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Admiralty - Right to Jury Trial in Certain Cases on Great Lakes - Maintenance and Cure Not Contract or Tort Matter

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RECENT DECISIONS

ADMIRALTY—RIGHT TO JURY TRIAL IN CERTAIN CASES ON GREAT LAKES—MAINTENANCE AND CURE NOT CONTRACT OR TORT MATTER—Libelant brought an action for maintenance and cure on the admiralty side of a federal district court in Illinois. He requested a jury trial, relying on the Act of February 20, 1845, which provides that in certain admiralty and maritime cases arising on the Great Lakes relating to any matter of contract or tort, trial shall be by jury on the demand of either party. The trial court heard the case without a jury and dismissed the libel on the merits. The court of appeals *held,* on appeal, that maintenance and cure was a matter of ancient and established maritime law, and not a matter of contract or tort for which the libelant would be entitled by the statute to a jury trial. *Miller v. Standard Oil Co.,* (7th Cir. 1952) 199 F. (2d) 457, cert. den. 345 U.S. 945, 73 S.Ct. 836 (1953).

Whether a claim for maintenance and cure is contractual, delictual or belongs to some independent category has not been clearly determined.[1] Story saw the claim as part of the contract for compensation of the seaman.[2] Though modern courts occasionally speak of the claim as contractual,[3] more often it is called quasi-contractual,[4] or an incident of the status of the seaman,[5] or a duty annexed by law to the employer-employee relationship[6] or to the relationship of the seaman to the vessel.[7] By characterizing the claim as relational or quasi-contractual the courts are able to use contract principles or ignore them as the occasion demands to reach a proper result. Thus, it has been held that for sur-

[1] 2 NORRIS, THE LAW OF SEAMEN §544 (1952).

[2] Harden v. Gordon, (C.C. Me. 1823) 11 Fed. Cas. 480, No. 6,047.

[3] There appears to be general agreement now that the claim does not sound in tort. Sperbeck v. A. L. Burbank & Co., (2d Cir. 1951) 190 F. (2d) 449; Pacific Steamship Co. v. Peterson, 278 U.S. 130, 49 S.Ct. 75 (1928). However, a breach of the duty to provide maintenance and cure may give rise to a "personal injury" within the meaning of the Jones Act. Cortes, Administrator v. Baltimore Insular Line, Inc., 287 U.S. 367, 53 S.Ct. 173 (1932).

[4] ". . . Implied in law as a contractual obligation. . . ." Pacific Steamship Co. v. Peterson, note 3 supra, at 138. ". . . the right to maintenance and cure lies on the borderline between 'contract' and 'quasi-contract'. . . ." Sperbeck v. A. L. Burbank & Co., note 3 supra, at 452.

[5] "In its origin, maintenance and cure must be taken as an incident to the status of the seaman in the employment of his ship." O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 at 42, 63 S.Ct. 488 (1943).

[6] Cardozo characterized the claim to maintenance and cure as follows: "The duty to make such provision is imposed by the law itself as one annexed to the employment. Contractual it is in the sense that it has its source in a relation which is contractual in origin, but given the relation, no agreement is competent to abrogate the incident." Cortes, Administrator v. Baltimore Insular Line, Inc., note 3 supra, at 371. It is interesting to compare this statement with his view of the duty of the shoreside employer to provide workmen's compensation for his employees: "The contract creates the relation to which the law attaches the duty. . . ." Matter of Smith v. Heine Boiler Co., 224 N.Y. 9 at 12, 119 N.E. 878 (1918). See also Loverich v. Warner Co., (3d Cir. 1941) 118 F. (2d) 690 at 692, where the claim is characterized as "an inseparable incident to the relation of the parties."

[7] "Clearly, the seaman's right . . . is one imposed by law, arising out of the nature of his employment and his relationship to the vessel." 2 NORRIS, THE LAW OF SEAMEN §544, p. 145 (1952).

vival purposes, the claim sounds in contract rather than tort and hence survives the seaman's death.[8] But another court rejected an insurance company's argument that the claim for maintenance and cure was contractual in nature and hence not within the coverage of a policy which indemnified the shipowner from "liability imposed by law."[9] It has been held that maintenance and cure is either an implied-in-fact provision in the maritime contract or quasi-contractual—implied in law—so that a municipal court given jurisdiction over contracts express or implied has jurisdiction over an action for maintenance and cure.[10] The decision in the principal case reflects the desire of the court to minimize the effect of a statute creating an exception to the general rule denying jury trial in admiralty proceedings, since there is no policy reason for the exception. The statute has a curious history.[11] At the time of its passage, it was the belief of Congress that admiralty jurisdiction was limited to tide waters;[12] cases arising on the Great Lakes, therefore, would be cognizable only at common law, and could not be transferred to the admiralty jurisdiction without carrying over the right to jury trial guaranteed by the Seventh Amendment. However, the Supreme Court later held that admiralty jurisdiction extended to lakes and navigable waters;[13] hence, the cases provided for by the statute were already within the admiralty jurisdiction and so the provision for jury trial was unnecessary to make the statute constitutional. Despite subsequent revisions of the Judicial Code, this provision for jury trial in these limited cases has been retained.[14]

A seaman seeking a jury trial of his claim for maintenance and cure has other means of securing it. Under the saving clause of the Judiciary Act, the seaman may bring his action at law in a state court with a trial by jury,[15] or he may enforce his claim on the law side of the federal district court if there is diversity of citizenship and the minimum jurisdictional amount of $3,000.[16] Recently two other theories for a law action in the federal court have been developed and both are supported by some authority. One is the theory of pendent jurisdiction.[17] When a seaman brings a negligence action under the Jones Act at law, as he is permitted to do, he may couple with it a count for

[8] Sperbeck v. A. L. Burbank & Co., note 3 supra; Cheng v. Ellerman Lines, (D.C. N.Y. 1926) 1926 A.M.C. 1038.

[9] Dryden v. Ocean Accident & Guarantee Corp., (7th Cir. 1943) 138 F. (2d) 291.

[10] Romer v. American Export Lines, Inc., 110 N.Y.S. (2d) 400 (1952).

[11] The history of the act may be found in Gillet v. Pierce, (D.C. Mich. 1875) 10 Fed. Cas. 388, No. 5,437.

[12] The Genesee Chief, 12 How. (53 U.S.) 443 (1851), points out that this was the accepted English view at the time the Constitution was adopted.

[13] The Eagle, 8 Wall. (75 U.S.) 15 (1868).

[14] The current form of the provision appears in the Act of June 25, 1948. It reads: "In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it." 28 U.S.C. (Supp. V, 1952) §1873.

[15] Pacific Steamship Co. v. Peterson, note 3 supra.

[16] 4 BENEDICT, ADMIRALTY, 6th ed., §612 (1941).

[17] Under this theory when a federal court has acquired jurisdiction of a cause of action by reason of a federal question, it may decide all questions raised in the case even though

maintenance and cure, if the facts supporting the count for maintenance and cure and the one for negligence are substantially the same.[18] The justification for such a procedure is practical rather than theoretical, since it may result in a saving of time, expense, and double litigation. The other theory is set forth in *Doucette v. Vincent*,[19] where it was held that a claim for maintenance and cure raises a federal question within the meaning of section 1331 of the Judicial Code granting jurisdiction to the federal district courts where the matter in controversy exceeds $3,000 "and arises under the Constitution, laws, or treaties of the United States." The general maritime law was incorporated into the Constitution by the grant of admiralty and maritime jurisdiction to the federal courts. Under the doctrine laid down in *Southern Pacific v. Jensen*,[20] when a suit is brought in state court by virtue of the saving clause, the substantive right of the parties must be determined by the federal maritime law. The conclusion reached in *Doucette v. Vincent* from these principles was that a case brought by virtue of the saving clause is a case "arising under the Constitution." In the Third Circuit, however, it has been held that the federal question raised in a claim for maintenance and cure is not sufficient to ground original jurisdiction in the district courts.[21] It does seem somewhat far-fetched to say that all rights under the general admiralty law are constitutional rights merely because the grant of admiralty jurisdiction to the federal courts is an implied adoption of the general maritime law. The extension of federal question jurisdiction to admiralty matters would provide plaintiffs a means of coupling the advantages of the federal court system with trial by jury in those cases where diversity is lacking. Whether or not the Supreme Court will see fit to complicate the field of seamen's rights and remedies further by approving this theory remains to be seen.[22]

Richard B. Barnett, S.Ed.

the federal question is decided adversely to the party raising it, and the case is ultimately decided on non-federal grounds. Hurn v. Oursler, 289 U.S. 238, 53 S.Ct. 586 (1933).

[18] Nolan v. General Seafoods Corp., (1st Cir. 1940) 112 F. (2d) 515; Stevens v. R. O'Brien & Co., (1st Cir. 1933) 62 F. (2d) 632; Bay State Dredging & Contracting Co. v. Porter, (1st Cir. 1946) 153 F. (2d) 827; Hern v. Moran Towing & Transportation Co., (2d Cir. 1943) 138 F. (2d) 900. One judge who has followed this practice says that the results have been satisfactory but expresses doubt as to whether in theory it was permissible. "Yet, unless the theory of pendent jurisdiction be expanded, it seems to me that all of us have acted erroneously. . . . At any rate, as at present advised I cannot see that what we have done has ever been explicitly approved by the Supreme Court of the United States." McDonald v. Cape Cod Trawling Corp., (D.C. Mass. 1947) 71 F. Supp. 888 at 892.

[19] (1st Cir. 1952) 194 F. (2d) 834.

[20] 244 U.S. 205, 37 S.Ct. 524 (1917).

[21] Jordine v. Walling, (3d Cir. 1950) 185 F. (2d) 662.

[22] This theory is fully discussed in a note at 66 HARV. L. REV. 315 (1952).