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Case Digest

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Case Digest

The purpose of the *Case Digest* is to identify and summarize for the reader those recent and interesting cases that have less significance than those that merit an in-depth analysis. Included in the digest are cases that apply established legal principles without necessarily introducing new ones.

This digest includes cases reported from June through October, 1973. The Spring issue will include cases reported from October through February, 1974. The cases are grouped into topical categories, and references are given for further research. It is hoped that attorneys, judges, teachers and students will find that this digest facilitates research in problems involving aspects of transnational law.

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1. ADMIRALTY

DAMAGES FOR SURVIVOR'S GRIEF ARE NOT PROPERLY AWARDABLE IN GENERAL FEDERAL MARITIME ACTION FOR WRONGFUL DEATH

Petitioner, Canal Barge Company, Inc., sought review of the district court's finding that it was solely liable for damages caused when its towboat struck a bridge spanning the Mississippi River. Arguing that the negligence of its pilot, Griffith, who was killed in the collision, was the proximate cause of the accident, petitioner sought to limit its liability and to recover indemnification from Griffith's estate. Griffith's personal representative cross-appealed from the district court's determination that damages for survivor's grief are not properly awardable under general maritime law. On the issue of Griffith's contributory negligence, the Court of Appeals for the Fifth Circuit reversed and held that as a matter of law knowledge of particular current conditions existing under high water circumstances is imputable to an experienced pilot like Griffith who knew of the high water level. The court referred to the district court, however, the determination of whether petitioner was entitled to some degree of indemnification for the negligence of its employee. As to wrongful death damages, the court upheld the district court's two per cent inflation adjustment to damage computations for loss of future earnings and the court's refusal to allow for income tax deductions, since decedent's annual estimated earnings were not "clearly above the reach of the middle income scale." The court then rejected the personal representative's argument that damages for survivor's grief, including compensation for lost love and affection, are recoverable under the wrongful death action created by *Moragne v. States Marine Lines*, 398 U.S. 375 (1970). Following the method suggested in *Moragne* for a determination of the recovery justified in the instant case, the court looked first to general maritime law, then to the remedial policies indicated by Congress in the Jones Act, 46 U.S.C. § 688 (1970) and the Death on the High Seas Act, 46 U.S.C. §§ 761-68 (1970) and finally to the policies of state death remedies, where applicable in a maritime context. The court found an explicit policy against allowing recovery for survivor's grief under general maritime and federal statutory sources, and reasoned that the rationales favoring recoverability for this claim in state death actions "are too divergent and ill defined to override the policies against recoverability manifested in general maritime law and in the federal statutes." *Petition of M/V Elaine Jones*, 480 F.2d 11 (5th Cir. 1973).

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LONGSHOREMAN IS NOT THIRD PARTY BENEFICIARY OF MARITIME STEVEDORING AND CHARTER PARTY CONTRACTS

The plaintiff longshoreman sought recovery for his pierside injuries that were caused by a landbased forklift while he was loading a ship. Neither the ship nor its gear was responsible for the injuries. Although *Victory Carriers v. Law*, 404 U.S. 202 (1971), foreclosed recovery against the ship or its owners, plaintiff nevertheless sought to sustain admiralty jurisdiction on the theory that he was the third party beneficiary of maritime contracts between his stevedore employer and the United States, time charterer for the vessel and terminal owner, and between the United States Lines, the owner of the vessel, and the United States. The Fourth Circuit upheld the district court's judgment for the defendants. The court determined that the stevedore's warranty of workmanlike performance ran to the vessel and its charterer, and not to the longshoreman, and that the United States as charter party had no contractual duty to the longshoreman. *Bernard v. U.S. Lines, Inc.*, 475 F.2d 1134 (4th Cir. 1973).

SHIPOWNER'S LIABILITY FOR REMOVAL OF VESSEL WRECKAGE NOT LIMITED BY THE SHIPOWNER'S LIMITED LIABILITY ACT

Plaintiff owner's ship sank in the Panama Canal. Since the sunken hull obstructed canal passage, the Panama Canal Company removed the wreckage following notification by the shipowner that the vessel had been abandoned, and charged the owner with removal expenses. The owner sought to limit his liability for these costs to his interest in the vessel and her freight, pursuant to the Shipowners' Limited Liability Act, 46 U.S.C. § 183 (1970), on the ground that his failure to remove, and the removal costs incurred, were "without his privity or knowledge." Because section 15 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 409 (1970), imposed a duty on the owner of sunken craft to remove the wreckage from a navigable channel, the Canal Company asserted that it should recover the expenses incurred in freeing the Canal of the obstruction. The Court of Appeals for the Second Circuit affirmed the district court's denial of a limitation on the owner's liability. Observing that Congress consistently has enacted provisions designed to insure the expeditious removal of obstructions by their owners from navigable channels, the court concluded that this particular obligation may not be limited by the privity or knowledge provisions of the Limited Liability Act. To enforce such a limitation, the court reasoned, would defeat congressional intent. *In re Chinese Maritime Trust, Ltd.*, 478 F.2d 1357 (2d Cir. 1973).

COURTS MAY ADOPT STATE LAW FOR MEASUREMENT OF DAMAGES IN MARITIME TORT ACTION

Plaintiff, a tugboat captain, sued defendants, union organizers, for personal injuries sustained by plaintiff during a beating by defendants. Appealing from a judgment by the district court that granted him \$5,000 in damages, plaintiff contended, *inter alia*, that the court erred in refusing him punitive damages. The Court of Appeals for the Fifth Circuit, however, affirmed the lower court decision. The court found that though this was a maritime tort, in all other respects it constituted a state tort claim. Therefore, the court reasoned that the district court properly had followed the principle of *Alcoa Steamship Co. v. Charles Ferran & Co.*, 383 F.2d 46, *cert. denied*, 393 U.S. 836 (1967), that courts applying maritime law may adopt state law by express or implied reference, or by virtue of the interstitial nature of federal law, and had applied Louisiana tort law denying plaintiff recovery for punitive damages. *Baggett v. Richardson*, 473 F.2d 863 (5th Cir. 1973).

2. BORDER SEARCHES

A HUNCH IS INSUFFICIENT BASIS UNDER FOURTH AMENDMENT FOR BORDER SEARCH AND ARREST

Defendants, two pier watchmen, were arrested in their car following their departure from the pier by customs agents who had fleetingly observed that one of the defendants was carrying a tote bag that appeared unusually heavy. Following an exploratory, warrantless search of defendants' car incident to the arrest that produced goods stolen from the pier area, a United States Magistrate convicted the defendants of theft from a shipment in international commerce. On appeal, defendants contended first that the search lacked the requisite probable cause, and secondly, that if the search qualified as a border search, nevertheless the customs agents' lack of the necessary reasonable suspicion to believe that defendants were violating the customs laws should have caused the Magistrate to grant defendants' motion to suppress the discovered evidence. Relying on *United States v. McGlone*, 394 F.2d 75 (4th Cir. 1968), which deals with border searches of those who work on docks, plaintiffs argued the reasonable basis for this alleged "border search." The District Court for the Eastern District of Washington reversed defendants' convictions on finding inadmissible the evidence obtained from the car search. Finding that the search constituted a "border search" because it fell within the "reasonably extended geographic area in the immediate vicinity of an entry

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point" as required by *United States v. Glaziou*, 402 F.2d 8 (2d Cir. 1968), the court then looked to all the facts and circumstances, under the rule of *Cooper v. California*, 386 U.S. 58 (1967), and found no reasonable basis for the customs agents to believe that defendants were introducing goods into the United States in a manner contrary to the customs laws. In reaching this decision, the court distinguished *McGlone* on its facts and emphasized here the lack of the agents' prior knowledge that goods were missing or of any reason to suspect the defendants, and the unlimited and unreasonable extent of the exploratory search conducted. The court concluded, therefore, that the mere hunch, arising from the arguably unusual manner in which one of the defendants carried a bag, together with the proximity of the search to the border area, was insufficient to satisfy the reasonableness requirement of the fourth amendment for border searches. *United States v. Murray*, 354 F. Supp. 604 (E.D. Pa. 1973).

3. CONSTITUTIONAL LAW

STATE STATUTE PROHIBITING THE IMPORTATION OF FOREIGN FIREARMS PARTS IS AN UNCONSTITUTIONAL INVASION OF THE CONGRESSIONAL POWER TO REGULATE FOREIGN COMMERCE

Appellants R.G. Industries and Firearms Import and Export Corporation, Florida manufacturers of firearms utilizing foreign parts, challenged the constitutionality of Fla. Stat. § 790.26 (1972), an enactment that prohibited the assembly of any firearms from parts manufactured outside the United States. Appellants alleged that the Florida statute, by creating a direct state restraint on foreign commerce, violated the commerce clause of the United States Constitution, which vests in Congress exclusively the power to regulate foreign commerce. Florida urged that the enactment was a valid exercise of its police power because it would protect the public safety by removing a source of cheap, dangerous and easily-concealed handguns, one type of gun manufactured by appellants. The Supreme Court of Florida reversed the lower court's decision and held that the statute was an unconstitutional invasion of the congressional power over foreign and interstate commerce. While the United States Supreme Court, in *Huron Cement Co. v. Detroit*, 362 U.S. 400 (1960), has recognized that a proper application of a state's police power is a general exception to the commerce clause power of Congress, the court observed that this statute fell without the bounds of this exception. Since notwithstanding the language of the act, anyone could obtain a small handgun

in Florida merely by buying one made either with American parts or with foreign parts assembled in other states or abroad, the act would ban neither the sale nor possession of such guns in Florida. The court concluded, therefore, that the statute served no legitimate public purpose because it failed to protect the public and discriminated arbitrarily against foreign commerce. *R.G. Industries, Inc. v. Askew*, 276 So. 2d 1 (Fla. 1973).

4. CONTRACTS

OCEAN CARRIAGE RATES CHARGED UNITED STATES GOVERNMENT BY PRIVATE CARRIER DO NOT EXCEED PREVAILING RATES WHEN APPROVED BY FEDERAL TRADE COMMISSION AND IDENTICAL TO THOSE CHARGED OTHER SHIPPERS SIMILARLY SITUATED

Plaintiff, the United States Government, sought damages from defendant steamship company for alleged overcharges in the transportation of government-financed shipments of famine relief supplies to Turkey. Defendant had carried the goods to Istanbul and then had transported them on Turkish line ships to the Turkish ports of Trabzon and Samsun. Under the terms of the supplier's certificate that it executed for each shipment, defendant had represented that the rates charged did not exceed the prevailing rate for similar services or the rate paid to defendant for similar services by other customers similarly situated. Arguing that the "prevailing rates" were those under the Turkish National Maritime Line tariff, plaintiff contended that defendant breached its contract by charging plaintiff rates higher than prevailing Turkish rates for the Turkish part of the journey. Defendant responded that its rates accorded with those set by the Gulf/Mediterranean Ports Conference, a rate-fixing authority subject to the jurisdiction of the Federal Trade Commission, and to which the defendant was bound to adhere. Therefore, defendant alleged, it must charge all shippers, whether private or governmental, the same rates. Since the bill of lading covered the entire carriage, defendant also contended that plaintiff could not apply different rate schedules to the different parts of the carriage. The district court granted defendant's motion for summary judgment, and explained that its jurisdiction, under 46 U.S.C.A. § 817(a) (1970), extended here only to contract interpretation, and not to a consideration of the reasonableness of the rates charged. Relying on *United States v. Kansas City Southern Railway Co.*, 217 F.2d 763 (8th Cir. 1964), the court then ruled that plaintiff could not fragment its unitary carriage charge into two

parts for the purpose of determining what constitutes "prevailing rates" or "similar services." Concluding that defendant had charged plaintiff the rates paid for similar services by other customers similarly situated, the court found no contractual breach. *United States v. Lykes Brothers Steamship Co.*, 353 F. Supp. 1151 (E.D. La. 1973).

5. CRIMINAL LAW

EVIDENCE OF DEFENDANT'S PRIOR FOREIGN CONVICTIONS HELD ADMISSIBLE AND NOT VIOLATIVE OF *GIDEON V. WAINWRIGHT* WHERE VOLUNTARILY PROVIDED BY DEFENDANT

During his trial for having taken a motor vehicle without the consent of the owner, defendant voluntarily admitted six prior convictions in the province of British Columbia, Canada, as well as one in the forum state. During trial on the supplemental information alleging defendant to be a habitual criminal, the court also admitted testimony by the court reporter from the first trial concerning defendant's admissions of prior convictions. Following his conviction, and the court's determination that he was a habitual criminal, defendant appealed. Since the court had failed to determine whether defendant was afforded, or waived, counsel during the Canadian proceedings, defendant argued that, under *Gideon v. Wainwright*, 372 U.S. 335 (1963), the use of these prior convictions for the purposes of impeachment or enhancement of punishment could not be allowed, and must invalidate the verdict. The Court of Appeals of the State of Washington affirmed the conviction and ruled that the defendant's voluntary admission of his prior convictions denied him the protection of the *Gideon* rule. Since the testimony of the court reporter did violate the constitutional safeguards in *Gideon*, however, the court remanded the case to the trial court either for a hearing to determine whether defendant had had access to counsel in the British Columbia actions, or for resentencing without consideration of whether defendant was a habitual criminal. *State v. Paul*, 508 P.2d 1035 (Wash. App. 1973).

6. FOREIGN RELATIONS

PROCEDURALLY PROPER EXECUTIVE ORDER HELD SUFFICIENT TO ESTABLISH FOREIGN RELATIONS EXCEPTION TO FREEDOM OF INFORMATION ACT

Under the Freedom of Information Act, 5 U.S.C. § 552 (1970),

plaintiffs, history scholars, sought disclosure of a Department of Defense file, entitled "Forcible Repatriation of Displaced Soviet Citizens—Operation Keelhaul," that was created in 1946 by Allied Force Headquarters, a post-World War II joint British-American command. Section (b)(1) of the Information Act, however, exempts from disclosure matters that are "specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy." In his cross motion for summary judgment, defendant argued that the file was "classified" under Executive Order 11652, and that unilateral disclosure of the file without the unavailable concurrence of the British Government would prejudice the foreign relations of the United States. Notwithstanding the automatic declassification provided by that Order for documents held twenty years or longer, defendant also claimed protection from that requirement in the exception for materials "furnished by foreign Governments and international organizations." The District Court for the District of Columbia found that defendant met his burden of demonstrating exemption from the Act. The court reasoned that, under *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973), absent allegations of fraud or subterfuge it would look no further than the defendant's demonstration of the file's procedurally proper classification to establish its exemption because the realm of foreign relations is inappropriate for judicial intervention. The court then concluded that the contributions to the file by the British Government effected the exemption from mandatory declassification for foreign governmental materials. Therefore, the court granted defendant's motion for summary judgment. *Wolfe v. Froehle*, 358 F. Supp. 1318 (D.D.C. 1973).

7. IMPORT-EXPORT

TARIFF COMMISSION'S INJURY DETERMINATION UNDER ANTIDUMPING ACT OF 1921 UPHOLD AS SUPPORTED BY SUBSTANTIAL EVIDENCE UNDER COURTS' LIMITED POWER OF REVIEW.

Appellant, an importer of portland cement, protested the imposition of dumping duties pursuant to section 201 of the Antidumping Act of 1921, 19 U.S.C. § 160 (1970), against the entry of its cement at San Juan, Puerto Rico by attacking the validity of the Tariff Commission's determination that the sale of its imported cement at less than fair market value was likely to injure an industry in the United States. Appellant contended that the Tariff Commission had violated its statutory authority by basing its determination, in part, on the mere presence of sales at less than fair value,

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that the injury determination should be set aside as arbitrary under the Administrative Procedure Act, and that antidumping duties should not be imposed against its imports into Puerto Rico because they did not reasonably relate to the injury found to exist in the New York area. The Customs Court upheld the duties and the Court of Customs and Patent Appeals affirmed. Concluding that sales at less than fair value are reasonably related to a determination of injury under the statute, the court ruled that the Commission did not err in considering this evidence. The court next found that, under *City Lumber Co. v. United States*, 457 F.2d 991 (1972), the scope of judicial review of the Commission's finding is restricted to determining whether the Commission acted within its delegated authority, correctly interpreted the statutory language and then correctly applied the law. Although reserving opinion on the applicability of the Administrative Procedure Act, the court found that even under that more extensive scope of review the Commission's determination would not have been arbitrary since it was supported by substantial evidence. Notwithstanding the situs of the actual injury, the court then concluded that the same duties should be collected on importations to Puerto Rico as to the various states, since the statute includes Puerto Rico within the definition of "United States." *Imbert Imports, Inc. v. United States*, 475 F.2d 1189 (C.C.P.A. 1973).

UNITED STATES HELD NOT BARRED FROM BRINGING FORFEITURE CLAIM UNDER 31 U.S.C. § 443 AFTER CONVICTING PERSON OF IMPORTING GOLD WITHOUT LICENSE

Claimant illegally imported certain Austrian and American gold coins into the United States from Canada. After claimant's conviction under 18 U.S.C. § 545 (1970) for importing merchandise without having obtained a license, plaintiff United States then brought a forfeiture action pursuant to 31 U.S.C. § 443 (1970), which restricts the importation of gold into the United States. Claimant maintained that double jeopardy and res judicata bars the second proceeding, and argued that 31 U.S.C. § 443 (1970) is unconstitutional because it would result here in a taking of private property without compensation, violating the fifth amendment. The court rejected both of claimant's assertions and granted summary judgment for plaintiff. Relying on *One Lot Emerald Stones v. United States*, 409 U.S. 232 (1972), the court foreclosed claimant's first contention by holding that since forfeiture is a civil action, neither double jeopardy nor res judicata bars its institution after claim-

ant's criminal conviction. The court further reasoned that forfeiture of these gold coins is not protected by the just compensation clause of the fifth amendment. *Norman v. B. & O. R.R.*, 294 U.S. 240 (1935), excludes United States coins from such constitutional protection, and the court concluded that since the importation of foreign coins affects the currency of the United States, the Government has the constitutional power to regulate the entry of those coins. *United States v. Two Hundred Fifty-Four U.S. \$20 Gold Coins*, 355 F. Supp. 298 (E.D. Mich. 1973).

8. JURISDICTION

STATE COURT ISSUANCE OF TEMPORARY INJUNCTION AGAINST UNIONS PICKETING FOREIGN VESSELS HELD WITHIN STATE JUDICIAL DISCRETION AND NOT VIOLATIVE OF FEDERAL REGULATORY STATUTES

Appellant, an unincorporated labor organization, appealed the issuance by an Alabama court of a temporary injunction that restrained appellant's members from peacefully picketing foreign vessels, arriving at the port of Mobile, that employed only alien seamen. The purpose of appellant's picketing was to protest the payment by foreign ships of inferior wages that undercut employment of American seamen and detrimentally affect the United States balance of payments. Arguing the invalidity of the injunction, appellant contended that the Labor Management Relations Act (LMRA), 29 U.S.C. § 141 *et seq.* (1970), preempted the jurisdiction of the issuing court, that the Norris-La Guardia Act, 29 U.S.C. § 101 *et seq.* (1970), prohibited the issuance of a temporary injunction by the issuing court in a peaceful labor dispute, and that its activity was protected as free speech under the United States Constitution. Appellee, the representative of numerous stevedoring companies that operate in the Port of Mobile, contested appellant's entire argument, and particularly sought relief from the interference with its business. Finding that the dispute was either one between the appellant and foreign shipowners, or one in which the intent was to force Congress to act in the international sphere in response to the picketing, the court affirmed the issuance of the injunction and ruled that in either case these matters affected international commerce and, therefore, were not preempted from state judicial jurisdiction by the LMRA. The court then found that the anti-injunction provisions of the Norris-LaGuardia Act are inapplicable to state courts. Observing that *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (1957), limits the constitutionally protected right of picketing

when its purpose is to interfere with the right of a third party to conduct his business, the court concluded that the lower state court had acted within its broad discretion in determining that the appellant's actions constituted a sufficiently wrongful interference with the business of appellee to justify the granting of the temporary writ. *American Radio Assn. v. Mobile Steamship Assn.*, 279 So. 2d 467 (Ala. 1973).

DEPARTMENT OF STATE BOARD OF APPELLATE REVIEW DECISION ON CITIZENSHIP IS BINDING ON ALL AGENCIES AND OFFICERS OF THE UNITED STATES

The decision of the Board of Appellate Review of the Department of State holding nonresident plaintiff entitled to citizenship rights was disputed by the Immigration and Naturalization Service which withheld plaintiff's passport and Certificate of Naturalization. Plaintiff then brought this suit to enforce the Board's determination, and in response the Attorney General entered the case and ruled that plaintiff was not a citizen. The Attorney General argued that section 103 of the Immigration and Nationality Act, 8 U.S.C. § 1103 (1970), which provides that the Attorney General's determinations on questions of law are controlling, gives him the power to overrule the Board of Appellate Review's decision and made his decision final and conclusive on the executive branch. On cross motions for summary judgment, the District Court for the District of Columbia upheld the Board's determination, and ruled that the Department of State has exclusive authority to administer and enforce all nationality laws relating to persons outside the United States. The court reasoned that the authority of the Attorney General extends to the naturalization of aliens, and not to nationality. In addition, the court concluded that 8 U.S.C. § 403 (1970) gives the Attorney General no authority to review the Board's ruling since the issues in plaintiff's case were factual, and were resolved in an adversary proceeding in which the failure of the government to raise objections constituted a valid waiver. Further, the court found strong due process objections to the Attorney General's role as a "reviewing forum" in such cases. *Cartier v. Secretary of State*, 356 F. Supp. 460 (D.D.C. 1973).

A FEDERAL COURT SHOULD EXERCISE ADMIRALTY JURISDICTION IN AN IN REM LIBEL INVOLVING FOREIGN VESSELS OF DIFFERENT NATIONALITIES UNLESS THE DEFENDANT CAN ESTABLISH THAT TO DO SO WOULD WORK AN INJUSTICE

Petitioner, a German corporation, filed an in rem libel in the District Court for the Southern District of Georgia against the *M/S Netuno*, a Brazilian-owned vessel that had collided with the *M/V TransMichigan*, petitioner's vessel, on Lake Huron. The district court refused to assert jurisdiction, claiming *forum non conveniens*, and because another suit between the parties, involving the same issues, was pending in the admiralty courts of Canada. On appeal, the Court of Appeals for the Fifth Circuit vacated the lower court's decision. Relying on its own decision in *Motor Distributors v. Olaf Pedersen's Rederi A/S*, 239 F.2d 463 (5th Cir. 1956), which interpreted *The Belgenland*, 114 U.S. 315 (1885), the court determined that a federal court should exercise jurisdiction in an in rem libel involving foreign vessels of different nationalities unless the defendant can establish that to do so would work an injustice. The court emphasized that the burden is not on the plaintiff to establish that injustice will result if the court does not exercise jurisdiction, but rather is on the defendant to demonstrate that the exercise of jurisdiction will result in an injustice. Finding that the district court had used a balancing test in deciding that it was an inconvenient forum, the court remanded the suit to the district court for a reassessment of the jurisdictional question using the proper legal standard. *Poseidon Schiffahrt G.M.B.H. v. M/S Netuno*, 474 F.2d 203 (5th Cir. 1973).

VALIDITY OF FOREIGN ORDER FOR EXTRADITION TO THE UNITED STATES NOT SUBJECT TO UNITED STATES JUDICIAL REVIEW

Petitioner, convicted of armed robbery and later paroled, left his parole district without permission, committed various crimes and then fled the United States to Jamaica. On a formal United States request for extradition based on petitioner's armed robbery, which is an extraditable offense under the Extradition Treaty with Great Britain, December 22, 1931, 47 Stat. 2122, which applies to Jamaica, the Supreme Court of Appeal of Jamaica ordered petitioner's extradition to the United States. Following American reincarceration, petitioner sought a writ of habeas corpus on the ground that Jamaica actually had extradited him for his parole violation, which is not an extraditable offense under the applicable treaty. The United States District Court for the Middle District of

Pennsylvania denied petitioner's request for relief. Whether an extraditable offense constituted the grounds for petitioner's return to the United States, the court reasoned, was a final decision solely for the Jamaican courts, and is not subject to United States judicial review. The court then concluded that though the extradition treaty bound it to assume the fairness of the Jamaican hearing afforded petitioner, nevertheless the Jamaican extradition order was reasonable because the treaty intended extradition for crimes, such as petitioner's armed robbery, that remain unpunished. *McGann v. U.S. Board of Parole*, 356 F. Supp. 1060 (M.D. Pa. 1973).

RENTED AMERICAN EMBASSY HELD WITHIN SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF UNITED STATES FOR ADJUDICATION OF MANSLAUGHTER COMMITTED THEREIN

Defendant, chargé d'affaires at the rented American Embassy in the Republic of Equatorial Guinea, killed a fellow embassy employee within the embassy. On his return to the United States, defendant was convicted of voluntary manslaughter by the District Court for the Eastern District of Virginia. Appealing this ruling, defendant contended that Congress, notwithstanding its recognized constitutional power to extend the criminal court jurisdiction of American courts to United States embassies abroad, limited its grant in 18 U.S.C. § 7 (1970) of "special maritime and territorial jurisdiction" to areas within the geographical boundaries of the United States. To support this contention, defendant argued that the phrase "any lands reserved or acquired for the use of the United States" in the first part of section 7(3) necessarily is restricted by later references therein to the states of the Union. The Court of Appeals for the Fourth Circuit, however, affirmed defendant's conviction. Holding that 18 U.S.C. § 1112 (1970) specifically grants United States courts subject matter jurisdiction over offenses committed within the "special maritime and territorial jurisdiction of the United States," the court ruled that the broad jurisdictional boundaries in 18 U.S.C. § 7(3) (1970) must be read independently of later phrases of limitation, and extends United States jurisdiction to embassies acquired by the United States in foreign countries. The court, furthermore, found unimportant the absence here of American embassy ownership since the test of jurisdiction is one of practical usage and dominion exercised over the premises by the United States Government. *United States v. Erdos*, 474 F.2d 157 (4th Cir. 1973).

9. PATENTS

DATE OF DELIVERY, NOT DATE OF PUBLICATION, IS EFFECTIVE DATE OF FOREIGN PATENT FOR DETERMINING EFFICACY OF SUBSEQUENT IDENTICAL UNITED STATES PATENT

In response to defendant's suit against plaintiff for patent infringement, plaintiff pursued his rights set forth in *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172 (1965), and brought this action for a declaration of the invalidity of the two separate American patents claimed by the defendant, and for an injunction restraining defendant from asserting infringements or seeking royalties. Defendant previously had filed applications for French patents on the same inventions more than twelve months before submitting its identical American applications. In each case, furthermore, the American applications were filed after the delivery dates of the French patents, but before the day on which notice of the identical French patents was published in the official French bulletin, *Bulletin Officiel de la Propriete Industrielle*. Under 35 U.S.C.A. § 102(d), a person is not entitled to a patent in the United States if the invention first was patented by the applicant in a foreign country prior to the date of the American patent application on an application filed more than twelve months before filing the application in the United States. Plaintiff contended that since each patent was signed officially by the French authorities on the date of delivery, the invention was patented on that date, and not on the date of official publication, as argued by the defendant. Concluding that the defendant's rights in the French patents accrued on the date of delivery from the appropriate French authorities, the district court found the American patents held by defendant to be invalid as prescribed by 35 U.S.C.A. § 102(d). Noting that under the patent procedures in France an inventor-patentee may sell, trade or publish his patent rights on and after the date of the patent's delivery, the court reasoned that the exclusive rights of the inventor, which compose the very nature of a patent, ripened fully on the delivery date. *Duplan Corp. v. Deering Milliken, Inc.*, 353 F. Supp. 826 (D. S.C. 1973).

10. SOVEREIGN IMMUNITY

REGARDLESS OF RECIPROCITY REQUIREMENTS OF PUBLIC VESSELS ACT, UNITED STATES WAIVED ITS IMMUNITY BY SEEKING AFFIRMATIVE JUDGMENT ON COUNTERCLAIM IN ADMIRALTY

United Philippine Lines, Inc., a Philippine corporation, filed
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suit against the *USS Daniel Boone*, in rem, and against the United States, in personam, for damages arising from the collision of the *USS Daniel Boone* and the *M/V Philippine President Quezon*, a vessel owned by the plaintiff. Jurisdiction was founded on the Public Vessels Act, 46 U.S.C.A. § 781 *et seq.* (1970). Defendant United States responded by alleging a lack of the reciprocity required by section 5 of the Act, which provides that no national of a foreign government may bring suit under the Act unless it can be shown that United States nationals would be allowed to sue under similar circumstances in the courts of that country. The United States then filed a counterclaim seeking dismissal of plaintiff's action, a counterclaim for damages and arrest of the *M/V Philippine President Quezon* to secure its counterclaims. The district court held that this action constituted a waiver by the United States of sovereign immunity, thus making it unnecessary to reach the question of reciprocity under section 5 of the Act. On appeal to the Court of Appeals for the Fourth Circuit, *held*, affirmed. The court concluded that, under the rule of *Ludeenbach Steamship Co. v. The Thelka*, 226 U.S. 328 (1924), the government had so far taken the position of a private suitor as to waive its sovereign immunity by seeking dismissal of plaintiff's action, affirmative judgment on the counterclaim and the arrest of the *Quezon*. The court reasoned that this result flows from the peculiar relationships characteristic of claims arising from collisions in admiralty, which are not present in civil cases. *United Philippine Lines, Inc. v. Submarine USS Daniel Boone*, 475 F.2d 478 (4th Cir. 1973).

