FEDERAL JURISDICTION AND THE COMPENSATION ACTS

BY

CLARENCE W. HOBBS

TABLE OF CONTENTS

FEDERAL JURISDICTION AND THE COMPENSATION ACTS

BY

CLARENCE W. HOBBS

I. Federal and State Jurisdiction

The Federal Government is a government, theoretically at least of limited powers. Its jurisdiction is that specifically conferred upon it by the Federal Constitution, and within that jurisdiction its authority is paramount to that of the states. Under the provisions of the 10th Amendment to the Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Accordingly, there exists as to every state a certain field wherein, even within its own bounds, state legislation must yield to Federal legislation.

The Workmen's Compensation Acts have been regarded as a proper exercise of the States' rights to regulate the reciprocal rights and duties appertaining to the relation of employer and employee within their bounds. In certain cases, however, the relation of employer and employee is inseparable from the Federal jurisdiction, either by reason of existing on territory over which the United States has jurisdiction, or being incidental to activities which the Federal Government exercises or under the Constitution has a right to regulate. In such cases a conflict of laws may exist, and as above indicated where the employment comes within the Federal jurisdiction, the right of the Federal Government to regulate it is paramount to that of the states.

The discussion which follows seeks to map out the chief jurisdictional fields wherein Federal jurisdiction overlays the State jurisdiction. Two other fields exist. One has already been discussed in the *Proceedings,* namely the authority of the Federal Government under the Full Faith and Credit clause, so called to compel a state to recognize the validity of the compensation act of another state. Another appears likely to develop in consequence of the very considerable *de facto* extension of Federal activities during the past few years. This, however, is not yet ripe for discussion. Its effect on the compensation field is probably

nil unless and until Congress shall undertake the formulation of compensation acts applicable as broadly as its acts in regulation of labor disputes. The few fields mentioned here, especially the maritime field, have presented real problems to those engaged in the making or administering of rates and indeed to those vested with the duty of interpreting and applying the compensation acts.

II. Jurisdiction of the United States over its Own Employees

1. *Direct Employees of the United States*

A sovereign state cannot be held liable in contract unless the incurring of the liability is authorized by the constitution or by statute. It cannot be held liable in tort unless it has voluntarily assumed liability.

36 Cyc. 881.

The Federal Government, being within the limits of its jurisdiction a sovereign state cannot be brought before any tribunal without its consent. It may, in consenting specify the tribunal before which it consents to appear.

American Digest. Title, United States. Century Edition, sec. 113; Decennial Editions, sec. 125.

Federal employees cannot therefore be brought within the benefit provisions of state compensation acts, nor can they maintain against the Federal Government the rights of action at law provided by any state statute. None of the state acts apply in terms to the Federal Government as employer, or to Federal employees as employees. One state, North Carolina, has in its compensation act a specific exception of Federal employees; but that is not necessary. Employees of the United States are relegated to the remedies provided by the Federal Statutes.

The Federal Government has a compensation act, originally enacted May 30, 1908, appearing in U.S.C.A., Title V c15, secs. 751-796. This act applies generally to "all civil employees of the United States and of the Panama Railroad Company" (sec. 790). It applies also specifically to employees of the Federal Civil Works Administration (sec. 796). It does not extend to military and naval forces of the United States, nor to "officers" (1917, 31 Op. Atty. Gen. 203). It has been extended by opinion and interpretation to cover seamen of Shipping Board vessels (1925, 34 Op. Atty. Gen. 363) and to employees of the United States Shipping Board Emergency Fleet Corporation (sec. 795 also 1924, 34 Op. Atty. Gen. 120).

2. *Employees of Public Corporations of the United States*

These are not direct employees of the United States. The sovereignty of the United States extends to its public corporations, that is, to corporations created for governmental purposes wherein the United States retains the entire beneficial interest: and so long as these corporations are engaged in purely governmental pursuits, they are not subject to state regulatory laws, nor may they be sued except by consent of government. When, however, the United States has gone into business through a public corporation, it is to that extent divested of sovereignty, and the corporation becomes subject to the rules of law governing private corporations.

14 Corpus Juris, P. 75, and cases cited, note 39.

The list of Federal public corporations is large and has of late years shown a pronounced increase. Some of these are obviously governmental in character: in others, they are without question in business.

In this field, the application of law is not of the clearest, and in some cases there may be a liability of the corporation under more than one law, and cases when the employee may claim the benefit of more than one law. How far the Federal Employees' Compensation Act covers the employees of public corporations is by no means certain from the law itself, which by specifically mentioning some causes an implication of law that others are not included. But a public corporation organized for purely governmental purposes is erected mainly for convenience, and is to all interests and purposes the national government. At all events, these employees cannot claim the benefit of any laws other than those of the United States.

The fact that the last named act included employees of the Panama Railroad Company was held not to bar an action of tort by an employee against the railroad under the Federal Employers' Liability Act.

Panama R. Co. v. Minnix, 282 F. 47.

Under section 791 of the act, however, a person cannot receive compensation under the Federal Act because of an injury or death caused under circumstances creating a legal liability on the part of the Panama Railroad Company unless the right of action is released.

During the war, the Director General of Railroads was held subject to a State Compensation act as employer. Here a presidential order was involved which made him subject to "all Statutes and orders of regulatory commissions" of the several states.

Hines v. Meier, 272 F. 168.

The United States Shipping Board Emergency Fleet Corporation was held subject to the Pennsylvania compensation act: and this holding the Supreme Court declined to reverse on writ of error. Employees of the corporation may, however, also claim under the Federal Employees' Compensation Act.

U. S. Shipping Board, etc. Corp. v. Sullivan, 76 Pa. Super. Court 30, 261 U. S. 146.

Another case, involving the U. S. Shipping Board Fleet Corporation, was a libel in admiralty against a ship operated by that corporation on account of the death of a seaman, alleged to have been caused by a maritime tort. But here a statute (U.S.C.A. Title 46, sec. 742) permitted suits in admiralty against the United States or the corporation in cases where a proceeding in admiralty could have been maintained, had the vessel been privately operated.

Renew v. U. S., 1 F. Supp. 256.

These cases, though few, sufficiently indicate that where a public corporation of the United States is engaged in what is essentially private business, it may be held liable as an employer under the state compensation acts or under any liability laws which may be appropriate and applicable. This principle is presently of considerable consequence in view of the large extensions of Federal activity into fields of private business.

3. *Cases of Indirect Employment*

There are a certain number of cases where question has arisen as to the applicability of state compensation acts to persons in the employ of the United States, but loaned to private persons: or to persons employed by contractors for the United States.

During the war, the army sent a company of drafted soldiers to work with the civilian employees of a lumber company, getting out lumber for the government. One of these soldiers, being injured, was declared entitled to the benefit of the State Compensation Act.

Rector v. Cherry Valley Timber Co., 196 Pac. 654 (Wash.).

Generally speaking, it would seem that contractors for the Federal Government are entitled to none of the government's immunities. Thus state compensation acts have been held to cover the employees of a contractor holding a contract for delivery of United States Mails.

Comstock v. Bivens, 239 Pac. 869 (Colo.).

Also, to cover employees of contractors for the National Forest Service, working on land wholly controlled by the government.

State v. State Ind. Acc. Board, 286 Pac. 408 (Mont.).

Nickell v. Dept. of Labor and Industries, 3 Pac. 2nd 1005 (Wash.).

Also to cover employees of contractor under Federal Contract in connection with a reclamation project.

Samarzick v. Aetna Life Ins. Co., 40 P. 2nd 129 (Wash.).

Also to cover employees of highway contractor obtaining services of trucks and drivers through Federal Reemployment service.

Grundeman v. Hector Construction Co., 261 N. W. 478.

Doubtless the state may not interfere with the performance of the Federal Governmental functions. The Federal immunity, however, does not extend to all its functionaries. They are amenable to the laws of the states in which they are, and the above cases do not appear unorthodox. There is a point involved, however, which will be considered under a later heading, namely the extent to which state laws apply to persons injured upon property of the United States.

4. *Federal Relief Workers*

The matter of relief workers is discussed in connection with the coverage of the Workmen's Compensation Acts. Some of the relief workers were undoubtedly direct Federal employees, and in the Civilian Conservation Corps and the Civil Works Administration, benefits were paid as such, though in the latter case at least on a reduced basis. In so far as relief workers were Federal employees, no other compensation act than that of the Federal Government was applicable. But a deal of the relief problem was handled by state agencies and by contractors for work designed to alleviate unemployment. Federal funds were poured liberally into these enterprises, and various Federal agencies took a hand in planning work and placing relief employees. Some very complicated situations arose thereby, in some of which it was hard to make out who was the real employer. But if employed by one, other than the United States, his remedy, if any, would be under the state laws. Mere furnishing of Federal funds or performance of supervisory functions by the agencies of the United States do not avail to constitute the relief workers employees of the United States.

III. Territorial Possessions and Property Holdings of the United States

Questions have frequently arisen as to the application of laws in case of injury sustained within the bounds of property owned by the United States or under its governmental control.

Such property falls into several distinct classifications. The United States has at different times by purchase, treaty or conquest acquired governmental jurisdiction over considerable land outside the confines of any state, and with that jurisdiction, ownership of any land not held in private possession. Over this it exercises the full power of a sovereign state. It can, and has by act of Congress, erected portions of land so held into states and has in other portions set up territorial governments. In the former case, the government retains only such governmental jurisdiction as is given by the terms of the constitution. In the latter case, it as a matter of practice permits the territorial governments to function, but retains the right to overrule or supersede them.

Congress is given authority under the constitution, Article 1, sec. 8, par. 17.:

> "To exercise exclusive Legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings."

Under the provision of Article IV, sec. 3, par. 2:

> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States."

With respect to the Territories and to the District of Columbia themselves, no question arises different in kind from what arises in any state. The Territories and the District of Columbia have their own codes of law, including a series of Compensation Acts, and those acts and the local liability laws apply as do the laws of the several states within their respective jurisdictions.

The property holdings, that is to say, the holdings of the United States as proprietor are as follows:

(1) Lands acquired under the provisions of the Constitutional authority quoted above.
(2) Lands acquired not in accordance with these provisions.
(3) Such parts of the public domain as has not as yet been disposed of.

The legal situation with regard to these property holdings has been the subject of some little litigation, and has been affected by two different acts of Congress.

1. *Lands Acquired Under Constitutional Authority*

In case of lands acquired under the provisions of the Constitutional authority, i.e., land purchased with the consent of the Legislature for the purposes named therein, the jurisdiction of the United States is exclusive. It is probable that in the absence of Congressional legislation, state laws affecting private rights and duties in force at the time of the purchase remained in effect, but state laws subsequently enacted did not take effect unless adopted by Congress.

(a) *The Act of February 1, 1928, C. 15, 45 Stat. 54, U. S. C. A. Title 16, sec. 457.*

This act provides:

"That in the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States within the exterior boundaries of any state, such right of action shall exist as though the place were under the jurisdiction of the state—and in any action brought to recover on account of injuries sustained in any such place, the rights of the parties shall be governed by the laws of the state within the exterior boundaries of which it may be."

The effect of this act was to put into force within properties of the United States statutes giving remedy for injuries or wrongful death by way of action at law, but not the State Workmen's Compensation Acts.

Murray v. Joe Gerrick & Co., 291 U. S. 315.
Allen v. Ind. Acc. Comm., 43 P. 2nd. 787.
Utley v. State Ind. Comm., 55 P. 2nd. 764.

Not in accord with these decisions is:

Lynch's case, 183 N. E. 834.

(b) *The Act of June 25, 1936, C. 822, U. S. Statutes at Large*

This act, while not formally amending or repealing the act referred to above, in effect changes the construction given to it in the case of Murray v. Joe Gerrick & Co., cited above. It empowers those in charge of the enforcement and application of state compensation laws to enforce and apply them to "all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any state, and to all projects, buildings, constructions, improvements and property belonging to the United States of America, which is within the exterior boundaries of any state, in the same way, and to the same extent as if said premises were under the exclusive jurisdiction of the state within whose exterior boundaries the same may be."

In view of the language used in the decision of Murray v. Joe Gerrick & Co., it seems probable that this virtual adoption of state compensation acts is within the authority of Congress. Whatever the situation may have been prior to this act, there seems now no question as to the application of state compensation acts to injury occurring on property of the United States.

2. *Lands Acquired with Cession of Jurisdiction by States*

In case of at least some of the National Parks and in some other cases, extensive acquisitions of property have been made by the United States, the state assenting thereto and making final cession of jurisdiction. Where the land is acquired for purposes enumerated in the constitutional power, cession of jurisdiction is immaterial. When not acquired for such purposes the state retains jurisdiction except in so far as it makes cession thereof, and the extent of the jurisdiction depends upon the terms of the cession.

U. S. v. Wurtzbarger, 276 F. 753.
Fort Leavenworth R. Co. v. Lowe, 114 U. S. 531.

The last named case upholds the validity of such cessions. After a cession of jurisdiction, state laws previously in effect for the protection of private rights remain in effect.

Chicago, etc. R. Co. v. Glinn, 114 U. S. 542, 547.

Laws subsequently enacted do not apply, save in so far as they are adopted by Congress for application to the territory.

Arlington Hotel v. Fant, 278 U. S. 439.
Willis v. Oscar Daniels Co., 166 N. W. 496 (Mich.)
Murray v. Joe Gerrick Co., cited above.

Laws enacted prior to cession likewise lose their effect as soon as Congress has enacted legislation covering the same subject matter.

Webb v. J. G. White Engineering Co., 85 So. 729 (Ala.).

The two statutes cited under the preceding heading have application to property of this description. Subsequent to the enactment of the Act of February 1, 1928, it seems tolerably certain that actions could be maintained for injuries received upon property of this description in accordance with the liability laws of the state within whose exterior boundaries the property lay. Since the enactment of the act of June 25, 1936, it seems certain that the compensation act of the state is applicable.

3. *Lands Acquired, without Cession of Jurisdiction*

Entirely apart from the effect of the acts above cited, in cases where property is acquired, not in pursuance of the constitutional authority, and without cession of jurisdiction, it would follow that the states retain jurisdiction. This may happen in several ways:

(a) If the property is acquired other than by purchase.
(b) If the consent of the Legislature is not obtained.
(c) If the acquisition is for purposes other than those named in Article 1, section 8, clause 17, of the Federal Constitution.

In any of these cases, the United States is in the position of an ordinary proprietor. Save in so far as the property is used as a means to carry out governmental purposes, it is subject to the legislative authority and control of the states equally with the property of private individuals.

Fort Leavenworth R. Co. v. Lowe, 114 U. S. 531.

Under this principle, there would seem no reason why a state compensation act should not cover an injury sustained on such property, unless it appeared its application would interfere with the conduct of governmental functions. Thus it has been held that a state regulatory law (in this case an oleomargarine statute) does not apply to the governor of a National Soldiers' Home acting under the direction of the board of managers and by authority of Congress.

Ohio v. Thomas, 173 U. S. 276.

Where no governmental agency is involved, however, it would not seem that the application of a state compensation act would interfere with governmental functions.

IV. Federal Jurisdiction over Interstate Commerce

1. *In General*

Under the provisions of Article 1, section 8, clause 3 of the Federal Constitution, Congress has the power to regulate commerce with foreign nations and among the several states and with the Indian tribes. This power when exercised is sole and exclusive. A state may regulate commerce which is purely intrastate, and may exercise a police jurisdiction over those transacting interstate commerce within its bounds, so long as this does not regulate, prohibit or burden interstate commerce itself. It may, too, with reference to local needs, where the matter regulated is not of a material character and where uniformity is not necessary, make regulations until Congress sees fit to act.

12 Corpus Juris 13-17.

Once Congress acts, this action supersedes all state laws on the subject and also excludes additional or further regulation by the states.

The rights and duties of employees and employers engaged in interstate commerce have been regulated by Congress. The Federal Employers' Liability Act (35 Statutes at Large, c. 149, 45 U. S. C. A., sec. 51 et seq.) applies to common carriers by railroad while engaging in commerce between the several states, the District of Columbia or foreign nations. It gives a right of action in tort, based on negligence, in cases where at the time of the injury both the carrier and the employee were engaged in interstate commerce. It does not apply to carriers not engaged in interstate commerce, to carriers not operating by railroad, nor to employees of carriers engaged in interstate commerce, who were not at the time of injury engaged in interstate commerce.

The broad and general terms of the Workmen's Compensation Acts did not in some cases take cognizance of the fact that they were invading the field covered by the Federal Employers' Liability Act. A New Jersey case (Rounsaville v. Central R. Co., 94 A. 392) took the position that since the Compensation Acts merely added a statutory incident to the contract of service, it might apply to railroads although admittedly it could not bar the remedy provided by the Federal Act. In Winfield v. N. Y. C. & H. R. Co., 110 N. E. 614 (N. Y.) and Erie R. Co. v. Winfield, 96 A. 394 (N. J.) the position was taken that since the Federal act did not cover injuries not due to negligence, the compensation acts might apply to such cases. Connole v. Norfolk & Western R. Co., 216 Fed. 823 indicated that compensation acts elective in form might apply to rail-

roads, and their employees if both elected to be subject thereto. All these points were flatly negatived by the Supreme Court.

N. Y. Central R. Co. v. Winfield, 244 U. S. 147.
Erie R. Co. v. Winfield, 244 U. S. 170.

These cases took the position that since the Federal act had adopted the principle that rights to indemnity for personal injuries were based on negligence, this of necessity precluded the states from setting up any other standard: and that Congress intended the act to be comprehensive of those instances in which it excluded liability as well as of those in which a liability was imposed. It was further indicated that the states might not interfere with the operation of the act, either by putting the carriers and their employees to an election, or by attributing such an election to them through a statutory presumption. Accordingly, any award of compensation must be reversed whenever it appears that the employee is the employee of a railroad engaged in interstate commerce, and was at the time of the injury himself engaged in interstate commerce.

Philadelphia & Reading R. Co. v. Hancock, 253 U. S. 284.

These cases established the principle so definitely that the conflict of laws stopped then and there. Most of the states have modified their acts so as to exclude cases coming within the Federal Employers' Liability Act. Strictly speaking, the exclusion is not necessary.

2. *Employees Engaged in Interstate Commerce*

The court had already held that if an employee were not engaged in interstate commerce, the state act was applicable.

N. Y. C. R. R. Co. v. White, 143 U. S. 188.

The question, when is an employee engaged in interstate commerce, belongs properly to the interpretation of the Federal Employers' Liability Act. This has been extensively litigated, and the compensation cases of necessity follow the principles laid down.

(a) *Operation and Maintenance*

Without going into the interpretation of the Federal Employers' Liability Act very deeply, it will suffice to note that those employees who are actually operating trains or otherwise actually facilitating the transit of goods or persons carried in interstate commerce or maintaining the road bed and equipment used therein are engaged in interstate commerce, and come under the Federal Employers' Liability Act.

Member of train crew—

Phila. & Reading R. Co. v. Hancock, 253 U. S. 284.
Rounsaville v. Central R. Co. of N. J., 101 A. 182 (N. J.).

Operator of switch engine—

Erie R. Co. v. Winfield, 244 U. S. 170.

Switchman—

Paden v. Rockford Palace Furniture Co., 207 Ill. App. 534, 257 U. S. 645.
Runge v. Chicago Junction R. Co., 226 Ill. App. 187.
Ames v. Armour & Co., 246 Ill. App. 118.

Flagman—

Walker v. Chicago I. & L. R. Co., 117 N. E. 969 (Ill.).
Flynn v. N. Y. S. & W. R. Co., 101 A. 1034, 103 A. 1052 (N. J.).

Section hand on interstate track—

N. Y. C. R. R. Co. v. Winfield, 244 U. S. 147.
Matney v. Bush, 169 P. 1150 (Kans.).

Yard employees—

Illinois Central R. Co. v. Ind. Com., 182 N. E. 627 (Ill.).

Machinist's helper making repairs on engine in service—

Saxon v. Erie R. Co., 116 N. E. 983 (N. Y.).

Member of building gang constructing culvert on main line—*C. B. & Q. R. Co. v. Amack, 199 N. W. 735 (Neb.).*

See also—

Miller v. Illinois Central R. Co., 201 Ill. App. 519.
Connelly v. Michigan Central R. Co., 207 Ill. App. 25.
Reilly v. Erie R. Co., 107 A. 736.

(b) *Construction, Repairs and Other Incidentals*

As to those engaged in construction, repairs and other incidental operations, each case must stand on its own facts as to whether the work is part and parcel of interstate commerce or purely incidental.

Thus, compensation acts have been held to apply in case of workmen injured while repairing engines in repair shops.

Ind. Com. v. Davis, 259 U. S. 182.
Kasulka v. L. & N. R. Co., 105 So. 189 (Ala.).

So, too, in case of a millwright, hurt while ripping a piece of timber to be used in repairing a caboose.

Fish v. Rutland R. Co., 189 App. Div. 352 (N. Y.).

So of a blacksmith's helper, hurt while repairing a chisel for work on repair of engine, temporarily out of service.

D. & R. G. W. Co. v. Ind. Com., 206 P. 1103 (Utah).

So of a plumber hurt in the inspection and repair of a railroad station.

Vollmer v. N. Y. C. R. R. Co., 119 N. E. 1084.

Employee inspecting cars on tracks, not in actual service.

Hart v. Central R. Co. of N. J., 147 A. 433, 151 A. 906 (N. J.).

Employee injured while running a reaming machine on a piece of steel designed to be used in repairing a freight car.

Williams v. Carolina C. & D. Ry. Co., 289 S. W. 520 (Tenn.).

Workmen making concrete forms for construction of retaining wall to be used as part of a track elevation plan.

Dickinson et al v. Ind. Acc. Board, 117 N. E. 438 (Ill.).

Workmen unloading gravel from car in railroad yard.

Reed v. C. C. C. St. L. R. Co., 220 Ill. App. 6.

Yard master, injured while lighting a fire in the office.

Benson v. Missouri Pacific R. Co., 69 S. W. 2nd 656.

(c) *Employees to Whom Federal Act Gives no Redress*

The Compensation acts do not apply to employees engaged in interstate commerce, even though the Federal act gives them no redress.

Walker v. Chicago I. & L. Ry. Co., 117 N. E. 969 (Ind.).
Matney v. Bush, 169 Pac. 1150 (Kans.).

(d) *Third Party Remedies Under State Compensation Acts*

The third party remedy available under the Workmen's Compensation Act is not available to employees engaged in interstate commerce.

Schultz v. C. G. & W. R. R. Co., 226 Ill. App. 559.

(e) *Railroads Which Elect to Come Under State Compensation Acts*

A railroad which qualifies under the Massachusetts act as assenting employer is not under obligation to insure employees engaged in interstate commerce.

Armburg v. B. & M. R. Co., 177 N. E. 665, 285 U. S. 234.

(f) *Compensation Jurisdiction*

The question whether an employee is engaged in interstate commerce goes to the Court's jurisdiction.

It should therefore appear on the record that the employee was not engaged in interstate commerce.

Brinsko's Estate v. Lehigh Valley R. Co., 102 A. 390 (N. J.).

A stipulation by parties that both are subject to the compensation act should be construed as meaning that the employee was engaged in intrastate commerce.

Rosandick v. Chicago, N. S. & M. R. Co., 201 N. W. 391 (Wis.).

(g) *Joint Employment*

An employee acting as flagman for both an interstate and an intrastate railroad, and killed by a train of the interstate railroad at the time a train of the intrastate railroad was passing was an employee of the intrastate railroad at the time as to support an award of compensation.

San Francisco-Oakland Terminal Rys. v. Ind. Acc. Com., 179 P. 386 (Cal.).

The above indicates the nature of the problems raised by reason of the jurisdictional line that has been drawn in case of employees. It may be added that the problem, when is an employee engaged in interstate commerce, has been very intensively litigated under the Federal Employers' Liability Act.

3. *Employees Other Than Railroad Employees Engaged in Interstate Commerce*

The Federal Employers' Liability act applies only to railroads engaged in interstate commerce. Interstate commerce is a term far more extensive and includes many employers beside railroads. In default of Federal Legislation, they are, unless excepted or excluded by the state act, employers within their terms.

(a) Carriers by airplane.

These would seem to be within the terms of state compensation acts.

Sheboygan Airways v. Ind. Com., 245 N. W. 178 (Wis.). (This was, however, an intrastate operation.)

It may be noted that Congress has enacted regulatory provisions over airplanes and has asserted definite juris-

diction over "The airspace over the lands and waters of the United States including the Canal Zone".

49 U. S. C. A., sec. 176.

So far, this has not been coupled with regulations of the relation of employee and employer with respect to personal injuries, though some such regulation in case of interstate aircraft might seem desirable.

(b) Express companies have been held to come within the compensation acts.

Pusher v. Am. Ry. Exp. Co., 183 N. W. 839.
Castagno v. Lavine Express Co., 176 A. 679 (N. J.).

(c) Also Telegraph Companies.

Western Union Tel. Co. v. Byrd, 294 S. W. 1099 (Tenn.).

(d) The same would be true, doubtless of motor-busses. The point has apparently not been pressed. There are a number of cases as to carriers by water, but these properly come under the section devoted to Maritime coverage.

4. *Exclusions in the State Compensation Acts as to Carriers*

Some states make no exclusions of railroads and their employees from the compensation acts. In such cases, the line of separation is that indicated by the Federal decisions, i.e., the state act does not and cannot cover the employee of a railroad if at the time of the accident both the railroad and the employee were engaged in interstate commerce. Other states have made exclusions in varying form substantially in accord with the above rule. Others have made exclusions broader than the rule requires. These states, and the substance of statutory provisions in the last named class listed below.

i. *No Provision*

California, Florida, Massachusetts, Nevada, New Jersey, Pennsylvania, Rhode Island, Wisconsin.

ii. *Provisions Substantially in Line With Rule Laid Down by Federal Court*

Arizona (sec. 1445), Connecticut (sec. 5262), Delaware (sec. 3193 W. W.), District of Columbia (sec. 1), Hawaii (sec. 7537), Idaho (sec. 43-1804), Illinois (sec. 5), Indiana (sec. 19), Iowa (sec. 1417), Kansas (sec. 6), Louisiana (sec. 30), Maine (sec. 2, I, II), Maryland (secs. 33, 34), Michigan (Part VI, sec. 4), Missouri (sec. 3310 a), New Mexico (sec. 11), New York (sec. 113), Ohio (sec. 1465-98), South Dakota, (sec. 9452),

Utah (sec. 3155), Vermont (sec. 6508), West Virginia (sec. 10), Wyoming (sec. 124-105), New Hampshire (sec. 1) definitely seeks to bring railroad operations within its act: and probably belongs in the preceding division rather than this.

iii. *Provisions Making Broader Exclusions Than Those Required by Rule*

Alabama (sec. 7543). Excludes "any common carrier doing an interstate business while engaged in interstate commerce".

Alaska (sec. 2201). Excludes "the operation of railroads as common carriers".

Colorado (sec. 4384). Excludes "common carriers engaged in interstate commerce and their employees".

Georgia (secs. 9, 16). Excludes common carriers by steam railroad, whether engaged in interstate or intrastate business.

Kentucky (sec. 4880). Excludes "steam railways or such common carriers, other than steam railways, for which a rule of liability is provided by the laws of the United States".

Minnesota (Part 2, sec. 4268). Excludes "any common carrier by steam railroad".

Montana (sec. 2931). Excludes "any railroad engaged in interstate commerce" except as to railroad construction work.

Nebraska (sec. 48-106). "Provided that railroad companies engaged in interstate or foreign commerce are declared subject to the powers of Congress and not within the provisions of this act."

North Carolina (sec. 14). Excludes "Railroads and railroad employees".

North Dakota (sec. 396a 2). Excludes "any employment of a common carrier by steam railroad".

Oklahoma (sec. 13350). Excludes "operating any railroad in interstate commerce".

Oregon (sec. 49-1815). The act applies to railroads, logging railroads, street railroads and interurban railroads "when not engaged in interstate commerce".

The act applied to carriers by motor truck "when not engaged in interstate commerce". Special provisions for the above to come under the act by election. Secs. 49-1810, 49-1815-2.

South Carolina (sec. 140). Excludes "railroads and railroad employees".

Tennessee (sec. 6856). Excludes "any common carrier do-

ing an interstate business when engaged in interstate commerce".

Texas (Art. 8306, sec. 2). Excludes "any person, firm or corporation operating any steam, electric, street or interurban railway".

Virginia (secs. 9, 15). Practically same as Georgia.

Washington (secs. 7693, 7695). Substantially, this excludes railroads and their employees engaged both intrastate and interstate commerce, except as to railroad construction work. The provisions of the Federal Employers' Liability Act are adopted to cover employees not within that act. Intrastate railroad operations with clearly separable payroll come within the act: also railroad contractors.

Employers other than railroads, and their employees engaged in both intrastate and interstate commerce are within the act only to the extent that the payroll of employees engaged solely in intrastate business is separable from the payroll of employees engaged in both intrastate and interstate business.

V. The Maritime Jurisdiction of the United States

1. *In General*

A sovereign state is generally recognized as having authority to exercise powers of government within its territorial boundaries. This authority may be termed the state's jurisdiction. In case of a legislative body, the term jurisdiction refers to the limits of its legislative authority: in case of a court, to its power to adjudicate rights and administer remedies provided by law.

Under principles of international law, the jurisdiction of a sovereign nation is regarded as extending into the sea to the distance of a marine league from shore, although the reason for setting this limit, i.e., the distance a cannon can cast a ball from the shore, no longer applies. Where the shore is indented, the league is measured from a line drawn from headland to headland. In case of large bays, when the headlands are more than two leagues apart, international jurists are by no means unanimous. The United States, in the North Atlantic Fisheries case contended for a limitation of this rule to cases where headlands were not over two leagues apart, but the Hague Tribunal failed to concur with this, suggesting as a rule the measurement of the league from a line drawn between head-

land and headland at the first point where they were not over ten miles apart. This can hardly be said to be a rule of international law, however. Larger bays than this have been held within the territorial jurisdiction of a nation.

Scott. Hague Court reports pp. 141, 183.
Direct U. S. Cable Co., Ltd. v. Anglo-American Tel. Co., Ltd., 2 App. Cas. 384, 420 (England).
33 C. J. 406, 407, and notes.

Where a nation abuts on a navigable stream, the boundary, if not defined by treaty, is generally taken as the "Thalweg" or center of the main navigable channel of the stream.

Louisiana v. Mississippi, 202 U. S. 1, 49.

In case of a bound upon inland waters, navigable, but with no defined channel, the boundary, if not defined by treaty, is generally taken as the center. This may, however, be affected by considerations of actual or probable use in the ordinary course.

Minnesota v. Wisconsin, 252 U. S. 273.

The ocean, outside of territorial limits, is known as the open sea or the high seas. It is not within the jurisdiction of any nation. A ship, sailing on the high seas, is generally regarded as part of the nation to which it belongs and as taking its nation's law along with it. This so-called "law of the flag" has, however, no application to prevent a ship becoming subject to the laws of a nation as soon as it enters its territorial waters. This may, however, be modified by treaty.

In case of the United States a peculiar situation exists. The United States is a body of states which are sovereign save in so far as they have ceded their authority to the Federal Government. The Federal Government, by virtue of the so-called "Commerce Clause", and of the provisions of Article III, section 2, defining the powers of the Federal courts as extending to all cases of admiralty jurisdiction has by necessary implication the powers of a sovereign nation to control the navigable waters of the United States and to make laws for the regulation of commerce and navigation therein, and to regulate the rights and duties of individuals within the sphere usually appertaining to admiralty and maritime matters. But while the United States possesses this paramount jurisdiction, territorial jurisdiction over the waters and subordinate right of legislation are vested in the states, and state lines go or may go clear to the limits recognized by international law. There is no territorial zone in navigable waters which can be regarded as completely outside the territorial jurisdiction of the states and completely within that of the Federal Government, save that appertaining to territories and possessions of the United States.

2. *Navigable Waters of the United States*

These include all waters and waterways within the territorial limits of the United States and the several states which are navigable. Navigable waters are those which, by their own depth, width and location are rendered available for navigation, whether actually so used or not. The Common Law of England restricted the terms to tide-waters; but this limitation is not the law in the United States.

State ex. rel. Commissioners of Atchafalaya Levee dist. v. Capdeville 83 So. 421, 252 U. S. 581.

"Navigable water" means water navigable in fact.

U. S. v. Holt State Bank, 270 U. S. 49.

Whether a river is navigable in fact is determined by whether it is used or can be used in its natural and ordinary condition as a highway of commerce, over which trade or travel are, or may be, conducted in the ordinary modes of trade and travel by water.

Oklahoma v. Texas, 258 U. S. 574.
Brewer-Elliott Oil & Gas Co. v. U. S., 260 U. S. 77.

Canals and lakes may be navigable waters of the United States. The question of navigability depends upon the possibility of use, either by themselves or through continuous connections, in interstate or foreign commerce.

33 U. S. C. A., p. 4, c. 1 notes.
1 C. J. 1257, notes 93, 94, 95.

Both the states and Congress have authority to declare streams navigable or non-navigable. The authority of the states is, however, subordinate to that of Congress.

33 U. S. C. A., secs. 21-46.

The maritime jurisdiction of the United States is not confined to navigable waters of the United States, but extends to vessels of the United States on the high seas or even in ports of other nations. It extends to vessels of other nations only when these are within navigable waters of the United States.

Non-navigable rivers and inland waters are not within the jurisdiction of the United States.

3. *The Federal Jurisdiction*

(a) *The Maritime Law*

The maritime law is a system of law which particularly relates to the affairs and business of the sea, to ships, their crews and navigation, and to marine conveyance of persons and property. It is not the law of a particular country, but part of the general law of nations.

36 C. J. 960.

The maritime law is far from being a complete code of rights and duties. Inasmuch as it applies to private rights, and not national rights, it is operative in any country only in so far as it is adopted by the laws and usages of that country.

The Scotland, 105 U. S. 24.

Maritime law is more or less enforced by nations generally, because of the need of a fairly uniform practice in matters international in character. Nations generally can and do modify it by statute in so far as it applies to their own ships or to waters subject to their own jurisdiction. In case of the United States, the constitutional provisions heretofore referred to made the maritime law a matter exclusively of Federal cognizance. The states can add nothing to it, and take nothing from it, and in the field of strictly maritime law, state legislation is ineffective, except as such legislation is adopted by the national will.

The Unadilla, 73 F. 350, 351.

The maritime law takes cognizance of both maritime contracts and maritime torts. It is enforced generally by courts having admiralty jurisdiction. Certain contracts and torts under the maritime law create a maritime lien against a vessel, and these liens are enforced by libel *in rem*, a procedure whereby the vessel may be taken possession of by an officer of the court and upon proper proceedings sold to satisfy the lien. Admiralty courts also take cognizance of actions against persons in the form of libels *in personam*. Procedure in admiralty does not, independent of statute, afford parties the right of trial by jury. In certain cases of contract or tort arising in the Great Lakes, however, the right to trial by jury is given by statute.

U. S. Rev. Sts., sec. 566.

1 C. J. 1336.

In suits *in personam*, however, the jurisdiction of the admiralty courts is not exclusive.

The principal case wherein the maritime law has a distinctive rule as to the liability of the employer for injuries to his employee is in case of seamen. Under the maritime law, if a seaman falls sick or is injured while in the service of the ship, he is entitled to maintenance and cure. "Cure" is used in its original sense of "care". The duty to afford cure and maintenance rests upon the ship, its master and its owner. It is not created by statute but arises from the general maritime law.

56 C. J. 1066, 1067.

The right is coextensive with service in the ship. It is in no way dependent upon any fault on the part of the ship, its master or its owner. It is a quasi-contractual right, arising out of the relation between the seaman and the ship. As such, it is probably not within the terms of a contract of insurance against legal liability only. This right of cure and maintenance generally under the maritime law precluded any right of a seaman to maintain an action in tort to recover damages. To this, however, there was one well-recognized exception. If the injury was caused by the personal negligence or default of the shipowner, such as the unseaworthy condition of the ship and its appurtenances (including in this term incompetence, inefficiency or gross brutality of officers), in such case a suit to recover damages could be maintained.

56 C. J. 1082, 1088-1092.

The maritime law, however, gave no remedy for death of a seaman caused by wrongful act, nor did it give a remedy to a seaman for injuries caused by the negligence of his fellow servants.

56 C. J. 1088, sec. 651, 1093, sec. 665.

On the other hand, in a suit by a seaman, the negligence of a fellow servant was a defense only in case it was the sole and proximate cause of the injury, without any causal connection whatever with the unseaworthy condition of the ship.

56 C. J. 1094, sec. 667.

The maritime law also took cognizance of torts to persons other than seamen, provided the same took place on navigable waters. Generally it is held that the tort must be maritime in character, i.e., having some relation to a vessel, its owners, officers or crew. All cases, however, do not recognize this distinction.

Imbrovek v. Hamburg American Steam Packet Co., 190 F. 229, 193 F. 1019.
The Plymouth, 3 Wall. 20.
The San Rafael, 134 F. 749.
Campbell v. Hackfield, 125 F. 696, 697, 698, 700.

So far as the right to cure and maintenance was concerned, it might exist even though the seaman were injured on land. In case of actions in tort, however, the tort must occur in some degree on navigable water. Admiralty courts had jurisdiction of continuing torts consummated partly on land and partly on the water: also of torts

originating on water and consummated on land; but not of a tort originating on land and consummated on water.

1 C. J. 1287-1288.

As in case of suits involving seamen, the maritime law gave no remedy for death caused by wrongful act or negligence on the high seas or navigable waters. This was, it may be instanced, the general rule at common law.

1 C. J. 1289.

Congress has undoubted authority, as in case of other nations, to make statutory modifications of the maritime law within its jurisdiction. The extent to which it has modified the law is hereinafter discussed.

(b) *The Judiciary Act*

In the absence of legislation by Congress as to the procedure in maritime matters, state courts could and did take cognizance of proceedings in admiralty. The first judiciary act, however, passed in 1789, did away with this by declaring the jurisdiction in the courts of the United States of all civil cases of admiralty and maritime jurisdiction to be exclusive of the courts of the several states. The act contained, however, a clause "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it".

28 U. S. C. A., sec. 371, sec. 41 (3).

This act transferred to the district courts of the United States the characteristic admiralty jurisdiction, and in effect wrote the maritime law into the statute books, thereby at once depriving the states of any legislative or judicial authority in the premises. The provision was held constitutional.

The Moses Taylor, 4 Wall. 411, 430.

State laws giving rights to maritime proceedings *in rem* against vessels became forthwith void, except in case of proceedings applicable to domestic vessels only.

The Roanoke, 189 U. S. 185.
Perry v. Haines, 191 U. S. 17.

Such proceedings can, however, be maintained in the Federal courts only, unless the cause of action is non-maritime in character.

The Roanoke, cited above.
Iroquois Transp. Co. v. De Lancy, 205 U. S. 354.
(For other cases as to maritime laws, see 28 U. S. C. A., sec. 371, note 79.)

The effect of the saving clause, however, was to permit common-law courts, state or Federal to entertain actions *in personam* even though the cause of action arose from a tort cognizable in admiralty proceedings.

Crane v. Pacific S. S. Co., 272 F. 204.
Ross v. Pacific S. S. Co., 272 F. 538.

Just how far this saving clause goes has been the theme of no little discussion, and no little variance in the courts. Whether it has the effect of saving merely rights of action at common law, or whether it enables states to provide a remedy broader than the common law and enforce it, is a theme on which courts are not altogether consistent. Thus, it has been held that a sailor, electing to sue for damages is restricted to rights measured by the maritime law.

Chelentis v. Luckenbach S. S. Co., 247 U. S. 372.
Hanrahan v. Pacific Transport Co., 262 F. 951.

So, too, it has been held that in a suit brought by a longshoreman for injuries received while loading a vessel on navigable water, he is bound, as to rules of contributory negligence, acts of fellow servants and measure of recovery, by the maritime law and not the common law.

Kennedy v. Cunard S. S. Co., 139 U. S. 752.

Also, that the statute refers only to remedies for the enforcement of the Federal maritime law, and does not create substantive rights, nor assent to their creation by the states.

Cassil v. U. S. Emergency Fleet Corp'n., 289 F. 774.

On the other hand there are cases holding that the common law remedy saved to suitors is not limited to either the substantive or remedial law as it was in 1789, but, as applied to maritime torts, may be modified by state statutes within reasonable limitations. Thus a provision of the state labor law imposing a duty to provide safe scaffolds has been applied.

Maleeny v. Standard Shipbuilding Corp'n., 142 N. E. 602 N. Y.

In view of decisions involving the Compensation acts, it seems on the whole likely that the latter case is not sound.

There is, however, one well established exception to the rule, namely, statutes giving recovery for death caused by wrongful act.

Apart from statute, no right of action existed at common

law for death caused by wrongful act, and this rule was applied in admiralty cases.

1 C. J. 1289, note 62.

The Federal courts, however, did recognize the applicability of state death statutes, or similar remedies provided by laws of foreign nations in cases of deaths occurring in waters of such state or nation, or in vessels of such state or nation upon the high seas.

1 C. J. 1290, sec. 127, note 66.
American Steamboat Co. v. Chase, 16 Wall. 522.
The Hamilton, 207 U. S. 398.
La Bourgogne, 210 U. S. 95.

The application of state death statutes has been greatly limited by the enactment of the Jones Act, relating to seamen on American vessels, and by the Federal Act giving right of action for death on the high seas. But state death statutes still have application in cases not coming under either.

Spencer Kellogg Co. v. Hicks, 285 U. S. 502.

The advent of the Workmen's Compensation Acts raised the question of the state's authority to regulate the relation of master and servant in the maritime field. The acts generally did away with the common law or statutory remedy of action at law for damages in case of wrongful injury to or death of an employee, and substituted a statutory indemnity, annexed as matter of right either to the contract of service or to the relation of employer and employee. The state courts were inclined to hold that the application of these acts to services, maritime in character, was no infringement on the maritime jurisdiction of the United States. The Supreme Court, however, having before it the case of a stevedore, injured while on board a vessel discharging cargo, held that the compensation act of the state had no application. The court took cognizance of the fact that state death statutes had been applied in maritime cases, but took the position that these merely supplemented the maritime law, whereas the compensation acts, so far as they went, abrogated the maritime law altogether, and set up a new remedy of a different character. The court also indicated an opinion that, "where the subject is national in character, and admits and requires uniformity of regulation, affecting alike all the states, and as transportation between the states, including the importation of goods from one state into another, Congress alone can act on it and provide the needed regu-

lations. The absence of any law of Congress on the subject is equivalent to a declaration that commerce in that matter is free". This the court held was a case where the usages of maritime commerce required uniformity.

Southern Pacific Co. v. Jensen, 244 U. S. 205.
Clyde S. S. Co. v. Walker, 244 U. S. 255.
Peters v. Veasey, 251 U. S. 121.

Congress tried to avoid the result of this decision by the Act of October 6, 1917, amending the clause of the Judiciary Act by adding to the saving clause the words "and to claimants the rights and remedies under the Workmen's Compensation law of any state". This, however, the Supreme Court held unconstitutional on the ground that to adopt the acts of the states to cover a field where Congress alone had the right to act was an unconstitutional delegation of authority.

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.

Congress made a second attempt to legislate on the subject in the act of June 10, 1922, c. 216. This substituted for the clause declared invalid the words now appearing in the law: "and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the Workmen's Compensation law of any state, district, territory or possession of the United States".

26 U. S. C. A., secs. 41 (3), 371.

This was declared unconstitutional for the same reasons as in case of the preceding law.

Washington v. W. C. Dawson Co., 264 U. S. 219.
Ind. Acc. Com. v. Rolph, id.

The decisions were by a closely divided court, and while the majority were probably in accord with the general trend of decisions in maritime cases, the admission by the courts of the state death acts into the maritime field created an awkward exception to explain away. Surely there is as much reason for uniformity in case of actions involving death as in compensation cases: and if the courts could without legislation recognize the former, it would seem that Congress might have had authority to recognize the latter. However, such is the law, and in view of the enactment by Congress of the Longshoremen's and Harbor-Workers' Act, such the law is likely to remain.

There remained, however, one further question, namely as to the right of the state to annex incidents to contracts

of service maritime in character when performed upon the shore. On this point, however, the Supreme Court held that the contract of employment, though maritime in character, has no particular reference to any dominant Federal rule as to liability. Injuries to maritime workers and even to seamen on land had always been regarded as coming under the laws of the states, and thus it worked no material prejudice to the general maritime law to apply the state compensation acts to injuries of maritime employees on land.

State Ind. Com. v. Nordenholdt Corp'n., 259 U. S. 263.

The effect of the decisions was to raise a question whether the application of state death statutes to maritime cases might not likewise be affected. On this point the Supreme Court held. "The subject is maritime and local in character, and the specified modification of, or supplement to the rule applied in admiralty courts, when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations."

Western Fuel Co. v. Garcia, 257 U. S. 233.

This reasoning, however, offered a loophole for a limited application of the compensation acts to the maritime field, namely in cases local in character, where the application would not work material prejudice to the characteristic features of the general maritime law. It is now well established that there is a field where the state compensation acts do apply, even though injury is in an employment maritime in character, and injury is sustained on navigable waters of the United States.

Grant, Smith, Porter Co. v. Rohde, 257 U. S. 469.
Millers Indemnity Underwriters v. Braud, 270 U. S. 59.
Lahti v. Terry & Tench Co., 148 N. E. 527, 269 U. S. 548, 273 U. S. 639.

The result is, a line of demarcation between state and Federal jurisdiction, obscure enough to create a host of litigated cases, and capable of clarification only by decisions of the Supreme Court and Congressional legislation. Up to date, Congress has made no attempt to alter the line. While it has passed legislation hereinafter discussed, giving to seamen statutory rights of recovery in the form of suits for damages, (the so-called Jones Act) and a statute giving right of recovery for death by wrong-

ful act on the high seas, and the extremely important Longshoremen's and Harbor-Workers' Act, none of these acts affects cases involving maritime employees cognizable under state compensation acts. Before discussing these acts, it seems proper to insert a section briefly delineating the line between Federal and state jurisdiction, so far as it has been definitely marked out.

(c) *Application of Laws to Maritime Risks*

As has been seen, the Federal jurisdiction over maritime torts was essentially local, extending to torts consummated on a vessel or in navigable waters, and also to torts begun on water and consummated on land. There was some difference of opinion in the courts as to whether it applied to all torts coming within this description, or merely to maritime torts, that is to say, torts connected in some way with vessels, their masters or crews or generally with navigation and commerce, the latter being probably the sounder view.

This line, however, has not been followed with any exactitude in declaring the extent to which compensation acts could cover injuries on navigable waters.

(1) *Injuries on Vessels*

For the purpose of the maritime law, and particularly in connection with the subject of maritime liens, a vessel includes generally every description of water craft or other artificial contrivance used, or capable of being used, as means of transportation on water. If the business or employment of a vessel appertains to travel or to trade and commerce on water, it is subject to admiralty jurisdiction, whatever be its form, size, capacity or means of propulsion.

1 C. J. 1263-64 and notes.

Vessels, for purposes of admiralty jurisdiction have been held to include canal boats, ferry boats, lighters, barges, with or without sails or rudders, floating grain elevators, floating boat houses, a bath house made of boats, house boats, scows, light-boats, wharf boats, floats used as receptacles for oysters, pump boats, pile drivers, or even a floating circus towed by a stern wheel steamer.

1 C. J. 1263-64, notes 74-76, 80-91.

Dredges, when used for purposes of transportation or for harbors and navigable channels are vessels, but

not dredges which are used for local purposes or which are stationary.

1 C. J. 1263-64, notes 77-78, 96, 38 C. J. 1203, 1204, notes 8, 9.

Rafts have sometimes been held vessels, but not always.

1 C. J. 1263-64, note 79.

Certain other floating structures, capable of being moved, but from their nature, build, design and use intended to be relatively permanent are not vessels for purposes of admiralty jurisdiction. Thus, floating dry docks, a marine pump, a floating hotel, a gas float, and a floating scow platform, have been held not to be vessels.

1 C. J. 1263-64, notes 93-98.

Also, naturally, dry docks, wharves and floating structures permanently attached to shore.

38 C. J. 1202, notes 90-92.

For purposes of admiralty jurisdiction, a vessel became a vessel sometimes before it was actually put into commission, and continued to be a vessel although temporarily aground, laid up for repairs or undergoing repairs in a dry dock or marine railway. It ceased to be a vessel when wrecked or when otherwise permanently unfitted for navigation.

1 C. J. 1263-64, note 99.

i. *Vessels Generally*

Generally, the state compensation acts have no application to injuries sustained on board vessels by employees engaged in maritime employments.

Thus of seamen injured aboard vessel.

Hartman v. Toyo Kisen Kaisha S. S. Co., 244 F. 567. Seaman.

Barrett v. Macomber & Nickerson Co., 253 F. 205. Seaman.

Knapp v. U. S. Transp. Co., 181 App. Div., 432. Second Mate.

Dorman's Case, 129 N. E. 352 Mass. Mate.

In re Famous Players Lasky Corp'n., 30 F. 2nd 402. Seaman on ship used for taking motion pictures.

McKennon v. Kinsman Transit Co., 270 N. Y. S. 583. Shipkeeper.

London Guarantee & Acc. Co. v. Ind Acc. Com., 279 U. S. 109. "Spare Master".

The same is true of stevedores, longshoremen and other workers employed in loading or unloading vessels. This is true whether they are employed by the vessel, its master or owner or not, and irrespective of whether there is a remedy under the maritime law for the particular case or not.

This has been so extensively litigated in the Supreme Court of the United States as to preclude the necessity of more than casual mention of cases in other courts which are extremely numerous.

Southern Pacific Co. v. Jensen, 244 U. S. 205. Stevedore.

Washington v. W. C. Dawson & Co., 264 U. S. 219. Stevedore.

Ind. Acc. Com. v. Rolph, 264 U. S. 219. Stevedore.

Peters v. Veasey, 251 U. S. 121. Longshoreman.

Alaska S. S. Co. v. McHugh, 268 U. S. 23. Case of a stevedore on ship engaged in coastwise trade.

International Stevedoring Co. v. Haverty, 269 U. S. 549. Stevedore. Noteworthy as an instance of a very broad interpretation of the "Jones Act", extending to stevedores doing the work of seamen the rights conferred by that act on seamen.

Northern Coal & Dock Co. v. Strand, 278 U. S. 142. Stevedores. This reversed a state case which held the state compensation act might be applied when no maritime tort was involved, and therefore, no remedy under the maritime law.

Employers' Liability Co. v. Cook, 281 U. S. 233. Employee injured while unloading vessel. Reversing 31 F. 2nd 497, which held state act applicable, the employment being on a ship used solely for transporting the employer's own products.

The same is true of employees making repairs on vessels or fitting the same by sea. The cases are considered under the subject, ships under repair. As to employees who are only casually aboard ships for particular errands, there is question whether the rule applies, and reason to believe it does not apply to non-maritime employees casually on a ship or as passengers.

Teahan v. Ind. Acc. Com., 292 P. 120. Assistant wharfinger employed by city, injured while going on ship to receive manifest papers. Held under the state compensation act.

Madderns v. Fox Film Corp'n., 143 N. Y. S. 764. Actor injured on boat used in making motion pictures. State compensation act held to apply.

The Linseed King, 48 F. 2nd 311. Shore employees, drowned while returning from work in launch of employer. Held that state compensation act applied. The case was reversed in the Supreme Court. (Spencer Kellogg Co. v. Hicks, 285 U. S. 502) on the ground that since the employer had committed a maritime tort causing the deaths, the employees had rights under the maritime law which could not be affected by the state compensation act.

Heaney v. P. J. Carlin Const. Co., 199 N. E. 16, Aff. 298 U. S. 637.

Dingfeldt v. Albee Godfrey Whale Creek Co., 284 N. Y. S. 858.

Both these cases involved injuries to employees sustained by explosion on boat transporting them to work. Held that state compensation act applied. Case differs from preceding in that boat was not operated by employer.

Haynes v. Luckenbach Gulf S. S. Co., 170 So. 909 (La.) This case seems inconsistent with foregoing. It held state compensation act not applicable to longshoreman injured on shipboard while being transported to work.

Other exceptions are hereinafter discussed, in connection with particular types of craft.

There seems some reason to believe this exception well founded under the rule laid down in Grant Smith Porter Co. v. Rohde and Millers Indemnity Underwriters v. Braud, previously cited.

It would seem that when an employee comes within the maritime law, no agreement between himself and his employer has power to make the state compensation act applicable.

State v. Duffy, 149 N. E. 870 (Ohio).

The state compensation act not being applicable, the employer cannot of course set up any provision of the act to modify his rights under the maritime law.

There is a case holding that when employee and employer have agreed on compensation, the subrogation provisions of the act may apply to transfer to the employer rights to recover for a maritime tort: but this seems of doubtful authority.

Lumbermen's Mutual Casualty Co. v. Thompson, 235 N. Y. S. 646.

ii. *Ships Under Repair, Lying in Navigable Waters*

All employees injured on board vessels in the course of making repairs or installing fittings or machinery on vessels lying in navigable waters are under the maritime law, even if their employment is temporary in nature, and even if the ship is temporarily out of commission.

Alaska Packers Ass'n. v. Ind. Acc. Com., 218 P. 561 (Cal.), 263 U. S. 722.
Kierejewski v. Great Lakes Dredge & Dock Co., 261 U. S. 479.
Messel v. Foundation Co., 274 U. S. 427.
Baizley Iron Works v. Span, 281 U. S. 222.

Thus held with respect to following:

Lee v. W. A. Fletcher Co., 4 F. 2nd 3. Work of scraping and painting vessel tied up to wharf.
Osten v. Brennan, 6 F. 2nd 388. Repairing boilers of ship.
Kantleberg v. G. M. Standifer Const. Co., 7 F. 2nd 922. Caulker.
Alaska Packers Ass'n. v. Ind. Acc. Com.; cited above. Rigger making vessel ready for sea.
Ahern's Case, 142 N. E. 703 (Mass.). Employee of shipbuilding company injured while working on vessel lying in navigable waters.
Doey v. Clarence P. Howland Co., 120 N. E. 53.
Sullivan v. Hudson Navigation Co., 182 App. Div. 152, 248 U. S. 574.
London Guar. & Acc. Co. v. Marine Repair Corp'n., 195 N. Y. S. 492.

Carpenters injured while fitting ship to receive cargo.

Hawkins v. Anderson & Crowe, 164 P. 556 (Ore.) Lining ship.
Kierejewski v. Great Lakes Dredge & Dock Co., cited above. Repairing scow.
Messel v. Foundation Co., cited above. Boilermaker's helper repairing funnel.

Kuhlman v. W. A. Fletcher Co., 20 F. 2nd 465. Ship carpenter.
La Casse v. Great Lakes Engineering Works, 219 N. W. 730 (Mich.) Workman on ship temporarily out of commission.
Dewey v. D. L. & W. R. Co., 143 A. 313 (N. J.). Pipe fitter working on vessel.
Colonna Ship Yards v. Dunne, 145 S. E. 342 (Va.). Acetylene Welder installing boiler tubes.
McClure v. Wilson, 265 P. 485. Machinist repairing launch.
Baizley Iron Works v. Span, cited above. Incidental painter doing work on ship.
Lake Washington Ship Yards v. Brueggemann, 56 F. 2nd 655. Caulker.
Arundel Corp'n. v. Ayers, 175 A. 586 (Md.). Machinist's helper repairing dredge.

There are a few cases the other way, but in view of the Supreme Court cases, these must be taken as overruled. When an employee is injured on land while working at repairing a vessel, it is not generally a maritime case. These cases are discussed later.

iii. *Ships in Dry Dock*

There are two kinds of dry dock, floating and "graven", or attached to land. Neither kind is rated a "vessel" for the purpose of maritime liens.

1 C. J. 1263-64, note 93.
38 C. J. 1202, notes 90, 91, 92.

A vessel in dry dock is however regarded, for the purpose of determining liability of employers, much as if she were in water, and an injury to an employee engaged in repairing her is a maritime injury, irrespective of whether it occurs on the vessel, or by a fall in the dry dock itself.

Gonsalves v. Morse Dry Dock & Repair Co., 266 U. S. 171.
Robins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449.
The Anglo-Patagonian, 235 F. 92.
Gray v. New Orleans Dry Dock & Shipbuilding Co., 84 So. 109 (La.), 254 U. S. 617.
O'Hara's case, 142 N. E. 844 (Mass.).
Danielson v. Morse Dry Dock & Repair Co., 139 N. E. 567 (N. Y.).

Warren v. Morse Dry Dock & Repair Co., 139 N. E. 569 (N. Y.).

Butler v. Robins Dry Dock and Repair Co., 147 N. E. 435 (N. Y.). (Injury in "graven" dry dock.)

March v. Vulcan Iron Works, 132 A. 89, 271 U. S. 682 (N. J.). Fall from ladder loading from dock to vessel on ways.

Baker Tow Boat Co. v. Langnac, 117 So. 915 (Ala.).

Colonna Ship Yard v. Bland, 148 S. E. 729 (Va.).

Watkins v. Jahncke Dry Dock Co., 135 So. 469 (La.).

Dawson v. Jahncke Dry Dock Co., 131 So. 743 (La.).

Dawson v. Jahncke Dry Dock Co., 137 So. 376 (La.). This case involved the death of one inspecting ship in dry dock as preliminary to making a bid for repairs. It was held a maritime injury and not under state compensation act.

Manufacturers Liability Co. v. Hamilton, 222 N. Y. S. 394.

The cases may be noted of Maleeny v. Standard Shipbuilding Corp'n., 142 N. E. 602, N. Y., and Dahl v. Robins Dry Dock & Repair Co., 203 App. Div. 792. These involved the question whether a workman injured repairing a vessel in dry dock might not set up the provisions of the New York Labor Act, relative to supplying safe scaffolding. The court held it could be done, but the decision seems very doubtful.

The case of Shea v. State Ind. Acc. Com., 247 P. 170 (Ore.) holding that a workman injured while working on the keel of a vessel in a "graven" dry dock is under the state compensation act seems erroneous, or at least very much against the great weight of decision.

A question may be raised as to whether a workman on a dry dock, not engaged in work on a vessel is under the maritime law in view of the fact, noted above, that a dry dock itself is not a vessel.

iv. *Vessel on Marine Railway*

Colonna's Ship Yard v. Lowe, 22 F. 2nd 443. This holds that a painter while painting a ship on a marine railway is subject to the state compensation act.

Norton v. Vesta Coal Co., 63 F. 2nd 165 (acc.). But see *Continental Casualty Co. v. Lawson, 64 F. 2nd 802,*

which holds worker on vessel on marine railway to be subject to maritime jurisdiction. This is a very well considered case: and it must be conceded that the distinction between a vessel in dry dock and a vessel on a marine railway is very fine-drawn.

v. *Vessel Stranded*

A vessel remains a vessel under the maritime law irrespective of the fact that it is stranded: though not after it became a wreck. The cases thus far developed relate to injuries suffered while endeavoring to launch a stranded vessel.

Payne v. Jacksonville Forwarding Co., 290 F. 936. Injury received while attempting to secure line to stranded vessel. Held under maritime law.

Alaska Packers' Ass'n. v. Ind. Acc. Com., 253 P. 924 (Cal.), 276 U. S. 467. Injury received while on land, or partly on land, partly in water, trying to launch stranded boat. Held compensable under state law.

vi. *Vessel Under Construction*

A vessel under construction did not become a vessel for the purpose of a maritime lien attaching until it reached a certain point of development. It became a vessel for such purpose, however, some time before it was actually put in commission.

On this point, the compensation cases do not follow the lines as to maritime liens. A person working on a vessel, launched but not in commission, comes under the state law, not the maritime law.

Grant Smith Porter Co. v. Rohde, 257 U. S. 469.
Missouri Valley Bridge & Iron Co. v. Malone, 240 S. W. 719 (Ark.).
Los Angeles Shipbuilding & Dry Dock Co. v. Ind. Acc. Com., 207 P. 416 (Cal.).
Gillard's Case, 138 N. E. 384 (Mass.).
Taylor v. Lawson, 60 F. 2nd 165.
U. S. Casualty Co. v. Taylor, 64 F. 2nd 521.

The case of Pacific American Fisheries v. Hoof, 291 F. 306 to the contra must be taken as overruled.

vii. *Dredges*

As previously noted, dredges were not always regarded as "vessels" for purposes of admiralty jurisdiction. Self-propelled dredges, especially when used for

transportation or dredging navigable channels have been held "vessels": non-self-propelled dredges, stationary dredges and dredges used for purposes other than in aid of navigation have been held not to be vessels.

1 C. J. 1263-64, notes 77, 78, 96.
38 C. J. 1203, 1204, notes 8, 9.

The application of state compensation acts with regard to dredges shows a similar division, with a tendency to strain a point in favor of regarding them as under the state law.

Under Maritime Law

Zurich General Acc. etc. Co. v. Ind. Com., 218 P. 563 (Cal.). This involved a dredge engaged in deepening navigable channels.

Arundel Corp'n. v. Ayers, 175 A. 586 (Md.). This involved a dredge being repaired in navigable waters, not used for local purposes.

Kibadeaux v. Standard Dredging Co., 81 F. 2nd 670. This involved a dredge engaged in clearing slips in harbor.

Puget Sound etc. Co. v. Dept. of Labor & Industries, 54 P. 2nd 1003 (Wash.). Indicated that dredging operations in navigable waters designed to deepen, widen or construct navigable channels come within maritime law.

Under State Compensation Acts

Southern Surety Co. v. Crawford, 274 S. W. 280, 270 U. S. 655 (Tex.). Dredge, not self-propelled, working on inland harbor channel.

Lindberg v. Southern Casualty Co., 15 F. 2nd 54. Dredge cutting channel from river to lake.

City of Oakland v. Ind. Acc. Com., 244 P. 353 (Cal.). Dredge tender used in connection with dredge used in harbor work.

Toland's Case, 155 N. E. 602 (Mass.). Dredge, not self-propelled, digging out site for dry dock.

United Dredging Co. v. Ind. Acc. Com., 267 P. 763. Dredge operating in navigable water.

Mack v. Portland Gravel Co., 278 P. 986 (Ore.). Dredge digging sand from navigable river for commercial purposes.

Fuentes v. Gulf Coast Dredging Co., 54 F. 2nd 69. Dredge in shallow water, pumping sand on land for filling purposes.

Dourrieu v. Port of New Orleans, 158 So. 581 (La.). Dredge in navigable waters, filling in adjacent lowlands.

Orleans Dredging Co. v. Frazie, 161 So. 699. Dredge, not self-propelled, cutting navigable channel through a point.

Puget Sound etc. Co. v. Dept. of Labor Industries, cited above. Indicated that dredging for purpose of extending shore land, even if in navigable waters comes within state compensation act.

Woods v. Merrill-Stevens Dry Dock & Repair Co., 84 Fed. Supp. 208. Non-self-propelled dredge, used to maintain proper depth of water in private slips where vessels were dry docked and repaired.

La Crosse Dredging Co. v. Ind. Com., 270 N. W. 62 (Wis.). Dredge used in work of cutting through land and into shore line of navigable river.

It is doubtful whether any very consistent line of cleavage can be established: but it seems probable that some dredging risks at least are under the maritime law. If a line be established, it will probably be on the point whether the dredge would be considered a "vessel" for the purpose of a maritime lien. This point was raised in Fuentes v. Gulf Coast Dredging Co., cited above. When a dredge is not self-propelled and used for a purpose strictly local, it may be set down with some confidence as a non-maritime risk.

The case of *State v. Duffy, 148 N. E. 572 (Ohio)* involved the matter of dredges, but on the point of whether dredging risks in connection with contracting work could be covered by the State Fund.

viii. *Fishing Boats*

There has been a tendency in some states to apply the compensation act to fishing boats, especially those which are small, or those used for pleasure fishing. But the United States Supreme Court has ruled even pleasure fishing boats as vessels and subject to the maritime law.

London Guarantee & Acc. Co. v. Ind. Acc. Com., 279 U. S. 109. In accord with this case.

Lesczymski v. Andrew Radel Oyster Co., 129 A. 539 (Conn.). Oyster fishing boat.

Foppen v. Peter J. Fase & Co., 188 N. W. 541 (Mich.). Fishing tug on Lake Michigan.

London Guar. & Acc. Co. v. Ind. Acc. Com., 256 P. 857 (Cal.). Pleasure fishing boat.

Tyler v. Ind. Com., 158 N. E. 586. Net fishermen on Lake Erie.
Maryland Casualty Co. v. Grant, 150 S. E. 424 (Ga.). Fishing boat.
Johnson v. G. T. Elliot, Inc., 146 S. E. 298 (Va.). Fishing boat outside three-mile limit.
Saleens v. Travelers Ins. Co., 171 S. E. 159 (Ga.). Fishing boat operating in navigable water.
Claramitaro's Case, 193 N. E. 4 (Mass.). Fishing boat in navigable waters.

Contra

Travelers Ins. Co. v. Bacon, 119 S. E. 458 (Ga.).
London Guar. & Acc. Co. v. Ind. Acc. Com., 265 P. 825 (Cal.). (Overruled by principal case cited.)
Balestiere v. Ind. Acc. Com., 267 P. 763 (Cal.).

ix. *Barges*

Barges are generally regarded as vessels for purposes of admiralty jurisdiction.

1 C. J. 1263-64, note 80.

The general trend of decisions is that state compensation acts do not apply to workers on barges in navigable waters.

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.
White v. Jordan W. Couper Co., 260 F. 350.
Lee v. Licking Valley Coal Digger Co., 273 S. W. 542 (Ky.)
Stearns v. Love Drilling Co., 7 La. App. 493 (La.).
Gaines v. Gulf Coast Towing Co., 120 So. 548 (La.).
T. J. Moss Tie Co. v. Turner, 44 F. 2nd 928.
Martinson v. State Ind. Acc. Com., 60 P. 2nd 972 (Ore.).
Comar v. Dept. of Labor & Industries, 59 P. 2nd 1113 (Wash.).
State ex. rel. Kansas City Bridge Co. v. Workmen's Compensation Commission, 81 S. W. 2nd 986.

This last case involved a mat-worker on a barge engaged in making and sinking mats on the river bottom to divert current from the bank.

The case of *Missouri Valley Bridge & Iron Co. v. Malone, 240 S. W. 719 (Ark.)* involved a barge under construction, and it was properly held that injuries to workers were governed by state law rather than maritime law.

State v. Duffy, 148 N. E. 572 (Ohio) involved

merely the question whether barges and those employed on them in connection with a construction project could be covered by the State Fund.

It may be noted that barge cases enter into the Longshoremen's and Harbor-Workers' Act under a very different aspect, i.e., whether bargemen come within the exception to the act of "master and members of the crew of a vessel".

x. *Scows*

Scows are vessels for purposes of admiralty jurisdiction.

1 C. J. 1263-64, note 85.

The case of *Kierejewski v. Great Lakes Dredge & Dock Co., 261 U. S. 479* applied the maritime law to the case of an employee drowned while repairing a scow in navigable waters.

Herbert's case, 186 N. E. 554 (*Mass.*) held that the state compensation act applied to a "sweeping scow" used for scavenger work within city limits only. This seems very properly within the principle laid down in Millers Indemnity Underwriters v. Braud, cited previously.

State v. Duffy, 148 N. E. 572 (*Ohio*) treated scows used in local construction projects as properly coverable by the State Fund.

xi. *Lighters*

Lighters are vessels for purposes of admiralty jurisdiction.

1 C. J. 1263-64, note 76.

Employees upon lighters in navigable waters properly come under the maritime law and not the state compensation act.

McDonald v. City of New York, 36 F. 2nd 714.
Boles v. Munson S. S. Line, 256 N. Y. S. 729.

xii. *Car Floats and Car Ferries*

There is little reason to doubt that these are properly "vessels" and that employees on them are under the maritime law. A very curious conflict of law has arisen in case of these, namely as to railroad employees when on car floats or ferries. It would

seem they come under the Longshoremen's and Harbor-Workers' Act, rather than the Federal Employers' Liability Act.

Nogueira v. N. Y., N. H. & H. R. Co., 32 F. 2nd 179, 281 U. S. 128.

Buren v. Southern Pac. R. Co., 50 F. 2nd 407.

Richardson v. Central R. of N. J., 253 N. Y. S. 789.

xiii. *Tow Boats*

Held that employees on tow boats are not within state compensation act.

Dworkowitz v. Harlem River Tow Boat Lines, 192 App. Div. 855.

See, however, *State v. Duffy, 148 N. E. 572 (Ohio).*

xiv. *Derrick Barges*

As to these, the cases are not unanimous.

Home Life & Acc. Co. v. Wade, 236 S. W. 778 (Tex.). This held an employee injured on a derrick barge in a river, assisting in loading cranes not subject to state compensation act.

Lumbermen's Reciprocal Ass'n. v. Adcock, 244 S. W. 645 (Tex.). This held an injury to one employed on a "raising float" or boat to which was attached apparatus for raising logs sunk in boom to be subject to the state compensation act.

Cooley v. E. M. Wichert Co., 118 A. 765 (Pa.). State compensation act held to govern case of death of employee on derrick boat in navigable river being used in construction of a wall having no connection with navigation.

See also *State v. Duffy, 148 N. E. 572 (Ohio).*

It seems very likely that when derrick boats are used in connection with navigation and commerce they come within the maritime law. When used for local purposes not connected with navigation they might very properly be classed as non-maritime, as in case of dredges.

xv. *Piledrivers*

Piledrivers have been held vessels for purposes of maritime jurisdiction.

1 C. J. 1263-64, note 91.

The compensation cases are few, and so far evenly divided.

Pfister v. Bergdolt Const. Co., 65 S. W. 2nd 137. Here the compensation act was held not to apply to a "lead man" on a piledriver mounted on a scow moored in navigable water and engaged in maritime work.

McClain v. Kansas City Bridge Co., 83 S. W. 2nd 132 (Mo.). Here state compensation act was held to apply to death by drowning of employee on piledriver mounted on boat, moored in navigable river.

There would seem reason for holding piledrivers matters of "purely local concern", even more strongly than in case of dredges.

xvi. *Launches, Motor Boats, Pleasure Boats and Yachts*

Generally speaking launches are "vessels" and injury to employees on launches properly comes under the maritime law.

Beyerle v. Ind. Acc. Com., 241 P. 894 (Cal.).
McClure v. Wilson, 265 P. 485.
Spencer Kellogg Co. v. Hicks, 285 U. S. 502.

Pleasure boat.

Sells v. Marine Garage, 285 N. Y. S. 51.

Motor boat.

St. Johns v. T. T. & M. T. Thomson, 182 A. 196 (Vt.).

Yacht.

U. S. F. & G. Co. v. Lawson, 15 F. Supp. 116.

There is one case where an employee injured while engaged in upholstering a motor boat in navigable water has been held to come within the state compensation act. Offhand this seems not calculated to prejudice the general structure of the maritime law.

Johnson v. Swonder, 150 N. E. 615 (Ind.).

xvii. *Ferryboats*

Ferryboats are vessels for purposes of maritime jurisdiction when operating on navigable waters.

1 C. J. 1263-64, note 75.

There seems no good reason to question that employees on ferryboats do not come within the terms of the state compensation laws.

Meyers v. Harkins Bros., 5 La. App. 190.

There is, however, one case to the contrary, involv-

ing an injury to an employee while the boat was tied to a wharf.

Bockhop v. Phoenix Transit Co., 117 A. 624 (N. J.).

This case seems contrary to the general trend of decisions.

xviii. *Houseboats*

Houseboats are regarded as vessels for the purposes of maritime jurisdiction.

1 C. J. 1263-64, note 84.

There is one case where the state compensation act was applied to an injury of an employee on a houseboat, but in this case the houseboat was permanently attached to a landing and not intended to be moved about.

Lawton v. Diamond Coal & Coke Co., 115 A. 886 (Pa.)

xix. *Boat*

See *Bell v. West Island Corp'n., 245 N. Y. S. 337* holding that death of employee while operating a boat does not come within the state compensation act. It may be questioned, however, whether mere incidental operation of a small boat in connection with an operation essentially non-maritime is sufficient to bring an employee within the Federal jurisdiction.

Wheeler Shipyard v. Lowe, 13 F. Supp 863.

xx. *Raft*

There are conflicting decisions as to whether rafts are vessels for purposes of admiralty jurisdiction.

1 C. J. 1263-64, note 79.

There is a single case where an injury sustained on a log raft has been held not within the state compensation act.

Beyerle v. Ind. Acc. Com., 241 P. 894 (Cal.).

But operations in preparing logs for transportation by water, breaking up rafts and floating logs to mill conveyor have been held within the state compensation act.

Eclipse Mill Co. v. Dept. of Labor & Industries, 251 P. 130 (Wash.).

And an employee drowned by falling off a log boom comes properly within the state compensation act.

Ketchikan, etc. Co. v. Bishop, 24 F. 2nd 63.

Mere floating platforms used as means for work are

not *per se* vessels. Whether the maritime law or the state compensation act would apply to injuries or death of employees on these would appear to depend on whether the work being done were maritime in character.

Lahti v. Terry & Tench Co., 273 U. S. 639.
Kierejewski v. Great Lakes Dredge & Dock Co., 261 U. S. 479.

xxi. *Vessel Used for Taking Motion Pictures*

A vessel does not cease to be a vessel because of being used for this purpose. The terms travel, transportation, commerce are very broadly interpreted, both under the so-called "commerce clause" and for purposes of maritime jurisdiction.

Thus it has been held that seamen injured on a vessel used in producing motion pictures are subject to the maritime law.

In re Famous Players Lasky Corp'n., 30 F. 2nd 402.

An actor, however, is not a maritime employee, and may properly be held within the state compensation act.

Madderns v. Fox Film Corp'n., 143 N. Y. S. 764.

xxii. *Structures in Navigable Waters*

It seems probable that any structure in or on navigable waters which would not be a vessel for the purpose of admiralty jurisdiction, ought to be regarded as within the scope of the state compensation acts, as they are in general essentially local in character. Floating structures which by their nature, build, design and use are intended to be relatively permanent, or which are permanently attached to land come within this designation.

1 C. J. 1263-64, notes 98-99.
36 C. J. 1202, notes 90-92.

There are not many cases involving the application of the compensation act to these.

Burns v. City of New York, 251 N. Y. S. 77. This involved an injury to an employee, on a "float or bridge" attached to land, whose duties were to moor incoming ferryboats to the bridge. It was held that he came within the maritime law, not the state compensation act. The case seems decidedly wrong in principle, and in no way distinguishable from the case of an employee on a wharf.

Sunny Point Packing Co. v. Faigh, 63 F. 2nd 921. This involved death of employee who presumably fell from fish-trap floating in navigable waters. The state compensation act was held applicable.

Dewey Fish Co. v. Dept. of Labor & Industries, 41 P. 2nd 1099 (Wash.). This held that the occupation of constructing and maintaining fish-traps in Puget Sound was within the terms of the state compensation act.

Jeffers v. Foundation Co., 85 F. 2nd 24. This involved injury to a diver inside a coffer dam in the Ohio River. Held, not within Jones Act, as water inside dam had been withdrawn from navigation.

New Amsterdam Casualty Co. v. McManigal, 87 F. 2nd 332. Injury sustained on lighthouse under construction, 12 miles from shore. Held, injury on navigable water within Longshoremen's and Harbor-Workers' Act.

xxviii. *Summary*

The lines laid down in the admiralty law, especially with regard to maritime liens, are not strictly followed as a test for determining the boundaries between the maritime laws and the state compensation act. Generally, an employee injured on a vessel comes within the maritime law rather than the state compensation act. In case of vessels under construction, however, the state compensation act applies even after the vessel is launched: and under the principle laid down in Grant Smith Porter Co. v. Rohde and Millers Indemnity Underwriters v. Braud, the state compensation acts may apply to certain cases where the matter is of local concern and the application of the state law would not prejudice the general structure of the maritime laws. The Supreme Court has, however, been inclined to follow the line of the law of maritime liens with regard to vessels in actual operation. The exceptions if any are confined to vessels which are local in their operations and not used for purposes directly connected with travel, transportation and commerce.

(2) *Injuries on Water, Not on a Vessel*

The case of divers has been the theme of one notable case, very often quoted.

Millers Indemnity Underwriters v. Boudreaux, 245 S. W. 1025, 261 S. W. 137 (Tex.).

Millers Indemnity Underwriters v. Braud, 266 U. S. 628.

This involved the death of a diver working at removing obstacles to navigation. The court held the case compensable under the state compensation act.

This must be taken as superior in authority to a New York case involving death of a diver laying a cable.

De Gaetano v. Merritt & Chapman Derrick & Wrecking Co., 203 App. Div. 259.

It will be noted that the leading case is a particularly strong case, and indicates very clearly the intention of the court to permit the state acts to go out on navigable water to the full extent consistent with preserving the general structure of the maritime laws.

See also

Jeffers v. Foundation Co., 85 F. 2nd 24.

Here the diver was injured in a coffer dam. Held, not entitled to recover under Jones Act as water inside coffer dam had been withdrawn from navigable waters.

(3) *Injuries Partly on Water, Partly on Land*

When an injury is fully consummated on water, there is a presumptive case for the application of the maritime law: when it is fully consummated on land, it is governed by the law of the state. There is an intermediate class of cases where the injury begins on water and is consummated on land, or begins on land and is consummated in water.

i. *Cases where the Employee is Struck on a Vessel and Knocked onto the Wharf, or Struck on the Wharf and Knocked into the Water or onto a Vessel*

When the blow is received on the ship, the injury is maritime in character and governed by the maritime law.

Minnie v. Port Huron Terminal Co., 257 N. W. 831 (Mich.), 295 U. S. 647. Longshoreman struck on deck of vessel by hoist and knocked to the wharf.

When the blow is received on the wharf, the injury is non-maritime and the state compensation act may apply.

T. Smith & Son v. Taylor, 276 U. S. 179.

Scott v. Dept. of Labor & Industries, 228 P. 1013.

Atlantic Coast Shipping Co. v. Royster, 129 A. 668 (Md.).
Rorvik v. North Pacific Lumber Co., 195 P. 163.
Taylor v. Smith & Son, 5 La. App. 284.
Baldwin v. Linde-Griffiths Co., 181 A. 35.

ii. *Cases Where the Employee Falls or is Injured in Passing from Shore to Ship or from Ship to Shore*

There are numerous cases on this subject, and not at all consistent. The best rule appears to be that laid down in the Atna, 297 F. 673, namely, that if one is passing from ship to shore, one is regarded as on the ship till one has safely reached the shore: and if one is passing from shore to ship, one is regarded as on the shore till one has safely reached the ship. This rule was quoted with approval by the Supreme Court in the case of the The Admiral Peoples, 295 U. S. 649.

The decisions, where compensation laws may be involved, are as follows:

Going from Ship to Shore

Merchants & Miners Transp. Co. v. Norton, 32 F. 2nd 513. Machinist drowned after fall from ladder by which he was leaving ship. State compensation law held not applicable.

The Phoenix 3 F. Supp. 1017. Fall of seaman from "Jacob's Ladder" to dock held maritime injury.

Lermond's Case, 119 A. 864 (Me.). Pipe fitter on vessel, thrown by ladder slipping, and falling on bumper log permanently attached to wharf. Held subject to state compensation act.

Gordon v. Drake, 159 N. W. 340 (Mich.). Employee injured, jumping from launch to dock at order of master of launch. Held, not under maritime, but state law.

In re Wolf's Case, 189 N. E. 85. Employee killed by slipping off movable ladder resting on wharf, by which he was leaving ship. Held not under state compensation act.

The Berwindglen, 14 F. Supp. 992. Seaman injured by falling to dock from ladder held cognizable in admiralty.

Going from Dock to Ship

Gillard's Case, 129 N. E. 265. Seaman injured by breaking of ratline while boarding schooner lying at wharf, held, maritime injury.

L'Hote v. Crowell, 54 F. 2nd 212. Longshoreman, riding ship's sling from dock to vessel, striking against side of ship and falling to wharf. Held, maritime injury.

Union Oil Co. v. Ind. Acc. Com., 295 P. 513. Seaman who slipped and fell to wharf trying to board barge, held within jurisdiction of state compensation act.

Egan v. Morse Dry Dock Co., 214 App. Div. 226. Employee climbing from dock to ship, thrown to dock by ladder slipping. Held subject to state compensation act.

Stretkowicz v. William Spencer & Sons Corp'n, 185 A. 371 (N. J.). Stevedore injured by losing control of truck on gangplank and knocked against stanchion of boat. Held, not within state compensation act.

Richards v. Monahan, 17 F. Supp 252. Case of ship's machinist, killed by fall to dock while boarding ship by ladder. Held, injury on navigable water within Longshoremen's and Harbor-Workers' Act.

The Shang Ho, 13 F. Supp. 632. Longshoreman knocked to dock from gangplank he was ascending when vessel moved forward without warning. Held, maritime injury.

It will be noted that the cases are not completely consistent. It is thought, however, that the rule laid down in The Atna holds for injuries received while in use of gangplanks or ladders. Where the injury is due to a defect in ship's equipment or to careless management of its apparatus, there is perhaps reason to hold the injury maritime.

iii. *Cases Where an Injury is Complete on Shipboard, but Death Occurs on Shore*

It seems well settled that admiralty does not lose jurisdiction in this case. The cases are somewhat numerous and are perhaps better discussed under the head of the Federal death statutes. It would seem, however, that in no case could the

state compensation act apply, unless it would have applied to the original injury.

Liverani v. John T. Clark & Son, 176 N. Y. S. 725.

Vancouver S. S. Co. v. Rice, 53 S. Ct. 420.

(4) *Injuries Wholly on Land*

The state law applies to all such cases, irrespective of whether the employment is maritime, and, so far as application of the compensation law is concerned, irrespective of whether the injury was caused by the vessel or its apparatus.

Thus the state compensation law has been held to apply in the following cases:

Riedel v. Mallory S. S. Co., 196 App. Div. 194. Ship's watchman falling from pier and drowned.

State Ind. Com. v. Nordenholt Corp'n., 259 U. S. 263. Longshoreman injured on dock.

Netherlands American Steam Navigation Co v. Gallagher, 282 F. 171. Stevedore injured on pier.

Smalls v. Atlantic Coast Shipping Co., 261 F. 928. Longshoreman injured on land, although by defect in vessel's apparatus.

Barry v. Donovan, 151 A. 520. Longshoreman injured on dock by being struck by vessel's sling.

Companile v. Morse Dry Dock Co., 205 App. Div. 480. Ship repairer injured on land.

McBride v. Standard Oil Co. of N. Y., 196 App. Div. 822. Truckman, injured by truck sliding backward and crushing him against vessel's side.

Tracy v. Eastern Loading Corpn's., 202 App. Div. 811. Employee injured while working on dock.

Walsh v. Atlantic Stevedoring Co., 208 App. Div. 822. Employee of stevedore, injured on dock.

Cordrey v. The Bee, 201 P. 202. Longshoreman injured on dock by being struck by fall of ship's sling.

Shear v. Ind. Acc. Com., 247 P. 770. Stevedore injured on dock.

Alaska Packing Ass'n v. Ind. Acc. Com., 276 U. S. 467. Maritime employee, partly on land, partly in water, injured while trying to launch stranded vessel.

White v. J. P. Florio & Co., 126 So. 452. Longshoreman, injured on dock after finishing work on vessel.

Lindh v. Booth Fisheries Co., 2 F. Supp. 19. Injury in fall from dock to ship. (Held not maritime case.)

Powers v. Murray, 254 N. W. 559. Injury to seaman while on land. (Held not maritime case.)

Kulczyk v. Rockport S. S. Co., 8 F. Supp. 336. Injury to seaman standing on dock.

Seeley v. Phoenix Transit Co., 272 N. Y. S. 127. Pilot and master of tug boat, falling through hole in pier.

Esteves v. Lykes Bros. S. S. Co., 74 F. 2nd 364. Seaman standing on wharf, painting vessel.

Rudo v. A. H. Bull S. S. Co., 177 A. 538. Seaman, standing on wharf, unloading coal from truck and putting it into net for hoisting aboard ship. (Not entitled to recover under Jones Act.)

Scott v. Dept. of Labor & Industries, 228 P. 1013. Stevedore, falling from dock to ship's decks.

(5) *Summary*

The line as between the application of the maritime law and the state compensation acts appears to be as follows:

i. Seamen and maritime employees are subject to the maritime law in case of injuries on vessels lying in navigable waters, except in case of ships under construction and except in a few cases held "local in character".

ii. The same would appear to be true of injuries received in navigable water other than on vessels if in connection with a characteristically maritime occupation, except in a case "local in character", i.e., not closely connected with actual conduct of travel, transportation and commerce.

iii. The state compensation act applies to maritime employees with respect to injuries on land, and injuries originating on land, even if consummated on water or on a vessel: and to injuries received on water in cases not subject to the maritime law. It does not apply to injuries originating on a vessel and consummated on water, provided the maritime law is applicable to such cases in the event the injury and its consummation were entirely on water.

iv. The state compensation act applies to non-maritime employees, irrespective of the place of occurence of injury. A non-maritime employee is

one whose occupation is not associated with travel, transportation and commerce. There seems no reason why this should not be true, not only on navigable waters within the confines of the state, but elsewhere, in case the law of the state is extra-territorial. The state compensation act cannot, however, render the remedy exclusive in the event the employer commits a maritime tort against the employee.

(d) *Statutory Modifications of the Remedies Available to Seamen Under the Maritime Law*

(1) *The Nature and Extent of Remedies Under the Maritime Law*

"Seaman" is a term which in the old days was practically synonymous with "sailors" or "mariners". The changes in the methods of navigation have brought upon the high seas vessels of great size containing an operating force only a small part of which can properly be termed sailors. The term "seamen" under the maritime law properly includes persons employed in and about a ship as more or less permanent members of the ship's personnel, under contract relations with the ship, its master or owner. Briefly, the term includes officers, although a narrower construction excluding officers is sometimes used. When the term appears in a statute, its meaning must be gathered from the context.

56 C. J. 923, 924 and notes.

Under the maritime law, seamen had two well defined rights with respect to personal injuries sustained in the course of their service.

i. *Care, Cure and Maintenance*

A seaman injured or falling sick while in the service of the ship is, according to principles recognized in the maritime law at a time antedating the Christian era, entitled to maintenance and cure. "Maintenance" properly signifies the provision of food and lodging. "Cure" is used in its original meaning of "care". The two terms together require that the seamen shall receive sustenance and attendance of a suitable character, including everything reasonably possible and necessary to his maintenance, cure and comfort under the particular conditions involved. When the nature of the disability requires it, he

should be relieved from duty, removed to comfortable quarters, given suitable food, proper nursing and medical treatment. Medical treatment should be what is ordinary and reasonable, including, if circumstances permit, treatment by physician or surgeon, and hospitalization.

The right to maintenance and cure does not necessarily terminate with the service, but extends for a reasonable time after the termination of the voyage. It does not run for an indefinite period, nor necessarily until actual cure is effected.

56 C. J. 1067-1072.

The right to maintenance and cure extends only to disabilities suffered while in the service of the ship, that is to say, while under the power and authority of its officers. It is not necessarily confined to disabilities arising from acts done for the ship's benefit, nor in the actual performance of duty.

56 C. J. 1067.

It may cover disabilities sustained on shore if the seaman is in fact upon the service of the ship. The right is not lost by the seaman's negligence. It may be lost if the injury is due to the seaman's willful misconduct. It does not cover injuries arising from the seaman's own fault or vice, nor disabilities arising from a diseased condition existing at the time of shipment.

56 C. J. 1068, 1069.

The right is available to anyone who serves the ship as the result of a contractual engagement, and serves the ship in respect to its navigation.

The Buena Ventura, 243 F. 797.

It extends both to seamen paid cash wages, and members of the crew compensated by "lay" or share. It covers seamen on seagoing ships, also those engaged in coastwise trade or in the navigation of lakes, rivers and harbors.

The term "seamen" for the purpose of this right, has been held to include engineers, firemen, fishermen, mates, mates acting as masters, and wireless operators.

It does not include longshoremen and stevedores.

56 C. J. 1077.

The right is contractual or quasi-contractual in nature, being incorporated in the contract of service by rule of maritime law. It exists against the vessel, its master and its owner. It may be enforced in a court of admiralty by a libel *in rem* against the vessel. An action *in personam* may be maintained either in a court of admiralty or in a law court, Federal or state. The right, being contractual is governed as to procedure and as to statutes of limitations, by the rules applicable to actions in contract, not by those applicable to actions in tort.

56 C. J. 1079.

A seaman can in such an action recover any sums spent by him for maintenance and cure, but not prospective expenses. If he has been injured by the failure to supply proper maintenance and cure, he can recover compensation by way of damages.

56 C. J. 1079-1080.

In an action brought to recover damages for failure to provide proper cure, the measure of damages is the consequential injury, including compensation for additional physical injury arising from the neglect, personal loss resulting from inability to earn wages during the period of incapacity caused by the neglect, and pecuniary compensation aside from contract wages for such period as the seaman may have been compelled to work when legally entitled to be relieved from duty. Recovery may not be had for pain and suffering necessarily incident to the disability, but may be had for pain and suffering to the extent that they are due to the neglect or maltreatment.

56 C. J. 1081.

ii. *Rights of Recovery for Personal Injury*

Under the maritime law, a seaman could not maintain an action in tort for an injury, unless it were due to the personal negligence of the shipowner, such as the unseaworthiness of the vessel or its appliances, or the failure to supply medical treatment and attendance. The maritime law has been largely supplemented by statute in regard

to requirements upon the shipowner as to the outfitting and equipment of the ship with regard to the safety, comfort and health of the crew: and injuries due to breach of these requirements are actionable. With respect to injuries on the high seas the law to be applied is the law of the flag. With respect to injuries arising from a tort committed in the territorial waters of a nation, the remedy is properly in accordance with the laws of that nation. But the Federal courts, while applying this rule to injuries upon ships of a foreign nation in waters of the United States, are not consistent in applying it to injuries upon ships of the United States in the waters of a foreign nation.

56 C. J. 926, note 11, 927, sec. 12, notes 32-38.

Rights of action in tort under the general maritime law are available to "seamen", generally as in case of rights of action based on the right to cure and maintenance. Actions in tort under the maritime law are within the jurisdiction of admiralty courts and can be enforced by libel *in rem* if the vessel is responsible. Actions *in personam,* based on such torts could be brought in both Federal and state courts.

The maritime law gave no remedy for death caused by wrongful act, and gave no right of actions for injury caused by the negligence of a fellow-servant. Apart from actions of tort based on the violation of specific statutes, the maritime law generally gave right of action in tort only for injuries caused by the unseaworthiness of the vessel.

"Seaworthiness" is a relative term challenging exact definition. "Seaworthiness" implies that the ship is staunch and sound, properly equipped, provisioned and manned, with cargo properly stowed. It implies a competent master and a competent crew. Notorious brutality on the part of an officer is evidence of incompetence.

56 C. J. 1089-1092.

The rule that there could be no recovery for the negligence of a fellow-servant precluded suits based on an act of negligence of any one employed on the ship from the master down. On the other hand, negligence of a fellow-servant

could not be set up as a defense in an action based on the unseaworthiness of the ship unless the negligence were the sole cause of the injury.

56 C. J. 1094, sec. 667, 1097 sec. 676.

As previously noted, the Federal courts recognized the applicability of state death statute to cases of death by wrongful act. These applied where the act causing the death occurred in territorial waters of the state, or where it occurred on a ship owned in the state, upon the high seas.

56 C. J. 1083, sec. 636.
La Bourgogne, 210 U. S. 95.
The Hamilton, 207 U. S. 398.

Similarly, a case of death by wrongful act upon a vessel of a foreign nation, or caused by a maritime tort of a ship of such nation might be proceeded on under the statutes of such nation.

La Bourgogne, cited above.
The Hamilton, cited above.

(2) *The La Follette Act*

The Seaman's Act of 1915, U. S. Comp. Sts., sec. 8337a, Act March 4, 1915, c. 153 sec. 20, the so-called La Follette Act, undertook to broaden the rights of action of seamen for injuries received on shipboard by providing that seamen having command should not be considered the fellow-servants of those under their authority. This act did have some effect in enlarging rights of action, but did not change the general rules of the maritime law to the extent of giving the injured seaman rights to recover upon common law principles.

Chelentis v. Luckenbach S. S. Co., 247 U. S. 372.

It is hardly necessary to discuss the scope of this act as it has now been superseded by the Jones Act.

(3) *The Jones Act*

The Act of June 5, 1920, c. 250 sec. 33, 41 Stat. 1007 46 U. S. C. A., sec. 688, the so-called Jones Act, gave a broad right of recovery to seamen by making the provisions of the Federal Employers' Liability Act applicable. The section reads as follows:

"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, and in such actions all statutes

> of the United States, modifying or extending the common law right or remedy in case of personal injuries to railway employees shall apply: and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States, confining or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The remedy given by this section is a new remedy by way of action in tort. The remedy is *in personam*, and the election is between this and the rights of action in tort under the maritime law, which as has been seen were restricted in character and enforceable in most cases by a libel *in rem* in an admiralty court. The right to cure and maintenance is not affected by an election to proceed under this section, since that under the maritime law was a contractual remedy and could be had by the seamen in any event, irrespective of any rights of action in tort he might have.

Pacific S. S. Co. v. Peterson, 278 U. S. 130.
Flynn v. Panama R. Co., 201 N. Y. S. 56.
56 C. J. 1106, sec. 701.

But see, *contra.*

Peterson v. Pacific S. S. Co., 261 P. 115.

The jurisdiction of the Federal courts of actions under this section is not exclusive. Such actions may be brought in state courts: but if brought there, the provisions of the Federal Statute, including the statute of limitations are applicable.

Engel v. Davenport, 271 U. S. 33.

While the right of action given by this section may be entertained in a court of admiralty by a libel *in personam*, a proceeding under this section cannot be enforced by a libel *in rem.*

Buzynski v. Luckenbach S. S. Co., 275 U. S. 518.
The Pinar del Rio, 16 F. 2nd 984, 274 U. S. 732, 277 U. S. 151.

The extent to which this act adds new causes of action to those existing under the maritime law is not

entirely determined. It does, by reference to the Federal Employers' Liability Act, broaden the remedy, and affect the defences which may be interposed. Accordingly, the negligence of a fellow-servant is not a defence in any case.

Crosby Fisheries, Inc., Pet. 31 F. 2nd 1004.
56 C. J. 1095, note 49.

The defence of assumption of risk is normally available, but must be interpreted with regard to the maritime law. The seaman's occupation is not at all like that of a railway employee. Once he has signed the articles or is on board, he is subject to orders, liable to disciplinary action for disobedience thereto, and is unable to abandon his employment until the termination of the voyage. Hence the defence is more limited than under the Federal Employers' Liability Act, and, in cases where the maritime law or a statute lays a peremptory duty upon the employee, such as to duty to furnish a seaworthy ship, and apparatus in proper condition, cannot be set up at all.

56 C. J. 1097-1102.

Contributory negligence is not a defence in an action brought under the Jones Act; and the doctrine of comparative negligence with apportionment of damages is adopted. This, however, was more or less the case under the maritime law.

56 C. J. 1102-1104.

The right of action for death caused by wrongful act given by the Jones Act would seem to supersede the application of state death statutes to cases of death of seamen by wrongful act committed on navigable waters. As to how far it supersedes the right of action in admiralty given by the Federal Death statute (later discussed) for death by wrongful act on the high seas is a moot question, not yet decided.

Anderson v. Standard Oil Co. of N. J., 209 N. Y. S. 493.

The persons, etc. to which this section applies must be determined from the context of the act, and in particular 46 U. S. C. A., sec. 713, cited as follows:

"In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person

(apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be 'seamen'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river to which the provisions of this chapter may be applicable ——."

This indicates that the statute applies to American ships only.

Clark v. Montezuma Transp. Co., 216 N. Y. S. 295, 217 App. Div. 172.

It has been held to apply to American vessels in foreign ports.

Bennett v. Connelly, 202 N. Y. S. 568, 204 N. Y. S. 893.

The kinds of craft which may be regarded as vessels have been discussed under a preceding section. The use of the word "navigating" in the definition quoted would seem to point to vessels in active service, or only temporarily out of service. A court has refused to apply the section to employees on ships of the United States, laid up and permanently unfit for service.

Gonzalez v. U. S. Shipping Board Emergency Fleet Corp'n, 3 F. 2nd 168.

The definition given to "seamen" is very broad and has been broadly construed. It has been held not to apply to laborers on navigable waters, not signed as seamen on the vessel's articles or engaged in navigation.

Young v. Clyde S. S. Co., 294 F. 549.

It has been held to apply to stevedores and longshoremen performing on board ship work of a kind which might be done by members of a vessel's crew.

International Stevedoring Ass'n. v. Haverty, 272 U. S. 50.

It has been held not to apply to injuries sustained within a coffer dam in navigable waters, waters inside the dam having been withdrawn from navigation.

Jeffers v. Foundation Co., 85 F. 2nd 24.

The passage of the United States Longshoremen's and Harbor-Workers' Act, however, would seem to remove all employees not coming within the exception in that statute of "master and members of the crew of a vessel" from the purview of this section.

(e) *The Federal Death Statute*

The Act of March 30, 1920, C 111, sec. 1-7, 41 Stat. 537, 46 U. S. C. A., secs. 761-767 authorizes the bringing of a suit for damages in admiralty in cases where death is caused by wrongful act, neglect or default occurring on the high seas, beyond a marine league from shore of any state, district or territorial possession of the United States. The measure of recovery is "fair and just compensation for the pecuniary loss sustained". The action must be brought within two years from the date of the wrongful act, but it is provided that the right of action shall not be deemed to have lapsed until 90 days after a reasonable opportunity to secure jurisdiction.

The act does not affect the provisions of any state statute giving rights of action for death by wrongful act. It does not apply to the Great Lakes, nor to waters within the territorial limits of any state.

This act was enacted prior to the Jones Act, and the exact effect of the Jones Act upon it in cases of the death of seamen by wrongful act has not as yet been authoritatively decided. The Jones Act gives a right of action *in personam* only. This act gives a right of action in admiralty, and could doubtless be enforced by libel *in rem* in a case where the vessel could properly be held responsible. It seems on the whole probable that the remedy under the Jones Act is elective, as in case of action for damages, and in that case there is no real conflict.

The act undoubtedly has application in cases where the seaman is killed by the tort of a vessel other than his own, and, of course, to cases where another than a seaman is killed. When the tort of a foreign vessel is the cause of death; the vessel can be proceeded against under this statute, or under the law of the country of the vessel.

The Windrush, 286 F. 251.
The Buenos Aires, 5 F. 2nd 425.

The state laws may still be applied in case of death on navigable waters within the state bounds in any case where neither the Jones Act, the Longshoremen's and Harbor-Workers' Act nor a state compensation act is applicable.

O'Brien v. Luckenbach S. S. Co., 286 F. 301.

It seems probable that the act has application when the wrongful act occurs on the high seas, even though death takes place on shore: though this has been questioned.

(f) *The Longshoremen's and Harbor-Workers' Act*

The Act of March 4, 1927, C 509, 33 U. S. C. A., secs. 901 et seq., the so-called Longshoremen's and Harbor-Workers' Act, was passed as a result of Federal decisions heretofore noted, indicating that while Congress could enact a compensation law of its own covering employees within the Federal maritime jurisdiction, it could not make state compensation acts applicable thereto.

The act is a compensation act. It applies generally to injuries or death sustained by any employee on navigable waters of the United States (including any dry dock.) It specifically does not apply.

1. To injuries or death for which compensation may validly be provided by state law.
2. To the master or member of the crew of any vessel.
3. To any person engaged by the master to load, unload or repair any small vessel under 18 tons net.

The act has not up to date produced a considerable volume of decisions indicating its scope. As above indicated, it was intended not to cover all injuries on navigable waters, but only such as could not be validly covered by state acts. It may be noted that the line of application begins, not at the point actually covered by state laws, but at the point to which the state might validly extend its laws.

U. S. Casualty Co. v. Taylor, 64 F. 2nd 521.
Continental Casualty Co. v. Lawson, 64 F. 2nd 802.
U. S. F. & G. Co. v. Lawson, 15 F. Supp. 116.

(1) *"Including any Dry Dock"*

As previously noted, state compensation acts have no application to workers on vessels in dry docks, whether floating dry docks or "graven" dry docks. The act therefore may properly apply to such workers. As to workers on vessels on marine railways, the decisions are in conflict. Two cases held that the phrase quoted does not cover the case of a ship on a marine railway.

Colonna's Ship Yard v. Lowe, 22 F. 2nd 843.
Norton v. Vesta Coal Co., 63 F. 2nd 165.

One case, and a very well considered case, holds that it does. This case involved a vessel hauled upon a dock for repair. The court held the act applicable.

Continental Casualty Co. v. Lawson, 2 F. Supp. 159, 64 F. 2nd 802.

The court cited in support of its position the reasoning in the case of North Pacific S. Co. v. Hall Brothers, 249 U. S. 919. As indicated previously, the distinction between a vessel under repair in dry dock and a vessel under repair on a marine railway is technical, and the considerations which would refuse state compensation acts application in the one case should operate in the other also.

(2) *Vessels Under Repair*

As previously indicated, workers on vessels under repair come under the state compensation acts if injured on land, under the maritime law if injured on a vessel lying in navigable water or on the water. This line of cleavage indicates the application of the Longshoremen's and Harbor-Workers' Act.

Merchants' and Miners' Transp. Co. v. Norton, 32 F. 2nd 513.

(3) *Vessels Under Construction*

As previously indicated, state compensation acts apply to workers on vessels under construction, even after they are launched and lying in navigable waters. To such workers the Longshoremen's and Harbor-Workers' Act has no application.

U. S. Casualty Co. v. Taylor, 64 F. 2nd 779.
(Reversing Taylor v. Lawson, 60 F. 2nd 135.)

(4) *Loading and Unloading of Vessels*

In case of stevedores and longshoremen, a question exists, not as to the line of demarcation separating the application of state acts from the application of the maritime law, but whether, in the maritime field, they come under the Jones Act or the Longshoremen's and Harbor-Workers' Act. As previously noted, certain stevedores and longshoremen were held to come within the term "seamen" as used in the Jones Act. The broad and general terms of the Longshoremen's and Harbor-Workers' Act are inclusive of stevedores and longshoremen, and the exception of master and members of the crew does not apply to them.

L'Hote v. Crowell, 54 F. 2nd 212 (rev., 286 U. S. 512).

Moore v. Christensen S. S. Co., 53 F. 2nd 299.

(5) *Car Floats*

These have raised a peculiar jurisdictional question as to railroad employees working in connection with

handling cars on car floats. It would seem to be settled that while so engaged, their rights, in case of injury, are determined, not by the Federal Employers' Liability Act, but by the Longshoremen's and Harbor-Workers' Act.

Nogueira v. N. Y., N. H. & H. R. Co., 32 F. 2nd 179, 281 U. S. 128.

Buren v. So. Pac. R. Co., 50 F. 2nd 407.

Richardson v. Central R. of N. J., 253 N. Y. S. 789.

(6) *Exception of "Master and Members of the Crew of a Vessel"*

The two preceding headings indicate certain classes of employees on vessels which do not come within the exception. The term "master" properly means the officer in command of a vessel, and he does not lose his standing as master, even if he receives a fatal injury, not on his own ship but while starting the engine on another ship owned by the same employer.

Merchants' and Miners' Transp. Co. v. Norton, 32 F. 2nd 513.

The term "crew" properly means all persons on board a vessel who constitute with the master the ship's company.

B. & O. R. Co. v. Parker, 4 F. Supp. 815.

Kibadeaux v. Standard Dredging Co., 81 F. 2nd 670.

There has been a tendency to construe the act broadly, as is to be expected in case of remedial legislation, and consequently to construe the exceptions narrowly.

Thus, the exception has been held not to exclude a third officer, paid off and re-engaged as night watchman on a vessel in dry dock.

Union Oil Co. v. Pillsbury, 63 F. 2nd 925.

Similarly in case of a night watchman on a vessel in winter quarters.

Seneca Washed Gravel Co. v. McManigal, 65 F. 2nd 779.

Similarly in case of painter in shipyard drowned while piloting motorboat for a few hours at employer's direction.

Wheeler Shipyard v. Lowe, 13 F. Supp. 863.

Similarly in case of employee injured while repairing vessel, who expected to become member of crew when vessel was fit for service.

Taylor v. McManigal, 14 F. Supp. 419.

A more peculiar line of decisions appears to be developing in case of employees on barges. A bargeman is properly a seaman, even if he is the sole person on the barge.

B. & O. R. Co. v. Parker, 4 F. Supp. 815.

But a person employed on a barge in stencilling ties is not a member of the crew, within the reasoning of the exception.

T. J. Moss Tie Co. v. Tanner, 44 F. 2nd 928.

And it has been further held that, since "crew" is a collective term, the exception does not apply to the sole employee on a barge.

De Wald v. B. & O. R. Co., 71 F. 2nd 810.
Harper v. Parker, 9 F. Supp. 744.
Diomede v. Lowe, 14 F. Supp. 380, 87 F. 2nd 296.

(7) *Exception of a Person Employed by the Master to Load, Unload or Repair a Vessel Under 18 Tons Net*

The object of this exception is, apparently, to limit the power of the master to burden small vessels with charges. It does not exclude persons employed by the owner.

Continental Casualty Co. v. Lawson, 64 F. 2nd 802.

While the development of a body of decisions as to the scope of the act is not far advanced, it seems unquestioned that the act does not conflict with state compensation acts, but is limited to the maritime field. In that field it seems likely that it will be broadly construed, and that the exceptions will be narrowly construed: even though this trespasses on fields heretofore covered by other liability statutes. It can apply to "seamen" only when they do not come within the designation of "members of the crew", and it of course has no application on the high seas.

4. *The Water Boundaries of States*

This is pertinent to the subject just discussed because of its close relation to the general maritime problem. While in general the states of the Union are sovereign states, and their boundaries are fixed according to principles recognized by international law, this has, in case of the states been highly modified by the circumstances attending their creation, by treaties, both international and between the states, and by the fact of the impermanence of certain of the bounds.

(a) *Boundaries on the Sea*

A state may, in the exercise of its sovereignty extend its bounds one marine league from low water mark and if this is done, the region so annexed is an integral part of the territory of the state.

Manchester v. Massachusetts, 139 U. S. 234.
U. S. v. Newark Meadows Improvement Co., 173 F. 426.
59 C. J. 57, note 19.

This is perhaps true if there is no express extension, provided there is no direct limitation or exclusion of such waters.

Ex parte Marincovich, 192 P. 156 (Cal.).
Ocean Industries, Inc. v. Super. Court, 252 P. 722 (Cal.).

This rule applies, not only to the mainlands, but to islands forming part of it.

Ex parte Marincovich, Supra.
Suttori v. Peckham, 191 P. 960 (Cal.)

The rule as to indentations in the coast line, that is to say, measuring the marine league from a line drawn from headland to headland has been held to apply in case of state bounds.

Thus, the Bay of Monterey, with headlands 18 miles apart, and having a maximum width of 22 miles and depth of 9 miles has been held as wholly included within the State of California.

Ocean Industries, Inc. v. Super. Court, Supra.

Thus Buzzards Bay, which is over one but less than two leagues between headlands, widening out to a greater distance, has been held within the boundaries of Massachusetts.

Manchester v. Massachusetts, Supra.

Certain of the states have, under acts of admission or by constitution, extended their bounds beyond the one league limit.

Thus, Florida has extended its bounds a distance of three leagues from the coast.

Lipscourt v. Kaloroukas, 133 So. 107.
Pope v. Blanton, 10 F. Supp. 18.

Louisiana has extended its bounds three leagues out towards the Gulf, and Mississippi includes islands six leagues from the coast.

Louisiana v. Mississippi, 202 U. S. 1.

(b) *Boundaries on the Great Lakes*

The international boundary between the United States and Canada, also the St. Lawrence, the Great Lakes and the communicating waters was originally fixed by the Definitive Treaty of Peace, concluded at Paris, September 3, 1783, and ratified by Congress January 14, 1784. The Treaty of Ghent, concluded December 24, 1814 and ratified February 17, 1815, provided for a redetermination of this boundary by a commission, which met and agreed as to the bounds from the St. Lawrence to Lake Superior, but disagreed as to the bound from Lake Huron to the Lake of the Woods. The decision was dated June 18th, 1822. The boundary was finally settled by the Webster-Ashburton Treaty, concluded August 9, 1842 and ratified August 22, 1842. The boundaries of the states go out to the international boundary.

Edson v. Crangle, 56 N. E. 647 (Ohio).

Chicago Transit Co. v. Campbell, 110 Ill. App. 366.

The state lines in Lake Michigan, as between Wisconsin and Michigan follow the middle of the lake. Wisconsin was admitted by the Act of August 6, 1846, and the boundary on the lake was fixed by drawing a line from the northeast corner of the State of Illinois to the Michigan line, and following that line north.

Bigelow v. Nickerson, 70 F. 118.

(c) *Boundaries on Rivers*

These have led to a deal of litigation, mainly on the question whether a bound by the "middle of the river" is the mathematical middle or the middle of the navigable channel, the doctrine of the Thalweg. The latter is the rule generally adopted.

See 59 C. J. 52, 53 and notes.

Another series of questions are created by the terms of treaties and conventions, cessions, acts of admission, etc. Among these may be noted:

(1) The Ohio River border of Kentucky extends under the act of cession by Virginia to the United States of the Northwest Territory, to low water mark on the Northwestern side of the river.

Nicoulin v. O'Brien, 248 U. S. 113.

59 C. J. 56, notes 13 (a), (c), (d).

(2) The bound on the Chattahoochee between Georgia and Alabama is dependent on the contract of cession between the United States and Georgia, which carries the Georgia line to the Western bank.

Alabama v. Georgia, 23 How. 505.

On the other hand, the middle of the Chattahoochee determines the bound between Georgia and Florida.

Florida Gravel Co. v. Capital City Sand Co., 170 Ga. 855.

(3) The bound between Georgia and South Carolina on the Savannah and Tugalo rivers is under the Beaufort Convention of 1787, at the middle part of the stream, without regard in the channel.

Georgia v. South Carolina, 257 U. S. 516.

(4) The bound between New Mexico and Texas is the middle of the Rio Grande as it was on September 9, 1850.

New Mexico v. Texas, 275 U. S. 279.

(5) The boundary between Washington and Oregon is the middle of the North Ship Channel in the Columbia River.

Washington v. Oregon, 214 U. S. 205.

(6) The Texas Arkansas boundary is on the southern bank of the Red River.

Oklahoma v. Texas, 261 U. S. 340.

Another series of cases involve changes in the course of a river. The general rule is that a gradual change in channel shifts the boundary line, but that a sudden change or "avulsion" does not. In the states along the Mississippi consequently, and to some extent on other rivers, the boundary originally on the river, may in places no longer be there. The line between Louisiana and Mississippi, Mississippi and Arkansas and Tennessee and Arkansas have been the theme of much litigation: and there are also cases involving the Illinois, Iowa, Missouri, Kansas and Nebraska river boundaries.

59 C. J. 59 and notes.

(d) *Boundaries on Sounds, Bays, Straits, Gulfs and Estuaries.*

The rule of the middle of the channel is generally applied.

(e) *The Water Bounds of New Jersey and New York*

These deserve special consideration because of their importance. The question what law applies is of considerable importance when there is such a notable difference in law, as for instance, in the death statutes of New York and New Jersey.

The New York bound in Long Island Sound has been

involved in litigation. The Sound did not figure in the Colonial charters of either New York or Connecticut. There is thus a question as to whether it or any part of it belongs to either state.

The Elizabeth, 8 F. Cas. No. 4, 352, 1 Paine 10.

Probably, however, the line between Connecticut and New York lies in the middle of the Sound and the part of the Sound wholly within the bounds of New York is part of the territory of New York.

Mahler v. Norwich Transp. Co., 35 N. Y. 352.

The line between New York and New Jersey was until 1833 involved in doubt because of the conveyancing of the Duke of York, who by grant in 1660 obtained the territory of both colonies, and thereafter made the New Jersey grant. On account of the wording of that grant, New York claimed that its line ran along low water mark on the New Jersey side all down the Hudson, New York Bay, the waters between Staten Island and New Jersey, and Raritan Bay clear to Sandy Hook, including all islands in the river and bay. The bounds were so expressed in the first statutory declaration of the bounds, and in the Montgomery charter of the city of New York, granted in 1730.

New Jersey, naturally, claimed to the center of the river and of New York Bay, and began suit in the Supreme Court of the United States in 1829 to determine the line. Ultimately, the states agreed to the appointment of a commission, and this commission drafted a treaty, usually referred to as the Treaty of 1833. It was approved by Congress under date of June 25, 1834, U. S. Statutes at Large, volume 4, p. 708. By this treaty, the line was declared to be the middle of the Hudson River, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay to the Main Sea.

The Treaty, however, provided that New York should retain "its present jurisdiction of and over Bedlow's and Ellis' Island, and shall also retain exclusive jurisdiction of and over other islands lying in the waters above mentioned and now under the jurisdiction of that state".

Also, the Treaty stipulated for "exclusive jurisdiction" in the state of New York over all the waters of the Bay of New York and over all the waters of the Hudson River, west of New York and South of Spuyten Duyvil Creek and over the lands covered by said waters.

This was subject to New Jersey's rights of property in the land west of the boundary line, and to its jurisdiction

over wharves, docks and improvements on the New Jersey side, and a right to regulate fisheries on its side of the boundary.

As to the waters between Staten Island and New Jersey, "exclusive jurisdiction . . . . in respect to such quarantine laws and laws relating to passengers as now exist or may hereafter be passed" was retained by New York over the Kill van Kull and the sound, as far as Woodbridge Creek.

New Jersey had similar "exclusive jurisdiction of the waters of the Sound below Woodbridge Creek and over Raritan Bay", westward of a line drawn from "the Lighthouse at Pierce's Bay to the mouth of Mattawan Creek".

This was subject to the same rights in New York as were granted New Jersey in case of the upper waters. The territorial boundary established by this line is not difficult until it reaches Raritan Bay. The question was raised in a case involving the location of a wreck: and the court indicated that the "main sea" referred to in the treaty meant the ocean outside a line drawn from Sandy Hook to Coney Island. The treaty line ran to the center of the line thus located, and thence by the center of the shortest lines between the New Jersey coast and Staten Island.

Morris v. Board of Supervisors of Richmond County, 73 N. Y. 393.
Re Devoe Mfg. Co., 108 U. S. 461.

The limits of the jurisdictional field established by the treaty are precise enough. There is, however, some question as to the extent of jurisdiction intended to be conveyed. A number of cases, one in the Supreme Court of the United States involved the point: and there seems to be a question as to whether what the treaty calls exclusive jurisdiction is not merely a restricted jurisdiction designed for police and sanitary purposes and to promote the interests of commerce in the use and navigation of the waters.

People v. Central Railroad of New Jersey, 42 N. Y. 283.
Ferguson v. Ross, 126 N. Y. 459.
Central R. of N. J. v. Jersey City, 58 A. 239, 61 A. 1118, 209 U. S. 410.
Cook v. Weighley, 59 A. 1029, 64 A. 196.
Leary v. Jersey City, 189 F. 419, 208 F. 854.
The Rhein, 204 F. 253.
Carlin v. N. Y., N. H. & H. R. R. Co., 135 App. Div. 876.

This last case involved the application of the New York Death Statutes to a death case caused by a marine accident on the New Jersey side of the river. The court held

the act applied. It is not, however, a decision of a court of last resort, and in view of language used in the other cases may not prove the final answer. It is a matter of considerable importance whether the New York Compensation Act and the New York liability acts go by the territorial boundary or the jurisdictional boundary.

Clarke v. Ackerman, 278 N. Y. S. 75.

The boundary line on the other side of New Jersey has also been in controversy, but has recently been settled.

State of New Jersey v. State of Delaware, 54 S. Ct. 407.

The boundary here is peculiar. It follows the center of the main channel, but Delaware owns the river bed within the limits of a twelve mile circle about the town of Newcastle.

The foregoing is not exhaustive. The water boundaries of the several states have been the theme of a deal of litigation, but in proceedings based on personal injuries of an employee, only a relatively few locations give rise to a material number of injuries. The arduous task of mapping out each and every water boundary of each and every state is hardly within the scope of the present undertaking: but it is thought the information above given includes most of what is practically of consequence.

VI. Conclusion

The United States is, among the great nations of the world, the leading exponent of the Federal type of organization. It is a national government of limited powers superimposed upon a group of states, each sovereign save to the extent that governmental powers have been vested in the National Government. Politically, this type of government has certain incontestable advantages. It enables states to act together for national purposes without forfeiting their identity and their powers of local self-government. But the foregoing study points out one concomitant disadvantage, namely the variation in private rights and duties between jurisdiction and jurisdiction, and a most undesirable difficulty in determining those rights and duties in cases which fall at or near the dividing line.

A great deal of the difficulty would disappear if there were a greater degree of uniformity in the laws governing the employer-

employee relationship. The problem of conflict of laws as between state and state would not be serious if the states would effect a degree of uniformity in their compensation acts with regard to such matters as employers, employees and injuries covered by the Act, benefit provisions and application to extra-territorial injuries. Such uniformity is by no means probable. Conflict of laws between the states and the Federal jurisdiction would be less serious if the Federal Government made a more extensive application of the compensation principle, bringing masters and crews of vessels and employees subject to the Federal Employers' Liability Act within the terms of a Federal Compensation Law, and if uniformity could be secured between state compensation acts and Federal compensation acts. But this again seems by no means probable.

That the difficulty is of no mean proportion can be seen by viewing the number of cases cited in this study and in the previous study on the extra-territorial application of compensation acts. The remedy, if there be one, must probably be worked out through the Federal government. The Federal government has probably power under the Full Faith and Credit clause to enact legislation defining the proper extra-territorial application of compensation acts. Under recent decisions of the Supreme Courts, its jurisdiction over interstate commerce is far more extensive than had been supposed, and it seems not improbable that it could extend its compensation acts far enough to wipe out the jurisdictional conflicts which have been discussed. That, however, is for the future. Whether the present tendency towards an increase, *de jure* or *de facto,* in the powers of the Federal government will continue cannot at the moment be foretold.

Let it be marked down, however, as a point which will one day require settlement, that rights and duties of employer and employee should be reasonably uniform as between state and state, and as between state jurisdiction and Federal jurisdictions, and that the policy of states and of Federal government alike should be directed towards the avoidance of situations where the rights of the employee may be imperiled or confused by the necessity of determining obscure issues of fact or controverted points of law.