DePaul Law Review

Volume 9
Issue 2 *Spring-Summer 1960*

Article 7

Laches in Admiralty Actions

DePaul College of Law

that an American civilian would be subjected to a jurisdiction and procedure completely unknown to him. Ignorance of this could deprive the accused of a fair trial. Creation by Congress of foreign federal courts is the third alternative. If treaties exist which create these jurisdictional vaccums, they would be directed to these courts and the Supreme Court has upheld Congress' power to so provide.[60]

Regardless of the congressional decision, *Reid* has extended the *Milligan* application to include this narrow field. Once again the Courts have protected the individuals' rights and their jurisdictional province from congressional encroachment. All that need be said was said over one hundred and fifty years ago:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers or either of them: the judiciary shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not men.[61]

[60] Ex parte Bakelite, 279 U.S. 438 (1929); American Insurance v. 356 Bales of Cotton, 26 U.S. 511 (1828).

[61] Mass. Const. Art. XXX.

LACHES IN ADMIRALTY ACTIONS

The length of time during which an action may be brought by a seaman for personal injury is governed by the admiralty doctrine of laches, unlike ordinary common law actions which are generally strictly governed by statutes of limitations.[1] The seaman who is injured or becomes ill in the service of the ship has three basic remedies against the owner of the ship: (1) An action for maintenance and cure which will allow him to recover his wages until the end of the voyage, his expenses for lodging and medical expenses he has incurred for cure. (2) An action for unseaworthiness should he be injured through the unseaworthiness of the vessel. (3) An action under the Jones Act for negligence of the owner of the vessel or his servants.[2] Laches is applied somewhat differently

[1] Gardner v. Panama R.R. Co., 342 U.S. 29 (1951); Holmberg v. Armbrecht, 327 U.S. 392 (1946); Southern Pacific Co. v. Bogert, 250 U.S. 483 (1919); The Key City, 14 Wall. (U.S.) 653 (1871).

[2] E.g., The Osceola, 189 U.S. 158 (1903). Justice Brown stated that the law was settled in these four propositions:

"1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

"2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of

as to each action. Unless an Act of Congress specifies a fixed time for commencing an action or filing a petition or taking some other step in an admiralty action, as was done in the case of the Jones Act actions, all matters of delay are left to the discretion of the district court sitting in admiralty. The exercise of this discretion has traced certain patterns dependent on the particular action involved.

One of the earliest pronouncements of the Supreme Court was embodied in *The Key City*[3] where a shipper of wheat brought an action against the shipping company for the loss of the cargo some three and one half years after it was lost. In ruling that admiralty actions are not determined by state statutes of limitation the Court stated:

> That while the courts of admiralty are not governed in such cases by any statute of limitations, they adopt the principle that laches or delay in the judicial enforcement of maritime liens will, under proper circumstances, constitute a valid defence. . . .
>
> [N]o arbitrary or fixed period of time has been, or will be, established as an inflexible rule, but that the delay which will defeat such a suit must in every case depend on the peculiar equitable circumstances of that case.[4]

The Key City and *The Osceola* have proved to be touchstones for the particular area of admiralty law decided in each. The doctrine of laches though remaining substantially unchanged from the opinion rendered in *The Key City* has undergone considerable refinement. All of the subsequent decisions, while adding refinements to the doctrine, have expressed the two basic elements of the doctrine: inexcusable delay in the institution of suit, and prejudice resulting to the defendant by reason of such delay.[5]

---

the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.

"3. That all the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident." Ibid., at 175. In 1920, Congress enacted the Jones Act which provided a remedy for the seaman injured through negligence of the master or any members of the crew. 46 U.S.C.A. § 688 (Supp., 1959).

[3] 81 U.S. 653 (1871).

[4] Ibid., at 660. "Upon the occurrence of certain mishaps or the non-fulfillment of certain obligations arising out of contract or status, the maritime law gives to the party aggrieved a right conceived of as a property interest in the tangible thing involved (usually but not always a ship) in the (often as yet unascertained) amount of the accrued liability. This right is called a maritime lien." Gilmore, The Law of Admirality, 32 (1957). Admirality law allows an action to be brought in personam, i.e., against the person, in all three of the mentioned actions while an action in rem, i.e., against the ship, may only be brought in the action for unseaworthiness and the action for maintenance and cure.

[5] E.g., Loverich v. Warner, 118 F.2d 690 (C.C.A.3rd, 1941).

The Supreme Court did not again speak on the subject of laches until 1951, when the Court made reference to the common practice of admiralty courts applying a state statute of limitations as a guide to a period free of laches:[6]

> Though the existence of laches is a question primarily addressed to the discretion of the trial court, the matter should not be determined merely by a reference to and a mechanical application of the statute of limitations. The equities of the parties must be considered as well. Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief.[7]

In the absence of special circumstances, admiralty courts follow the practice of referring to a state action analogous to the particular admiralty action brought and applying the statute of limitations governing that action to the admiralty action brought as a guide to what is and what is not laches.[8] The above quotation, of course, indicates accurately that special circumstances are prevalent. In *The Kermit*[9] sugar shipped on the respondent's vessel arrived in a damaged state. Although the libellant was fully aware of the damage at the time of arrival, his libel was not filed until four and one half years after this occurrence. No testimony was taken by the libellant until 1930, nine and one half years after the cause of action accrued. The court, in holding the libellant's action barred by laches, enumerated some of the circumstances to be considered, before applying a state statute of limitations: The duration of the delay in asserting the claim; the sufficiency of the excuse offered in extenuation of the delay; the character of the evidence by which plaintiff's right is sought to be established; whether during the delay the evidence of the matters in dispute has been lost or become obscured or the conditions have so changed as to render the enforcement of the right inequitable; and whether third parties have acquired intervening rights. The court added that the mere institution of a suit does not relieve a person from the operation of the rule of laches; if he fails to prosecute his suit diligently, the consequences are the same as though no suit had been begun.

There are other situations, more numerous, where the surrounding circumstances do not indicate laches so obviously. Where a libellant pleads facts which on their face indicate that the analogous statute of

[6] Gardner v. Panama R. Co., 342 U.S. 29 (1951).

[7] Ibid., at 30.

[8] Gardner v. Panama R. Co., 342 U.S. 29 (1951); Hughes v. Roosevelt, 107 F.2d 901 (C.C.A.2d, 1939); The Sydfold, 86 F.2d 611 (C.C.A.2d, 1936); Marshall v. International Mercantile Marine Co., 39 F.2d 551 (C.C.A.2d 1930); Redman v. United States, 86 F. Supp. 41 (S.D.N.Y., 1948).

[9] 76 F.2d 363 (C.C.A.9th, 1935).

limitations has run, he has the burden of rebutting a presumption that the delay was inexcusable and prejudiced the defendant.[10] Thus, where an action was brought against a scow company for damage to the libellant's barge, and after three years, the respondent impleaded another scow company as being the actual wrongdoer, the district court held the action of impleader barred by laches. The court pointed out that the applicable New York statute was three years, and since the respondent had not rebutted the resulting presumption of laches, did not allow his impleading action.[11]

It should be noted that the presumption of laches is rebuttable and in many cases this is accomplished. In *The Gertrude*[12] the libellant performed in excess of one hundred hours work in raising and repairing the respondent's sunken boat, and, when attempting to bring an action in rem, was unable to locate the boat. The evidence indicated that the owner had secreted its whereabouts. The court in refusing to allow the defense of laches, stated that laches did not consist only of a time element but diligence or the lack of it was always an important factor.

The nature of the action brought can also be of importance in enabling a libellant to rebut the presumption of laches. In *Loverich v. Warner*[13] a seaman developed a malignancy in his throat while working for the respondent. He was discharged in 1933 and in 1939 brought an action for maintenance and cure. The court, in disallowing the defense of laches, accepted the libellant's argument to the effect that because liability for maintenance and cure is absolute and because there would be no necessity to find witnesses to establish negligence or unseaworthiness, the delay did not operate to the prejudice of the respondent. However, a frivolous excuse will not rebut the presumption of laches. In *Redman v. United States*,[14] an action brought four months after the analogous state statute of limitations had run, the plea of the libellant that he was not aware of the liability of the defendant was rejected by the court which stated:

> Ignorance of facts material to a claim may preclude the application of laches. This, however, is not so when such ignorance is due to the negligent failure of the libellant to make such inquiry as facts may reasonably suggest.[15]

[10] Hays v. Port of Seattle, 251 U.S. 233 (1920); Wilson v. Northwest Marine Iron Works, 212 F.2d 510 (C.A.9th, 1954); Morales v. Moore-McCormack Lines, 208 F.2d 218 (C.A.5th, 1955); Kane v. U.S.S.R., 189 F.2d 303 (C.A.3rd, 1951).

[11] Dwyer Lighterage, Inc. v. Christie Scow Corp., 96 F. Supp. 900 (E.D.N.Y., 1951).

[12] 38 F.2d 946 (C.C.A. 5th, 1930).

[13] 118 F.2d 690 (C.C.A.3rd, 1941).

[14] 86 F. Supp. 41 (S.D.N.Y., 1948).

[15] Ibid., at 42.

Where the applicable statute of limitations has not run, and as a result the laches is not apparent on the face of the libel, the burden is on the respondent to show that the delay was inexcusable or operated to his prejudice.[16] One of the most common arguments for an application of laches is the unavailability of witnesses or the inability of witnesses who are available to remember. Where the vessel sought to be attached has been sold to an innocent purchaser without knowledge and the lien is sought to be enforced against the ship in his hands, the delay tolerated will be shorter and other circumstances will be given great weight, even though the applicable statute of limitations has not yet run.[17]

The defense of laches is as a rule properly presented only by answer and not by exception unless the libel shows laches on its face.[18] However, the failure to plead laches in the answer as originally filed is not a waiver of the defense.[19] The dismissal of a suit for laches is not a decree on the merits. Thus where an action was brought for damage to a steamer and the case was dismissed for laches, the respondent was not able to plead res judicata in a subsequent suit against him in another district court, the court indicating that a decree of laches will not bar a suit in another court.[20]

To this point it has been indicated that as a general rule, the admiralty court will look to the analagous state statute and apply it as a guide to proper period for laches. The analagous state statute will be the one which limits an action as nearly the same to the particular admiralty action as possible. Since the remedies allowed seamen for personal injuries are peculiar to the law of admiralty a basic understanding of the individual actions is necessary in order to understand the application of a particular statute of limitations.

THE JONES ACT

The Jones Act action is unique in comparison to the other two actions in that it is the only one of the three, created and governed by statute.[21] The statute has incorporated by reference the Federal Employers Lia-

[16] Wilson v. Northwest Marine Iron Works, 212 F.2d 510 (C.A.9th, 1954); Reconstruction Finance Corp. v. Harrison & Crossfield, 204 F.2d 366 (C.A.2d, 1953); Kane v. U.S.S.R., 189 F.2d 303 (C.C.A.3rd, 1951); Redman v. United States, 176 F.2d 713 (C.A.2d, 1949); United States v. Dussel Iron Works, 31 F.2d 535 (C.A.5th, 1929).

[17] The Key City, 81 U.S. 653 (1871); Phelps v. The Cecilia Ann, 199 F.2d 627 (C.A.4th, 1952).

[18] Pacific Atlantic S.S. Co. v. The Tower Grange, 80 F. Supp. 461 (D.C. Md., 1948); Sprague & Son Co. v. Howard, 68 F. Supp. 348 (D.C.N.J., 1946).

[19] Redman v. United States, 176 F.2d 713 (C.A.2d, 1949).

[20] Warner v. Buffalo Drydock, 67 F.2d 540 (C.C.A.2d, 1933). See The Sydfold, 86 F.2d 611 (C.C.A. 2d, 1936).

[21] 46 U.S.C.A. § 688 (Supp., 1959).

bility Act which provided originally for a two year statute of limitations and has been amended to provide for a three year statute of limitations.[22] Because the statute specifically states the limitation period, this period controls, and laches is inapplicable. The Jones Act period of limitations has been consistently held to control over the various state statutes of limitation. In an action by a seaman under the Jones Act for personal injuries, in ruling that the three year period allowed for commencement of suits under the Jones Act superseded the one year allowed by the California statute for similar actions, the court said:

> We conclude that the provision of § 6 of the Employers Liability Act relating to the time of commencing the action is a material provision of the statutes modifying or extending the common law right or remedy in cases of personal injury to railway employees which was adopted by and incorporated in the Merchant Marine Act. And, as a provision affecting the substantive right created by Congress in the exercise of its paramount authority in reference to the maritime law, it must control in an action brought in a state court under the Merchant Marine Act, regardless of any statute of limitations of the state.[23]

MAINTENANCE AND CURE

Any member of the crew of a vessel may recover for any expenses for injuries incurred by him during the period of his employment.[24] Fault on the part of the owner or his servants is not necessary to the action[25] and the only generally recognized defense to the action is that the seaman was injured as a result of his own wilful misconduct.[26] Under the maintenance and cure action, the seaman may recover in three areas: (1) For medical expenses until that point of maximum cure is reached;[27] (2) for expenses of lodging;[28] and (3) for his wages during the period of the voyage.[29]

[22] Ibid. For further information on the Jones Act, consult 9 *De Paul Law Review* 51 (1959).

[23] Bogdanovitch v. Gasper, 41 F. Supp. 457, 460 (S.D.Cal., 1941). See Arnson v. Murphy, 109 U.S. 238 (1883).

[24] E.g., The Osceola, 189 U.S. 158 (1903).

[25] E.g., Calmar S.S. Corp. v. Taylor, 303 U.S. 525 (1938).

[26] The Coniscliff, 270 Fed. 206 (C.C.A.5th, 1921); Cornell S.S. Co. v. Fallow, 179 Fed. 293 (C.C.A.2d, 1909). The courts are not inclined to find wilful misconduct too easily and have not found it even in cases where the injuries resulted from the libellant's own drunkenness. Bentley v. Albatross S.S. Co., 203 F.2d 270 (C.A.3rd, 1953).

[27] Stanovich v. Julin, 227 F.2d 245 (C.A.9th, 1955); Sims v. War Shipping Administration, 186 F.2d 972 (C.A.3rd, 1951).

[28] Koslusky v. United States, 208 F.2d 957 (C.A.3rd, 1953); Robinson v. Isbrandtsen Co., 203 F.2d 514 (C.A.2d, 1953).

[29] Farrell v. United States, 336 U.S. 511 (1949); Jones v. Waterman S.S. Corp., 130 F.2d 797 (C.C.A.3rd, 1942), aff'd 318 U.S. 724 (1943); Pacific Mail S.S. Co. v. Lucas, 264 Fed. 938 (C.C.A.9th, 1920); The City of Alexandria, 17 Fed. 390 (S.D. N.Y., 1883).

Keeping in mind that the nature of the action is the determinative factor in the decision of what state statute of limitations is applicable for laches, perhaps the best insight into the nature of the action may be gained by a view of the development of the action. The origins of the action are traced by most writers to various medieval codes which at that time comprised the law of admiralty.[30] The earliest mention of the doctrine in American law was in two early cases, *Harden v. Gordon*[31] and *Reed v. Canfield*[32] which, together with the well known decision in *The Osceola*,[33] became foundation cases for the maintenance and cure action.

In discussing jurisdiction over maintenance and cure actions the court in *Harden* stated:

> Supposing that by the principles of law the seamen are entitled, in case of sickness, to be healed at the expense of the ship, I am of the opinion, that the claim for such expense may be enforced in the court of admiralty. It constitutes, in contemplation of law, a part of the contract for wages, and is a material ingredient in the compensation for the labor and services of the seaman.[34]

The court in *Reed* allowed the same recovery for expenses so far ". . . as expenses are incurred in the cure, whether they are of a medical or other nature, for diet, lodging, nursing, or other assistance,"[35] but pointed out that there was no recovery for permanent injuries. This case was decided before actions for unseaworthiness or under the Jones Act were recognized. It is noteworthy that *Harden*, beyond defining the action of maintenance and cure, gave the action a *contractual* nature by describing the seaman's rights as part of the contract for wages. This nature has remained with the action and the *Harden* opinion to that effect reflects by and large the attitude of more recent decisions.[36]

Several decisions have spoken of the right of maintenance and cure as one created by admiralty law and given to the seaman where the relationship of owner and seaman exists.[37] This is significant in that the same

[30] Laws of Oleron, Art. VI, Art. VII (1190); Laws of Wisbuy, Art. XVIII, Art. XIX; Laws of the Hanse Towns, Art. XXXIX, Art. XLV; Marine Ordinances of Louis, Art. XIV.

[31] 11 Fed. Cas. 480 (D.Me., 1823).

[32] 20 Fed. Cas. 426 (D.Mass., 1832).

[33] 189 U.S. 158 (1903).

[34] Harden v. Gordon, 11 Fed. Cas. 480, 481 (1823).

[35] Reed v. Canfield, 20 Fed. Cas. 426, 429 (1832).

[36] Aguilar v. Standard Oil, 318 U.S. 724 (1943); Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932); Lindgren v. United States, 281 U.S. 38 (1930); Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928); Western Fuel Co. v. Garcia, 257 U.S. 233 (1921).

[37] Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932); Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928); Sims v. War Shipping Administration, 186 F.2d 972 (C.A.3rd, 1951); Muise v. Abbott, 160 F.2d 590 (C.C.A.1st, 1947).

remarks have been made regarding the action of unseaworthiness of which more will be said in the discussion of that action.

No cases have been found which consider the action of maintenance and cure as a delictual one for purposes of applying state statutes of limitation. On the basis of this case law, the admiralty courts have consistently applied the particular state contractual statute of limitations as opposed to the delictual statute, where one was to be applied as a guide for laches.[38]

UNSEAWORTHINESS

The doctrine of unseaworthiness has had a rather checkered career in the admiralty courts. At one time the doctrine was limited to providing remedies only in situations where the owner was at fault in some way.[39] Gradually, the doctrine became such that liability for all damages proximately resulting from any breach of the implied warranty of seaworthiness is imposed by law upon the owner regardless of whether or not the unseaworthy condition aboard the vessel or the vessel itself happens to be within the control of the owner.[40]

From the standpoint of impact upon the law of unseaworthiness, one of the most important cases of this century was *Seas Shipping Co. v. Sieracki*.[41] Sieracki, a longshoreman, was employed by a stevedoring company to load cargo on the S.S. Robin Sherwood. He was operating a winch lowering cargo into a hold when part of the equipment broke, resulting in injury to him. In describing the duty on the part of the vessel owner to provide a seaworthy ship, the Court said:

> It is essentially a species of liability without fault, analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character. It is a form of absolute duty owing to all within the range of its humanitarian policy.[42]

Perhaps the most oft quoted statement on the source of the action of unseaworthiness is from the *Sieracki* decision wherein the court stated:

[38] Loverich v. Warner, 118 F.2d 690 (C.C.A.3rd, 1941); Marshall v. International Mercantile Marine Co., 39 F.2d 551 (C.C.A.2d, 1930); McGrath v. Panama Railway Co., 298 Fed. 303 (C.C.A.5th, 1924); Benjamin v. United States, 85 F. Supp. 948 (S.D.N.Y., 1949); Frame v. New York, 34 F. Supp. 194 (S.D.N.Y., 1940); Cresci v. Standard Fisheries, 7 F.2d 378 (S.D. Cal., 1925).

[39] The Tawnie, 80 F.2d 792 (C.C.A.5th, 1936); The Cricket, 71 F.2d 60 (C.C.A. 9th, 1934); Burton v. Greig, 271 Fed. 271 (C.C.A. 5th, 1921); Kahyis v. Arundel, 3 F. Supp. 492 (D. Md., 1933).

[40] Grille v. United States, 232 F.2d 919 (C.A.2d, 1956); Rogers v. United States Lines, 205 F.2d 57 (C.A.3rd, 1953); Petterson v. Alaska S.S. Co., 205 F.2d 478 (C.A.9th, 1953).

[41] 328 U.S. 85 (1946).

[42] Ibid., at 94, 95.

"The origins are perhaps unascertainable."[43] Concededly, the origins do not appear to be at all definite. The action seems to be derived from the seaman's privilege to abandon a ship improperly fitted out.[44]

In England in 1896, a statute was enacted providing that there should be imported into every contract of service between the owner of the vessel and the seamen on board an implied obligation, "that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the same."[45] It is not easily determined whether this statute was evoked by American law, or influenced our law, or was merely coincidental with our law. It is noteworthy, however, because of the contractual treatment of the action by the English law. The statute was noted in *The Osceola* where the court commented on it and resulting decisions implementing the right of seamen in England to an indemnity for breach of the warranty of seaworthiness. The court also noted the same liability had been recognized in the United States as a result of a consensus among the circuit and district courts that the obligation of the owner to furnish a seaworthy ship should be recognized. One court explained their recognition of the new liability by reason of the fact that, in the early days of shipping, every seaman could judge for himself whether all the equipment on board was seaworthy since he was familiar with it, whereas with the advent of mechanization in shipping, the seaman could not rely on his own knowledge to judge the seaworthiness of the equipment and therefore had to rely on the owner.[46]

In many of the unseaworthiness cases decided before *The Osceola*, the right of the seamen to recover for unseaworthiness necessitated proof of the negligent failure of the owner of the vessel or his servants to provide a seaworthy ship.[47] These cases leaned toward the ordinary tort action, with negligence as a necessary factor to be proved.

However, the *Sieracki* decision reversed any trend that might have been starting in that direction. Since Sieracki was a longshoreman, another issue which arose and was answered was the question to whom did the war-

[43] Ibid., at 91.

[44] Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944); Dixon v. The Cypress, 7 Fed. Cas. 755 (D. Pa., 1789).

[45] Merchant Shipping Acts, 39 to 40 Vict., Ch. 80, § 5 (1876).

[46] The Edith Godden, 23 Fed. 43 (S.D. N.Y., 1885).

[47] Rainey v. Grace & Co., 216 Fed. 449 (C.C.A. 9th, 1914), cert. den. 235 U.S. 704 (1914); Hamilton v. United States, 268 Fed. 15 (C.C.A. 4th, 1920); Rainey v. New York & P. S.S. Co., 216 Fed. 449 (C.C.A. 9th, 1914).

ranty of seaworthiness extend? As there was no privity of contract between Sieracki and the owner of the vessel, the court, in order to find liability, had to go beyond the theory that had been subscribed to by most of the courts prior to that time which was that the duty to furnish a seaworthy ship was an implied part of the contract between owner and seaman.[48] Thus *Sieracki* rejected as a sole basis for liability both contract and negligence and established a liability without fault on the part of the owner for any breach of the warranty of seaworthiness.

After rejecting negligence as the sole source of the unseaworthiness action entirely and contract to the extent that it was the sole source, the court explained:

> It is only the source of the relation which furnishes the occasion for the liability, attached by law to performance of the service, to come into play. Not the owner's consent to liability, but his consent to performance of the service defines its boundary.[49]

It is significant that the court was speaking of the unseaworthiness action as a right imposed by the admiralty law on the relationship of owner and seamen. Several decisions indicated similar thinking regarding the maintenance and cure action. However, the courts have not applied a contractual statute of limitations as with the maintenance and cure action but rather, in unseaworthiness, have generally applied a tort statute in determining the period for laches.[50]

An interesting development has occurred in the Second Circuit where, despite a recent case clearly deciding the unseaworthiness action to be delictual,[51] the Court of Appeals, in *Le Gate v. The Panamolga*,[52] applied a contractual statute of limitations to an unseaworthiness action. The court noted that since in a common law action[53] for breach of warranty of fitness where the plaintiff was burned because of his clothes catching fire, the New York Court of Appeals had applied a contractual statute of limitations deeming it appropriate in view of absence of necessity to prove fault. On this basis, the court reasoned that the action of unseaworthiness

[48] Boudoin v. Lykes Bros. S.S. Co., 348 U.S. 336 (1955); Rogers v. United States Lines, 205 F.2d 57 (C.A.3d, 1953); Petterson v. Alaska S.S. Co., 205 F.2d 478 (C.A.9th, 1953); Read v. United States, 201 F.2d 758 (C.A.3rd, 1953).

[49] Seas Shipping Co. v. Sieracki, 328 U.S. 85, 96 (1946).

[50] Wilson v. Northwest Marine Iron Works, 212 F.2d 510 (C.A.9th, 1954); Kane v. U.S.S.R., 189 F.2d 303 (C.A.3rd, 1951); Redman v. United Fruit Co., 185 F.2d 553 (C.A.2d, 1950); Redman v. United States, 176 F.2d 713 (C.A.2d, 1949); White v. American Barge Lines, 127 F. Supp. 637 (W.D. Pa., 1955).

[51] Strika v. Netherlands Ministry of Traffic, 185 F.2d 555 (C.A.2d, 1950).

[52] 221 F.2d 689 (C.A.2d, 1955). LeGate was reaffirmed in Tesoriero v. The Molda, 232 F.2d 311 (C.A.2d, 1956).

[53] Blessington v. McCrory Stores, 305 N.Y. 140, 111 N.E.2d 421 (1953).

should also have the contractual statute of limitations applied because no fault need be proved there either. This application of the contractual statute of limitations was repeated for the same reasons by a Pennsylvania district court.[54]

The *Le Gate* case did not decide that the unseaworthiness action was of a contractual nature thus departing from the *Sieracki* decision, but rather that the contractual statute of limitations was better suited to the action of unseaworthiness than the delictual statute. This could well prove to be something of a compromise answer to the question of whether the unseaworthiness has a delictual or contractual nature or perhaps neither as maintained by *Sieracki.*

In conclusion, the doctrine of laches determines how long a libellant may wait to bring his action in admiralty. In the absence of a statutory provision setting out this time as in the Jones Act, or special circumstances contracting or expanding the period during which an action may be brought without prejudicing the respondent, the applicable state statute of limitations is used as a guide to the proper period. The contractual statute is consistently used in maintenance and cure actions. The majority of courts apply a delictual statute in actions for unseaworthiness but a possible trend, originated by the second circuit, towards applying a contractual statute is discernible.

[54] Cummings v. Redeeriakteeb Transatlantic, 144 F. Supp. 422 (E.D. Pa., 1956), aff'd. 242 F.2d 275 (C.A.3rd, 1957).

DEVELOPMENT OF RIGHTS AGAINST NEGLIGENT THIRD PARTIES UNDER THE ILLINOIS WORKMEN'S COMPENSATION ACT

The Workmen's Compensation Act when introduced was a revolutionary development in the solution to the problem of industrial accidents. From the date of its mental conception to the time of its legal inception this legislation has given rise to repeated queries from the members of the Illinois Bar. In April of 1911, John H. Wigmore assailed the adoption of this legislation in Illinois at that time. In discussing its complexities and lack of national uniformity he said: "The danger is—yes, the *certainty* is —that confusion will be 'worse confounded' if these bills pass now."[1]

Although fifty years have passed, many provisions of this legislation still appear to be in a state of legal confusion. This article will be limited to just one of these areas of confusion—third party liabilities. The discussion is made in the hope that a disentanglement of past judicial decisions will lead to a clearer understanding and appreciation of the 1959 Illinois Workmen's Compensation Act.

[1] 5 Ill. L. Rev. 571 (1911).