STATE LEGISLATION ON MATTERS WITHIN ADMIRALTY JURISDICTION

The Constitution of the United States provides that "the judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction,"[1] and the Judiciary Act of 1789 gives the Federal District Courts the right to take cognizance of "all civil cases of admiralty and maritime jurisdiction, saving to suitors the right of a common law remedy, where the common law is competent to give it. And such jurisdiction shall be exclusive."[2] This note deals with the extent to which the state may legislate regarding those matters within the grant of admiralty jurisdiction to the Federal courts. The nature and extent of admiralty law and of the power conferred by this clause of the constitution is outside its scope.. It will be sufficient to say generally that it embraces acts done on the navigable waters of the country and on the seas, and contracts, claims, and services purely maritime and touching commerce and navigation.[3] The jurisdiction of the state courts under the clause saving the "common law remedy" will also be touched on only incidentally. A state cannot, of course, give its courts power to entertain suits within the exclusive jurisdiction of the federal courts, but under the provision mentioned there is a large class of cases, in which both judicial systems may give a remedy.[4]

The grant of jurisdiction to the federal courts carried with it an implied grant of power to Congress to legislate on matters embraced in it.[5] It follows, therefore, that no state can pass an act repugnant to any provision of Congress regarding maritime law,. and all state legislation is liable to be so superseded.[6] But further it is held that Congress has adopted the principles and rules of admiralty law and that legislation inconsistent therewith is void.[7] These principles are "to be treated with the same consideration which must be given to

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[1]Art. III, Sec. 1.

[2]U. S. Rev. Stat., 563, 8. Re-enacted by the Judicial Code, Act of March 3, 1911, C. 231, Sec. 24, Subsec. 3, and Sec. 256, Subsec. 3, 36 Stat. 1091, 1160 (U. S. Comp. St., Supp. 1911, pp. 136, 234).

[3]Story on Const., Sec. 1666.

[4]Leon v. Galceran, 11 Wall. 185, 20 L. Ed. 74.

[5]The City of Norwalk, 55 Fed. 98, 105 (affirmed and reasoning approved, 61 Fed. 364).

[6]Butler v. Boston S. S. Co., 130 U. S. 527; 9 Sup. Co. 612, 32 L. Ed. 1017.

[7]The Chusan, 2 Story 455; Swayne & Hoyt v. Barsh, 226 Fed. 581.

the statute on the subject. A state may not pass any act which abridges or enlarges the responsibilities or duties of maritime law."[8] Thus where there are rights and remedies of parties, given by the existing maritime law, in regard to a certain set of facts, the state is powerless to interfere. This law, however, is not a complete system. Its provisions extend over only a certain limited area and deal with only a limited number of the circumstances requiring redress, which may arise in connection with maritime affairs or upon the high seas. Where the admiralty law has not taken the field and there is no limitation imposed by any other clause of the constitution, the commerce clause especially, the state is free to act.[9] "Rules for the acquisition of property by persons engaged in navigation, and for its transfer and descent are, with some exceptions, those prescribed by the state to which the vessels belong and it may be said generally the legislation of the state, not directed against commerce or any of its regulations, but relating to rights and liabilities of citizens and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."[10] A state may create new rights and impose new liabilities in the nature of provisions of general law, regarding maritime matters.[11] In the City of Norwalk[12] the court gave three classes of subjects on which the local legislation governed: 1, general rights of persons and property, within the state limits; 2, subjects under the police power; 3, local regulations of a maritime nature. The state cannot, of course, change the jurisdiction of the federal courts,[13] or enlarge that of its own courts so as to encroach on the exclusive power of the federal tribunals,[14] but it may create rights which only admiralty by its peculiar procedure and powers can enforce,[15] or enforce in its own courts common law rights regarding subjects under admiralty jurisdiction.[16]

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[8]Schuede v. Zenith S. S. Co., 216 Fed. 566.

[9]U. S. v. Bevans, 3 Wheat. 386, 4 L. Ed. 404; Swayne & Hoyt v. Barsh, supra; Leon v. Galceran, 11 Wall. 185, 20 L. Ed. 74.

[10]Sherlock v. Alling, 93 U. S. 99, 104, 23 L. Ed. 819.

[11]The Hamilton, 207 U. S. 398, 28 Sup. Ct. 133, 52 L. Ed. 264; The Onoko, 107 Fed. 984; Aurora v. Boyce, 191 Fed. 960.

[12]55 Fed. 98.

[13]The Steamer Capitol, 22 How. 129, 16 L. Ed. 291.

[14]The Glide, 167 U. S. 606, 17 Sup. Ct. 930, 42 L. Ed. 246.

[15]Peyroux v. Howard, 7 Peters 341, 8 L. Ed. 700; The J. E. Rumbell, 148 U. S. 1, 13 Sup. Co. 498, 31 L. Ed. 345.

[16]Steamboat Co. v. Chase, 16 Wall. 522, 21 L. Ed. 369.

The questions of what court has jurisdiction and of what law is to be administered must be kept separate. Admiralty courts obtain jurisdiction in these cases because of the locality or the maritime nature of the facts. Once they have them under consideration, the rights, duties and obligations of the parties are to be judged according to the law applicable to the particular facts before the court, whether such law springs from admiralty, the common law or the statutes of a state.

Following these principles, state statutes, affecting actions for personal injuries, have been declared inoperative, as to injuries suffered on the high seas.[17] "The right of action arising out of a maritime tort, relating to the recovery of damages for a personal injury depends upon the maritime law, which has been adopted by the laws and usages of the country."[18] So the state Employer's Liability Acts are of no effect on suit for damages due to maritime torts.[19] There is, however, one large class of cases in regard to which state legislation governs as to torts committed within the admiralty jurisdiction of the federal courts. These are the cases arising under the statutes giving an action for wrongful death, the so-called Lord Campbell's acts. It has been held that the maritime law gave no remedy for the injury and that therefore the statutes do not alter or encroach upon it and that the admiralty courts will enforce them. If a lien on the vessel is given, a libel *in rem* will lie;[20] if there is no lien, the action must be *in personam*.[21] When

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[17]Workman v. New York, 179 U. S. 522, 21 Sup. Co. 212, 45 L. Ed. 314; The Thielbek, 211 Fed. 685 (affirmed 218 Fed. 251); Swayne and Hoyt v. Barsh, 226 Fed. 581.

[18]The Henry B. Smith, 195 Fed. 312.

[19]Schuede v. Zenith Co., 216 Fed. 566; Swayne and Holt v. Barsh, supra; The Henry B. Smith, supra; State ex rel. Jarvis v. Daggett, 151 Pac. 648, but it was held that the Workman's Compensation Act of New York was enforceable in the state courts in a suit on an injury at sea, on the ground that it was only a change in the common law and that the clause saving common law remedies applied. In re Walker, 215 N. Y. 529, 109 N. E. 604.

[20]The Oregon, 73 Fed. 846; The Aurora v. Boyce, 191 Fed. 960.

[21]The Corsair, 145 U. S. 335, 12 Sup. Co. 949, 36 L. Ed. 727; The Onoko, 107 Fed. 984. "If the cause of action be one cognizable in admiralty and the suit be in rem against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, on the other hand, the cause of action be not one of which a court of admiralty has jurisdiction or if the suit be in personam against an individual defendant, wth an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the clause of the statute saving a common law remedy." Knapp, Stout and Co. v. McCaffrey, 177 U. S. 638; 20 Sup. Co. 824; 44 L. Ed. 921. In the latter case an action will lie in the state court.

enforced by the federal court, sitting in admiralty, this statute "must be applied just as if the suit had been brought in the state court and only defenses which are open to the defendant under the jurisprudence of the state, if successfully maintained, will bar recovery on the libel."[22] Thus where the action would be barred by the statute of limitations in the state courts, it is in admiralty also.[23] So also contributory negligence is a defense, tho not so by the usual rules of admiralty.[24] Where the death was occasioned on the high seas, not within the territorial waters of any state, the ship causing it or on which it occurred is considered sufficiently the territory of the state to which it belongs to enable the courts to apply the statute of that state.[25] The statute is binding on the federal courts, tho it provide that a jury assess the damages, while in admiralty all questions of fact are settled by the court.[26] A jury trial is not necessary even in the state, and is not essential to the right given or the liability imposed.

Perhaps the statutes which have been most prolific of litigation are those by which the state confers a lien on a vessel to persons holding some claim for materials, services, etc., rendered in connection with it. Where there is no lien already conferred by the maritime law, the statutes are valid and will be enforced by the admiralty courts.[27] The grounds for this practice are in line with the principles given above; admiralty takes jurisdiction because of the maritime nature of the contract, claim or service for which the lien is given, and, once having jurisdiction enforces the substantive rights of the parties in the premises. A state cannot put a non-maritime matter within admiralty jurisdiction, but it may create a new right, which is enforceable by admiralty process, regarding a contract or claim, already in the jurisdiction. A lien, not inconsistent with or encroaching upon maritime law is such a right and is valid in the federal courts.

As noted above, a lien conferred by a state statute in an action for wrongful death is valid in courts of admiralty. So is a lien for labor done and materials furnished a vessel in the port of her home

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[22]Quinette v. Blesso, 136 Fed. 825; 69 C. C. A. 503.
[23]The Harrisburg, 119 U. S. 194; 7 Sup. Co. 147.
[24]Gretschmann v. Fix, 189 Fed. 716.
[25]The Hamilton, 207 U. S. 398; 28 Sup. Co. 133; 52 L. Ed. 264.
[26]State of Maryland v. Miller, 180 Fed. 796.
Lottawana, 21 Wall 558; 22 L. Ed. 654.
Peyroux v. Howard, 7 Peters 341; 8 L. Ed. 700; The Roanoke, 189 U. S. 185; 23 Sup. Co. 491; 47 L. Ed. 770.

state.[28] If the vessel belongs to another state, a statute conferring or attempting to regulate the lien is unconstitutional, as admiralty furnishes the remedy and the state law would be an attempt to supersede the maritime law.[29] State statutes can give a valid lien for master's wages,[30] wharfage,[31] expenses for attention given in quarantine hospitals to seamen taken ill on board ship,[32] contracts of affreightment,[33] pilotage,[34] towage.[35] A lien for a claim arising out of a contract not maritime in its nature will not be enforced, as the court here has no jurisdiction.[36] The lien if valid in admiralty will have the same incidents as one granted by the maritime law; it will be entitled to the same priorities and subject to the same conditions,[37] and the state statutes cannot impose different ones.[38] It will be remembered that with regard to the laws giving an action for wrongful death, the case was to be treated as if brought in a state court. The basis of the distinction seems probably to be this; in the actions for death, it is a new substantive right that is given, and this right exists only when the conditions imposed by the statute and the state law are fulfilled, while in the lien cases the right is a remedial one to be enforced by the procedure of the admiralty courts and for a state to modify the incidents of this procedure would be an invasion of admiralty law. A state cannot give its own courts jurisdiction to enforce a lien of the character and with the incidents of one in admiralty. The federal jurisdiction is exclusive save for the common law remedies and such a lien is unknown at common law.[39] If the lien, whether statutory or by common law, is of the nature of a common law lien, dependent on possession, admiralty, taking jurisdiction from the nature of the facts, will enforce it according to the common law.[40]

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[28]The Lottawana, supra; The Pearl, 189 Fed. 540. These cases are now superseded by the Act of June 23, 1910, c. 373, § 1, 36 Stat. 604 (U. S. Comp. Stat. Supp. 1911, p. 1192), giving a lien to those furnishing domestic, as well as foreign, vessels with supplies and repairs.

[29]The Chusan, 2 Story 455.

[30]The Louis Olsen, 52 Fed. 652.

[31]The Geo. W. Elder, 206 Fed. 268, 124 C. C. A. 332; The Virginia Rulon, 13 Blatch. 519.

[32]The Wensleydale, 41 Fed. 829.

[33]The J. F. Warner, 22 Fed. 342.

[34]Ex parte McNeil, 13 Wall. 236, 20 L. Ed. 624.

[35]Mack S. S. Co. v. Thompson, 176 Fed. 499, 100 C. C. A. 57.

[36]The Steamer Capitol, 22 How. 129, 16 L. Ed. 291; The H. E. Willard, 53 Fed. 599; The McMaster Dredge, 95 Fed. 832.

[37]Mack S. S. Co. v. Thompson, supra.

[38]The J. E. Rumbell, 148 U. S. 1, 13 Sup. Co. 498, 37 L. Ed. 345; The Roanoke, 189 U. S. 185, 23 Sup. Co. 491, 47 L. Ed. 770.

[39]The Moses Taylor, 4 Wall. 411, 18 L. Ed. 397, 32 How. Prac. 460; The Glide, 167 U. S. 606, 17 Sup. Ct. 930, 42 L. Ed. 246.

[40]The Marian, 1 Story 68.

The states may also make rules under the police power and as local regulations of commerce, so far as they are not in conflict with maritime law, the Acts of Congress, or the provisions of the constitution.[41] The grant of admiralty jurisdiction to the federal government was not a cession of all powers over the territorial waters of a state. The general legislation is still in the hands of the state. Thus it may pass criminal laws,[42] regulate and fix charges for wharves,[43] establish rules regarding pilotage,[44] or fisheries within its general jurisdiction,[45] and tax ferries.[46] It is beyond the purpose of this note to elaborate on this power. The cases given will illustrate the general scope of valid and constitutional legislation under this head, which may affect navigation and maritime matters.

The Judiciary Act of 1789 limited the exclusive jurisdiction of the federal courts by "saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it."[47] Attempts have been made to construe this so as to allow a state legislature to invest its courts with authority to enforce remedies peculiar to admiralty, but the contention has not been allowed. The provision means that the right to resort to the common law courts for the redress that they are competent to give is saved to suitors; it doesn't allow them to be given greater jurisdiction or new remedies.[48] "It is not a remedy in the common law courts, but a common law remedy."[49] Thus the state courts cannot enforce liens peculiar to admiralty,[50] but they can entertain suits to enforce common law liens tho on maritime contracts[51] and they can hear actions for wrongful death on the high seas which pray for only common law relief.[52] In short, they can exercise the general jurisdiction of the state over contracts and torts according to common law, tho the cause may be also within the cognizance of the admiralty courts.

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[41]The City of Norwalk, 55 Fed. 98.

[42]U. S. v. Bevans, 3 Wheat. 386, 4 L. Ed. 404; Smith v. Maryland, 18 How. 71, 15 L. Ed. 269.

[43]Transportation Co. v. Parkersburg, 107 U. S. 691.

[44]Darden v. Thompson, 198 U. S. 310, 25 Sup. Co. 660, 49 L. Ed. 1064; Cooley v. Port Wardens, 12 How. 299, 13 L. Ed. 996.

[45]Manchester v. Mass., 139 U. S. 240, 11 Sup. Co. 559, 35 L. Ed. 159.

[46]Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 2 Sup. Ct. 257, 27 L. Ed. 419.

[47]U. S. Rev. Stat. 563, 8.

[48]The Moses Taylor, 4 Wall. 411, 18 L. Ed. 397; The Hine v. Trevor, 4 Wall. 555, 18 L. Ed. 45; The Belfast, 7 Wall. 624, 19 L. Ed. 266.

[49]The Moses Taylor, supra, at p. 431.

[50]The Glide, 167 U. S. 606, 17 Sup. Ct. 930, 42 L. Ed. 246.

[51]Keating v. Spink, 3 Oh. St. 105.

[52]Steamboat Co. v. Chase, 16 Wall. 522, 21 L. Ed. 369.