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THE LANDWARD EXTENSION OF ADMIRALTY JURISDICTION: THE 1948 STATUTE

ARNOLD W. KNAUTH*

The line between water and dry land is clear and sharp. Not only can it be seen at the edge of every sea, lake and river; it can be felt by a swimmer on the darkest night. One might suppose that the line between the law of the sea and the law of the land would be equally simple and obvious. Yet in our English and American tradition, few lines are fuzzier and more bedevilled by argumentative distinctions. In Professor Robinson's phrase, "the line wobbles."

The urge to argue arises from the twin facts that ships with their owners, their assets, and the whole company of witnesses to an event frequently raise anchor and float away from the place and jurisdiction where the event occurred, never to return—quite unlike a building on land with its group of occupants and apparatus of ownership and tenancy and employment; and that the legal remedies developed by our maritime courts are quite different from those of our terrene courts. These differences are largely due to the necessities of a practice adapted to the rapid movement of ships, ship cargoes and maritime witnesses. Thus the maritime jurisdiction permits arrest in rem and a form of "foreign attachment" without bond or other security given by the plaintiff to protect the defendant against an abuse of process, in frank reliance on the proctor's good faith.¹ It permits the prompt taking of testimony by deposition *de bene esse*—for whatever it is worth—on very short notice and without delaying formalities or provision for expenses of the opposing party.² It grants the maritime lien which is secret and adheres to the ship as she passes from port to port, and from owner to owner.³ It operates through the single judge, without a jury.⁴ In the United States the maritime jurisdiction is limited to the federal

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¹ BENEDICT ON ADMIRALTY Ch. XXIV, §§ 288-94, (6th ed. 1940).

² BENEDICT, Ch. XXXIX, §§ 389-96.

³ ROBINSON, ADMIRALTY 363 (1939); Griffin, *The Federal Maritime Lien Act of 1910 and 1920*, 37 HARV. L. REV., 15 (1924), 1924 A. M. C. 206; Fitz-Henry Smith, *The Maritime Lien Act, 1910*, 24 HARV. L. REV. 182 (1911).

⁴ English admiralty judges are assisted by two Trinity House masters or navigational experts; in other countries nautical assessors assist the courts.

courts, which results in a high degree of uniformity in practice and substantive law throughout the nation. In all countries seamen's wage cases are given preference in hearing, and seamen may sue as a matter of right without giving any security for costs.⁵ In the United States, there may be an appeal from an interlocutory decree fixing the liability,⁶ without waiting to complete the proofs of damages. And an appeal is often trial de novo on the record, with a possibility of adducing new testimony and obtaining new findings,⁷ resulting in a final decision instead of the tedious remand for a new trial by the lower court. Admiralty hears cases involving less than \$3,000. Admiralty can divide the damages 50-50 in the event of mutual fault.⁸ Admiralty imputes fault to a ship in rem even when the shipowner has no personal fault, as when damage is caused by a compulsory pilot.⁹ Admiralty sustains contracts which exempt tug-boat owners from liability for the acts of their employees who direct the movements of large vessels in harbors, under certain circumstances;¹⁰ it often implies a warranty that vessels will be seaworthy.¹¹ These and other rules and distinctions may have a decisive effect on the outcome of any given situation.

The citizenry who are interested in the question whether these procedural and substantive legal differences between the maritime law and the common, code or "civil" law will apply to their disputes are not merely the shipowners and their customers—the cargo shippers and the passengers—but also their employees, the brokers, the terminal operators, the public officials who enforce regulations by fines and penalties and forfeitures, and, nowadays, also the government as a commercial shipowner and operator, shipper of cargo, employer of maritime labor, and as operator of Navy and Coast Guard vessels which commit torts. Behind many of these interested groups stand

⁵ Seamen enjoy this privilege regardless of pay and resources; others who wish to sue at public expense must take pauper's oaths. Longshoremen are not seamen for this purpose. *Raccuglia v. U. S.*, 66 F. Supp. 769, 1946 A. M. C. 1063, (E. D. N. Y. 1946).

⁶ 62 STAT. 929 (1948), 28 U. S. C. §§ 1292, 2107 (Supp. 1949), as amended 63 STAT.—, P. L. 72, c. 139, §§ 107-08 (1949).

⁷ *Grovell v. Stockard S. S. Co.*, 176 F. 2d 121, 1949 A.M.C. 1621 (3d Cir. 1949).

⁸ ROBINSON, ADMIRALTY 90, 683, 853; Sprague, *Divided Damages*, 6 N. Y. U. L. Q. REV. 15 (1928); Huger, *Proportional Damages at Sea*, 13 CORNELL L. Q. 531 (1928).

⁹ Griffin, *The American Law of Collision*, 440-48, 552 (1949); ROBINSON, ADMIRALTY 364, 703, 704; *The Gateway City-Salawati* (N. V. Stoomvaart Maatschappi, Etc. v. Waterman), 82 F. Supp. 158 (S. D. N. Y. 1949) and 83 F. Supp. 705, 1949 A. M. C. 895 (S. D. N. Y. 1949).

¹⁰ *The William J. Worth* (Publicker v. Tugboat Neptune Co.), 171 F. 2d 48, 1949 A. M. C. 121 (3d Cir. 1949).

¹¹ See KNAUTE, OCEAN BILLS OF LADING 159 (3d ed. 1947). Apart from bills of lading, see *The Fred E. Hasler*, 55 F. 2d 919, 1932 A. M. C. 237, (2d Cir. 1932).

the insurance companies which underwrite marine risks. This is a considerable segment of the seagoing and commercial community; and there can be much energy put into argument of fine points of fact and law.

The story for us may be said to begin about the year 1350, when the Court of the Admiral took form in England, and perhaps more definitely in 1375, when rules of the court were drawn up at the Inquisition of Quinsborough and approved by King Edward III.¹² The co-existence of two sets of the king's courts and judges was bound to produce conflict in due time; it was the Admirals who first sought to extend their jurisdiction,¹³ but legal historians have emphasized the later struggle when Coke ruled the common law courts and jealously fought to restrict the scope of the admiralty jurisdiction in the seventeenth century.¹⁴ In this he largely succeeded. Eventually, in the earlier days of Victoria's reign, the rising commercial interests in London brought about a truce satisfactory to the businessmen and underwriters of the City, which was expressed in the law reform statutes known as the Admiralty Court Acts of 1840, 1846, 1854, 1861, 1868, culminating in the general reorganization of the English courts in 1873.¹⁵ That solution has remained in satisfactory operation in all the parts of the British Empire to the present day, and seems to be surviving the transformations which have caused various parts of that Empire to become independent political and legal units. But the tradition and philosophical apparatus of argument about the limits of admiralty and maritime jurisdiction, having been instilled in men's minds and become highly developed, have continued to furnish unending ammunition for counsel, courts and legislators.

The British solution of 1873 did not, of course, apply as statute in the United States, and a century of independence from British rule had built up such a strong body of separatist law that there was apparently never any serious thought of adopting the British formula in America. We had bickered on the subject hotly prior to the British reform—notably in 1825 over the extension of federal maritime law to the rivers bordering and traversing Kentucky,¹⁶ which was given up in the face of fierce opposition by the Kentuckians, and again in 1845-1852-1866, when the federal maritime jurisdiction was successfully asserted over

¹² BENEDICT §§ 682-83.

¹³ BENEDICT § 685.

¹⁴ BENEDICT § 690.

¹⁵ BENEDICT § 703.

¹⁶ 2 WARREN, *THE SUPREME COURT IN U. S. HISTORY* c. 16 (1924); BENEDICT § 734; *The Thomas Jefferson*, 10 *Wheat.* 428 (U. S. 1825) (opinion of Mr. Justice Story).

the five Great Lakes,¹⁷ and soon afterwards—despite Kentucky—to all the interior rivers and lakes comprising the inter-connected water transportation system of the continent.¹⁸ We continued to handle these matters through the courts, which by interstitial legislative decisions under the guise of constitutional interpretation have occasionally extended and occasionally pruned the limits of the jurisdiction down to recent times.¹⁹ “The wobbling of the lines drawn under the present rules,”—in Professor Robinson’s words—was well described, in all its curious and sometimes amusing exfoliations, in his volume on Admiralty published in 1939.²⁰

One of the most annoying rules of the American law has been that the admiralty jurisdiction might not deal with damage done *by* a ship *to* an object on the land. Thus, if a swing-bridge carelessly hit a ship, admiralty could entertain the ship’s suit against the bridge-owner; but if a ship carelessly hit a bridge, admiralty could not hear the bridge-owner’s case, which had to proceed in the common law courts. Again, if a derrick on a pier damaged a ship, admiralty could proceed, but if a derrick on a ship damaged a pier, it could not. If a ship hired tug-boats and pilots to move the ship from one pier to another, and these carelessly caused the ship to ram a wharf or shed, the wharf and

¹⁷ An act of Feb. 26, 1845, declared the extension of jurisdiction, but was challenged. In 1850, Mr. Erastus C. Benedict, in the first edition of his *LAW OF AMERICAN ADMIRALTY*, eloquently argued that the Great Lakes are great waters, comparable in their character and commerce with the seas and oceans, and properly within admiralty jurisdiction. See the sixth edition, § 43. In 1851, the Supreme Court endorsed his argument, saying that the Act of 1845 was constitutional, and abandoned the *Thomas Jefferson* ruling. The *Propeller Genessee Chief v. Fitzhugh*, 12 How. 443 (U. S. 1851). This time there was no such political outcry as had been heard in 1825.

¹⁸ The Court considered the Act of 1845 superfluous; jurisdiction of inland waters existed anyway without a statute. *The Hine v. Trevor*, 4 Wall. 555 (U. S. 1866).

¹⁹ *Jurisdiction extended*: *The Blackheath*, 195 U. S. 361 (1904); *The Raithmoor*, 241 U. S. 166 (1915); *Yarabek’s Case*, 50 F. Supp. 488, 1943 A. M. C. 1283; (*W. D. Mich.* 1943), *Appalachian Electric Power Co. v. U. S.*, 308 U. S. 378, 194 A. M. C. 1 (1940). This last is celebrated by the jingle:

Where, oh where is New River in Virginia?
It made the jurisdiction of the admiraltee!
Nice little river near the tops of the mountains,
Never saw a steamer and it wouldn’t float a tugboat,
Roosevelt wanted power for some Tennessee farmers,
So it made the jurisdiction of the admiraltee!

Jurisdiction reduced: *The Rock Island Bridge*, 6 Wall. 213 (U. S. 1867); *Cleveland Term. & V. R. Co. v. Cleveland S. S. Co.*, 208 U. S. 316 (1908), wherein “The court,” says Robinson, “specifically repudiated Justice Brown’s views expressed in the *Blackheath*, that there was [is] admiralty jurisdiction for injury by a vessel [to a bridge and dock] . . .”; *The Steel Ranger*, 62 F. Supp. 605, 1945 A. M. C. 1123, S. D. N. Y. 1945.

²⁰ ROBINSON, *ADMIRALTY* 50-69 (1939).

shed damage could not be litigated in the admiralty court.²¹ These closely-trimmed rules became very troublesome when the government in 1942 suddenly became a large shipowner and operator, because the existing congressional permission to sue the government on its shipping contracts and torts happened to be limited to the admiralty jurisdiction; hence there was no current permission to sue the government for a ship damage to a shore property. These niceties of jurisdiction became quite disproportionate to the results sought or attainable. "New sets of facts," as Professor Robinson observed, "keep the land structure controversy on the go."²²

At the date of Robinson's book, proposals for reform had drifted ineffectually for some thirty years. "The obscurities would be cleared up," he wrote, "if admiralty jurisdiction were stated in terms of *injury merely by a ship*."²³ That was the view of Judge Veeder. But Robinson was hopeless of reform:

The point has now ceased to be arguable. The shore structure may not sue the vessel in admiralty; the vessel may sue the shore structure in admiralty.²⁴ Even where the bridge and the ship are both at fault, the bridge still *must* sue at common law. The traditional common law effect of contributory negligence invites the ship to stay out of the state courts and get into the forum in which its negligence will cost it least. . . . The cross-libel [by the bridge] has no better standing than would the same cause of action if brought on an original libel.

Yet the result of the *Norfolk-Berkeley Bridge* case²⁵ was that "if the ship initiates limitation of liability proceedings, it consents to an equitable handling of the damages, in favor of the shore structure, and on the basis of the admiralty rule for division. . . . The whip is in the shipowner's hand in either case."²⁶

There can be an argument about the constitutional power of Congress to enlarge the admiralty jurisdiction landwards by legislative act. A similar doubt had beset the Preferred Ship Mortgage Act of 1920,²⁷ but an opinion of Chief Justice Hughes²⁸ effectually laid that doubt. Relying on that precedent, Robinson expressed the view that a legisla-

²¹ *Id.* at 50, text and notes.

²² *Id.* at 60.

²³ *Id.* at 61.

²⁴ *Id.* at 66.

²⁵ *U. S. Norfolk v. Berkeley Bridge Corp.*, 29 F. 2d 115, 1928 A. M. C. 1636 (E. D. Va. 1928).

²⁶ ROBINSON, ADMIRALTY 68, 69.

²⁷ 41 STAT. 1000 (1929), 46 U. S. C. § 911 *et seq.* (1946), as amended 49 STAT. 2016 (1936).

²⁸ *The Thomas Barlum*, 293 U. S. 21, 1934 A. M. C. 1417 (1934).

tive extension in favor of shore structures would be constitutional, in these words which are currently believed to justify the new Act:

The constitutionality of an act extending maritime jurisdiction to injury to shore structures by ships would seem to be covered, argumentatively at least, by the reasoning used to sustain the Ship Mortgage Act of 1920, 46 U. S. Code § 911 *et seq.* *The Thomas Barlum* . . . 293 U. S. 21, 55 S. Ct. 31, 79 L. Ed. 176 [1934 A. M. C. 1417]. The latter case explained away *Bogart v. The John Jay*, (1854) 58 U. S. (17 How.) 399, 15 L. Ed. 95, in which the Supreme Court had denied the very jurisdiction which the new act conferred. . . .

In HOUGH [*Admiralty Jurisdiction—Of Late Years*, 37 HARV. L. REV. 529 (1924)], the late Judge Hough, who both at the bar and on the bench was an admiralty lawyer of the first rank, remarked: "Truly, as Holmes, J., remarked when he started trouble in *The Blackheath*, the scope of admiralty jurisdiction is not a matter of 'obvious principle or very accurate history' and it is just as true now as when Brown, J. wrote in his essay that 'the certainty of the law would have been better conserved either by following the *Plymouth* case in *The Blackheath*, or overruling it in the subsequent cases.'" Hough also remarks that the cases repudiating Brown's view "all disposed of without mention of *The Blackheath*, were a wet blanket to the lower courts."²⁹

The passage of the statute extending admiralty jurisdiction to damage by ships taking effect on land was largely due to a curious twist in the sudden increase of the federal government's interest in shipping. The government had, in far-away 1939, practically withdrawn from the shipping business, in which it had been engaged to a steadily lessening degree since the first World War ended in 1918; such vessels as it still allocated to commercial services were leased to operators who were privately responsible for torts.³⁰ Hence the government cared not at all about the form of remedy for land damages; and private interests did not care much either because the common law remedy was available and, while cumbersome, could be made to work in most cases.

This indifference vanished suddenly. The second World War put the government back into the ship-owning and -operating business on a greater scale than ever. Accidents of all sorts began producing admiralty libels in a torrent,³¹ under the Suits in Admiralty Act of 1920³²

²⁹ ROBINSON, ADMIRALTY 61 n.19.

³⁰ *Brady v. Roosevelt S. S. Co.*, 317 U. S. 575, 1943 A. M. C. 1 (1943).

³¹ Approximately 10,000 libels were received by the Attorney General in the space of three-and-a-half years. The majority were for seamen's injuries.

³² 41 STAT. 525 (1920), 46 U. S. C. §§ 741-752 (1946).

for merchant ships, under the Public Vessels Act of 1925³³ for public vessels, and under both acts when the draftsman was uncertain about the facts. Numerous damages *by* government ships *to* wharves, bridges and other shore properties began to happen; but the damaged parties could not file any suits because the two statutes permitting tort suits against the government were strictly limited to admiralty cases. No official could waive or extend the line defined by Congress. Often the shore damage was part of a sequence of events largely maritime, as when groups of tug-boats were shifting ships in harbors from one berth to another, the navigation being disturbed by the acts of other passing vessels; it became a technical nuisance to have to segregate the shore damage suits against private parties allegedly negligent, in a state court suit at common law. The government's lawyers and paymasters felt bound to insist upon the absence of any right to sue the government for damages done by publicly-owned vessels on land; and the courts upheld these arguments.³⁴ The idea that the sovereign can do no wrong, and is immune from complaint, enjoyed another fling. Congress in the midst of war was much too occupied to attend to private bills for civil damages.

The pressure of claims resulting from the four years of war induced Congress, in August, 1946, to concede not only the ship-shore point, but many others as well, in the Federal Tort Claims Act.³⁵ It thus became possible to sue in the ordinary federal courts for a great variety of injuries inflicted by federal servants—airplane crashes, post office truck accidents, army vehicle torts—all lumped together with damage done *by* government ships *to* land structures. The remedy was by a "civil" (common law) action in the federal district courts under the Rules of Civil Procedure. Suddenly the government became much interested in the matter of forum. It was administratively sounder to place all ship cases in the admiralty court. The method lay ready at hand—the long-mooted extension of admiralty jurisdiction. Pushed by the Maritime Commission and the Navy, the dusty reform bill was quickly enacted in June, 1948.³⁶

³³ 43 STAT. 112 (1925), 46 U. S. C. §§ 781-790 (1946).

³⁴ *State of Maine v. U. S.*, 134 F. 2d 574, 1943 A. M. C. 495, (1st Cir. 1943). The government refused to recognize a claim by the state as owner of a bridge for damage caused by a government vessel. The reversal of attitude brought about by the Federal Tort Claims Act is exemplified by the Cooper River Bridge Case (*United States v. South Carolina Highway Dept.*), 171 F. 2d 893, 1949 A. M. C. 350, (4th Cir. 1948), and the Pensacola Bridge Cases (*Florida State Highway Dept. v. U. S.*), 1949 A. M. C. 1638.

³⁵ 60 STAT. 842 (1946), 28 U. S. C. § 2671 (1948).

³⁶ 62 STAT. 496 (1948), 46 U. S. C. § 740 (Supp. 1949), 1948 A. M. C. 1502.

It remains to glance at some of the problems raised by the new statute. The constitutional question has already been mentioned, and the Act would seem to be valid. Procedurally, the Act has two aspects. The first sentence is general; it applies to all litigants:

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water.³⁷

This is in effect the text proposed many years ago by the Maritime Law Association, and repeatedly suggested by its committees.³⁸ The principal disputes are likely to be as to what is a "vessel" and what is "on navigable water." These are ancient questions for the puzzlement of the maritime brethren. One need only suggest that a launched hull, afloat but incomplete, is not necessarily a vessel; that a vessel laid up and somewhat dismantled may not be a vessel; and that a dry-dock is, in legal contemplation, full of water.³⁹ Lawyers will find the usual areas for skirmishes along familiar lines.

These general provisions are not disturbing. They conform to Robinson's view and Veeder's advice; they are equivalent to the long-settled English rule. They restore the rulings of Justice Henry Billings Brown in 1903, which his successors repudiated in 1907. We may readily agree that they do not impose new burdens on owners of shore structures nor force them into a new or objectionable court; the new law merely confers on them a new remedy without depriving anyone of the common law right as a complete alternative. Ship-owners will scarcely complain if ship torts are heard by admiralty courts. They may regret that persons injured on shore may now libel ships in rem and arrest them until bond is furnished, or "foreign attach" a sister ship or other asset without posting a plaintiff's attachment bond. But these are procedural

³⁷ *Ibid.*

³⁸ Maritime Law Ass'n Minutes 1775 (1930). The New York and American Bar Associations were also active.

³⁹ ROBINSON, ADMIRALTY 42, 163; BENEDICT §§ 51, 69; *The Meteor* (Murray v. Schwartz), 1949 A. M. C. 1081 (2d Cir. 1949); *The San Marcos*, 140 F. 2d 230, 1944 A. M. C. 87 (4th Cir. 1944); *Taylor v. Lawson*, 64 F. 2d 521, 1933 A. M. C. 1200 (4th Cir. 1933). As to dry docks, see 1942 ANNUAL SURV. AMER. LAW 584; *Travellers Ins. Co. v. Branham*, 136 F. 2d 873, 1943 A. M. C. 1419 (4th Cir. 1943); *Travellers Ins. Co. v. McManigal*, 139 F. 2d 949, 1944 A. M. C. 377 (4th Cir. 1944).

troubles with which shipowners have long been familiar and with which they are organized to cope.

The remainder of the Act applies only to government shipping, and its daily importance will vary as the amount of government ship operation rises and recedes. At the moment, it is rapidly lessening. But these aspects are nevertheless worth some discussion. The Act provides:

As to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the *exclusive* remedy for all causes of action arising after the date of the passage of this Act and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act:

Provided further, that no suit shall be filed against the United States until there shall have expired a period of *six months* after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. [Italics supplied.]⁴⁰

These provisions eliminate the option of a common law suit or an admiralty suit. Private suitors have this option; the government declines to give it. Charming puzzles can still be foreseen. Is a half-completed government hull a "vessel"?^{40a} If it drifts against my wharf, do I sue under the Torts Act for a terrene tort, or in admiralty for a tort by a vessel? The cautious draftsman will doubtless sue both ways. But in admiralty damages may be divided, while at law a small element of contributory negligence will wholly defeat recovery.

It will also be noted that the new Act is of no assistance in circumventing a plea of sovereign immunity by a foreign state as shipowner or operator; and that it does not touch the question of suing the United States in the courts of a foreign country. These remain for future solution; and it may be interjected that there is much feeling in Europe that the mechanism set up by both the United States and England for dealing with ship-damage cases in foreign ports is not wholly satisfactory.⁴¹

Under the new Act, you cannot sue the government at the place "where the act or omission complained of occurred"—which the Torts

⁴⁰ 62 STAT. 496 (1948), 48 U. S. C. § 740 (Supp. 1949).

^{40a} Texts and cases cited note 39 *supra*.

⁴¹ In 1949, the Comité International Maritime, in its call for the summer meeting, remarked that the British and the United States statutes' consent that the sovereign be sued for its maritime torts *in its own courts at home* do not satisfy the general commercial need of a right to sue a sovereign who engages in commerce in the same places where other merchants and carriers can be sued.

Act permits; the courts which may hear these admiralty cases are the United States courts "where the parties so suing reside or have their principal place of business in the United States, or in which the vessel charged with liability is found."⁴² So, a Delaware corporation owning a wharf in Seattle will have to sue in Delaware or in, say, Alabama where the offending vessel may be laid up. It would seem likely that there would be pressure to amend the Act to permit suit at the place where the wharf or bridge is located, which is where the witnesses will be.

Can the damage claimant take depositions at once, *de bene*? Or must he wait six months? It would seem unjust to deny the familiar admiralty right to take testimony of seagoing witnesses at once.⁴³

Courts have already been asked to decide whether the new law is retroactive, and they have said it is not.⁴⁴ None has yet given it retroactive effect. As the initial date recedes into the remoter past, the question will become unimportant.

But as it merely provides another remedy in addition to that already existing for events which have occurred, the Act would seem to be procedural rather than substantive, and might be given retroactive effect.

The six-months delay for "administrative action" would seem to be a nuisance, and, perhaps, a trap for the unwary. The time for suit being two years from the date of the injury, the tricky result is that a party who fails to give the six-months notice until eighteen months have elapsed is unable to sue. This same six-months notice device was utilized in the War Shipping Administration Clarification Act of March 24, 1943,⁴⁵ and caused much difficulty. The record of voluntary settlements

⁴² Suits in Admiralty Act, 41 STAT. 525 (1920), 46 U. S. C. § 742 (1946). Almost identical wording appears in the Public Vessels Act, 43 STAT. 1112 (1925), 46 U. S. C. § 782 (1946).

⁴³ Under the W. S. A. Clarification Act, 57 STAT. 45 (1943), 50 U. S. C. § 1291 (1946), which imposes a delay in the filing of seamen's injury suits against the government until there has been administrative inaction or disallowance, the actual practice has been to agree to depositions *de bene esse* during the period preceding the filing of the libel.

⁴⁴ The Jones Act, 41 STAT. 1007 (1920), 46 U. S. C. § 688 (1946) giving seamen an alternative common law remedy, was construed as a change in the substantive law, and was not applied to accidents occurring prior to its enactment on June 5, 1920. An interesting instance of the method of conducting seamen's injury cases before the Jones Act became effective is *Cricket S. S. Co. v. Parry*, 263 Fed. 523 (2d Cir. 1920), in which two powerful legal minds—former federal Judge Veeder and future federal Judge Woolsey—met before Judges Ward, Hough and Manton. The *Princess Sophia* (Petition of Canadian Pacific Co.), 278 Fed. 180, 197 (W. D. Wash. 1922); the Circuit Court of Appeals did not mention the point upon appeal.

⁴⁵ The provisions of the new Title 28 have, on the other hand, been applied to pending suits; *Bagner v. Blidberg*, 84 F. Supp. 973, 1949 A. M. C. 1627, (E. D. Pa. 1949), is a maritime example.

during these six-months periods for administrative action would not seem to justify an extension of the method; a party should be allowed to get his suit started at any time, and not compelled to proceed in two moves. A suit is also a notice; but a notice is not a suit. Odd special rules of this sort do not comport with the dignity of the government in agreeing to handle its claims by the legal method in court. They are ingloriously trailing clouds of the outworn doctrine of sovereign immunity.

In 1939, Professor Robinson seemed well justified in doubting that this reform would ever come about. His reputation as a prophet is hardly diminished by the fact that it took a great war convulsion to produce, on the side, this rather diminutive but thoroughly satisfactory reform in the limits of the admiralty jurisdiction. Now that the extension statute is on the books, it may be expected to remain there into the very long future.