Jurisdiction of Courts of Admiralty

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Repository Citation
James G. Jenkins, Jurisdiction of Courts of Admiralty, 4 Marq. L. Rev. 118 (1920).
Available at: http://scholarship.law.marquette.edu/mulr/vol4/iss3/2

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The constitutional grant of power to the courts of the United States includes "all cases of admiralty and maritime jurisdiction." By the original Judicial Act of 1789, this power was vested in the District Courts of the United States, and was made exclusive of the courts of the several states; but it saved to suitors the right of the common-law remedy where the common-law as it then existed, is competent to give it. This means that jurisdiction in proceedings in rem is exclusive, but is not exclusive as to proceedings in personam. The courts of admiralty may enforce in rem a lien created by a state statute; so a suitor may proceed in the admiralty either in personam against the owner of a vessel, or in rem against the vessel itself; or he may resort to the common-law remedy in a state court, and may attach the vessel as the property of the owner; because the vessel is held in such case, not as itself an actor, but merely as property of the owner, and the title or interest of the defendant in such suit may be divested by such proceeding. All maritime contracts may be enforced either in admiralty in rem, or in personam, or in the state courts in personam only.

Formerly it was a matter of grave dispute whether a maritime contract included anything except what was done upon the sea. As early as 1815, in the celebrated case of DeLovio vs. Boit, 2 Gall. 398, the question arose whether an action in personam could be maintained in the admiralty upon a marine policy of insurance, the contract having been made on land, and to be performed on land. That eminent jurist, Judge Story, delivered an elaborate opinion concerning the jurisdiction of the admiralty. In a masterly review of the decisions of the common-law courts, seeking to restrict that jurisdiction, he showed them to be irreconcilable with any just conception of the admiralty jurisdiction. He challenged the limitation applied by those courts that jurisdiction extended only to causes of action arising "from things done upon the sea," and asserted the true limitation to be "to things pertaining to the sea"; that the delegation of jurisdiction comprehended all marine contracts, whether made or to be ex-
executed on land or sea, which related to the navigation, business or commerce of the sea. This doctrine encountered censure and opposition from both bench and bar. Even Mr. Justice Daniels, of the Supreme Court of the United States, in *Jackson vs. Magnolia*, 20 How. 335, decided in 1857, speaks of Judge Story's decision as "a broad pretension for the admiralty, under which the legal profession and this court staggered for thirty years before being able to maintain it." It was not until 1870, after fifty-five years of contention, that the precise question was presented to the Supreme Court in *Insurance Company vs. Dunham*, 11 Wall. 1. Then by the unanimous concurrence of the Judges, the position of Judge Story was fully sustained, as declaring the correct principle of admiralty jurisdiction; and it was determined that whether a contract was maritime or not, depends not upon the place where made, but upon the subject matter.

And yet, singularly as it may appear, there are two exceptions which seem to me to be irreconcilable with the broad doctrine sustained by the Supreme Court. The first is with respect to the building of a ship. This would seem to come within the rule that the admiralty has jurisdiction "to things pertaining to the sea." And yet it has been generally held in this country that a proceeding in admiralty will not lie, either *in rem* or *in personam*, for the cost of building a ship.

So likewise, as I shall have occasion hereafter to state, a vessel is liable for injury done upon the water, but not to an injury done to a thing upon land; the courts holding that both the cause and the effect must be consummate upon the water.

It is difficult for me to reconcile these holdings with the broad and liberal jurisdiction asserted and maintained that admiralty has jurisdiction of all things pertaining to the sea. Yet these distinctions have been upheld by the Supreme Court of the United States and must be recognized as established law.

The admiralty and maritime jurisdiction embrace two great classes of cases, one dependent upon locality and the other upon the nature of the contract or service. The first embraces all claims for torts committed on the high seas and upon the navigable waters of the United States. It includes all injuries, whether committed by direct force, or in consequence of negligence or malfeasance; including personal injuries to passengers, seamen or freighters, or suffered by a stranger.
The second includes all contracts, claims and services which are purely maritime, and which respect rights and duties appertaining to commerce and navigation. This jurisdiction extends to all contracts of affreightment, whether by charter party or by bill of lading, when performed upon the high seas or the navigable waters. It embraces contracts for the carriage of passengers, including all suits growing out of the relation of passenger and carrier. It embraces marine insurance, salvage, agreements of consortship between wreckers, and to compel distribution by one salvor who has received the whole amount, among co-salvors. It embraces general average, bottomry and respondentia bonds, claims for repairs, supplies and materials furnished to both foreign and domestic vessels. It takes cognizance of pilotage, wharfage, towage, negligence in towing, seamen’s wages and, in fact, all matters properly referable to marine commerce.

Having considered the general subject of jurisdiction, let me now call your attention to certain subjects which are within that jurisdiction, and which may be considered under the general head of—

**MARITIME LIENS.**

A ship is made to plough the sea, and not to rot at the wharf. It is necessary, therefore, that she have a crew and should be furnished with all proper supplies to make her seaworthy at the start, and to keep her in that condition during the voyage. In ancient time, and up to the application of steam as a motive power, voyages were protracted, sometimes lasting for years. Anciently the cargo was owned by the owner of the ship, and was carried to distant ports to be traded off for the products of the countries visited, which were brought back to the ports from which the vessel had sailed. It was seldom that the owner accompanied the ship. The duty of disposing of the cargo and of trading for the return cargo was generally deputed by the owner, either to the master, or to some other representative called a super cargo. The master, however, had supreme control of the navigation of the ship and of obtaining the necessary supplies at any port which he might enter while upon the voyage. The law, therefore, granted him great powers with respect to the ship, commensurate with the exigencies of the occasion. It was necessary for the safety of the crew and of the vessel that he have supreme power, and the crew were bound to obey his
orders without question or demur; the master, however, being answerable for any abuse of that power. It often occurred that the ship in a foreign port needed supplies to continue her voyage, or repairs to make her seaworthy, and the law invested the master of the ship with power to obtain those supplies and repairs, and for that purpose to borrow money in a foreign port on the security of the vessel. Those repairs and supplies constituted a maritime lien upon the ship. This maritime lien is a claim—privilege on the thing—on the vessel—although the possession of the vessel was not delivered to the person advancing the money for the supplies or repairs. It was a proprietary right in the thing itself, called in the maritime law a jus in re—that is, a right to follow the vessel wherever she may be and enforce the claim through the courts of admiralty. So, also, he could obtain money on bottomry bonds, that is, a sum of money as a loan for a particular voyage, at a very high rate of interest, called maritime interest, on the security of the ship, freight and cargo, upon the condition that if the voyage be performed safely, the money with interest shall be repaid; but if the vessel be lost by peril of the sea, then nothing was payable. Respondentia bonds could also be given for loans made on the cargo instead of the ship. In other words, with respect to supplies, repairs and money necessary to be obtained for the ship and used for the purpose of the voyage, the master was the alter ego of the owner and could bind the ship. He was also vested with large discretion with respect to the navigation of the vessel, and with power over the cargo in respect of that navigation. In case of storm or stress of weather when it became necessary to lighten the ship, the master could direct a particular part of the cargo to be sacrificed by being thrown overboard to lighten the vessel. This is called a "jactus". The loss thereby sustained is borne by the remainder of the cargo and by the ship, and by the amount of freight money earned, in what is called general average, or average contribution; each thing saved by the jactus paying in proportion to its value for that which had been sacrificed for the common good. So that, if cargo or ship should take fire, and in the extinguishment of the conflagration the cargo or a part of it should be damaged by water, that which was lost must be compensated for by that which was saved in general average contribution. Three things must concur to authorize that contribution. First, a common imminent peril. Second, a voluntary sacri-
fice. Third, successful avoidance of the danger. But, as the discretion of thus destroying a part for the general good is lodged with the master, his mind must determine the necessity, and order the sacrifice. So it has been held by the Supreme Court that where a conflagration in the hold of a vessel was extinguished by the fire department of a city without any direction of the master, and to prevent the spread of the conflagration, there could be no general average contribution; but otherwise if the destruction by the fire department was by the direction of the master.

SEAMEN'S WAGES.

Anciently seamen were not entitled to wages unless freight was earned. It would seem to have been a sort of partnership, all parties being interested in the common adventure, dividing the profits ratably if the adventure was successful, and the seamen not receiving wages in case of disaster. Hence the maxim that "Freight is the mother of wages." And it was not until about the year 1825 that by the act of Congress seamen were entitled in any event to the wages contracted for. Seamen have been the peculiar care of the courts of admiralty — wards of the court — which has at all times been careful to see that they were not imposed upon, and to grant them speedy relief, without the delay and expense attending ordinary suitors in its courts. They have been considered an improvident and reckless class of men, childlike in respect of business, and needing protection. Whether that view should prevail at the present day may be doubted, for they seem to have adopted the customs of other laborers and have formed unions for their own protection, and they have learned to strike. Seamen's wages have been considered the first lien upon a vessel and are payable out of the proceeds of sale of the vessel; because the services of the seamen were necessary to the navigation of the ship, to the earning of freight, and to bring her safely into port. There are, however, one or two exceptions to this, notably in the case of collision between two vessels, where the damages done to a vessel are first payable out of the proceeds of the sale of the vessel in default, in priority to the claims of seamen for wages earned prior to the collision; because the vessel and crew doing the damage are treated as the offending thing and as all being guilty of the wrong. But it is otherwise as to wages earned subsequent to collision in bringing the defaulting vessel into port, because without their services the de-
faulting vessel could not have been subjected to the payment of the damage inflicted.

**SALVAGE.**

As a vessel is subject to storm and wind and likely to be put at the mercy of the waves, or driven ashore at a distance from any port and can only be saved by a passing vessel or by those on shore giving voluntary assistance, the courts have liberally decreed compensation to salvors for the service rendered. This right is unknown to the common-law or to chancery. It is a moral claim, a duty of imperfect obligation. It is of the same class as the voluntary saving of a house on fire upon the land; but no right to compensation therefor is recognized at the common-law. It is like the case on land of houses blown up by dynamite to stay the spread of a conflagration; and yet by the common-law no remedy is given the owner. I have mentioned to you the case of a *jactus*, the throwing overboard of part of the cargo to lighten the ship and save the balance, where the admiralty charges that saved with the value of that sacrificed. You will thus see the broader equity that exists in the admiralty which allows such claims and will not permit the innocent to suffer, but charges his loss upon that saved by the sacrifice of his property.

Salvage depends upon no contract, although it may be contracted for, and then compensation is governed by the terms of the contract. Salvage is a reward allowed for a service rendered to marine property at risk or in distress by one under no legal obligation to do so, and resulting in benefit to the property if eventually saved. The considerations of humanity in relief of distress, or the preservation of life, or the risk incurred, do not affect the right to compensation; they are only considered with respect to the amount of compensation. This compensation is for the service which a volunteer adventurer spontaneously renders to the owner in the recovery of property from loss or damage at sea, under the responsibility of returning the property to the owner if saved and with a lien upon the property saved as their reward. This compensation is very liberally extended, and should be so from the necessities of the situation as an encouragement to other vessels or to men upon the shore to aid vessels in distress. It includes—

1st: The towage of disabled vessels. 2nd: Piloting or navigating endangered ships. 3rd: Removing persons or cargoes
from vessels in distress. 4th: Saving a stranded ship. 5th: Raising a sunken ship or cargo. 6th: Saving a derelict or wreck. 7th: Taking aid to a distressed ship. 8th: Saving persons in the boats of a distressed ship. 9th: Protecting ship or cargo or passengers from pirates. 10th: Furnishing men or necessary supplies to a ship at sea and short of them. 11th: Saving ship and cargo from fire either on board or in dangerous proximity. 12th: Or from any impending danger; as for example, an ice-floe. It is not essential that the danger be immediate and absolute. It is sufficient if the vessel has encountered danger which might expose her to destruction if the service be not rendered.

The service must be voluntary, that is, must be rendered by one under no legal obligation to render it. Therefore the crew cannot claim salvage, because it is their legal duty to stand by the ship in all danger. Nor can the pilot, nor can a life-saving crew, for they act only in discharge of their duty.

Success is essential to maintaining a claim for salvage. The ship or cargo must be saved and returned to the owner. Thus, if a salvor find a ship three thousand miles away from her port and loses her at the harbor bar, no remuneration can be allowed, for no benefit is conferred upon the owner.

Reward for salvage is always liberal and made with reference to the value of that saved. It is not only allowed for the time and labor expended, but as a bounty in addition, to encourage efforts to relieve distress at sea. The amount to be allowed rests in the sound discretion of the court.

The elements to be considered in determining the amount of the award are—

1st: The degree of danger from which the ship has been rescued. 2nd: The value of the property saved. 3rd: The value of the salvor's property put at risk in the saving. 4th: The risk incurred by the salvor. 5th: The skill shown. 6th: The time and labor expended. 7th: The degree of success obtained. And the amount allowed is always liberal.

The reward is distributed by the court among all engaged in the service of saving, the owner of the ship engaged in saving, the crew and the master. If the saving vessel be a steamer, her owners are usually allowed three-fourths of the amount awarded, because of the danger to the property employed and the risk incurred. The balance is distributed among the master and crew,
the master receiving the larger proportion by reason of the re-
sponsibility assumed by him. The portion for the crew is divided
among them in proportion to their wages. The salvage service is
chargeable to the ship and cargo saved in proportion to their
values. The freight money earned must also contribute.

**MARINE TORTS.**

A marine tort must be consummate upon the water and to a
navigable thing; but the primal cause may arise upon the land.
Thus collision between two vessels is a marine tort cognizable in
the admiralty. But an injury to a bridge over the water by a
vessel upon the water is not within the definition of a marine
tort, although an injury to a vessel by a bridge would be. So
sparks from a steamer setting fire to property on land is not a
marine tort; but otherwise if a ship is set fire to by a cause
arising upon the land.

I am free to confess that I am not persuaded of the logic of
this distinction. It seems to me a survival of the old English
doctrine which was adverse to any jurisdiction by the admiralty.
However, that has been settled by the Supreme Court, and in a
recent case the Judges have declined to recede from their former
holding on that subject.

**COLLISIONS AT SEA**

Collisions at sea are not infrequent and they have sought to
be avoided by the establishment of certain laws of the road, so
to speak, by which one vessel can the more readily avoid collision
with another. A vessel is required to provide proper lookouts at
all times, to watch for vessels in its course. They are also required
to provide certain lights, one on the starboard and one upon the
port bow, of different colors, which shall warn other vessels not
only of the existence of the approaching vessel, but of its course.
There are distinctive lights provided for different kinds of vessels,
and this whether the vessel is under way or at anchor. They are
required to sound signals in cases of fog and, in case of steamers,
to reduce their speed — although the captains of ocean steamers
insist that there is much less danger of collision if their speed is
kept up or increased, that they may get out of the bank of fog
sooner.

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There are also rules regulating steamers and sailing vessels. A steamer must keep out of the way of a sailing vessel and give her wide berth, because she is more easily handled. And when a steamer and sailing vessel are approaching each other, the sailing vessel must keep on her course and not change it, except in case of imminent danger. The steamer is bound to keep out of her way. In case of collision there is a peculiar provision in the admiralty which appeals to the equity. If both vessels are in fault, the damages of both are added together and divided and each vessel must sustain the one-half of the damage. This, of course, is necessarily arbitrary, but is much more equitable than the common-law rule. There, if one be grossly negligent and has caused damage and the other party has been slightly negligent, but that slight negligence has contributed to the injury, there can be no recovery, and the grossly negligent party escapes altogether. Whereas, by the admiralty rule, both parties at fault are punished for the negligence. Each must bear his proper proportion.

DEMURRAGE.

A ship is entitled to dispatch. She cannot be tied up at the wharf. She is made to plough the seas. So the consignee of a cargo must unload within reasonable time and with the usual dispatch of the port. But there is no liability for demurrage if the delay arises from some unforeseen cause over which the consignee has no control or if it be caused by authority of law. Provisions with respect to demurrage and liability therefore are usually stipulated in the bill of lading.

LIABILITY FOR INJURY TO PASSENGERS BY NEGLIGENCE.

The owners of a vessel are answerable for such injury; but no action in rem against the vessel will lie. And this upon the ground that the vessel is only liable for that which is in aid of her preservation. If the injury be occasioned by the negligence of another vessel, the owners of the offending ship are liable. If the negligence of both colliding vessels contribute to the injury, the owners of both are liable. The statutes of most of the states now give damages to the representatives for the death of a passenger. While there is no such original provision in the admiralty, yet the admiralty will enforce that statute in personam against the owner of the vessel.
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LIMITED LIABILITY ACT.

Anciently the owners of vessels were bound in solido for the liabilities of the ship arising from contract, and in proportion to their interest for liabilities arising out of tort. There was no limit of liability as respects the value of the vessel. The burden of this responsibility, the frequency of marine disasters in the days of frail crafts, the need of encouraging marine adventure—that being the only mode of communication between nations—led to the adoption in the maritime codes of provision limiting the liability of owners to their respective interests and by the value of the ship and freight. The noted ordinance of Louis XIV made the owners liable for the acts of the master and providing that they should be discharged of liability, abandoning to creditors and claimants their ship and its freight.

The first act in the United States upon this subject was passed March 3, 1851, and the object was stated by Mr. Justice Bradley in Norwich vs. Wright, 13 Wall, 104.

The great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital and invest it in ships, incur a great hazard in exposing their property to the perils of the sea and to the management of sea-faring men without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions by which they are exempt from personal liability except to a limited extent. The public interests require the investment of capital in ship-building quite as much as in any of these enterprises; and if there exist good reason for exempting innocent shipowners from liability, beyond the amount of their interest for loss or damage to goods carried in their vessels, precisely the same reasons exist for exempting them to the same extent from personal liability in cases of collision. In the one case as in the other, their property is in the hands of agents whom they are obliged to employ. The act
exempts the one upon surrender of the vessel from liability arising from casualty by fire, embezzlement, loss or destruction of goods by master or crew, damage from collision, and from any loss occurring without the privity or knowledge of the owner.

The proceeding by which that law is enforced is one *in rem* against the vessel and pending freight. A petition is filed in admiralty by the owner and all claimants are summoned in as parties. The vessel, or what is left of the vessel, is then appraised. It is then either sold and proceeds covered into the treasury of the court, or the owner may give bond in the penalty of the appraised value and have the vessel returned. Then in that proceeding the owner may contest any claim, either as to its validity or amount, and the proceeds of the sale of the vessel are divided pro rata among adjudicated claims. The proceeding is unique, somewhat like bankruptcy proceeding, marshaling and distributing assets. This proceeding also renders abortive any action at common-law to render the owner liable.

In respect to proceedings in admiralty there are two classes, as I have stated, proceedings *in rem* and proceedings *in personam*. The first is a proceeding directly against the vessel and its cargo and not against the individual owners. The vessel is deemed always the offending thing and the libel is filed against it. This libel corresponds to the declaration or complaint at common law. Admiralty, however, is unlike the common-law and more nearly resembles the jurisdiction of a court of equity. The libel consists in a series of articles, so called, in which the jurisdiction of the court is stated, the character of the vessel, the cause of the complaint against the vessel. Upon filing the libel a writ issues out of the court to the marshal to seize the vessel if within the jurisdiction of the court, and to notify all parties interested by publication, to appear at the time and place stated and defend their interest in the vessel. The owners of the vessel within the time stated can obtain a discharge of the vessel from the custody of the marshal upon filing a bond to respond to any judgment which may be rendered. Otherwise the vessel is presently sold under the direction of the court, because she is a perishable thing and cannot be allowed to rot at the wharf. In case of sale the proceeds are paid into court to abide the judgment and order of the court in the proceeding. If the vessel be bonded, the case proceeds as if the vessel were there, and when the decree is rendered,
if one be rendered to the libelant, it goes against the owner of the vessel and his bondsman for the amount of damages awarded.

The answer to the libel must be full and specific to each article of the libel. It must not only deny the charges of the libel which are claimed to be erroneous, but in case of damage by collision a general plea of not guilty or a general denial as at common law will not avail. The answer must go further, following more nearly the answer in equity and state the vessel's version of the collision and its cause, so that the court may have both sides of the story stated in the pleading, and determine whether the facts proven sustain the one side or the other. If he deem the answer insufficient, the libelant (who answers to the plaintiff in a common-law suit) may file his exceptions to it and the court then determines the question.

The testimony is usually taken out of court by deposition or before a commissioner; but, of course, it may be taken in open court, and a decree is entered as the court may determine the right to be. This decree may be appealed to the United States Circuit Court of Appeals for the circuit within six months from the entry of the decree. There is this difference to be noted between appeals in the admiralty and appeals in other cases either at common-law or in equity — the trial of an appeal in admiralty is a new trial of the whole suit. The decree is opened by the appeal and the Court of Appeals may enter its decree in the appellate court, or refer it back to the trial court, directing the sort of decree to be entered. Upon the appeal the appellate court may take new testimony if it sees proper to do so, but of course this will not be allowed unless the parties have shown due diligence with respect to obtaining it for use before the trial court.