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Admiralty--Concurrent Jurisdiction Over Partition of Vessels

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NOTES

ADMIRALTY CONCURRENT JURISDICTION OVER PARTITION OF VESSELS.

Madruga v. Superior Court[1] is noteworthy in that for the first time the Supreme Court of the United States decided that the state courts have concurrent jurisdiction, with the federal courts, over actions for partition of vessels by sale.

The action was brought in the Superior Court of California in and for San Diego County, as San Diego was the home port of the vessel. There had been a dispute as to the vessel's employment. Co-owners representing an 85 per cent interest in the ship filed the complaint, asking for partition under the authority of the Code of Civil Procedure 852a,[2] which permits an action for partition of personal property

The demurrer of the defendant minority owner, on the ground that the federal district courts had exclusive jurisdiction, was overruled. The defendant then applied for a writ of prohibition directing the Superior Court to refrain from further proceedings. The Supreme Court of California discharged the writ, upholding the jurisdiction of the Superior Court.[3] The United States Supreme Court granted certiorari.[4]

In affirming the holding of the California court the Supreme Court disposed of two issues. Namely, the extent and the character of federal admiralty jurisdiction.

Unless the federal courts have jurisdiction to order ships sold for partition of the proceeds the case presents no problem. Oddly enough the question has never been squarely decided by the Supreme Court. The Constitution extends the judicial power of the United States "to all cases of admiralty and maritime jurisdiction."[5] In the first Judiciary Act, Congrss provided that the United States district courts were to have "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction."[6] Mr. Justice Black for the court discussed the conflict of authority in the lower federal courts. These diverse holdings have ranged from the view that neither majority nor minority interests should be granted partition,[7] only equal interests,[8] to decisions that either can obtain partition on a proper showing.[9] Without arguing the point, the court concluded "that the power of admiralty, as Congress and the courts have developed it over the years, is broad enough for United States district courts to order vessels sold for partition."[10] This conclusion is in itself an important clarification of admiralty law, even though it leaves open the question of who is entitled to partition.

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[1] 346 U.S. 556 (1954).

[2] CALIF. CODE CIV. PROC. 852a *et seq.* § 852 deals with partition of real property, and § 852a merely provides that the following section govern partition of personal property "when applicable."

[3] 40 Cal.2d 65, 251 P.2d 1 (1952).

[4] 345 U.S. 963 (1952).

[5] U. S. CONST. Art. III § 2.

[6] 1 STAT. 73, 77 (1789).

[7] Lewis v. Kinney, Fed. Cas. No. 8,325 (C.C.E.D. Mo. 1879), The Red Wing, 10 F.2d 389 (S.D. Cal. 1925).

[8] The Emma B., 140 Fed. 771 (D.C.D. N.J. 1906).

[9] Tunno v. The Belsina, Fed. Cas. No 14,236 (D.C.D.S.C. 1857), and see Comment, 43 GA. L.J. 534 for a discussion of the state decisions, including the Madruga case.

[10] 346 U.S. 556 (1952).

The court went on to consider the contention that federal admiralty jurisdiction is exclusive. The Judiciary Act, after granting district courts their exclusive original cognizance, added a "saving clause," which reads: " . saving to suitors, in all cases, the right to a common law remedy, where the common law is competent to give it."[11] The clause has been amended to read: "saving to suitors in all cases all other remedies to which they are otherwise entitled."[12] The court said that this change is no way narrowed the jurisdiction of the state courts under the original 1789 Act; so the issue was considered as if no amendment had been made.

The saving clause seems inconsistent with the exclusive grant of admiralty jurisdiction to the federal district courts. However, the clause has a long history of interpretation.[13] The court restated this interpretation as follows: "Admiralty's jurisdiction is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien."[14] State courts are left "competent" to adjudicate maritime causes of action in proceedings *in personam*. The court also cited *Red Cross Line v. Atlantic Fruit Co.*,[15] which held that a state, though it could not provide a remedy *in rem* for a maritime cause of action, is free to adopt such remedies, and to attach to them such incidents, as it sees fit, so long as it does not make changes in the "substantive maritime law."

The reasoning of the court was that the California proceedings were not *in rem* "in the admiralty sense." It said that Manuel Madruga and not the ship was made defendant, and that the California court acted only upon the interest of the parties under its *in personam* jurisdiction. Therefore an adjudication would not affect the interests of others in the world at large, as it would if it had been a proceeding *in rem* to enforce a lien. So the court concluded that the California court was competent to grant partition and therefore had jurisdiction of the subject matter.

This holding disposed of the case, but the court went on to discuss the problem of a federal partition rule binding upon all the states. It denied that such a rule existed, as the petitioner claimed, limiting the exercise of admiralty's power to partition between owners of equal interests, or of any other national rule. The court did not think that, considering the scarcity of cases, a judicial establishment of some national rule was warranted, since Congress had not seen fit to legislate on the subject. The court further observed that these "essentially local disputes" could best be handled by "easily accessible local courts."

The decision is not free from difficulty. It is too late to quarrel with the interpretation of the saving clause. But the basis for labeling the California proceeding an *in personam* action is not clear. Mr. Justice Frankfurter attacks the majority position on this point. He points out that the right asserted was in the ship, not a personal claim outside the ship. He feels that jurisdiction should not depend on the "tenuous formality" that California procedure requires the co-owner to be made defendant, rather than the ship itself. Frankfurter adopts the reasoning of

[11] 1 STAT. 73, 77. It is to be noted that the California Supreme Court in the Madruga case rested its decision chiefly on the saving clause as amended.

[12] Revisions of 28 U.S.C. 1333, 28 U.S.C.A. 1333, 1948 and 1949.

[13] The Moses Taylor, 71 U.S. 411 (1866), The Hine v. Travor, 71 U.S. 555 (1866), The Belfast, 74 U.S. 624 (1868).

[14] See note 10 *supra*.

[15] 264 U.S. 108 (1923).

Fischer v. Carey,[16] an earlier California case which the Madruga case did not overrule, that it is a fundamental part of admiralty jurisdiction to exercise control over the res, the ship itself.

Mr. Justice Frankfurter is undoubtedly correct in saying that the usual *in rem* action asserts a right in a thing rather than against a person, and is equally correct in asserting that admiralty exercises control over the *res*. We can agree that if the partitioning court takes control and sells the vessel its action looks like an *in rem* proceeding, whoever is named defendant. But Frankfurter's broad objection is avoided by the majority's statement of the well settled narrower conception of an *admiralty in rem* action, the mark of which is that the decree "binds the world." That is, *because* the decree is founded on dominion over the *res*, as the actual subject matter of the jurisdiction, the decree binds not only the parties before the court, but all who have any interest in the vessel.[17] Under the decree the property itself passes, and not merely the title and interest of a personal defendant.[18] A sale under the decree *in rem* is a complete divestiture of prior liens and conveys to the purchaser a free and unencumbered title, the holders of such liens being remitted to the funds which are substituted for the vessel.[19]

The real drawback to the decision would not seem to be the one Mr. Justice Frankfurter voices, but the fact that California is a code state. As Mr. Justice Field pointed out in *The Moses Taylor*,[20] under a sale upon a judgment in a common law proceeding, the title acquired can never be better than that possessed by the personal defendant. But what is the situation in California? The code sections are not without ambiguity There is no definite indication which sections apply where personal property is to be partitioned, and no personal property cases could be found where the sections were cited. However, the relevant sections of the California Code of Civil Procedure provide:[21] (§ 757) for service of the complaint by publication if a party having a share or interest is unknown; (§ 766) that judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive on the parties to the suit, and "on all persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication," and on all other persons claiming from such parties or persons; and (§ 771) that the proceeds of the sale of encumbered property must be applied under the direction of the court "3. to satisfy and cancel of record the several liens in the order of their priority, if entitled to priority over the lien under which the owner's title was obtained." In addition, 787 provides that a recorded "conveyance" shall be a bar against all parties and persons interested, including unknown persons served by publication, and against all persons having unrecorded deeds or liens (such persons need not be made parties).

It would seem that the effect of these sections *could* be a judgment that would bind the world, especially if the plaintiff took the precaution of publishing notice of the suit. It is true that this would not be the result in every case; it would not be the result if the owner's interest were mortgaged heavily or if the value of the

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[16] 173 Cal. 185, 159 Pac. 577 (1916).

[17] The Moses Taylor, 71 U.S. 411 (1866), The Belfast, 74 U.S. 624 (1868), Knapp v. McCaffrey, 177 U.S. 638 (1900).

[18] Rounds v. Cloverport Foundry, 237 U.S. 303 (1915).

[19] 1 BENEDICT ON ADMIRALTY 17, 20, 21.

[20] The Moses Taylor, 71 U.S. 411 (1866).

[21] CALIF. CODE CIV. PROC. § 757 *et seq.*