STATE JURISDICTION IN THE MARITIME REALM; HEREIN THE SAVING CLAUSE, ITS BACKGROUND, SCOPE AND EFFECT

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The starting points for any discussion of the distribution of maritime jurisdiction in the United States are to be found in article III, section 2 of the Constitution of the United States and in the JUDICIARY ACT OF 1789,[1] as revised in the JUDICIARY CODE OF 1948.[2] Article III, section 1 of the Constitution provides that: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Section 2 provides that: "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction." While the effect of these constitutional provisions is to vest the federal admiralty jurisdiction solely in the federal "constitutional" courts to the exclusion of both legislative courts and executive officials, the constitutional language does not in itself exclude state jurisdiction in the admiralty field.[3] The fundamental adjustment of the federal-state judicial limits in the maritime realm was effected during the first year of the new government when Congress enacted as a part of the basic judicial enabling legislation a clause specifying that "the district courts shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it."[4] The implications of this peculiar clause are twofold, and both are basic to any discussion of admiralty and maritime jurisdiction in the United States. First, it must be noted that admiralty jurisdiction is exclusively vested in the federal courts. State courts are proscribed from exercising strict admiralty jurisdiction, but the effect of this exclusion is drastically mitigated by the second aspect of the statute whereby there is saved to suit-

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1. 1 Stat. 73 (1789).
2. 28 U. S. C. §1333 (1958); 28 U. S. C. A. §1333 (1949).
3. Crowell v. Benson, 45 F.2d 66 (5th Cir. 1930), *aff'd*, 285 U. S. 22 (1931).
4. *Supra* n. 1 at 77., as revised and re-enacted, *supra* n. 2. The saving clause remained unchanged from 1789 to 1917 when the clause "and to claimants the rights and remedies under the workmen's compensation law of any state" was added. 40 Stat. 395, *construed*, Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920). In 1948 the saving clause was changed by substituting the words "any other remedy to which he is otherwise entitled" for the words "the right of a common-law remedy where the common law is competent to give it." The Revisor's note indicates that no substantive change was intended by the 1948 amendment. 28 U. S. C. following §1333 (1958).

ors the common-law remedies in all cases where the common law is competent to afford relief. It does not necessarily follow that this common-law remedy so saved and preserved should be pursuable in the state courts, since the federal courts are themselves competent to offer such relief where the other jurisdictional requisites are met. Nevertheless, the jurisdiction of state tribunals has been included, almost without question, within the accepted interpretation of the clause,[5] and in the exercise of such jurisdiction there has developed a not inconsiderable body of case law.

The Saving of the Common-Law Remedy—Its Jurisdictional Effect

The express provision of the statute saving to suitors the right of a common-law remedy in all cases where the common law is competent to give one naturally raises the question as to exactly what is saved—when, where and why. The underlying purpose of the enactment has been so much taken for granted that it has been only rarely treated and even where discussed has shed little, if any, light upon the basic problems relating to its application to jurisdictional realities. It has been said that the clause was inserted in order to make it clear that the grant of judicial power in the United States in all cases of admiralty did not operate to deprive the suitor of his common-law remedies.[6] Such statements are obviously correct, but they are hardly meaningful in defining the extent and limitations of the jurisdiction which the clause purports to preserve. Nevertheless, it is generally understood that the word "remedy" is of literal application. This rule of unquestionable soundness gives us our first and basic definition and construction of what it is that is saved by the clause. The clause has reference to common-law remedies for the enforcement of maritime law. The maritime law which is the subject of enforcement is national, or federal, maritime law.[7] The clause neither creates substantive rights nor authorizes their creation by the states.[8] In a suit under

5. The Hine v. Trevor, 4 Wall. 555 (U.S. 1867). For a comprehensive state-court construction of the clause, see Kennedy v. Cunard S. S. Co., 189 N. Y. S. 402 (App. Div. 1921), *aff'd*, 235 N. Y. 604, 139 N.E. 752 (1923).

6. Taylor v. Carryl, 20 How. 583 (U. S. 1857); Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 A. 372 (1916).

7. The first opinion so holding is the much discussed decision in Chisholm v. Georgia, 2 Dall. 419 (U. S. 1793). "As the seas are the joint property of nations, whose rights and privileges relative thereto are regulated by the law of nations and treaties, such cases necessarily belong to the national jurisdiction." *Id.* at 475. Clearer and to the same effect is the statement in The Lattawanna, 21 Wall. 558 (U. S. 1874). "It was not intended by the framers of the Constitution to place the rules and limits of maritime law under the disposal and regulation of the several States, for that would have defeated the uniformity at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states." *Id.* at 575.

8. *Ibid.* See also Knickerbocker Ice Co. v. Stewart, *supra* n. 4.

the clause seeking to apply common-law remedies to enforce rights which are maritime in nature, the rights and liabilities of the parties are entirely creatures of the maritime law.[9] The substance of a maritime-related cause of action is not changed by the fact that the cause is asserted in a court of law.[10] Whether an action is tried at law or in admiralty, the liability and damages are to be measured by rules applicable to admiralty cases and not by the common-law rules.[11] Thus, while rights arising out of maritime contracts are generally enforceable either at law or in admiralty,[12] the measure of recovery will not be affected by the choice of forum. And the same is true with respect to maritime torts.[13] The result is to inject certain foreign elements in what might otherwise be a normal suit at law. For instance, the applicable principle with respect to the effect of delay in bringing suit on a maritime cause of action is laches in the admiralty sense and not the statute of limitations.[14] Under the clause a seaman may pursue the ancient maritime right to maintenance and cure in a state-court proceeding, but the nature and extent of the right will be defined by the federal maritime law.[15] Again, by way of illustration, a suit for indemnity or contribution in a case involving a maritime tort can be brought either in admiralty or at law, and the choice of a forum by the plaintiff will in no wise affect the defendant's substantive rights.[16]

Another effect of the saving clause has been to permit a federal district court to try maritime causes of action on the law side of the court docket.[17] This result is hardly surprising since the competency of the federal trial courts to give a common-law remedy is absolutely unquestionable and the statute is otherwise unqualified. In such situations, the basic jurisdictional requisites of diversity and amount in controversy must be present.[18] In fact, the courts have frequently gone so far as to state that except where diversity of citizenship exists there is

9. Chelentis v. Luchenbach S. S. Co., 247 U.S. 372 (1918).
10. Panama Agencies Co. v. Franco, 111 F.2d 263 (5th Cir. 1940).
11. Platt v. Chesapeake and Ohio R. R., 82 F. Supp. 968 (N.D. Ohio 1949); Erlich v. Wilhelmsen, 44 F. Supp. 414 (E.D. N.Y. 1942).
12. Thomas v. Socony Vacuum Oil Co., 37 F. Supp. 616 (S.D. N.Y. 1941).
13. *Supra* n. 11.
14. Larios v. Victory Carriers, Inc., 316 F.2d 63 (2nd Cir. 1963), noted, 63 MICH. L. REV. 890 (1964).
15. Catherall v. Cunard S. S. Co., 101 F. Supp. 230 (S.D. N.Y. 1952).
16. Spaulding v. Parry Nav. Co., 90 F. Supp. 567 (S.D. N.Y. 1950).
17. Evans v. American Export Lines, Inc., 175 F. Supp. 386 (S.D. N.Y. 1959); Catherall v. Cunard S. S. Co., *supra* n. 15; Neset v. Skiles A/S Oil Export Co. of Norway, 93 F. Supp. 530 (E.D. N.Y. 1950); Spaulding v. Parry Nav Co., *supra* n. 16; Erlich v. Wilhelmsen, *supra* n. 11.
18. Mazzella v. Pan Oceanics A/S Panama, 232 F. Supp. 29 (S.D. N.Y. 1964); Catherall v. Cunard S. S. Co., *supra* n. 15; Neset v. Skiles A/S Oil Export Co. of Norway, *supra* n. 17; Erlich v. Wilhelmsen, *supra* n. 11.

no federal common-law remedy available.[19] And it was stated by the United States Supreme Court in *The Belfast* that "in all cases *where the parties are citizens of different States,* the injured party may pursue the common-law remedy here described and saved, in the Circuit Court of the district as well as in the State courts."[20] Attempts to avoid such jurisdictional requisites by resort to federal-question jurisdiction have been generally unsuccessful. The federal statutory provision granting original jurisdiction wherein the matter in controversy is over a stated amount and arises under the Constitution, laws or treaties of the United States has been held not to extend to matters arising under federal maritime law[21] and not otherwise covered by specific federal legislation.[22] The discrimination made in the Constitution between cases of admiralty and maritime jurisdiction and other federal jurisdiction has been held conclusive against the identity of the types of cases embraced by the several constitutional clauses.[23] "[A] case in admiralty does not, in fact, arise under the Constitution or laws of the United States."[24] Unusual results have arisen in situations where a defendant has attempted to remove a maritime cause of action from a state court to the law side of a federal court. The decisions are in confusion and are largely inconsistent with the logic used in limiting the original common-law jurisdiction of the federal courts in maritime matters. Two recent decisions may be taken to illustrate the general problem. In *Kemp v. City of Los Angeles,*[25] an action alleging a maritime tort and demanding a judgment in personam for damages—a typical common-law remedy—was commenced in the Municipal Court of Los Angeles, California. Removal to the United States District Court for Southern California was sought by a defendant who was a resident of California. It was contended that the question of removal was governed by that portion of 28 U.S.C. §1441 (b)[26] which provides that federal-question controversies are removable "without regard to the citizenship or residence of the parties." This contention was rejected on the ground that a maritime action is not one arising under "the Constitution, laws,

19. Steamboat Co. v. Chase, 16 Wall. 522 (U.S. 1872); Leon v. Galceran, 11 Wall. 185 (U.S. 1870); The Belfast, 7 Wall. 624 (U.S. 1868); Padunano v. Yamashita Kisen Kabuskiki Kaisha, 21 F.2d 615 (2nd Cir. 1955), noted, 55 COLUM. L. REV. 1225 (1955), 24 FORDHAM L. REV. 691 (1956), 40 MINN. L. REV. 719 (1956), 31 N.Y.U.L. REV. 601 (1956), 8 STAN. L. REV. 129 (1955); Walker v. Dravo Corp. 210 F. Supp. 386 (W.D. Pa. 1962).
20. The Belfast, *supra* n. 19 at 643-44. (Emphasis added.)
21. Romeo v. International Terminal Operating Co., 358 U.S. 354 (1959). See also, Comment, 8 STAN. L. REV. 129 (1955) (*The Federal Question in Maritime Cases: "Congressional Intent"*).
22. Jardine v. Walling, 185 F.2d 662 (3rd Cir. 1950) (claim for maintenance and cure, or for unseaworthiness, does not arise under Constitution, laws or treaties).
23. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511 (U.S. 1828).
24. *Id.* at 544.
25. 172 F. Supp. 66 (S.D. Cal. 1959).
26. 28 U.S.C. §1441 (b) (1958); 28 U.S.C.A. §1441 (b) (1950).

or treaties of the United States" so as to come within that provision of 28 U.S.C. §1441 (b) which had been relied upon by the party seeking the removal. Rather, maritime actions in state tribunals under the saving clause fall within the second portion of §1441 (b) wherein it is provided that removal is available only "if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." In *Wunderlich v. Netherlands Insurance Company,*[27] a New York defendant was sued in a state court of New York on a contract of marine insurance. The defendant relied on the federal-question provision of §1441 (b) and was successful in removing the cause to the United States District Court for Southern New York. That court in sustaining the removal against a motion to remand relied on the United States Court of Appeals decision in *Doucette v. Vincent,*[28] a case where original jurisdiction was sustained on a federal-question theory. The court stated that "a suit brought on the law side of the federal district court, on a claim under the general maritime law, is a 'civil action' which 'arises under the Constitution' within the meaning of 28 U.S.C. §1331; and that therefore, if the jurisdictional amount required by §1331 is present, the district court has jurisdiction irrespective of diversity of citizenship."[29] The *Doucette* decision distinguished the holding of the Supreme Court in *The Belfast, supra,* page 453, on the ground that the 1875 statute giving the old circuit courts general original jurisdiction of suits of a civil nature at common law or in equity "arising under the Constitution, laws, or treaties of the United States" had completely altered the fact situation upon which all such pre-1875 holdings had been based.[30] This distinction has been completely rejected by the 1959 decision of the United States Supreme Court in *Romero v. International Terminal Company.*[31] In view of the apparent foreclosure of the issue by the *Romero* decision, it would appear that neither *Doucette* nor *Wunderlich* is the law today. While not clearly defined by decision,[32] it would appear that no case arising under the federal maritime law can be removed from a state tribunal to a federal district court in any circumstance where a party joined and served as a defendant is a resident of the state in which the action is

27. 125 F. Supp. 877 (S.D. N.Y. 1954).
28. 194 F.2d 834 (1st Cir. 1952).
29. *Id.* at 843.
30. *Ibid.*
31. *Supra* n. 21.
32. The holding of the *Kemp* case, *supra* n. 25, appears to be in keeping with the *Romero* doctrine, *supra* n. 21. The former was decided before the United States Supreme Court's decision in *Romero* was handed down. Unfortunately, the opinion in the *Kemp* case is highly compressed, and the basis for the decision of the court is not altogether certain.

instituted.[33] At any rate it is clear that a maritime cause may not be removed from a state court to the admiralty side of a federal district court since to permit such a removal would nullify the saving clause and deny the plaintiff the exercise of his option of remedies which the clause was designed to secure.[34]

The Meaning of Common-Law Remedy

The right to pursue a common-law remedy which the clause saves to suitors has been held to include all means, other than proceedings in admiralty, which may be employed to enforce the right arising under the federal maritime law.[35] The saving clause makes no affirmative grant of jurisdiction but merely excepts from the exclusive admiralty or maritime jurisdiction of the federal court system all cases in which suits may be brought to obtain other than admiralty remedies to which suitors are otherwise entitled.[36] Where the action as brought and defended is a common-law action in the broader sense of the term, without any of the ingredients of an admiralty or maritime cause, it is clearly within the benefit of the saving clause.[37] The distinction drawn in the original language of the clause was always held to be a distinction between law in its broader sense and admiralty and not a distinction between the common law on one hand and equity and admiralty on the other.[38] In 1948, the clause was changed to read "saving to suitors in all cases all other remedies to which they are otherwise entitled."[39] It is clear that the effect of the clause is to save from the exclusive jurisdiction of federal admiralty courts all remedies, both legal and equitable, other than those necessarily and peculiarly within the traditional concept of admiralty. It cannot be extended to include attempted alterations by the states of the substantive maritime law.[40] Some early cases construing the saving clause did hold that when an admiralty case was instituted in a state the tribunal was free to ap-

33. *Supra* n. 26.
34. Schoonmaker v. Gilmore, 102 U. S. 118 (1880); Steamboat Co. v. Chase, *supra* n. 19; Leon v. Galceran, *supra* n. 19; The Belfast, *supra* n. 19. "To permit that option to be nullified by a removal of the case, upon petition of the defendant, to this Court sitting as a court of admiralty, would be tantamount to reading off the statute books the "saving to suitors clause" which was first enacted as part of §9 of the Judiciary Act of 1789, 1 Stat. 76-77, and has continuously since been the law of the land. . . . " Hill v. United Fruit Co., 149 F. Supp. 470, 472-73 (S.D. N.Y. 1957).
35. Keithley v. Northern Pacific S. S. Co., 232 F. 255 (D. Or. 1916).
36. Paduano v. Yameshita Kisen Kubuskiki Kaisha, *supra* n. 19.
37. Chappell v. Bradshaw, 128 U. S. 132 (1888).
38. The Moses Taylor, 4 Wall. 411 (U.S. 1866).
39. *Supra* n. 4.
40. Red Cross Line v. Atlantic Fruit Co. 264 U.S. 109 (1924), *reversing*, 233 N.Y. 373, 135 N.E. 821 (1922).

ply local substantive law,[41] but the unanimous theory of subsequent decisions has been to the effect that the substantive law to be applied by the state court must conform to the uniform maritime law as developed and declared by the federal judiciary.[42] Thus, it appears to be clearly certain that the saving clause will not be construed as assenting to the creation by the states of substantive rights within the field of admiralty and maritime jurisdiction;[43] the accepted construction must be that it refers only to remedies and to the extent specified permits continued enforcement by the state courts of rights and obligations founded on maritime law.[44] On the other hand, effect may be given to state laws incidentally affecting maritime law as long as such state laws do not affect any of the characteristic features of the maritime law nor encroach upon an area where uniformity of practice is important.[45] So too, the right of a common-law remedy which has been saved under the clause will not be limited to those remedies existing in 1789 at the time of the passage of the original enactment.[46]

As a general proposition, if the proceeding is in personam and no remedy is sought against the vessel itself, the case is not within the exclusive jurisdiction of the federal admiralty courts. Since the common-law courts have always offered a remedy in personam, the right to pursue this form of redress is preserved to litigants in maritime-related causes.[47] A suitor desirous of proceeding in personam may do

41. Belden v. Chase, 150 U.S. 674 (1893); The Max Morris, 137 U.S. 1 (1890); Atlee v. Packet Co., 21 Wall. 389 (U.S. 1874); In re Pennsylvania R. R., 48 F.2d 559 (2nd Cir. 1931).

42. Pope & Talbot, Inc. v. Haun, 346 U.S. 406 (1953); Knickerbocker Ice Co. v. Stewart, *supra* n. 4; Chelentis v. Luchenbach S. S. Co., *supra* n. 9.

43. Chelentis v. Luchenbach S. S. Co., *supra* n. 9, Jennings v. Goodyear Aircraft Corp., 227 F. Supp. 246 (D. Del. 1946).

44. Roth v. Cox, 210 F.2d 76 (5th Cir. 1954), *aff'd*, 348 U. S. 207 (1955), noted, 41 A.B.A.J. 335 (April 1955), 29 ST. JOHN'S L. REV. 289 (1955), 103 PA. L. REV. 119 (1954).

45. United Barge Co. v. Logan Charter Service, Inc., 237 F. Supp. 624 (D. Minn. 1964). As an example, it has been held that state legislatures are competent to enact survival statutes which may be enforced as a common-law remedy in an action under the JONES ACT (46 U.S.C. §688) which contains no provisions for survivability against the estate of a deceased tort-feasor. Such enactments are not encroachments upon the exclusively federal maritime law. *Ibid.*

46. McDonald v. New St. Louis and Calhoun Packet Corp. 51 F. Supp. 438 (N.D. Ala. 1943) (enforcing state wrongful death statute); North Pacific S. S. Co. v. Industrial Acc. Comm'n of Cal., 174 Cal. 346, 163 P. 199 (1917) (enforcing state workmen's compensation statute). *Contra*, Frankel v. Bethlehem-Fairfield Shipyard, 46 F. Supp. 242 (D. Md. 1942), *aff'd*, 132 F.2d 634 (4th Cir. 1942), *cert. denied*, 319 U.S. 746 (1943), wherein it was held that state workmen's compensation laws are not included within the "common-law remedies" since the remedies afforded by such compensation acts are unknown to the common law. See n. 4 *supra*. State courts have generally taken the view that they have jurisdiction where a remedy exists at common law, although the cause of action is not recognized by the common law, but is given entirely by statute. Walter v. Kierstead, 74 Ga. 18 (1885).

47. Schoonmaker v. Gilmore, *supra* n. 34; Steamboat Co. v. Chase, *supra* n. 19.

so either in admiralty or at law.[48] Generally the test to determine if a proceeding to adjudicate a maritime cause of action is in personam is whether the defendant is a person and not a ship or other instrument of navigation.[49] In the former case the action is in personam; in the latter it is in rem.[50] The classic illustration is the case of a collision at sea. The common-law remedy is for money damages, an in personam remedial solution, and is clearly within the clause. Thus in a recent case there was little difficulty in holding that a state court had jurisdiction over an action against the owners of a vessel for property damage based on a collision with the complaining parties' pier.[51] In general, the common-law remedy has been applied in a number of varying situations.[52]

The gist of the judicial construction of the saving clause has been to create a concurrent jurisdiction with respect to proceedings maritime in nature but in personam in character while reserving to the exclusive admiralty jurisdiction of the federal courts those proceedings against a vessel, its equipage or its cargo which have been traditionally classified as in rem actions. Generally it has been held that the proceeding in rem as used in the admiralty was not and could not be a remedy afforded by the common law. Therefore the effect of the jurisdictional grant was to vest exclusively in the federal admiralty courts the jurisdiction to entertain such suits.[53] The distinction and logic are both well drawn in the opinion of the U. S. Supreme Court in the celebrated case of *The Moses Taylor*:[54]

> The action against the steamer by name, authorized by the statute of California, is a proceeding in the nature and with the incidents of a suit in admiralty. The distinguishing and

48. Panama R.R. v. Vasquez, 271 U.S. 557 (1926); New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. 344 (U.S. 1848).
49. Madruga v. Superior Court of State of Cal., 346 U.S. 556 (1953), *affirming*, 40 Cal.2d 65, 251 P.2d 1 (1952), noted, 40 A.B.A.J. 322 (April 1954), 42 CALIF. L. REV. 331 (1954), 53 COLUM. L. REV. 746 (1953), 42 GEO. L. REV. 534 (1954), 68 HARV. L. REV. 164 (1954).
50. *Ibid.*
51. Harbor Boating Club v. Red Star Towing and Transp. Co., 179 F. Supp. 755 (E.D. N.Y. 1960).
52. C. J. Hendry Co. v. Moore, 318 U.S. 133 (1943) (forfeiture); Red Cross Lines v. Atlantic Fruit Co., *supra* n. 40 (specific performance of agreement to arbitrate); Rounds v. Clovesport Foundry & Mach. Co., 237 U.S. 303 (1915), *affirming*, 159 Ky. 414, 167 S.W. 384 (1914) (attachment); Knapp, Stout & Co. v. McCaffrey, 177 U.S. 638 (1900) (enforcement of common-law lien); Steamboat Co. v. Chase, *supra* n. 19 (tort damages); Leon v. Galceran, *supra* n. 19 (wages owed); Intagliata v. Shipowners' and Merchants' Towboat Co., 26 Cal.2d 365, 159 P.2d 1 (1945) (tort damages); North Pacific S. S. Co. v. Industrial Acc. Comm'n, *supra* n. 46 (workmen's compensation); State v. Watts, 7 La. 440 (1834) (partition proceeding).
53. The Belfast, *supra* n. 19; The Hine v. Trevor, *supra* n. 5; The Moses Taylor, *supra* n. 38.
54. *Supra* n. 38.

> characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. It is this dominion of the suit in admiralty over the vessel or thing itself which gives to the title made under its decrees validity against all the world. By the common law process, whether of mesne attachment or execution, property is reached only through a personal defendant, and then only to the extent of his title. Under a sale, therefore, upon a judgment in a common law proceding the title acquired can never be better than that possessed by the personal defendant. It is his title, and not the property itself, which is sold. The statute of California, to the extent in which it authorizes actions *in rem* against vessels for causes of action cognizable in admiralty, invests her courts with admiralty jurisdiction. . . . The case before us is not within the saving clause. . . . That clause only saves to suitors "the right of a common-law remedy, where the common law is competent to give it." It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding *in rem,* as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law.[55]

Two years later, the Court, in a case arising in a state court of Alabama under an Alabama statute entitled "Proceedings in Admiralty," laid down further guidelines as to what was necessarily excluded from the operation of the saving clause:

> [M]ost common-law remedies in cases of contract and tort, as given in common-law courts, and suits *in personam* in the admiralty courts, bear a strange resemblance to each other, and it is not, perhaps, inaccurate to regard the two jurisdiction in that behalf as concurrent, but there is no form of action at common law which, when compared with the proceeding *in rem* in the admiralty, can be regarded as a concurrent remedy. . . . Authority does not exist in the State courts to hear and determine a suit *in rem* in admiralty to enforce a maritime lien.[56]

55. *Id.* at 427, 431.

56. The Belfast, *supra* n. 19 at 644, 645. But see C. J. Hendry Co. v. Moore, *supra* n. 52, wheren it was held that the common law provided a remedy in cases of forfeiture of articles seized on the navigable waters of a state, which remedy operated in rem but was nevertheless saved to suitors. Following the principle as quoted, see the even more recent decision in Madruga v. Superior Court of California, *supra* n. 49, wherein it was held that state courts could entertain suits by dissatisfied co-owners for the sale of a vessel and partition of the proceeds. "The procedings in this California partition were not *in rem* in the admiralty sense. The plaintiffs quarrel was with their co-owner, not with the ship. Manuel Madriga, not the ship, was made defendant. Thus the state court in this proceeding acts only upon the interests of the parties over whom it has jurisdiction *in personam,* and it does not affect the interests of others in the world at large, as it would if it were a proceeding *in rem* to enforce a lien." *Id.* at 301.

In the final analysis it would appear that it is not the claim which determines jurisdiction, but the character of the proceeding in which relief is sought. If it is a proceeding in personam against a named personal defendant, the litigant may proceed on either the admiralty or the law side of a federal court or, at his option, in a state court, but if he seeks an in rem remedy, he must sue in a federal admiralty court.

Effect of Federal Legislation Limiting Liability

The various enactments of Congress establishing certain ceilings on maritime-related liabilities do not in any way restrict or qualify the concurrent jurisdiction of state courts saved to suitors by the saving clause.[57] These acts are so construed as not to thwart the purpose underlying the preservation of the right to pursue a common-law remedy in a state court with an attendant trial by jury.[58] Of course, a suitor pursuing his common-law remedy in a state court does so subject to the shipowner's right to limit his liability.[59]

Conclusion—The Effect of a Concurrent Remedy at Common Law

The saving clause in no way limits the exercise of admiralty jurisdiction by the federal courts of admiralty. It simply provides for a concurrent in personam jurisdiction of courts of common law, both state and federal.[60] The remedy at common law is accorded to suitors in addition to their remedy in admiralty so that either of the concurrent remedies may be elected.[61] A suitor desirous of proceeding in personam may do so either in admiralty or at law.[62] In other words, the clause reduced to its simplest form means that suitors may retain other available remedies if they prefer them to those supplied in admiralty.[63] As was noted by the U. S. Supreme Court:

> Congress intended by that provision to allow the party to seek redress in the admiralty if he saw fit to do so, but not to make it compulsory in any case where the common law is competent to give him a remedy. Properly construed, a party

57. Baird v. Daly, 57 N.Y. 236 (1874).
58. Petition of Madsen, 187 F. Supp. 411 (N.D. N.Y. 1960).
59. The Aloha, 56 F.2d 647 (W.D. Wash. 1932).
60. Waring v. Clarke, 5 How. 441 (U.S. 1847).
61. Davis v. Matson Nav. Co., 143 F. Supp. 537 (N.D. Cal. 1956), noted 10 Stan. L. Rev. 168 (1957); Crispin Co. v. Lykes Bros. S. S. Co., 134 F. Supp. 704 (S. D. Tex. 1955); Rohde v. Grant Smith-Porter Ship Co., 263 F. 204 (D. Or. 1920).
62. Panama R. R. v. Vasquez, *supra* n. 48; New Jersey Steam Nav. Co. v. Merchants' Bank, *supra* n. 48; New York Cent. R. R. v. Rodermand Indus., Inc. 113 F. Supp. 435 (D.N.J. 1953).
63. Mazella v. Pan Oceanica A/S Panama, *supra* n. 18.

> under that provision may proceed *in rem* in the admiralty, or he may bring a suit *in personam* in the same jurisdiction, or he may elect not to go into admiralty at all, and may resort to his common-law remedy in the State courts or in the Circuit Court of the United States, if he can make proper parties to give that court jurisdiction of his case.[64]

Little can be added to the Court's summary of construction. It is on the basis of the saving clause and its developed construction that all state jurisdiction in the maritime realm is founded.

64. The Belfast, *supra* n. 19 at 644.