

# Butler v. American Trawler Company United States Court of Appeals, Fifth Circuit, 6 October 1989 887 F.2d 20

William Bennet '92

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### BUTLER v. AMERICAN TRAWLER COMPANY

United States Court of Appeals, Fifth Circuit, 6 October 1989  
887 F.2d 20

**An invited ship passenger's diversity action against a wharf owner to recover for injuries sustained while attempting to board a docked ship was governed by maritime law's three year statute of limitations.**

**FACTS:** Barbara Butler alleged that on May 8, 1984, she tried to board a ship, the Sea Lion VII, docked in Newington, New Hampshire. As she approached the end of the wharf, she noticed that the ladder from the wharf to the ship was not usable. She decided to climb down to the Sea Lion VII using the vessel's rigging, which was in close proximity to the wharf. While attempting to board the ship in this manner, she severely injured her finger in the ship's rigging. She sued on the theory of negligence, claiming that American Trawler, the owner of the wharf, failed to provide a usable ladder. The district court granted American Trawler's motion for summary judgment. The motion was based upon Butler's failure to file suit within the three year statute of limitations, imposed by federal maritime law. 46 U.S.C. App. §763a. Butler had argued that Maine's six year statute of limitations applied.

**ISSUE:** Whether boarding a ship bears significant relation to traditional maritime activities, for the purposes of determining in a diversity suit, whether a tort that occurs while boarding a ship, is within admiralty jurisdiction and thereby governed by maritime law?

**ANALYSIS:** The Court of Appeals, for the Fifth Circuit, held that boarding a ship was within admiralty jurisdiction and governed by maritime law's three year statute of limitations. Maritime law will govern if admiralty jurisdiction pertains. *Austin v. Unarco Industries, Inc.*, 705 F.2d 1 (1st Cir. 1983). Admiralty jurisdiction will lie when the tort at issue 1) occurred on navigable waters and 2) bore a significant relation to traditional maritime activities. In the case at hand, the tort occurred on navigable waters. The fact that the injury took place on the ship, precluded a debate over whether the wharf was to be considered part of the land. For the purposes of admiralty jurisdiction, the controlling case law holds that the tort occurs where the negligence "takes effect," not where the negligent act took place. *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 266 (1972).

In addition to the fact that the injury occurred on navigable waters, is the unarguable fact that the boarding of a ship bears a significant relationship to the traditional activities associated with maritime tasks. Boarding and walking on a ship is significantly different from walking into and around a building.

Butler alleges that the three year federal statute of limitations is not applicable because it is not part of substantive maritime law. Butler claims that the three year statute of limitations is procedural, therefore, the federal court should apply the six year Maine statute of limitations for this diversity action. The Supreme Court has made clear that a maritime tort is a "type of action which the constitution has placed under national power to control in its substantive as well as its procedural features." This negates the need to discuss what part of the legal lore will surround the terms "procedural" and "substantive". *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409 (1953). Thus the relevant question is not whether the federal statute of limitations, 46 U.S.C. App. §763(a), is "substantive" or "procedural," but whether Congress intended the statute to preclude the operation of different state limitations in respect to maritime torts. The language and the legislative history of the subsequently enacted federal statutes contain nothing to suggest that Congress intended to permit states to apply their own, differing statutes of limitations. In 46 U.S.C. App. §763(a), the words "unless otherwise specified by law," refer only to federal law, and not to state law.

Under general maritime law, therefore, a plaintiff may not begin a personal injury action, based upon a maritime tort, more than "three years from the date the cause of action accrued." Butler's action was correctly dismissed for failing to file the suit within the applicable time period.

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