libellant was a resident of the United States who had his first papers. Furthermore:

The whole voyage was to be performed within our territorial waters except possibly for a part of the leg between Norfolk and New York. That presents a wholly different situation from any that have hitherto arisen.<sup>67</sup>

As to the matter of nationality and the Jones Act, Judge Hand said:

The Jones Act was the culmination of a series of efforts . . . to secure adequate relief for American seamen in their employment. It is *extremely unlikely that Congress should have meant to exclude aliens* who . . . were members of that class merely because they had not been naturalized. . . . In *Uravic*, it was *at least* left open whether the Act applied to foreign seamen and that would go much further than to apply it to an alien circumstanced like the libellant. *We see nothing in the definitory section . . . to limit the application of the Act to American ships or American citizens*. As to ships, *Uravic* was an express answer and thereafter the definition no longer afforded an obstacle to *including* foreign seamen.<sup>68</sup> (Italics supplied).

Counsel observed the error in the statement of *Paula's* facts. And in denying a petition for rehearing, the following was said in a per curiam opinion:

It is true that we did not state the facts in *Paula* quite accurately; the libellant in that case signed on in Chile; the ship was Danish; *the voyage was from a Chilean port to Brooklyn*. None of these facts could make the least difference, however, *unless it were that the voyage ended in this country*; and that too is immaterial since it does not concern those facts which we hold to bring the libellant at bar within the protected class.<sup>69</sup> (Italics supplied).

65. *Zagoras v. Coumantaros*, 1941 Am. Mar. Cas. 306 (S.D.N.Y. 1941).

66. 132 F.2d 414 (2nd Cir. 1942), *cert. denied*, 319 U.S. 742 (1943). Cf. *Puig v. Royal Norwegian Gov't.*, 72 F. Supp. 69 (S.D. N.Y. 1947).

67. 132 F.2d 414, 416

68. *Ibid.*

69. *Rehearing denied*, 1943 Am. Mar. Cas. 47 (1943).

The "new twist" added by *Gambera* was the nature of the voyage as being within United States waters—beginning and ending in the United States—and the fact of the long continued residence. Yet, to be sure, there is nothing in the statute justifying such a conclusion. The court, of necessity, had to legislate. However, residence itself was later held not to be enough when the tort occurred on the high seas on a voyage which neither began nor ended in the United States.<sup>70</sup> Thus, it has to be residence *plus* to come within the protective warmth of *Gambera*.

What, next, does *Gambera* do to *Paula*? First, it says that nationality is no basis for distinction. Secondly, it says that the Act does apply to foreign vessels. Thirdly, it says nothing about grounding a distinction on the place of the signing of the articles. Lastly, and most significantly, is the fact that in *Gambera* the voyage began and ended here whereas in *Paula*, from the opinion on the petition for rehearing, the voyage began foreign, but ended here after making an intermediate stop in Florida. In both cases the cause of action arose in our waters—though far closer to United States soil in *Paula*. Hence, the only thread upon which the case was left to hang was that the voyage in *Paula* did not begin here. Such thin threads are not bases upon which to leave precedents hanging.

As foreign shipowners were signing on their crews in our ports, with articles written many times in the language of the vessel's flag, the courts were not slow to respond. This was displayed by the decision in *Kyriakos v. Goulandris*<sup>71</sup> and *Taylor v. Atlantic Maritime Co.*<sup>72</sup> (The latter case, however, will be discussed at a later point in this article). In *Kyriakos* a Greek seaman, not a resident here, signed articles in New York for shipment on a Greek vessel. The voyage of the vessel was to be from the United States to England and back. Before the vessel was to leave for England it went to the port of Fernandina, Florida. While there the libellant went ashore to purchase some personals and, on his way back to the vessel, was stabbed several times by another member of the crew whose vicious tendencies had been reported previously to the ship's captain to no avail. Circuit Judge A. N. Hand wrote the opinion for the majority of the court and held the Act applicable. In a rather long opinion, he felt several factors decisive:

In the instant case the libellant *signed on in an American port and he was injured in an American port*. We think this is sufficient both on reason and on authority.<sup>73</sup> (Italics supplied).

To the contention that the Seaman's Act of 1915 read in its title that it was to promote the welfare of *American seamen* in the United States

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70. *O'Neill v. Cunard White Star*, 160 F.2d 446 (2nd Cir. 1947), cert. denied 332 U.S. 773 (1947).

71. 151 F.2d 132 (2nd Cir. 1945).

72. 179 F.2d 597 (2nd Cir. 1950), cert. denied in *Atlantic Maritime Co. & S. Livanos & Co. v. Rankin*, 341 U.S. 915 (1951).

73. 151 F.2d 132, 137.



Merchant Marine, after discussing *Urvic* and Section 4 of the Act, which expressly applied to foreign vessels in our waters, Judge A. N. Hand replied:

When Congress used the word 'seamen' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished to limit the application of the statute to seamen of American citizenship or residence, *the words to effectuate the limitation were at hand. The legislators did not see fit to use them.* With the adjective 'American' applied to seamen in the title of the very act of which the Jones Act was an amendment *we cannot suppose that its omission from the statute itself was merely an oversight.* Instead, it appears evident that Congress deliberately chose to leave the word 'seamen' its full and unrestricted meaning *applicable to aliens and Americans alike unless in a case like Paula . . . which we think may be distinguished. . .*<sup>74</sup> (Italics supplied).

The distinction, of course, was that in *Paula* articles were signed abroad, while in *Kyriakos* articles were signed in New York.

Oddly enough, Judge L. Hand dissented. He argued that in all matters relating to the "internal economy or discipline" of a vessel the law of the flag prevails. For this proposition he cited nine cases, eight of which were pre-Jones Act and the ninth of which was a Jones Act case involving an American flagship. This last could be used to argue that if flag law prevails on American ships so should it also on foreign ships. But at its least the Act covers American ships. *Urvic* refused to limit the Act to domestic vessels. *Paula* said a personal injury was not an internal order controversy within the meaning of a treaty. Furthermore, in *Paula* the tort occurred aboard the ship; in *Kyriakos*, it was ashore. Whatever "discipline" was to be administered was strictly a matter between the ship and the assailant of *Kyriakos* unless the "peace of port" principle could be brought into play to the exclusion of the flag law.<sup>75</sup> Neither was the tort in *Stewart* any the less "internal economy" than in *Kyriakos*. Nor was it in *Gambera*, both *Gambera* and *Stewart* being decisions of L. Hand. If Judge Hand was

74. *Id.* at 136.

75. Many treaties give the local authorities jurisdiction where "peace of the port" is brought into play. 26 AM. J. INT'L L. (Supp.) 288 (1932). No distinction is made whether the act is ashore or on the vessel. The problem really is as to the meaning of the "peace of the port." It must be a serious offense which would disturb that peace. In *Wildenhus' Case*, 120 U.S. 1 (1887), a stabbing occurred on a Belgian vessel tied up to a pier in New Jersey. Our courts took jurisdiction. See *Chung Chi Cheung v. Rex*, 3 All Eng. L. Rep. 786 (1938). In *U.S. v. Flores*, 289 U.S. 137 (1933), our courts took jurisdiction of a murder of an American citizen by an American citizen on board an American vessel while it was at anchor in the Belgian Congo, the basis being that the jurisdiction was concurrent. Beyond the case of the felonious homicide it is difficult to define "peace of the port." A criminal act would seem to be within its meaning as the public is involved. An assault such as in *Kyriakos* would be difficult to classify. However, assuming it was a civil assault, it was so criminally tinged as to bring the public view to focus and, therefore, should see the assumption of jurisdiction by the local authorities. For further references see ROBINSON, ADMIRALTY, 234-238 (1939); JESSUP, THE LAW OF TERRITORIAL WATERS 144-193 (1929); *Jurisdiction Over National Vessels*, 16 B. U. L. REV. 115 (1936); *Quasi-Territoriality of Vessels in Foreign Ports*, 12 N.Y.U.L.Q. REV. 628 (1935) 13 N.Y.U.L.Q. REV. 43 (1935); *Criminal Jurisdiction Over Foreign Merchant Vessels*, 10 TULANE L. REV. 13 (1935).

reluctant to "legislate" in *Kyriakos*, then he certainly "legislated" to produce the *Gambera* result.

On conflict of laws bases, before the Act, the general rules were that matters of tort were to be governed by the flag law. As a matter of contract there was a preliminary question which was one of interpretation of the owner's engagements or of their performance. If the former, the law of the place of the making of the contract would prevail; if the latter, then the law of the place of performance would prevail. Before *Kyriakos*, and even before the Jones Act, as a matter relating to contract, the obligation was construed as relating to performance, thus calling for the application of flag law.<sup>76</sup> But assuming the law of the place of the making of the contract were to prevail, even if the tort were on the high seas,<sup>77</sup> the difficulty that should then arise is the "internal economy" principle which would see the visitation of flag law. As a matter of intent, it cannot be gainsaid that the owner never impliedly wished the application of the Act for injuries to the seaman. The only question with the Jones Act is how much did Congress intend to change the traditional rules as well as imposing on the owner the usage of the statute by an injured seaman?

In none of the cases thus far discussed was the locality of the tort in itself the deciding feature. It will be recalled that in *Gambera* the libellant was a New York resident who shipped on a foreign vessel operating between New York and Norfolk, and who was injured while in the waters of the United States. But in *O'Neill v. Cunard White Star, Ltd.*<sup>78</sup> the decedent was a British subject who had come to this country in 1924 and had made a declaration of becoming a citizen in 1925, but was never naturalized. His wife joined him here some years later, and to the couple were born four children who were American citizens. But their parents still were British subjects though American residents. Late in 1941, the decedent signed on a British ship in London for a voyage to Canada and return to England. He was washed overboard on the high seas as a result of the alleged unseaworthiness of the vessel and of the alleged negligence of the defendant's servants. Action was brought under the General Maritime Law and the Jones Act. The case was dismissed in the District Court. On appeal to the Second Circuit, this was affirmed. Judge L. Hand wrote the opinion for a unanimous court. First, he held it would be an abuse of discretion not to hear the case. Then the question arose as to whether the claim was good on its merits, i.e., whether the decedent himself could have sued

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76. *The Hanna Nielsen*, 273 Fed. 171 (2nd Cir. 1921), cert. denied, 257 U.S. 651 (1921); *Oehler v. Hamburg-Amer. Line*, 84 Misc. 272, 145 N.Y. Supp. 1090 (Sup. Ct. 1914).

77. *Taylor v. Atlantic Maritime Co.*, 179 F.2d 597 (2nd Cir. 1950), cert. denied, 341 U.S. 915 (1951).

78. 160 F.2d 446 (2nd Cir. 1947), cert. denied, 332 U.S. 773 (1947), 26 TEXAS L. REV. 212 (1947). See *Puig v. Royal Norwegian Gov't.*, 72 F. Supp. 69 (S.D. N.Y. 1947).

under the Act had he survived.<sup>79</sup> In denying the application of the Act, the facts of *Paula* were again incorrectly stated. On conflict of laws principles the decedent could not be aided: regarded as a tort, the law of the flag would govern; viewed as a breach of contract, then the liability would depend on either the place of the making of the contract or where the performance failed: the former was in England, the latter was on a British ship. Thus, British law applied unless the Jones Act changed the result. Then the question of the locality of the tort was brought into play:

The three decisions we have mentioned [meaning *Paula*, *Gamber* and *Kyriakos*] do not help us to decide whether we should now hold that the Jones Act interposes to change what would otherwise be the rights and duties of the parties, *because in all three the act or omission was within our waters . . .* It is true that a state may impose duties upon its own nationals when they are abroad; but the plaintiff must prove that Congress meant to impose duties upon the nationals of other states *while they were beyond the territorial limits of the United States*, a proposition vastly different in its consequences. Perhaps Congress might go even so far as that . . . ; but surely there should be the clearest warrant of its purpose to do so . . .<sup>80</sup> (Italics supplied).

As to *Uravic*, Judge Hand said that there the whole discussion proceeds on the assumption "that it is a question of *lex loci delicti*."<sup>81</sup> Thus, he felt he was thrown back upon the statute itself. In the remainder of the opinion in *O'Neill*, Judge Hand spoke in terms of "American seamen" who sign on in foreign ports and felt the Act was not intended to cover them, as foreign owners would not sign them on. However, this does not overlook the importance of the port of signing on and is manifestly contrary to that which Judge Hand said when he wrote in *Stewart*:

. . . for the result would be not only to deprive American seamen of the protection *which the Act was meant to give them when . . . serving on foreign ships . . .*<sup>82</sup> (Italics supplied).

*O'Neill* was only a resident. But such continued residence put him in the same position as an American citizen.<sup>83</sup> Yet this was not enough. The crucial factors in *O'Neill* would seem to have been the locality of the tort and the fact that the voyage of the vessel did not touch a United States port.

79. Because the Act runs to the advantage of the beneficiary, the right to recovery must be in the decedent himself. That is to say, the right of the beneficiary is derivative upon the rights of recovering in the decedent. See *Van Beeck v. Sabine Towing Co.*, 300 U.S. 342 (1937); *Flynn v. N.Y., N.H., & H. R.R.*, 283 U.S. 53 (1931); *Pollard v. Seas Shipping Co.*, 1945 Am. Mar. Cas. 119 (2d Cir. 1945); *Emery v. Rochester Tel. Corp.*, 271 N.Y. 306, 3 N.E.2d 434 (1936).

80. 160 F.2d 446, 448.

81. *Ibid.*

82. *Stewart v. Pacific Steam Navigation Co.*, 3 F.2d 329 (S. D. N.Y. 1924).

83. This would be under the ruling in *Gamber*. Judge Hand admits the same in the course of his decision in *Taylor v. Atlantic Maritime Co.*, 179 F.2d 597, 598 (2d Cir. 1950), where he says that ". . . we have also denied recovery to an alien, who was injured on the high seas and who had signed the articles in a foreign port, although he had resided in this country for twenty years and had applied for naturalization;

It will be recalled that in an earlier part of this article the New York Court of Appeals decision in *Sonnesen v. Panama Transport Co.*<sup>84</sup> was discussed in one of its aspects. In *Sonnesen*, both the seaman and the vessel were foreign. Articles were signed in New York. The voyage of the vessel began in the United States. The tort of which *Sonnesen* complained occurred on the high seas. Jones Act usage was denied. That articles were signed in New York was of no consequence. The fact that foreign shipowners, doing business in New York, were signing on crews in our ports was held not to pierce the foreign flag. Nor did the court feel bound to anything pressed upon it by *Kyriakos* as there the tort occurred ashore in a United States port. New York expressed its policy in *Sonnesen* inasmuch as the Act did not *expressly compel* it to hear the case. For whatever might be said of that policy we have to turn our attention to the case of *Taylor v. Atlantic Maritime Co.*,<sup>85</sup> where Taylor chose to assert his rights in the New York Federal Courts rather than in the New York State Courts.

The facts of *Taylor* are on all fours with *Sonnesen*. The seaman, Taylor, oddly enough, was a Panamanian subject. He was not a resident here. He signed articles in Norfolk, Virginia, for shipment aboard a vessel which flew the Panamanian flag, but was Greek owned. The articles themselves were in English with wages payable in American dollars. The voyage of the vessel was a round, beginning and ending in the United States. The tort of which Taylor made complaint was for the aggravation of tuberculosis while on the high seas. He sued under the Jones Act. A motion to dismiss for lack of jurisdiction over the subject matter was granted in the New York Southern District Court. An appeal was taken to the Second Circuit Court of Appeals. At this point, it would be interesting to observe how the precedents should have seen the case decided:

(1). The tort was on the high seas which was a basis for the denial of the Act's application in *O'Neill*.

(2). Though articles were signed in a United States port, as they were in *Kyriakos*, in the latter the tort occurred ashore in a United States port.

(3). The voyage began and ended in the United States (*Kyriakos*), but was not wholly coastwise with the tort occurring in our waters to an American resident (*Gambera*).

(4). The signing of articles here was the strongest peg to apply the Act under *Kyriakos*. This would *not* seem to be enough as a sixteen year residence in *O'Neill* was insufficient.

The opinion of the court in *Taylor* was written by Judge L. Hand for a unanimous court. The Act was held to apply, which necessitated reversal

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and this we held in spite of the fact that for the purposes of the Jones Act such a continued residence puts a seaman in the same position as an American citizen. (Italics supplied).

84. 298 N.Y. 262, 82 N.E.2d 569 (1948), cert. denied, 337 U.S. 919 (1949).

85. *Taylor v. Atlantic Maritime Co.*, 179 F.2d 597 (2d Cir. 1950), cert. denied, 341 U.S. 915 (1951).

of the District Court. Though *Sonnesen* was persuasive, it was not controlling. To be sure, the basis of the result in *Taylor* was the rationale of the opinion in *Kyriakos*:

Nevertheless, in spite of what we should hold, were we free, we think that, although *Kyriakos* can be distinguished because the injury took place on shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port.<sup>86</sup> (*Italics supplied*).

Application to the United States Supreme Court was made for the writ of certiorari, strongly urging the resolution of the conflict which existed between *Taylor* and *Sonnesen*. The writ was denied.<sup>87</sup> Of further interest with *Taylor* was the fact that it overlooked the place of injury test which contributed to the result in *Kyriakos* and was one of the crucial factors in *O'Neill*. In *Kyriakos* it was never uttered that the locus of the injury should not be considered. And with the test not used in *Taylor*, we have the rather startling result that if a foreign seaman signs articles on a foreign ship in a United States port he can sue under the Act; however, a seaman who signs articles abroad cannot sue, even though by a long continued residence he is considered a citizen for purposes of the Act (*O'Neill*).

It is also interesting to note that *Taylor* said nothing about sustaining the Act's application because the voyage of the vessel began and ended in the United States.

In *Kyriakos* the seaman signed articles in the United States and was injured ashore in a United States port. *Taylor* said that the signing of articles here was enough to see the Act's application. Would the fact that the tort alone occurred ashore here be enough? The answer to that question is found in the recent decision of *Catherall v. Cunard S. S. Co., Ltd.*<sup>88</sup> There, the seaman, a Britisher, was a member of the crew of the *Queen Elizabeth*. He had signed articles in Southampton, England, for a voyage to begin and end in England. While the vessel was at dock in New York, Catherall had his left leg mashed on the dock through the alleged negligence of the defendant. Suit was brought under the Jones Act and a motion was thereafter made to dismiss it for want of jurisdiction. Of course, the immediate problem was *Paula*. Assuming the full vitality of that case as a precedent, then a twofold distinction could be submitted:

(1). In *Paula*, the tort was on the vessel while in *Catherall* it was ashore. Hence, if applicable, "internal economy" would not cover *Catherall* as the tort was off the ship.

(2). In *Paula*, though the opinion is highly unsatisfactory on the point, the vessel seems to have visited our shores only "transiently." In *Uravic*, it will be recalled, counsel did contend that if the Act does not apply it does so only because the vessel is here "transiently." Thus, the

86. *Id.* at 600.

87. 341 U.S. 915 (1951).

88. 101 F. Supp. 230 (S.D. N.Y. 1951).

implication is strong that if a vessel is here frequently and consistently it will be subject to the imposition of the Jones Act. The *Queen Elizabeth* is here as frequently as she is in England. As a result, a good deal of Cunard's business is done through New York. In *Paula* such a situation did not exist.

As to *O'Neill*, a similar argument could be made as with *Taylor*. If residence was not enough in *O'Neill* then the tort could not be enough in *Catherall*. However, here the argument bore fruit! The Jones Act claim was dismissed for lack of jurisdiction. As to the second argument above, District Judge I. R. Kaufman said, "The theory is novel but unconvincing," and he felt:

In the case at bar, *Paula* and subsequent cases dictate that the law of the flag should not yield.<sup>89</sup>

It is submitted that the judicial "psychology" in this field sharply changed during World War II. Before the War Years it is dubious if we would ever have had the results that we do in *Taylor* and *Kyriakos*. In short, when foreign shipowners came to the United States and established their head business offices here, which in many cases resulted in the signing on of crews in our ports, our courts operated on a new theme, the harmony of which was predicated upon a rough analogy to the concept of "doing business" in the personal jurisdiction cases.<sup>90</sup> True! The essence of maritime commerce is contact. But it was substantial contact to which the attention of the courts was addressed. *O'Neill* is not inconsonant with this conclusion as the vessel there never touched a United States port. In *Catherall*, however, there can not really be any question of the substantiality of contact with our shores by the *Queen Elizabeth*.

It will next be recalled that in the majority opinion in *Kyriakos*, Judge A. N. Hand said that the bases of the decision were that articles were signed in New York *and* that the tort occurred ashore in a United States port. *Taylor* said that under the *Kyriakos* rationale articles signed here was enough. Thus, one of the two bases of *Kyriakos* was sufficiently persuasive to see the Act's coverage. Then, is there not some slight inference that if the tort occurred ashore here, though articles are signed abroad, the Act should also apply? This is supported by the language of Judge L. Hand in *Taylor*, which was quoted in our discussion of that case. If this is forceful, then, whatever may be said of *Paula*, *Catherall*, as it now stands, is wrongly decided.

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89. *Id.* at 233.

90. The personal jurisdiction "doing business" concept announced in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), was carried further in *Neset v. Christensen*, 92 F. Supp. 78 (E.D.N.Y. 1950), and even further in the very well reasoned opinion of District Judge Weinfeld in *Szabo v. Smedvig Tank-Rederi A.S.*, 95 F. Supp. 519 (S.D. N.Y. 1951), the latter case involving a suit by an Hungarian seaman against a Norwegian shipowner while the vessel was on time charter. Service on the New York agent was upheld. Cf. *Andrade v. American Mail Lines*, 71 F. Supp. 201 (D. R.I. 1947). But the analogy between the personal and substantive cases is only a very rough one. In the latter the business concept is not the end factor in and of itself. It is only meant to be said that it has entered the judicial thinking in this field.

Except for *Uravic* and *Plamals*, the Supreme Court followed a consistent line in refusing to grant the writ of certiorari in the cases which have been discussed. However, it finally yielded and granted the writ in the case of *Lauritzen v. Larsen*,<sup>91</sup> and handed down its decision in May, 1953. The facts of *Larsen* are similar to *Taylor*, though not on all fours with it. The seaman was a Dane who signed articles for shipment in New York aboard a Danish vessel. He was negligently injured aboard the ship when it was in Havana harbor. Suit was brought under the Jones Act. The District Court and the Second Circuit Court of Appeals held the Jones Act applicable on the authority of *Taylor* and *Kyriakos*. The Supreme Court reversed. The vote was seven to one. Mr. Justice Jackson was the author of the majority opinion. Mr. Justice Clarke did not participate and Mr. Justice Black dissented without opinion. In a rather long opinion, Mr. Justice Jackson found nothing in the Act which embraced *Larsen*. On conflict of laws principles there was an "overwhelming preponderance" favoring the application of Danish law:

The parties are both Danish subjects, the events took place on a Danish ship, *not within our territorial waters*. Against these considerations is only the fact that the defendant was served here with process and that the plaintiff signed on in New York, where the defendant was engaged in *our foreign commerce*. The latter event is offset by *provision of his contract that the law of Denmark should govern*. We do not question the power of Congress to condition access to our ports by foreign owned vessels upon submission to any liabilities it may consider good American policy to exact. But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship *not in our waters*.<sup>92</sup> (Italics supplied).

By this discussion the question is left open whether the Act can be applied to a transaction between foreigners for a tort occurring either within United States waters or on United States soil. If it can, decisions such as *Paula* and *Catherall* must be cast into oblivion. However, earlier in the course of the *Larsen* opinion, Mr. Justice Jackson had substantial doubts whether, with propriety, the territorial law could be applied, for he said:

But the territorial standard *is so unfitted* to an enterprise conducted under many territorial rules and under none that it usually is modified by the *more constant law of the flag*.<sup>93</sup> (Italics supplied).

Thus, were the doubts resolved into realities, *Kyriakos* would have to be buried whereas *Paula* and *Catherall* would remain sound. The result in *Gambera* would still stand inasmuch as a resident of the United States was concerned, but not because he was injured within our waters on a vessel whose voyage was between New York and Norfolk. Then what would

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91. 345 U.S. 571 (1953).

92. *Id.* at 592-593.

93. *Id.* at 584.

become of *O'Neill*? That decision, as it now stands, would also have to fall as erroneous. Indeed, Mr. Justice Jackson said that:

. . . each nation has a legitimate interest that its nationals and *permanent inhabitants* be not maimed or disabled from self-support. In some later American cases, courts have been prompted to apply the Jones Act by the fact that the wrongful act or omission caused injury to an *American citizen or domiciliary*.<sup>94</sup> (Italics supplied).

For this proposition he cited *Uravic*, *Shorter*, and *Gambera* without making any comment about *O'Neill*.<sup>95</sup> Furthermore, no mention was made in *Larsen* of a consideration of the nature of the vessel's voyage—an element so decisive in *O'Neill*. Though this has never in itself been a singularly crucial factor, it has been a persuasive feature in several of the cases hereinbefore discussed. Therefore, some of the questions that *Larsen* leaves open it seems to answer in the negative. As a result, the Act should read, "Any *American* seaman or resident who shall suffer personal injury . . ." rather than "Any seaman . . ." The broad reading given the Act by Mr. Justice Holmes in *Uravic*, is overruled, though not expressly, and that case is limited to its facts without ever having been discussed during the pages of *Larsen*. What remains of the "liberal interpretation" of the Act which a plethora of cases have mandated? While *Larsen* answers its own question, as well as those of *Taylor*, *Sonnesen*, and possibly even *Kryiakos*, it leaves so much unsettled as to invite many applications for the writ of certiorari, some of which should be granted to clarify the questions which it leaves open.

#### CONCLUSION

Basically, the entire problem with the foreign seaman field has been one of statutory construction. More fundamentally, the enigma is the meaning of the word "any" in the Act. Clearly, the Act does not apply where the seaman is foreign, not a resident, the vessel is foreign owned, with articles having been signed abroad, and the tort occurs on the high

94. *Id.* at 586.

95. In an extended footnote (numbered 3 on pp. 573-574 of the *Larsen* opinion) Mr. Justice Jackson discusses earlier decisions of the Second Circuit which he thinks are "at least superficially . . . at variance" with their decision in *Larsen v. Lauritzen*, 196 F.2d 220 (2nd Cir. 1952). *Taylor* in no major way is at variance. The basis of *Taylor* was only that *Taylor* signed articles in Norfolk, not because he was an alleged resident. *Taylor* could be distinguished from *Larsen* because the locus of the tort was different, but, in *Taylor*, the locus of the tort was in no way a feature of the decision. Mr. Justice Jackson regards *Paula* as consistent with earlier Second Circuit decisions. He cites *Hannah Nielsen*, 273 Fed. 171 (2nd Cir. 1921) and *Plamals*. The former was a pre-Jones Act case; the latter answered the question of whether the Act granted an *in rem* proceeding. Neither is apposite. Furthermore, if anything, language in *Paula* supports the results in *Kryiakos*, *Taylor*, and the Second Circuit decision in *Larsen* as already has been shown in the body of this article. There is nothing in *Paula* necessarily repugnant to these three decisions. So far as *O'Neill* should detain us, there is utterly no mention made of the fact of his long continual residence in the United States. The last sentence of this footnote reads "But they illustrate different considerations which influence *choice of law* in maritime tort cases." (Italics supplied). By the words "choice of law" is meant the usage of ordinary principles of conflict of laws. But the question really is whether the statute covers the case involved regardless of the ordinary rules. To use these rules is only to disregard the fact that a statute is brought into play. The citation of *Uravic* on p. 586 is not wholly correct because the decision there did not go off on a citizenship basis.



seas or a foreign port.<sup>96</sup> *Larsen* says that although articles are signed here, and the vessel has substantial contact with our ports, the Act still does not apply. When *should* it apply?

The breadth of the Act cannot be questioned. Mr. Justice Jackson feared that:

. . . Congress has extended our law and opened our courts to all alien seafaring men injured anywhere in the world in service of watercraft of every foreign nation—a hand on a Chinese junk, never outside Chinese waters, would not be beyond its literal wording.<sup>97</sup>

But this does not compel so limiting a construction as to return us to pre-Jones Act rationality on the bases of conflict of laws principles. If Congress wished the Act only to apply to American citizens or residents, it could easily have said so. If it wished to exclude foreign seamen, the words of exclusion were equally available. Certainly, if the Act is to be "liberally construed," it must be done horizontally as well as vertically. That some limitation upon the word "any" was intended to be imposed can not substantially be doubted. The Chinese hand on the Chinese junk injured in Chinese waters really should not be allowed to receive the Act's fruits because he can effectuate service of process on the employer in the United States. But if the Chinese hand were an American resident, or signed articles in an American port, or was negligently injured on United States soil or in American territorial waters, or the voyage of his vessel is to be wholly within our waters, or is to begin and end here—these are jurisdictional facts upon which the Act's application can be predicated. Thus, the Act would receive the broader construction which its words suggest. It would not, for all its breadth, cover a situation such as that which raises the misgiving of Mr. Justice Jackson.

In *Larsen*, Mr. Justice Jackson remarked that:

Maritime law . . . has attempted to avoid or resolve conflicts between competing laws . . .

and he said further:

. . . in dealing with international commerce we cannot be unmindful of the *necessity for mutual forbearance if retaliations are to be avoided*; nor should we forget that any contact which we hold sufficient of our law to a foreign transaction *will logically be as strong a warrant for a foreign country to apply its law to an American transaction*.<sup>98</sup> (Italics supplied).

Although Mr. Justice Jackson is filled with great trepidation this should little disconcert one for three reasons:

(1). The cases decided adversely to foreign shipowners before *Larsen* saw no retaliations.

(2). The sections of the Seamen's Act of 1915 which have *expressly* subjected foreign vessels to our law in order to allow seamen to obtain

96. *Tsitsinakis v. Simpson, Spence & Young*, 90 F. Supp. 578 (S.D.N.Y. 1950). See *Bonsalem v. Byron S.S. Corp.*, 50 F.2d 114 (2nd Cir. 1931); *Maia v. Lamport & Holt, Ltd.*, 141 Misc. 140, 252 N.Y. Supp. 201 (1931).

97. 345 U.S. 571, 577.

98. *Id.* at 582.

one half of their earned wages<sup>99</sup> (which has been constitutionally upheld)<sup>100</sup> and to advances made to seamen in our ports,<sup>101</sup> though not to advances made in foreign ports,<sup>102</sup> has caused no strife and international conflict.

(3). While a foreign country could apply its law to an American transaction, it is the seaman who can sue under it if he so chooses. Otherwise, on the basis of his American citizenship, he can sue and receive the fruits of the Act.

Other of our maritime laws have been imposed on or can be used by foreign shipowners.<sup>103</sup> If they can receive the benefits of our laws why should they not endure the burdens as well? But this can not be of "great" aid in ascertaining the meaning of the word "any."

It has been submitted that the Act should more broadly be construed than *Larsen* logic would lead us to do. The courts would necessarily be legislating as is frequently the case with a broad Congressional mandate. Indeed, the happiest solution would be for the Congress to speak again, speak as it omitted to speak in 1920, speak with the same spirit and beneficence which was that of the begetters of the Jones Act! Until that time the foreign flag in our ports still can fly with much respect and judicial deference. The desire for the equalization of operating cost of *all vessels* remains beclouded in a haze of Foreign Imperial Color.

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99. 38 STAT. 1164 (1915), 46 U.S.C. § 569 (1946).

100. *Strathearn S.S. Co. v. Dillon*, 252 U.S. 348 (1920).

101. *Heros v. Cockinos*, 1949 Am. Mar. Cas. 2046 (4th Cir. 1949); *Lakos v. Saliaris*, 116 F.2d 440 (4th Cir. 1940); *The Italier*, 257 Fed. 712 (2nd Cir. 1919); *Stavridis v. Cia Panamena Europa Navegacion, Ltda.*, 90 F. Supp. 187 (S.D. N.Y. 1950); *The Elizabeth Maersk*, 258 Fed. 765 (E.D. La. 1919); *Kikilis v. Niarchas*, 1949 Am. Mar. Cas. 709 (N.Y. City Ct. 1949). See *Patterson v. The Bark Eudora*, 190 U.S. 169 (1903).

102. *Sandberg v. McDonald*, 248 U.S. 185 (1918); *Neilson v. Rhine Shipping Co.*, 248 U.S. 105 (1918). See *Jackson v. S.S. Archimedes*, 275 U.S. 463 (1928).

103. 27 STAT. 445, 446 (1893), 46 U.S.C. §§ 190-195 (1946) (Harter Act); 49 STAT. 1207 (1936), 46 U.S.C. §§ 1300-1315 (1946) (The Carriage of Goods by Sea Act); 9 STAT. 635, 636 (1851), additions in 16 STAT. 458 (1871), as amended, 19 STAT. 251 (1877), 25 STAT. 80 (1886), and amended in the Sirovich Bill in 1936 which is now 46 U.S.C. §§ 181-189; 26 STAT. 425 (1890), 33 U.S.C. § 367 (1946) (The Stand-By Act); 22 STAT. 186, 187, 188 (1882), 35 STAT. 583 (1908), 46 U.S.C. §§ 151-162 (1946) (Passenger Act); The Safety at Sea Convention, NAVIGATION LAWS OF THE UNITED STATES 89-113 (1940).