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THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

EXTENSION OF ADMIRALTY JURISDICTION TO LAND STRUCTURES

Report of Committee, May 15, 1931

Since the preliminary report of January 17, 1930, your Committee has given this matter further consideration.

Unless the Supreme Court can be persuaded to modify its position as repeatedly stated, it is reasonably clear that the admiralty jurisdiction cannot be extended to, or interpreted to cover, cases of damage by vessels to land structures. See the discussion in *The Blackheath*, 195 U. S. 361; *The Raithmoor*, 241 U. S. 166; *Smith & Sons* v. *Taylor*, 276 U. S. 179, 1928 A. M. C. 447.

The Blackheath upheld the admiralty jurisdiction in respect of collision with a beacon attached to the bottom of the channel which was regarded as an aid to navigation. Mr. Justice Holmes said (195 U. S. at 365):

> "But Congress cannot enlarge the constitutional grant of power, and therefore if it could permit a libel to be maintained, one can be maintained now."

Mr. Justice Brown in his concurring opinion (195 U. S. at 368) said that the decision in *The Plymouth*, 3 Wall. 20, had been accepted as establishing that admiralty jurisdiction did not extend to injuries received by any structure affixed to the land, and that he accepted the decision in *The Blackheath* as practically overruling the former cases. He said further:

> "The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle; and the fact that Congress, under the Constitution, cannot extend our admiralty jurisdiction, affords an argument for a broad interpretation commensurate with the needs of modern commerce. To attempt to draw the line of jurisdiction between different kinds of fixed structures, as, for instance, between beacons and wharves, would lead to great confusion and much further litigation."

Nevertheless this suggestion of Mr. Justice Brown was not adopted by the Supreme Court, and in *Cleveland Terminal R. R.* v. *Cleveland S. S. Co.*, 208 U. S. 316, Mr. Chief Justice Fuller declined to depart from the rule that the damage must have been consummated on navigable waters in order that admiralty should have jurisdiction. He said that bridges, docks, piling, piers, etc., pertained to the land and concerned commerce on land, and were not aids to navigation in the maritime sense (page 321). Mr. Justice Hughes adverted to this in *The Raithmoor*, 241 U. S. at 174-175. This doctrine was reaffirmed in *The Panoil*, 266 U. S. 433, 1925 A. M. C. 181.

In an article in the Harvard Law Review for March, 1924 (Vol. 37, pages 529-544), entitled "Admiralty Jurisdiction—Of Late Years," Charles Merrill Hough reviewed the authorities with appropriate comment. For interesting notes on the subject reference may be had to 42 Harvard Law Review 563-566 (Feb., 1929); 44 id. 460-461 (Jan., 1931).

Perhaps the problem can best be met by seeking enactment by Congress of a law which would afford relief analogous to that existing in admiralty, and the following form is suggested—tentatively, and for the purpose of inviting comment and criticism:

Any vessel which while in navigable waters of the United States negligently causes damage to land or to any property whatsoever upon or affixed to land, or to any property right in respect of any of the same, or to persons on land or on such property, shall be liable for such damage and shall be subject to a lien therefor. Any person who sustains damage thereby may proceed by libel against said vessel in any district where she may be found. The rules concerning damages and the practice and procedure in all such cases shall be in all respects the same as those which prevail in causes of admiralty and maritime jurisdiction, except that any party shall have the right to demand in his pleading trial by jury, *provided* that unless such demand is made the case shall be tried before a judge without a jury. The remedy afforded by this Act shall not be exclusive of any other remedy.

This Act shall not be held to modify or repeal Sections 4283 to 4286, inclusive,* of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

If any provision of this Act is declared unconstitutional, or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby.

Your Committee conceives that such an enactment might be sustained by the courts on reasoning such as was expressed in *The Gansfjord*, 1928 A. M. C. 1283, 25 F. (2d) 736, affirmed 1929 A. M. C. 731, 32 F. (2d) 236, certiorari denied 280 U. S. 578.

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* U. S. Code, Title 46, secs. 183 to 186.

In that case recovery was allowed to the Government against a Norwegian vessel for collision damage negligently done to a jetty in the Mississippi River. The Government proceeded by libel under the Rivers and Harbors Act of 1899, in Section 16 of which it is provided (30 Stat. L. 1153, U. S. Code, Title 33, sec. 412):

> "And any boat, vessel, scow, raft or other craft used or employed in violating any of the provisions of sections thirteen, fourteen and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof."

In *The Gansfjord*, Judge Burns in the District Court, Eastern District of Louisiana, said (25 F. (2d) at 737):

> "Certainly Congress may distribute the judicial power as its wisdom, in the light of experience, dictates, under its broad powers to regulate commerce, etc., and to ordain and establish courts inferior to the Supreme Court. If this be so, there can be no question of its right to prescribe mere procedural forms for the enforcement of remedial legislation in the public interest."

On appeal to the Circuit Court of Appeals (32 F. (2d) 236-237), Judge Walker said:

> "The injury alleged being to a structure which is to be regarded as land was not cognizable in a court of admiralty. The Panoil, 266 U. S. 433, 45 S. Ct. 164, 69 L. Ed. 366. The libel did not purport to be one in admiralty, being filed on the law side of the court, and a jury being waived by written agreement of the parties. The statute does not indicate a purpose to require resort to a court of admiralty when the cause of action relied on is one not within the admiralty jurisdiction. It is not uncommon for such a remedy as the statute provides for to be authorized to be employed against a thing which is made use of in violating a law."

In the petition for certiorari counsel for the *Gansfjord* argued to effect that the Rivers and Harbors Act of 1899 as thus applied by the lower courts was unconstitutional in that it encroached on the admiralty and maritime jurisdiction of the United States as provided in Art. III, Sec. 2, Clause 1 of the Constitution. Counsel contended that it was only possible to enforce a lien against a vessel by proceeding against her in a court of admiralty, whereas in this case the steamer had been proceeded against in and seized on process out of a common law court.

Counsel for the Government in opposing this petition cited *Martin* v. *West*, 222 U. S. 191, where the Supreme Court upheld a judgment of the Supreme Court of the State of Washington enforcing a statute of that State which allowed a lien against a vessel for damage done to the pier of a drawbridge by negligent navigation. Government counsel also cited *Rounds* v. *Cloverport Foundry & Machine Co.*, 237 U. S. 303, which upheld a statute of Kentucky authorizing lien on a vessel in respect of repairs. In both these cases it was held that the admiralty jurisdiction of the United States was not invaded by the state statutes.

Your Committee recommends that this report, and particularly the form of statute suggested, be taken under consideration by the members of this Association with a view to discussion at the next meeting so that decision may then be reached, if possible, as to the question of seeking action from Congress.

Respectfully submitted,

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GEORGE DEFOREST LORD,
IRA S. LILLICK,
Committee.

New York City,
May 15, 1931.

NOTE: Mr. Lord's signature of the foregoing report was qualified by a statement to Mr. Hupper, to which Mr. Hupper referred in presenting the report as stated in the minutes of the meeting of May 15, 1931, Document No. 173, page 1836.