

June 2014

Admiralty--Jurisdiction--Suit for Wrongful Death-- Place of Death--Injury to Diver (Millers' Underwriters v. Braud, 270 U.S. 49 (1926))

St. John's Law Review

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Recommended Citation

St. John's Law Review (2014) "Admiralty--Jurisdiction--Suit for Wrongful Death--Place of Death--Injury to Diver (Millers' Underwriters v. Braud, 270 U.S. 49 (1926))," *St. John's Law Review*: Vol. 1: Iss. 1, Article 18.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol1/iss1/18>

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26 N. Y. 117, 123 (1862), and in later cases, an agent was held liable for damages for a breach of contract arising out the agent's implied warranty on an unauthorized power he assumed to possess. *Baltzen v. Nicolay*, 53 N. Y. 467 (1873); *Taylor v. Nostrand*, 134 N. Y. 110, 31 N. E. 246 (1892); 116 App. Div. 748 (2nd Dept. 1907), 113 N. Y. Supp. 688, 61 M. 286 (1908). Proceeding further, on a written contract to purchase a plant of a new company to be thereupon organized, the defendants were not held liable; *Fowle v. Kerchner*, 87 N. C. 49 (1882); thereby following the point most stressed in the Court of Appeals of Kentucky, which held that where the agent did not undertake to guaranty a ratification, one cannot bind him; *Murray v. Carothers*, 1 Metc. (Ky.) 71 (1858). In the principal case, there is no dispute as to the parties to the contract. The defendant, was not named as purchaser, but a corporate vendee was specified. There was no mistake, either mutually or unilaterally, thus it follows that the contract was not of the defendant nor can he be a substitute vendee, for to do so would be the effecting of a new contract. The authority for the preceding statement has been based upon the qualification of the general rule of law, as to the agent's personal liability, *Ogden v. Raymond*, 22 Conn. 379, 385 (1853), (58 Am. Dec. 529), with the aid of another state's corollary ruling; *Belding v. Vaughan*, 108 Ark. 69, 157 S. W. 400 (1913), where knowledge is imputed.

Upon authority, therefore, unless it is clear that an agent, upon the face of the contract is intended to be personally bound, the agent cannot be held, *Mechen Agency* (1st Ed.), Sect. 550, and "even though the contract itself cannot be enforced against the principal, the agent may be held for the fraud." 2 Clark & Syles, *Law of Agency*, Sec. 567. Thus, the action on a contract by an unauthorized agent in dealing with another, can be compelled to respond therefor, for the loss occasioned by his act, *Taylor v. Nostrand*, 134 N. Y. 108, 110; 31 N. E. 246, 247 (1908), and again, recognized for the damages sustained by the purchaser. *Rowland v. Hall*, 121 App. Div. 459, 106 N. Y. Supp. 55 (2nd Dept. 1907). Thus, it is submitted that the action cannot be properly upheld for specific performance and that relief can only be granted in an action based upon fraud.

ADMIRALTY—JURISDICTION—SUIT FOR WRONGFUL DEATH—PLACE OF DEATH—INJURY TO DIVER—Plaintiff's intestate, while employed as a diver by a shipbuilding company, submerged himself from a floating barge anchored in a navigable river in Texas thirty-five feet from the bank, for the purpose of sawing off timbers of an abandoned set of ways, once used for launching ships, which had become an obstruction to navigation. While thus submerged he died of suffocation due to failure of the air supply. Damages for the death were recovered from the employer's insurer under the workmen's compensation law of Texas. *Held*, that the facts disclosed a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state compensation Act; but the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist. *Millers' Underwriters v. Braud*, 270 U. S. 49 (1926).

The Supreme Court based its decision on the case of *Grant Smith-Porter v. Rohde*, 257 U. S. 469 (1922), which held that where a car-

penter was injured on an uncompleted vessel lying in navigable waters that the local statute prescribed an exclusive remedy; that the regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to the general maritime law, or interfere with the proper harmony or uniformity of that law, or in its international or interstate relations. See also, *Western Fuel Co. v. Garcia*, 257 U. S. 233 (1921); *Cooley v. Board of Wardens*, 12 How. 299, 19 U. S. 143 (1851); *Ex Parte McNeil*, 13 Wall (U. S.) 236 (1871); *American Steamboat Co. v. Chase*, 16 Hall (U. S.) 531 (1872); *The Hamilton*, 207 U. S. 398 (1907); *Sherlock v. Alling*, 93 U. S. 99 (1876).

However, the same court has held with reference to other compensation matters in which the admiralty jurisdiction was involved that because of their special relation to commerce and navigation, that they were beyond the regulatory powers of the state. *Great Lakes Dredge & Dock Co. v. Kierejeweski*, 261 U. S. 479 (1922); *Washington v. Dawson & Co.*, 264 U. S. 219 (1924); *Gonsalves v. Morse Dry Dock Co.*, 266 U. S. 171 (1924); *Robins Dry Dock Co. v. Dahl*, 266 U. S. 449 (1925).

The test of admiralty jurisdiction in torts is that of locality. The locality test has been applied to cases where a wharf collapsed and precipitated cargo into navigable waters. *Fireman's Fund Ins. Co. v. City of Monterey*, 6 Fed. (2nd) 893 (N. D. Cal. 1925). Where a workman who fell through an open hatch of a ship while in dry dock had no remedy in admiralty. *The Warfield*, 120 Fed. 847 (E. D. N. Y. 1903). However, there was such remedy in the case of injury to workmen who were injured by the falling of the anchor from a ship while in dry dock, though they were not even aboard the ship, but were on a staging erected for the purpose of enabling them to work outside the ship. *Anglo-Patagonian*, 235 Fed. 92, (C. C. A. 4th 1916). So too, a workman on a ladder which rested on the wharf, and extended up the ship's side, was injured by its slipping. The court denied its jurisdiction. *H. S. Pickands*, 42 Fed. 239 (E. D. Mich. 1890). Jurisdiction was denied in a case of a man who fell from a wharf in attempting to board a vessel, never having reached the ship. *Albion*, 123 Fed. 189 (N. D. Wash. 1903). In *Herman v. Port Blakely Mill Co.*, 69 Fed. 646 (N. D. Cal. 1895), a laborer working in the hold of a vessel was injured by a piece of lumber sent down through the chute by a person working on the pier. It was held that admiralty had jurisdiction. In *The Strabo*, 98 Fed. 998 (C. C. A. 2nd 1900), a workman attempted to leave a ship by a rope on the ship, which was not securely fastened. In consequence, he fell, being partly injured before he struck the dock, but mainly by striking the dock. It was held that admiralty had jurisdiction, because the injury occurred on the vessel, i.e., was consummated on the vessel, the injury on the dock was a mere aggravation of the one sustained on the vessel.

In view of the foregoing authorities it would seem that the Supreme Court is going far in permitting a tort occurring on navigable waters to be governed by a state law. Even though it is said to be a matter of mere local concern and that it does not in any way work material prejudice to the maritime law. It is submitted that no state should assume jurisdiction of an action which by its very nature is cognizable exclusively in admiralty.