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WRONGFUL DEATH IN ADMIRALTY

With the recent completion of the Arkansas River Navigation Project, both state courts and federal district courts sitting in Oklahoma are faced with the prospect of increased exposure to litigation involving maritime matters, which have heretofore largely eluded these tribunals. Of particular significance to the Oklahoma bar is the potential commercial navigation that the Kerr-McClellan channel is envisioned to inspire. Accompanying this newly-created commercial maritime traffic will be new issues in maritime matters to which Oklahoma lawyers have been largely unexposed in the past. For insofar as the Oklahoma bar has heretofore been exposed to admiralty and its peculiar concepts, such exposure has been limited to relatively uncomplicated maritime tort litigation arising from pleasure boating accidents. It is the limited purpose of this paper to examine the currently available remedies for maritime wrongful death actions, not to speculate as to the types of maritime matters which may or may not arise in Oklahoma.

In regard to an important preliminary matter, it should be noted that the recently dedicated channel is subject to the admiralty jurisdiction of the United States. In fact, the Arkansas River, which forms to a great extent the route of the channel, was held to be a navigable waterway within the admiralty jurisdiction of the United States long before the plans for the navigation channel were envisioned. Although a thorough discussion of the navigable water concept is un-

1 Brewer-Elliott Oil & Gas Co. v. United States, 260 U.S. 77 (1922); Grand River Dam Authority v. Going, 29 F. Supp. 316 (N.D. Okl. 1939). In both cases it was held that the Arkansas River constituted navigable waters, and thus was within the admiralty jurisdiction of the federal courts from the confluence of the Grand River, a route roughly equivalent to the current navigation channel.
necessary for the purposes of this paper, it is elementary that the practicing attorney realize that occurrences upon the channel will pose new issues, in regard to both the jurisdictional questions and substantive rules applicable.

While special limitations prohibit an extensive discussion of the attendant jurisdictional problems inherent in admiralty, it is nevertheless of initial importance to examine the immediate questions that will be presented in such cases. Admiralty jurisdiction is vested exclusively in the courts of the United States by the Constitution. U.S. Const. art. III, §2 specifies: "The judicial power shall extend . . . . to all Cases of admiralty and maritime Jurisdiction." Thus, a potential litigant's first task is to determine whether or not his claim is either within or without this rather vague constitutional grant of judicial power. Without going into great detail, the fundamental test of admiralty's jurisdiction, assuming of course that the particular claim arose upon a navigable water, depends upon whether the claim involved arose in tort or contract. The test of jurisdiction in admiralty over a contract

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2 " . . . the admiralty jurisdiction of the United States extends to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state." G. Gilmore & C. Black, *The Law of Admiralty* 28-29 (1957). See also *ex parte* Boyer, 109 U.S. 629 (1884); The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1867); The Genesee Chief, 53 U.S. (12 How.) 233 (1851).

8 Unfortunately, the precise extent of the quoted jurisdictional grant was not further defined in the Constitution, so that some uncertainties as to its limits persist, in spite of extensive efforts, both statutory and decisional, to specify its limits. See G. Gilmore & C. Black, *The Law of Admiralty* 18-30 (1957). However, one authority indicates that the subject matter described by this provision is definable, "albeit at a relatively high level of abstraction." D. Robertson, *Admiralty and Federalism* 3 (1970).
claim may be generally said to be “subject matter.” That is, whether or not a cause of action arising from a contract is within the admiralty jurisdiction is dependent upon the maritime nature of the contract. On the other hand, the word “locality” broadly defines the scope of jurisdiction in admiralty over maritime torts. To a great extent, decisional law has been responsible for defining the scope of admiralty’s jurisdiction in these particular areas, although various statutory provisions have lately become of increased importance in determining whether or not admiralty has jurisdiction in any particular case.

Once the preliminary determination has been made that admiralty does indeed have subject matter jurisdiction, the prospective litigant is then faced with making the determination of whether or not admiralty jurisdiction is exclusive, or is concurrent with various other courts under the savings to suitors clause. The apparent all-inclusive grant of federal jurisdiction in admiralty is quite illusory, being limited by the so-called “saving to suitors” clause contained in the Judiciary Act of 1789. This provision has the effect of granting

4 The courts have looked to the maritime nature of the contract to determine whether or not it is within the admiralty jurisdiction, rather than to the place where it is made or is to be performed. This “subject matter” test was first enunciated in New England Marine Ins. Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870). For a concise historical background of the cases and factors that influenced the development of this test for jurisdiction in admiralty over contracts, see G. Robinson, HANDBOOK OF ADMIRALTY LAW § 19 (1939).


both state courts and federal district courts (on their civil as opposed to admiralty docket) concurrent jurisdiction in cases in which the remedy sought was one originally within the cognizance of the common law courts. In essence, then, this provision allows a suitor a choice among three possible forums in a particular case, the choice depending largely upon the differing remedies available in the particular forum.\textsuperscript{8}

As indicated, the savings clause gives law courts concurrent jurisdiction with admiralty courts in cases in which common law courts were competent to grant the remedy sought. The term “law courts” is meant to include both state courts of general jurisdiction and federal district courts on the civil docket, acting pursuant to either their diversity powers or their jurisdiction over federal questions.\textsuperscript{9} However, where the sole remedy pursued is a libel against the particular vessel involved, either in tort or contract, so that the proceeding is of an \textit{in rem} nature, jurisdiction is exclusively with the province of a particular federal district court sitting in its specialized capacity as an admiralty tribunal.\textsuperscript{10}

Decisional law has for the most part clarified the scope of the concurrent jurisdiction vested in the law courts\textsuperscript{11} as a result of the savings clause. With a few rather important exceptions, then, the litigant would be faced with few jurisdictional difficulties, were it not for the presence of a fourth possibility. This possibility exists as a result of the decision in \textit{Rounds v. Cloverport Foundry & Machine Co.}\textsuperscript{12} In that case,

\begin{itemize}
  \item \textsuperscript{9} U.S. Const. art. III, § 2.
  \item \textsuperscript{10} \textit{See} The Moses Taylor, 71 U.S. (4 Wall.) 411 (1866); The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1866).
  \item \textsuperscript{11} For the purpose of this paper, the term “law courts” is used to refer to either a state court of general jurisdiction or a United States district court, acting within either its diversity or federal question power, as opposed to the federal district court’s admiralty docket.
  \item \textsuperscript{12} 297 U.S. 303 (1915); see Knapp, Stout & Co. v. McCaffrey, 177 U.S. 638 (1899).
\end{itemize}
the Court upheld a proceeding in personam against the owner of the vessel involved and the ancillary attachment of the vessel itself as security for the plaintiff's claim as being within the concurrent jurisdiction of a state court under the savings clause. State courts likewise have jurisdiction over quasi in rem proceedings, in which the attachment of a non-resident defendant's property (such as his vessel) establishes the court's jurisdiction, in addition to providing security for the plaintiff's claim. These alternatives are illustrative of the problems facing a litigant who has a maritime claim, either in tort or in contract.

If it be determined that jurisdiction in admiralty is concurrent with the law courts, the litigant is then confronted with the problem of choosing the proper forum. However, regardless of the forum chosen, the substantive rules of maritime law will be applied by the chosen forum so that uniformity may be achieved. Thus, the basic question presented in a litigant's choice of forum (assuming, of course, that jurisdiction is in fact concurrent) is whether or not the cause of action is properly triable by a jury. For in a federal district court sitting in its specialized capacity as an admiralty tribunal, all actions are tried to the judge sitting without a jury. This is so principally because the law of admiralty traditionally is derived from the civil, as opposed to the common, law system of jurisprudence. If the civil docket of a federal district court (either on the basis of diversity or in a case arising under the Constitution, laws, and treaties of the United States) is deemed preferable within the savings clause, the normal rules regarding juries are applicable, as is the case if a state court is selected.

With this necessarily brief jurisdictional background in mind, the reader's attention is directed to the principal subject matter of this paper. It was early held in Baker v. Bolton that the wrongful death of a human was not an actionable wrong which would entitle the injured party to recover damages for the tort. Legal historians have concluded that the origin of this seemingly unjust rule applicable at common law was to a large extent dependent upon the presence of the antiquated felony-merger doctrine. The effect of this doctrine was to deny any recovery by an injured party from the tortfeasor where the act complained of amounted to both a tort and a felony. According to this English common law view, the primary wrong to be redressed was that to the Crown, not to the party actually injured by the wrongful conduct. Since one of the criminal penalties exacted by the Crown was the forfeiture of the convicted felon’s chattels to the Crown, none of the tortfeasor’s property remained from which the injured party could satisfy a judgment, if one were rendered in his favor. There being no available remedy, there could be no legal wrong in a tortious sense. The primitive basis of this rule has been recognized ever since by both commentators and judges, and has been long abrogated if not explicitly overruled in England. Nevertheless, the rule was adopted in the United States and long continued to survive, at least in the absence of statute.

In The Harrisburg, the United States Supreme Court adopted the rule as applicable in maritime actions, holding that in the absence of statute there is no action for wrongful death in admiralty. Even though the court acknowledged the inequitable nature and operation of the rule, it followed its

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17 See Holdsworth at 432.


19 119 U.S. 199 (1886).
then recent decision in *Insurance Co. v. Brame*,\(^{20}\) which adopted the English common law rule as the rule to be applied in the United States\(^{21}\) by agreeing that no civil action is available for wrongful death. In *The Harrisburg*,\(^{22}\) the court applied *Brame* in reversing the decision of the two lower courts which had awarded damages to the libellant.

Ever since the Court's decision in *The Harrisburg*, the availability of a remedy for wrongful death has caused much uncertainty among the various tribunals which sought to predict the consequences of the rule thus promulgated.\(^{23}\) Various statutory provisions thereafter enacted sought to rectify the situation, although they met only with varying degrees of success.\(^{24}\) In spite of the uncertain application of these statutes, their enactment manifested a public policy in favor

\(^{20}\) 95 U.S. 754.

\(^{21}\) It must be remembered that both *Insurance Co. v. Brame* and *The Harrisburg* were decided at a time when the rule of *Swift v. Tyson*, 41 U.S. (16 Pet.) 166 (1842) was in effect.

\(^{22}\) 119 U.S. 199.


\(^{24}\) The Jones Act, 41 Stat. 1007, 46 U.S.C. § 688 (1920). The Jones Act provides:

... in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Thus, the Jones Act provisions are applicable in death cases only if the decedent can be classified as a seaman, and only if the action is brought by his personal representative against his employer. For a comprehensive treatment of the judicially developed rules arising from application of the Jones Act, see 1 P. Edelman, *Maritime Injury and Death* 63-144 (1960).
of awarding such damages, a manifestation that was later to have important ramifications, as will hereinafter be indicated. In light of this manifestation of a public policy that was favorable to awarding damages to survivors of persons who met with wrongful death, the favorite judicial technique of avoiding the strict meaning of The Harrisburg rule was that of statutory interpretation. In particular, the word “seaman” in the Jones Act proved to be a favored source for broadening the remedies available to the survivors of a maritime employee killed while working upon navigable waters. Other statutes which afforded a remedy for various maritime employees were broadly interpreted whenever possible in order to allow recovery, thus avoiding the harsh common law rule.

In addition to the aforementioned federal statutes, in the case where the death complained of occurred upon an inland or territorial waterway which otherwise constituted a navigable water within the admiralty jurisdiction, the applicable state wrongful death statutes were often available to provide a remedy to the survivors statutorily entitled to recover. The applicability of these various state wrongful death statutes has long caused confusion among the courts when confronted with the problem. The problem was itself complicated by the Supreme Court's decisions in two rather ambivalent cases. Prior to the Court's decisions in Southern Pacific Co. v. Jensen and Chelentis v. Luckenbach S.S. Co.,

27 E.g., Death on the High Seas Act, 46 U.S.C. § 761 et seq. (1920) (which applies only if death occurs on navigable waters beyond a marine league from shore); Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. (1927).
29 244 U.S. 205 (1917).
30 247 U.S. 372 (1918).
both state survival and wrongful death statutes had been applied rather freely by the admiralty courts, the federal district courts and state courts with concurrent jurisdiction under the savings clause. After Jensen and Chelentis, in which the uniformity concept was announced, courts facing the problem remained somewhat uncertain as to the availability of such statutes in appropriate cases. Part of the problem could be directly linked to The Harrisburg rule, but more directly it stemmed from Jensen, which itself involved an action to recover damages for wrongful death under a workmen's compensation statute.

In Jensen, however, Mr. Justice McReynolds indicated that state death legislation constituted a possible exception to the supremacy or uniformity concept therein enunciated, stating that "... it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied.\textsuperscript{31}

Shortly thereafter, the Court held in the case of Western Fuel Co. v. Garcia\textsuperscript{32} that a state wrongful death statute was available to give rise to a cause of action in admiralty for a maritime death. In Garcia, however, the court denied recovery on the ground that the California statute of limitations operated to bar the cause of action. With this decision, an important exception to the Jensen-Chelentis uniformity principle was upheld, thereby broadening the remedies available to survivors in wrongful death actions. However, application of state wrongful death statutes required the courts to apply the statute as an integrated whole, so that in many cases the doctrines of contributory negligence and assumption of risk were available to negate any existing cause of action, thus operating to a great extent to nullify the possible applicability of the state statutes. Since the substantive rules of ad-

\textsuperscript{31} 244 U.S. at 216.

\textsuperscript{32} Western Fuel Co. v. Garcia, 257 U.S. 233 (1921).
Wrongful death statutes are largely derived from the civil law system, in which the concept of comparative negligence is the rule and not the exception, the application of state wrongful death statutes often violates the doctrine of uniformity that the Jensen-Chelentis principle was thought to require. Again, however, Garcia can be largely explained as a judicial attempt to overcome the harsh result required by The Harrisburg rule in the absence of a statutory remedy to the contrary. In any event, the application of state wrongful death statutes by the courts in cases after Garcia is indicative of the judicial attempts to fashion suitable remedies in order to evade the common law rule of Baker v. Bolton.

Many of the difficulties attendant with this approach were due to the judiciary's failure to distinguish between the source of the duty imposed and the remedies available in the event of a breach of that duty. The problem was perhaps most clearly emphasized in The m/v Tungus v. Skovgaard. In that case, the decedent was killed when he fell into a vat of hot coconut oil, a fall that was occasioned by the spillage of an amount of coconut oil on the deck as a result of the defective operation of a pump. The decedent was an employee of El Dorado Oil Works, which had been employed by the consignee of the oil to assist in discharging the oil from the vessel. The decedent was called from his home by his employer in order to repair the defective pump. His widow and administratrix instituted a libel in admiralty against both the vessel and its owners for damages occasioned by his death, alleging both negligence and unseaworthiness as the cause of her husband's death. Since the decedent was not a seaman within the meaning of the Jones Act, that act was inappli-

Since the death occurred within a marine league from shore, the Death on the High Seas Act was likewise inapplicable. Thus, death having occurred within the territorial waters (though navigable) of the State of New Jersey, that state's wrongful death statute had to provide the remedy, if one were to be had. The difficulty with that rationale was that the New Jersey courts had not previously determined whether or not the statute included unseaworthiness as a basis of liability.

The district court dismissed the libel, holding that no action for wrongful death could be predicated on the basis of unseaworthiness, and that the respondents owed no duty to the decedent to provide a safe place to work. The court of appeals vacated the district court's decree dismissing the libel in an en banc decision, and remanded for further proceedings. However, the court divided on both the question of whether or not the New Jersey statute encompassed unseaworthiness as a basis of liability, and also as to whether or not the district court had erred in its determination that no duty was owed by the respondents to the decedent. Certiorari was granted by the United States Supreme Court.

The Court affirmed, but split over the consequences to follow the application of the state's wrongful death statute.

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37 See generally 1 P. Edelman, Maritime Injury and Death 63-144 (1960).


39 Thus, as Mr. Justice Frankfurter (concurring in the result) indicated, the case would seemingly be appropriate for application of the doctrine of abstention, particularly since a procedural remedy was available by which the New Jersey courts could have been allowed to determine whether or not the statute encompassed unseaworthiness. 358 U.S. at 597. For a concise discussion of the abstention doctrine, see C. Wright, Federal Courts § 52 (2d ed. 1970).

40 N.J.S.A. 2A:31-1. The relevant portions of that statute are reprinted in footnote 7 of the court's opinion.
The majority, speaking through Mr. Justice Stewart, concluded that the court of appeals had not been clearly erroneous in its determination that unseaworthiness was encompassed by the applicable state statute as a basis of liability. In so holding, the majority concluded that application of the state statute required application of all its attendant state restrictions, including the availability of the defense of contributory negligence as a complete bar to the right to recover. Since the district court has made no finding in regard to the defense of contributory negligence, remand was proper for that purpose. The Court stated:

"[A]dmiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State." Garrett v. Moore-McCormack Co., 317 U.S. 239, 245. The policy expressed by a State Legislature in enacting a wrongful death statute is not merely that death shall give rise to a right of recovery, nor even that tortious conduct resulting in death shall be actionable, but that damages shall be recoverable when conduct of a particular kind results in death. It is incumbent upon a court enforcing that policy to enforce it all; it may not pick or choose.

It is manifest, moreover, that acceptance of respondent's argument would defeat the intent of Congress to preserve state sovereignty over deaths caused by maritime torts within the State's territorial waters. The legislative history of the Death on the High Seas Act discloses a clear congressional purpose to leave "unimpaired the rights under State statutes as to deaths on waters within the territorial jurisdiction of the States." S. Rep. No. 216, 66th Cong., 1st Sess. 3; H. R. Rep. No. 674, 66th Cong., 2d Sess. 3. The record of the debate in the House of Representatives precedes.

41 Joined by Justices Harlan, Clark, Whittaker and Frankfurter. As indicated, Mr. Justice Frankfurter concurred separately in an opinion that was also applicable to a companion case, United New York and New Jersey Sandy Hook Pilots Ass'n v. Halecki, 358 U.S. 613 (1959).
ing passage of the bill reflects deep concern that the power of the States to create actions for wrongful death in no way be affected by enactment of the federal law. 59 Cong. Rec. 4482-4486.

There is no merit to the contention that application of state law to determine rights arising from death in state territorial waters is destructive of the uniformity of federal maritime law. Even Southern Pacific Co. v. Jensen, which fathered the “uniformity” concept, recognized that uniformity is not offended by “the right given to recover in death cases.” 244 U.S. 205, at 216. It would be an anomaly to hold that a State may create a right of action for death, but that it may not determine the circumstances under which that right exists. The power of a State to create such a right includes of necessity the power to determine when recovery shall be permitted and when it shall not. Cf. Caldarola v. Eckert, 332 U.S. 155.42

Speaking for a minority of the Court, Mr. Justice Brennan,43 concurring in part and dissenting in part, illustrated the majority’s failure to distinguish between the source of the right and the remedy in an opinion which this writer believes demonstrates the crux of the uncertainty.44 According to the minority’s view, the acceptance of a state’s wrongful death statute as a remedy available in admiralty does not carry with it the requirement that all of the statute’s limitations (such as the defense of contributory negligence as a complete bar to recovery) be likewise applied in admiralty as an integrated whole. In effect, the Brennan segment of the Court felt that the body of federal maritime law should con-

42 358 U.S. at 593-94.
43 Joined by Chief Justice Warren and Justices Black and Douglas.
44 For a highly provocative discussion on this decision, see D. Robertson, Admiralty and Federalism 225-36 (1970); see also Cook, Death on Inland Waters, 18 Hastings L.J. 869 (1967); Currie, Federalism and the Admiralty: The Devil’s Own Mess, 1960 Sup. Ct. Rev. 158.
sist of any applicable state remedial (e.g., wrongful death) statutes by analogy only. Brennan's opinion stated:

State statutes of limitation applicable to analogous types of claims have been utilized to define the limitations of federal rights of action for which no federal statute of limitations has been provided. . . . This remedial incident, tied up with the felt necessity of having some statutory definition, is drawn upon not because of any intent of the state legislatures to make their statute applicable to federal claims, but because it could be rationally utilized through analogy by courts charged with the enforcement of federal rights and duties and the construction of a proper pattern of remedies to that end. (emphasis added).

In spite of the disparity between the two factions on the Court at the time of The Tungus, the rationale enunciated in that decision remained an obstacle to courts in their quest to fashion suitable remedies in maritime death cases. In fact, in Hess v. United States, the minority seemingly acquiesced in The Tungus decision. The Court's consistent failure to allow a nonstatutory maritime death remedy has been consistently criticized by lower courts, although they have felt compelled to follow the decision and rationale in The Tungus. In all, the Court's treatment of the wrongful death cases seemingly disregards the Jensen-Chelentis uniformity principle altogether, as the disparate results themselves indicate.

Much of this uncertainty has since been rectified, however, by the Court's recent decision in Moragne v. States Marine Lines, Inc. In that case, the plaintiff's husband, a longshoreman employed by the Gulf Florida Terminal Com-

46 358 U.S. at 604.
48 In regard to the criticism directed toward The Tungus, see Kenney v. Trinidad Corp., 349 F.2d 832, 840-41 (5th Cir. 1965).
pany, was killed while working on board the vessel Palmetto State. His death occurred upon navigable waters within the State of Florida. His widow began an action in a Florida court as representative of the decedent's estate against States Marine Lines, Inc., the owner of the vessel, to recover damages for her husband's death, alleging both negligence and unseaworthiness as the bases of liability. States Marine removed the case to the United States District Court for the Middle District of Florida on the basis of diversity of citizenship, and there filed a third-party complaint against Gulf Florida Terminal Company. Both defendants moved that the portion of the plaintiff's complaint relating to unseaworthiness be dismissed, asserting that Florida's death statute did not encompass unseaworthiness as a basis of liability. The court granted the defendants' motion, but made the certification necessary under 28 U.S.C. § 1292(b) to permit an interlocutory appeal. On appeal, the Court of Appeals for the Fifth Circuit certified the question, pursuant to a procedure afforded by Florida law, of whether or not the state's death statute allowed recovery on the basis of unseaworthiness. The Florida Supreme Court answered the question in the negative. The Court of Appeals, upon the return of the case from the Florida Supreme Court, affirmed the district court's dismissal of that portion of the plaintiff's complaint relating to unseaworthiness. Prior to affirming, however, the court of appeals heard, without objection, the plaintiff's argument that she was entitled to reversal as a matter of federal maritime law without regard to the scope of the state death statute, this new theory in effect amounting to a direct attack on the soundness of The Tungus decision. Even though the fifth circuit had previ-
ously indicated its dissatisfaction with the body of law exist- ing as a result of The Tungus, it felt compelled to reject the plaintiff's argument, citing that decision in support of its judgment. Certiorari was granted, and the United States was invited to participate as amicus curiae, "to reconsider the important question of remedies under federal maritime law for tortious deaths on state territorial waters."

Mr. Justice Harlan delivered the opinion for a unanimous Court in which the Court declared, contrary to The Harris- burg, that there is a right under general maritime law to recover damages for death caused by a violation of maritime duties. After reviewing the authority then existing, and the criticism which it had engendered, the Court concluded that the problem lay with The Harrisburg, not with The Tungus, and expressly overruled the former decision. The factor that seemed to be dispositive of the question before the Court was the widespread enactment of statutes giving survivors the right to recover damages for tortious death subsequent to the decisions in Insurance Co. v. Brame and The Harrisburg. These various statutes, both state and federal, indicated clearly to the Court the public policy decision in favor of allowing such recovery. By overruling The Harrisburg expressly, and many of the decisions which impliedly followed, the Court has seemingly achieved the uniformity in maritime death cases that both Jensen and Chelentis were thought to protect. For, by announcing the existence of a federally created mari-

55 Kenney v. Trinidad Corp., 349 F.2d 832 (5th Cir. 1965).
57 Id. at 952.
58 398 U.S. at 377.
59 Mr. Justice Blackmun did not participate in the consideration or decision of this case.
60 119 U.S. 199 (1886).
61 95 U.S. 754 (1878).
62 119 U.S. 199 (1886).
63 "Much earlier, however, the legislatures both here and in England began to evidence unanimous disapproval of the rule against recovery for wrongful death." 398 U.S. at 389.
time right to recover for wrongful death, admiralty is freed of the nuisances of the operative effects of the various state statutes. Harlan’s opinion also indicates a thorough understanding of some rather complex concepts of federalism, insofar as they are applicable to admiralty, and indicates the Court’s acceptance of Brennan’s view as illustrated by his opinion in The Tungus.

After reviewing the policy emphasis on allowing recovery in death cases as indicated by the enactment of the various death statutes, Mr. Justice Harlan stated:

Because the refusal of maritime law to provide such a remedy appears to be jurisprudentially unsound and to have produced serious confusion and hardship, that refusal should cease unless there are substantial countervailing factors that dictate adherence to The Harrisburg simply as a matter of stare decisis. We now turn to a consideration of those factors.64

The Harlan opinion in Moragne,65 besides announcing a long desired substantive rule of admiralty law, is also important for its discussion of the concept of stare decisis. He continued:

Very weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reasons for rejecting any established rule must always be weighed against these factors.66

Weighed against these factors, a unanimous Court found no justification for The Harrisburg rule, except that it had the

64 398 U.S. at 402-03.
blessing of age, and thus overruled that decision, stating: "We accordingly overrule The Harrisburg, and hold that an action does lie under general maritime law for death caused by violation of maritime duties."\(^{67}\)

Although the Court specifically chose to leave additional important questions (e.g., whether any specific statute of limitations is to be borrowed to implement this federal maritime right, or whether the doctrine of laches is applicable) to await future litigation, its decision in *Moragne* is certainly of enormous importance in clarifying the uncertainties of the prior death cases, and its effect is sure to be felt in the potential maritime litigation that is certain to arise in Oklahoma as a result of the Arkansas River Navigation Project.

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\(^{67}\) 398 U.S. at 409 (1970).