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Admiralty - Laches - Applicability to Claim Based on Unseaworthiness Brought on Civil Side of Federal Court

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Notes

ADMIRALTY — LACHES — APPLICABILITY TO CLAIM BASED ON UNSEAWORTHINESS BROUGHT ON CIVIL SIDE OF FEDERAL COURT

A longshoreman was injured while unloading a ship, and sued the shipowner on the civil side[1] of federal district court, alleging that his injury was caused by the unseaworthiness of the vessel. His suit was brought over five years after the injury and the district court dismissed it on the ground that it was barred by the two-year state limitation on tort actions, or, in the alternative, by the admiralty doctrine of laches. The Court of Appeals for the Second Circuit *held,* affirmed, but only on the second ground. The proper method of determining whether a claim for personal injury caused by unseaworthiness is time-barred is to apply the admiralty doctrine of laches, not the state statute of limitations, even though the action is brought on the civil side of federal court and jurisdiction is based on diversity of citizenship. *Oroz v. American President Lines,* 259 F.2d 636 (2d Cir. 1958).

Maritime law requires the shipowner to furnish a seaworthy vessel and holds him absolutely liable to seamen[2] and certain harbor workers[3] who are injured because of a defect in the ship or its equipment.[4] This right to recover for personal injury

1. The federal courts are vested with exclusive and original jurisdiction over "admiralty and maritime" cases, "saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333 (1952). Pursuant to this power, a federal district court sits as a court of admiralty, which is referred to as the "admiralty side" of federal court. The "civil" or "law" side of federal court is simply the federal court sitting not as an admiralty court. See, generally, GILMORE & BLACK, ADMIRALTY 30 (1957).

This "saving clause" has been interpreted to allow suitors to enforce maritime causes of action through in personam remedies in state court or on the civil side of federal court, given diversity of citizenship. GILMORE & BLACK, ADMIRALTY 33 (1957).

2. The absolute character of the shipowner's liability appears to have been firmly established by the Supreme Court in Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946). See 2 NORRIS, LAW OF SEAMEN 242 *et seq.* (1952); GILMORE & BLACK, ADMIRALTY 315 *et seq.* (1957).

3. The right to recover for unseaworthiness has thus far been extended by the Supreme Court to a longshoreman, Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946), and a carpenter repairing the ship, Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953). For an analysis of the trend in this regard see GILMORE & BLACK, ADMIRALTY 361-64 (1957).

4. GILMORE & BLACK, ADMIRALTY 315 *et seq.* (1957). For a more detailed history of the judicial development of the right to recover for injury caused by

caused by unseaworthiness was not a creation of statute, but has been fashioned by the federal courts sitting as courts of admiralty.[5] In the absence of a federal statute fixing the period of limitation on claims for personal injury caused by unseaworthiness, the admiralty courts have utilized the equity doctrine of laches.[6] Generally a claim based on unseaworthiness will be held barred by laches if it is brought after an inexcusable delay which prejudices the defendant.[7] In order to determine whether these conditions are satisfied, admiralty courts are guided by state statutes of limitation;[8] if the state limitation period has run, the defendant is presumed to have been prejudiced by the delay and plaintiff must allege and prove facts showing no inexcusable delay and no prejudice.[9] However, the admiralty court may not simply apply the state statute mechanically, since the question of laches must be decided after a balancing of the equities of the case.[10]

A claim for personal injury caused by unseaworthiness may be brought not only on the admiralty side of federal court,[11] but also in state court[12] or on the civil side of federal court (as-

unseaworthiness, see Tetreault, *Seamen, Seaworthiness, and the Right of Harbor Workers*, 39 CORN. L.Q. 381, 386 (1954).

"Equipment" includes the ship's crew. GILMORE & BLACK, ADMIRALTY 320 (1957). For a collection of the cases see 2 NORRIS, LAW OF SEAMEN 245-52 (1952), and 2 *id.* 88-100 (Supp. 1958).

5. The right was first announced in The Osceola, 189 U.S. 158 (1903).

6. *E.g.*, Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525 (1956). As authority for the proposition the courts usually cite The Key City, 81 U.S. (14 Wall.) 653 (1871), which, however, did not involve a claim for personal injury caused by unseaworthiness.

7. Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525, 535 (1956); Kane v. Union of Soviet Socialist Republics, 189 F.2d 303 (3d Cir. 1951); Pinion v. Mississippi Shipping Co., 156 F. Supp. 652 (E.D. La. 1957). See also Gardner v. Panama R.R., 342 U.S. 29, 31 (1951) (suit for personal injuries, but not clear whether based on unseaworthiness); McDaniel v. Gulf and South American S.S. Co., 228 F.2d 189 (5th Cir. 1955) (not clear whether claim based on unseaworthiness); Morales v. Moore-McCormack Lines, 208 F.2d 218 (5th Cir. 1953) (claim based on negligence).

8. Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525, 533 (1956).

9. Wilson v. Northwest Marine Iron Works, 212 F.2d 510 (9th Cir. 1954); Taylor v. Crain, 195 F.2d 163 (3d Cir. 1952); Kane v. Union of Soviet Socialist Republics, 189 F.2d 303 (3d Cir. 1951); Redman v. United States, 176 F.2d 713 (2d Cir. 1949); GILMORE & BLACK, ADMIRALTY 632 (1957).

10. Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525, 533 (1956) (case remanded to allow introduction of evidence on prejudice and inexcusable delay, even though state limitation period had already run); Kane v. Union of Soviet Socialist Republics, 189 F.2d 303 (3d Cir. 1951). *Accord*, Gardner v. Panama R.R., 342 U.S. 29, 31 (1951) (trial court's finding of laches reversed, even though state limitation period had run); McDaniel v. Gulf and South American S.S. Co., 228 F.2d 189 (5th Cir. 1955); Morales v. Moore-McCormack Lines, 208 F.2d 218 (5th Cir. 1953).

11. London Guar. & Acc. Co. v. Industrial Acc. Comm'n, 279 U.S. 109 (1929).

12. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946) (dictum); Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922) (semble).

suming diversity jurisdiction is present),[13] where the case may be tried before a jury.[14] If the action is brought on the civil side of federal court, a problem arises whether the court is to apply the admiralty doctrine of laches or the state statute of limitations directly. It has been the practice for federal courts in several non-maritime situations to apply state limitation periods to federally-created rights for which Congress has provided no statute of limitations.[15] Relying on this practice, the first case to consider the present question held the state period of limitation directly applicable to a claim for personal injury caused by unseaworthiness brought on the civil side of federal court.[16] Later cases refused to apply the state limitation statutes directly, holding that laches applied because of the rule that substantive maritime law governs maritime causes of action brought in state court or on the civil side of federal court.[17] This

13. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).

14. 5 MOORE, FEDERAL PRACTICE 281 (2d ed. 1951). Whether trial in state court will be before a jury will, of course, depend upon state law.

15. See 2 *id.* at 717, for cases applying this rule to the anti-trust laws, the Fair Labor Standards Act, and the National Bank Act. The application of the rule was considered by the court in the instant case, but rejected. Oroz v. American President Lines, 259 F.2d 636, 638 (2d Cir. 1958).

16. Bonam v. Southern Menhaden Corp., 284 Fed. 362 (S.D. Fla. 1922). The court conceded that under the then recent holding of Chelentis v. Luckenbach, 247 U.S. 372 (1918), the civil side of federal court was bound to apply substantive admiralty law to a claim for personal injury caused by unseaworthiness. However, the court labelled the state statute of limitation as "procedural" and thus excluded it from the principle of the *Chelentis* case. The defendant in the instant case also advanced the argument that the state limitation period was "procedural" and thus outside the rule that the substantive law of unseaworthiness must be applied ouside the admiralty court. The argument was rejected. Oroz v. American President Lines, 259 F.2d 636, 638 (2d Cir. 1958).

17. White v. American Barge Lines, 127 F. Supp. 637 (W.D. Pa. 1955); Henderson v. Cargill, Inc., 128 F. Supp. 119, 120 (E.D. Pa. 1954) ("determination of the timeliness of the action depends on the equitable doctrine of laches and not the two-year Pennsylvania statute of limitations"); Apica v. Pennsylvania Warehousing & Safe Dep. Co., 101 F. Supp. 575, 576 (E.D. Pa. 1951) ("Consequently, the doctrine of laches applies rather than the doctrine of limitations, notwithstanding that jurisdiction is founded on diversity of citizenship"; see also the same case reported earlier at 74 F. Supp. 819 (E.D. Pa. 1947), where the same conclusion was reached with additional authorities cited). In accord with the holding of these three cases in Szalkiewicz v. Farrell Lines Inc., 142 F. Supp. 496 (S.D.N.Y. 1956), which apparently was a suit in admiralty court, although this is not clear from the opinion.

Two recent cases are at least analogously *contra* the three cases collected above. In Land v. United States Lines Co., 137 F. Supp. 376 (E.D. N.Y. 1955), plaintiff sued for wages, maintenance, and cure, apparently on the civil side of federal court. The court apparently applied the six-year contract limitation period of New York directly to his claim. However, in support of this procedure the court cited Marshall v. International Mercantile Marine Co., 39 F.2d 551 (2d Cir. 1930), where the six-year statute of limitations had been used only as a guide in determining the question of laches. It is possible, therefore, that in the *Land* case the court was using the state statute in such a fashion, although the opinion is not clear on this point.

In the second case, Haychuck v. South Atlantic S.S. Line, 127 F. Supp. 49

rule had been developed by the United States Supreme Court,[18] principally in cases holding that the maritime and not the state rules on burden of proof and contributory negligence applied to admiralty causes of action brought outside the admiralty courts.[19]

Basing its conclusion on the rule that admiralty substantive law is supreme even outside the admiralty court, the court in the instant case held that the civil side of federal court must apply laches to a claim for personal injury caused by unseaworthiness.[20] The court felt that since rules of contributory negligence[21] and burden of proof[22] had been held to affect so vitally the outcome of litigation as to be "substantive" for purposes of application outside the admiralty court, then the doctrine of laches was also "substantive" for that purpose. It was argued that since the civil side of federal court had jurisdiction over the claim

(E.D. Pa. 1954), the Pennsylvania limitation statute was held applicable to a seaman's claim for wages under 46 U.S.C. § 596 (1952), although application of the doctrine of laches was urged. This case, decided by Judge Welsh, should be compared to his opinion in *Henderson v. Cargill, Inc., supra*, in which he held that the doctrine of laches did apply to a claim for personal injury caused by unseaworthiness brought on the civil side of federal court.

18. The development is traced in GILMORE & BLACK, ADMIRALTY 374 (1957).

19. In Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942) a seaman brought suit in state court for negligence under the Jones Act, 41 STAT. 1007 (1920), 46 U.S.C. § 688 (1952), and for maintenance and cure under the general maritime law. Plaintiff had signed a release of his claims prior to trial, but Pennsylvania and maritime law differed as to the burden of proof necessary to prove the validity of such a release. Held, the maritime rule and not the state rule must be applied by the state court.

In Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953), a claim for personal injury caused by unseaworthiness was brought on the civil side of federal court, and the issue arose as to whether the state rule of contributory negligence applied. The Supreme Court held that it did not, and that the admiralty rule of divided damages applied instead. The argument was advanced that the jurisdiction of the court depended on diversity of citizenship between the parties under 28 U.S.C. § 1332 (1952), and that the state rule of contributory negligence must therefore be applied under the doctrine of Erie R.R. v. Tompkins, 304 U.S. 64 (1938). The Supreme Court declined to decide whether the civil side of federal court had jurisdiction only if diversity of citizenship existed, but assumed that to be the case, and still held the doctrine of *Erie* inapplicable. *Erie*, stated the court, had merely "decided that federal district diversity courts must try state-created causes of action in accordance with state laws." Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410 (1953). This was meant to insure that there be no difference in result between federal courts and state courts deciding like causes of action. This principle of equal justice demanded the application of the same rules on both sides of federal court for federally-created causes of action, since "the substantial rights of an injured person are not to be determined differently whether his case is labelled 'law side' or 'admiralty side' on a district court's docket." *Id.* at 411.

20. Oroz v. American President Lines, 259 F.2d 636, 638 (2d Cir. 1958). It will be observed that this is the first time a federal court of appeals has considered the question, which has been treated several times earlier by federal district courts. See notes 16 and 17 *supra*.

21. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953), discussed in note 19 *supra*.

22. Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942) (burden of proof of the validity of a seaman's release).

only because of diversity of citizenship,[23] the state statute of limitations should be applied under the rule of *Erie R.R. v. Tompkins*.[24] The court conceded that under the rule of *Erie* a federal court adjudicating rights arising out of state law is bound to apply the substantive law of the state where the court is sitting, in order that there be no difference in result between state and federal courts.[25] However, the court felt that this rule was not applicable to the present case since the right to recover for personal injury caused by unseaworthiness was created by federal maritime law, not by state law. Applying the doctrine of laches on the civil side of federal court would insure that there be no difference in result between the two sides of federal court.[26]

23. Whether the civil side of federal court has jurisdiction over a claim for personal injury based on unseaworthiness only if there is diversity of citizenship between the parties under 28 U.S.C. § 1332 (1952) was actually unsettled at the time the present case was decided. The Court of Appeals for the First Circuit had held in Doucette v. Vincent, 194 F.2d 834 (1st Cir. 1952) that a claim for personal injury caused by unseaworthiness was a case which "arises under the Constitution, laws, or treaties of the United States," within the meaning of 28 U.S.C. § 1331 (1952), a statute vesting the civil side of federal court with jurisdiction over such matters. Diversity of citizenship under 28 U.S.C. § 1332 (1952), then, was not necessary for the civil side of federal court to have jurisdiction over the claim. The contrary position was taken by both the Second and Third Circuits. Paduano v. Yamashita Kisen Kabushik Kaisha, 221 F.2d 615 (2d Cir. 1955); Jordine v. Walling, 185 F.2d 662 (3d Cir. 1950). *Accord*, 5 MOORE, FEDERAL PRACTICE 280 (2d ed. 1951). The United States Supreme Court has apparently settled the matter in Romero v. International Terminal Operating Co., 79 S.Ct. 468 (U.S. 1959), where Justice Frankfurter, in a long review of the authorities, rejected the notion that a claim for personal injury caused by unseaworthiness "arises under the Constitution, laws, or treaties of the United States" within the meaning of 28 U.S.C. § 1331 (1952). See, however, the dissent by Justice Brennan, in which the Chief Justice and Justices Black and Douglas join. *Id.* at 489.

24. 304 U.S. 64 (1938). The rule of that case, as succinctly stated by Justice Black in Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410 (1953) was "that federal district diversity courts must try state created causes of action in accordance with state laws."

25. The case which perhaps best enunciated the policy behind *Erie* was Guaranty Trust Co. v. York, 326 U.S. 99 (1945), in which Justice Frankfurter stated: "In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court. The nub of the policy that underlies *Erie R.R. v. Tompkins* is that for the same transaction the accident of a suit by a nonresident litigant in a federal court instead of in a State court a block away should not lead to a substantially different result." *Id.* at 109.

The holding of *Guaranty Trust Co. v. York* was that the federal court sitting in equity was bound to apply a state limitation period to a state-created right being enforced there. The case, therefore, was at least authority for the application of state limitation periods in diversity cases, and was urged upon the court in the instant case. The court distinguished the case on the ground that there a state-created right was being enforced, whereas in the present case a federally created right was involved.

26. This was precisely the rationale which the United States Supreme Court

The rule of the present case, in securing the application of laches on both sides of federal court to claims based on unseaworthiness, tends to promote the uniformity of maritime substantive law, and so fulfills the policy behind the Supreme Court cases which developed the theory of maritime law supremacy.[27] Complete uniformity in this regard, however, would not exist unless state courts entertaining claims for personal injury caused by unseaworthiness were also bound to apply the doctrine of laches. There are apparently no cases holding state courts so bound.[28] However, the Supreme Court has required state courts to apply substantive maritime law instead of state law in determining the burden of proof of the validity of a seaman's release,[29] and the proper limitation applicable to a claim based on unseaworthiness when joined with a claim under the Jones Act.[30] It is conceivable, therefore, that in the future a state court may be compelled to apply the admiralty doctrine of laches to a claim for personal injury caused by unseaworthiness.

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ALIMONY — EFFECT OF FAULT UNDER R.S. 9:301

The wife separated from her husband, who was frequently visiting the home of an unmarried woman, and she brought suit for divorce on the grounds of adultery. Because she failed to prove the alleged adultery, the divorce was not decreed, but she

had used in Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953). See note 19 *supra*, for a brief exposition of that case.

27. The notion that maritime law should be uniform throughout the country was announced by the Supreme Court in Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917). The doctrine of the supremacy of maritime law outside the admiralty courts can be traced to this case. See GILMORE & BLACK, ADMIRALTY 374 (1957). However, state law has been allowed to supplement maritime law in the areas of liens, wrongful death statutes, partition and sale of vessels, arbitration, and insurance. See Romero v. International Terminal Operating Co., 79 S.Ct. 468, 480 (U.S. 1959).

28. The United States Supreme Court declined to decide the question in both Engel v. Davenport, 271 U.S. 33 (1926) (state may not apply its limitation period to the Jones Act, which contains a three-year limitation period of its own), and McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958) (when claim based on unseaworthiness is joined with count for negligence under the Jones Act, state may not apply a limitation of less than three years to either count).

29. Garrett v. Moore-McCormack Co., 317 U.S. 239 (1952) (suit in state court for negligence under the Jones Act and maintenance and cure).

30. McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958). The Jones Act 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." 41 STAT. 1007 (1920), 46 U.S.C. § 688 (1952).