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AIRPLANES IN THE ADMIRALTY JURISDICTION: A SHORT HISTORY

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With the advent of the airplane as a convenient mode of intercontinental transportation, an inevitable question arose: must the admiralty give up a measure of its salty tradition and allow these ships of the air into its sacred integuments? When airplanes began to be used often enough to raise this question, there were those[1] who boldly contended that these craft were comprehended within the admiralty and maritime jurisdiction of the United States.[2] They were bitterly opposed by a segment of the common law bar, and in 1921 the matter came into the open at a meeting of the American Bar Association when the "Special Committee on the Law of Aviation" urged a constitutional amendment to bring all aviation under federal control.[3] President Harding had sent a bill to Congress on April 19, 1921, proposing that this control be under the admiralty jurisdiction.[4] The special committee attacked the bill, and it went down under withering fire.[5] In later years similar attempts at omnibus aviation liability legislation, though not always through the admiralty route, have also been unsuccessful.[6]

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1. Conference of Delegates from State and Local Bar Ass'ns at Boston, Sept. 2, 1919. See Knauth, *Aviation and Admiralty,* 6 AIR L. REV. 226 (1935).
2. U. S. CONST. art. III, § 2.
3. 46 A.B.A. REP. 498 (1921).
4. H.R. 17, 67th Cong., 1st Sess. (1921).
5. "It declares such portions of the air as are navigable by aircraft and all aircraft navigating the air to be within the admiralty jurisdiction of the federal courts (thus apparently claiming by Congressional action the power to establish a jurisdiction which was constitutionally conferred). . . . It extends the maritime law and laws relating to watercraft and water navigation to aircraft and air navigation so far as applicable (thus creating a fruitful field for controversial litigation and a degree of legal uncertainty until after an event), and except (among other exceptions) as modified by the rules and regulations (thus apparently conferring or attempting to confer upon an administrative officer the power to modify a law). It contemplates its own partial invalidity by saving the parts not held to be invalid."

46 A.B.A. REP. 498, 524-25 (1921). See Knauth, *Aviation and Admiralty,* 6 AIR L. REV. 226, 229 (1935).

6. Most notable of these was the so-called "Sweeney Report" by the CAB in 1941, which is discussed in Note, 12 AIR L. REV. 383 (1941). See also Keuhnl, *Uniform State Aviation Liability Legislation,* 1948 WIS. L. REV. 356, 360-61; Orr, *The Proposed State Uniform Aviation Liability Act,* 1948-49 PROC. ABA SEC. OF INS. L. 144. Other sequels include: Sweeney, *Is Special Aviation Liability Legislation Essential?* 19 J. AIR L. 166, 317 (1952); Morris, *Constitutional and Procedural Problems Presented by Proposals in Congress on Tort Liability in Air Transportation,* 1947 INS. COUNSEL J. 22; and Buhler, *Limitation of Air Carrier's Tort Liability and Related Insurance Coverage: A Proposed Federal Air Passenger Liability Act,* 11 AIR L. REV. 262 (1940).

A. Application of Traditional Admiralty Doctrines to Airplanes

The entire body of maritime law as it existed in 1921 was obviously inapposite to the needs of aviation. While Congress was not willing to extend the whole corpus of admiralty law to airplanes, not all the courts were convinced that various admiralty doctrines should not be applied piecemeal to airplanes coming within the maritime nexus. In this same year a seaplane moored in the navigable waters of New York Harbor dragged anchor and drifted toward the beach. The libelant waded into the water to turn the plane about and was struck by one of the propellers. In typical literary flourish Mr. Justice Cardozo observed that the latest of man's devices for locomotion had invaded the navigable water, "the most ancient of his highways."[7] This new craft "would have mystified the Lord High Admiral in the day when he was competing for jurisdiction with Coke and the courts of common law."[8] Nonetheless, it was held that while afloat the new craft is subject to admiralty jurisdiction. This language has not been extended beyond the seaplane situation, and in that context it has been limited almost to the facts of that case. Where a seaplane was removed from its hangar and its engine removed for repairs, no admiralty lien was held to attach.[9] Where a seaplane crashed into navigable waters, it was held that no maritime lien for salvage attached,[10] although one case held that there was admiralty jurisdiction for salvage where the seaplane buzzed a ship and then landed on the water.[11]

It has been suggested that the courts should allow a salvage lien regardless of the type of aircraft or whether it crashed or "landed."[12] This is probably a good rule, but the suggestion has not been taken to mean that maritime liens other than for salvage attach to any sort of airplane.[13] When a British court held that seaplanes did not come within the maritime jurisdiction for purposes of salvage,[14] Parliament immediately passed the Air Navi-

7. Reinhardt v. Newport Flying Service, 232 N.Y. 115, 133 N.E. 371 (1921).

8. *Id.* at 117, 133 N.E. at 371-72.

9. United States v. Northwest Air Serv., Inc., 80 F.2d 804 (9th Cir. 1935).

10. Foss v. Crawford Bros. No. 2, 215 Fed. 269 (W.D. Wash. 1914).

11. Lambros Seaplane Base v. The Batory, 215 F.2d 228 (2d Cir. 1954). In this case admiralty jurisdiction was extended, but for other reasons the court held that the salvors were not entitled to an award. The case is, then, not a square holding that salvage liens will attach even to seaplanes.

12. GILMORE & BLACK, THE LAW OF ADMIRALTY 450 (1957).

13. Comment, 64 COLUM. L. REV. 1084, 1089 (1964).

14. Watson v. R.C.A. Victor Co., 50 Lloyd's L.R. 77 (1934), 1935 A.M.C. 1251.

gation Act of 1936[15] which made salvage applicable to airplanes on the high seas. In view of the shaky state of the law in the United States as to jurisdiction in salvage lien cases, a comparable statute for the United States might not be a bad idea. This is one of the few instances where the airplane is in exactly the same position as a ship liable for salvage, since the plane is either floating helplessly on the sea or has sunk, and in either event its capacity for flight no longer exists. The factors which distinguish ships from airplanes in other contexts are no longer relevant for salvage liens, and jurisdiction should attach.

While no conceptual obstacles of a serious nature are encountered in making the maritime law of salvage applicable to airplanes, there are serious ones when attempts are made to apply limitation of liability. The Limitation Act[16] was passed ostensibly to help American shipowners compete with the British merchant marine.[17] Congress has evinced no such unusual solicitation for the competitive viability of the airlines; or if it has, it has limited its preferences to mail contracts[18] and airport construction.[19] Moreover, the Limitation Act is worded in terms of "vessels," which makes it easy for a court to hold that an airplane is not a vessel.[20] The cases in which a right to limitation has been asserted, however, have chosen not to rely on this makeweight argument, but have gone right to the heart of the matter and looked at the purpose in applying the Limitation Act to airplanes. In *Noakes v. Imperial Airways*[21] a plane fell into the sea, broke up and sank. The court denied limitation, holding that the primary purpose of the plane was flight through air, and it was incapable of being used as a means of transportation by water. Where a seaplane crashed into the Caribbean, limita-

15. 10 & 11 GEO. V, CH. 80 (1936), 1937 U.S. Av. 415. For the exotic state of the law prior to the *Watson* case, see *Flotsam and Jetsam, Findall and Waifs (Not to Mention Ligan or Lagan)*, 122 JUST. P. 570, 571 (1958).

16. 46 U.S.C. §§ 181-89 (1964).

17. See 23 CONG. GLOBE 331-32, 713-20, 776-77, 31st Cong., 2d Sess. (Jan. 25, Feb. 26, Mar. 3, 1851), for the brief Senate debate; see also, GILMORE & BLACK, THE LAW OF ADMIRALTY 663-67 (1957).

18. 49 U.S.C. § 1376 (1964).

19. 49 U.S.C. § 1104 (1964).

20. "Except as specifically provided in sections 143-147d of Title 33, the navigation and shipping laws of the United States, including any definition of 'vessel' or 'vehicle' found therein and including the rules for the prevention of collisions, shall not be construed to apply to seaplanes or other aircraft or to the navigation of vessels in relation to seaplanes or other aircraft." 49 U.S.C. § 1509(a).

21. 29 F. Supp. 412 (S.D.N.Y. 1939).

tion was refused because the fundamental purpose of the Limitation Act was to build up the Merchant Marine, and since water navigation for a seaplane was purely an auxiliary function, it was held not to come within the purpose of the Limitation Act.[22] Thus, limitation would not appear to be applicable to airplanes at all. If there can be no limitation for seaplanes, then a fortiori there should never be any for aircraft which in their normal operation do not touch the sea.

Even if the airlines cannot take advantage of this traditional maritime doctrine, there still remains their own peculiar limitation device, the Warsaw Convention.[23] Most of the flights over water are international, and where an action arises between signatories to the treaty,[24] airlines can obtain the benefit of its passenger recovery limitation which is about $8,300 per death.[25] This treaty limitation, combined with the traditional *res ipsa loquitur* theory, has been denominated by one critic as a "slot machine" award of the liability limits.[26]

The rule of divided damages in collisions of mutual fault was frozen into admiralty law in *The Schooner Catharine v. Dickinson.*[27] While this limitation has been criticized by both judges and commentators,[28] no court has attempted to overrule it, and as yet Congress has not been willing to offend the cargo interests by expanding this doctrine.[29] The doctrine today is just as vital as ever in its application to ships.[30] But what about air-

22. Dollins v. Pan-American Grace Airways, 27 F. Supp. 487 (S.D.N.Y. 1939).

23. 49 Stat. 3000 (October 12, 1929); T.S. No. 876.

24. Seventy-four nations are signatories to this convention. See U. S. Dept. of State, Office of Legal Advisor, Treaties in Force (1964).

25. The text ratified by the United States is in French, and the limitation is expressed as 125,000 francs. Warsaw Convention, Art. 22. The United States has announced it may withdraw if the limits are not raised temporarily to $75,000 and eventually to $100,000. See TIME MAGAZINE 86:98, Oct. 28, 1965.

26. Prominski, *Wrongful Death in Aviation: State, Federal, and Warsaw,* 15 U. MIAMI L. REV. 59, 73 (1960). See generally SHERMAN, THE SOCIAL IMPACT OF THE WARSAW CONVENTON (1952), and Rittenberg, *Limitation of Airline Passenger Liability,* 6 J. AIR L. & COMM. 365 (1935).

27. 58 U.S. (17 How.) 170, 177-78 (1855). Here, the court held that "under the circumstances usually attending these disasters, we think the rule dividing the loss the most just and equitable, and as best tending to induce care and vigilance on both sides, in navigation." The Schooner Catharine v. Dickinson, *supra* at 177-78.

28. GILMORE & BLACK, THE LAW OF ADMIRALTY 441-42 (1957).

29. See Knauth, *Aviation and Admiralty,* 6 AIR L. REV. 226, 232-33 (1935).

30. In Weyerheuser S.S. Co. v. United States, 372 U.S. 597 (1963) the Supreme Court held that the rule was not qualified to exclude from division F.E.C.A. payments to an injured seaman.

planes? One writer early suggested that when a plane crash occurs on or close to the water with mutual fault, the admiralty rule of half-damages should be applied. He acknowledged that there would be no basis for applying the doctrine "when the collision takes place in the navigable airspaces."[31] No case has yet been reported where the application of this rule has been sought. This is not without good reason, either, since an adverse decision on this mutual fault theory would leave both airlines completely open to proof of negligence by all passengers to whom they would have admitted fault. Apparently, the airlines feel that as things stand they have at least a fighting chance under the *res ipsa loquitur* approach,[32] and the divided damages route would be too risky.

"General Average" is another maritime doctrine that has not been invoked by an airline, and this is as it should be. There is little reason why such losses could not be handled by insurance. Moreover, there is almost no maritime connection except for the falling of cargo into the sea, and if such a doctrine were applied to aircraft, admiralty jurisdiction would be extended to airplanes merely to shift the burden of insurance from the carrier to the shipper, hardly an adequate justification for such an extension.

B. Tort Liability

By far the most prolific source of litigation over airplanes and admiralty jurisdiction has taken place in the area of tort liability. The airlines have been remarkably successful in placing themselves within this jurisdiction. One reason for this success is the confusion of the courts as to what the admiralty jurisdiction is, even as applied to ships.[33] In 1957 the touchstone for successful invocation of admiralty jurisdiction was stated to be the magic word "vessel," and "an airplane is generally held not to be a vessel."[34] The foundations of authority for that statement were

31. Knauth, *Aviation and Admiralty*, 6 AIR L. REV. 226, 233 (1935).

32. See, *e.g.*, Haasman v. Pacific Alaska Air Express, 100 F. Supp. 1 (D. Alaska 1951), *aff'd per curiam sub nom.* Des Marais v. Beckman, 198 F.2d 550 (1952), *cert. denied*, 344 U.S. 922 (1953). See also Goldin, *The Doctrine of Res Ipsa Loquitur in Aviation Law*, 18 So. CAL. L. REV. 15, 124 (1944); McLarty, *Res Ipsa Loquitur in Airline Passenger Litigation*, 37 VA. L. REV. 55 (1951); Vold, *Strict Liability for Aircraft Crashes and Forced Landings on Ground Victims Outside Established Landing Areas*, 5 HASTINGS L.J. 1 (1953); Prominski, *Wrongful Death in Aviation: State, Federal and Warsaw*, 15 U. MIAMI L. REV. 59 (1960).

33. See Currie, *Federalism and the Admiralty: The Devil's Own Mess*, 1960 SUP. CT. REV. 158, for a discussion of the cases.

34. GILMORE & BLACK, THE LAW OF ADMIRALTY 29-30 (1957).

two district court cases[35] and the Air Commerce Act of 1926,[36] which had long been held inapposite to wrongful death claims from airplane deaths in admiralty.[37] The difficulties of capsulating the extent of admiralty jurisdiction for beginning students in admiralty law indeed must have been great, and this over-conceptualistic generalization can perhaps be partially justified on this basis for as the Supreme Court once stated, "the precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history."[38] Such traditional thinking on the part of the admiralty bar could be financially costly,[39] as well as downright fraudulent to personal injury and death clients seeking a remedy.

The problem originated with the Death on the High Seas Act[40] which, while not worded in terms of "vessels," gave a cause of action previously existing only under the laws of the states, "whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States. . . ."[41]

Thus, prior cases construed statutes whose jurisdiction was conferred in terms of "vessels"[42] and would not appear to be

35. Noakes v. Imperial Airways, 29 F. Supp. 412 (S.D.N.Y. 1939) and U. S. v. Cordova, 89 F. Supp. 298 (E.D.N.Y. 1950). The latter case involved a fact situation too interesting to pass over. There, the passengers were returning from the Caribbean, and had imbibed considerable quantities of that area's most notable product. Suddenly, the pilot noticed that the nose of the plane was rising so fast that the automatic pilot could not compensate. Upon inquiry he discovered a round of fisticuffs among the passengers in the tail section, and everyone had crowded aft to watch. The captain was able to break up the melee only after sustaining serious injury from being bitten on the shoulder by one of the participants, who was described as having gone berserk. The issue was whether admiralty took jurisdiction over criminal assaults in planes over navigable waters, and the court concluded that it did not.

36. 49 U.S.C. § 1509(a) (1964).

37. Choy v. Pan Am. Airways Co., 1941 A.M.C. 483 (S.D.N.Y.); Higa v. Transocean Airlines, 121 F. Supp. 13 (D Hawaii 1954), *aff'd*, 230 F2d 780 (9th Cir. 1955); Wilson v. Transocean Airlines, 121 F. Supp. 85 (N.D. Calif. 1954).

38. The Blackheath, 195 U.S. 361, 365 (1904).

39. Recoveries for actions against airlines are generally among the largest reported in each issue of the NACCA Law Journal's section on "Verdicts or Awards Exceeding $50,000."

40. 46 U.S.C. §§ 761-68 (1964).

41. 46 U.S.C. § 761 (1964).

42. Such a statute was the Criminal Jurisdiction Act, 18 U.S.C. § 7(1) (1964), which created admiralty criminal jurisdiction to cover the void left by U.S. v. Cordova, 89 F. Supp. 298 (E.D.N.Y. 1950).

binding upon the jurisdictional scope of the High Seas Act. It was early decided that collisions taking place *under* the high seas were within the contemplated jurisdiction of this act.[43] However, this decision was not generally regarded as authority for the proposition that admiralty had vertical-plane jurisdiction over navigable waters. In fact nobody gave much thought at all to the airplane jurisdiction of admiralty, and when the first airplane case was brought under the High Seas Act, it concerned a seaplane, that same hybrid invention that had so confused the law of admiralty jurisdiction in *Reinhardt v. Newport Flying Serv.*[44] The action was brought on the civil docket, and the defendant moved to dismiss for lack of jurisdiction. The defendant contended that the action had been in the civil court rather than in admiralty, and the High Seas Act granted a right to sue only "in the district courts of the United States, in admiralty. . . ."[45] The court held that the words "in admiralty" had been inserted because of the doubt then existing as to whether legislation augmenting seamen's rights to recover damages for personal injury and granting common law jurisdiction to hear cases under it, might not be an unwarranted invasion of the admiralty jurisdiction. It concluded that this question had been settled favorably since the Act was passed, and thus the action could be brought at common law.[46] Two years later an action in a state court involving a plane lost over the Pacific Ocean was sustained under this same statute.[47]

The question of whether admiralty jurisdiction was exclusive as to actions brought under the High Seas Act for death on *ships* on the high seas was settled in favor of exclusiveness in 1952.[48]

43. The City of Rome, 48 F.2d 333 (S.D.N.Y. 1930) (A merchant vessel had collided with a submarine, killing 32 persons aboard the submarine.)

44. 322 N.Y. 115, 133 N.E. 371 (1921). See, Choy v. Pan Am. Airways Co., 1941 A.M.C. 483 (S.D.N.Y. 1941).

45. 46 U.S.C. §§ 761-68 (1964)

46. Choy v. Pan Am. Airways Co., 1941 A.M.C. 483, 487. The court believed that this question had been settled by Panama R.R. v. Johnson, 264 U.S. 375 (1924), reasoning that since the Death on the High Seas Act and the Jones Act were enacted by the same Congress, it would be anomalous to hold that seamen had a common law action for death and other victims of injuries on the same ship had not. Choy v. Pan Am. Airways Co., *supra* at 486.

47. Wyman v. Pan. Am. Airways, Inc., 181 Misc. 963, 43 N.Y.S.2d 420 (1943), *aff'd mem.*, 293 N.Y. 878, 59 N.E.2d 785 (1944), *cert. denied*, 324 U.S. 882 (1945).

48. Iafrate v. Compagnie Gen. Transatlantique, 106 F. Supp. 619 (S.D.N.Y. 1952). The court said that "to hold otherwise would mean that the references made to actions and suits in admiralty . . . [in the Death on the High Seas Act] . . . are surplusage." *id.* at 621.

It was not long before the courts had an opportunity to extend it to airplanes. In *Wilson v. Transocean Airlines*[49] there was a plane crash approximately three hundred miles east of Wake Island. The decedent had been a passenger on a flight from Guam to Oakland, and his representative brought an action in the California Superior Court. Removal was sought to the federal district court, alleging the jurisdictional amount and "arising under" the Death on the High Seas Act. In holding that the action should have been brought in admiralty, the court observed that the decision of the Supreme Court in *Panama R.R. v. Johnson*[50] was an unreliable guide to interpreting the High Seas Act.[51] Likewise the Air Commerce Act of 1926,[52] with its exclusion of airplanes from "navigation and shipping laws," was never intended to include a general admiralty statute such as the Death on the High Seas Act. As to whether the Act must be enforced exclusively in admiralty, it was stated that "the provision that enforcement is to be in admiralty is a limitation on the right itself."[53] Judge Goodman reasoned that the word "may" is not used to designate a permissible forum but to grant a right of action where none existed before, and the words "in admiralty" are not mere surplusage. The courts will construe an act to give meaning to every word. Since the plaintiff had alleged that the decedent was killed when the plane hit the water, he did not find it necessary to go into the question of fact as to where the death actually took place, but dismissed the civil complaint without prejudice to filing a libel in admiralty.[54]

Higa v. Transocean Airlines[55] arose out of the same disaster, and the Ninth Circuit relied heavily on *Wilson* to hold that "Congress has created a substantive admiralty right to be asserted *solely* in the federal courts in admiralty, by the plain words of the High Seas Act that the administrator 'may maintain a suit for damages in the district courts of the United States, *in admiralty*.' "[56] Again it was stated that the disposition of the case made it unnecessary to decide whether the High Seas Act applied to airplanes, which were not in any way navigable

49. 121 F. Supp. 85 (N.D. Calif. 1954).
50. 264 U.S. 375 (1924).
51. Wilson v. Transocean Airlines, 121 F. Supp. 85, 96 (N.D. Calif. 1954).
52. Now, 49 U.S.C. § 1509(a) (1964).
53. Wilson v. Transocean Airlines, 121 F. Supp. 85, 94 (N.D. Calif. 1954).
54. *Id.* at 98.
55. 230 F.2d 780 (9th Cir. 1955).
56. Higa v. Transocean Airlines, 230 F.2d 780, 783 (9th Cir. 1955).

vessels.[57] Unfortunately the plaintiff was not given leave to file a libel in admiralty without prejudice to the statute of limitations in this case, on the theory that he had been warned of the possibility of this holding and could have filed a suit in admiralty without affecting his rights to appeal.[58]

The mystique created over the exclusive admiralty jurisdiction was beginning now to be costly to a plaintiff or libelant who happened to file on the wrong "side" of the federal court, or who brought his action in a state court under the "saving to suitors." The controversy was caused by the loose draftsmanship of Congress and could have been cleared up easily by that body. However, that was hardly a likely prospect in view of its perennial hesitance to enact any sort of maritime legislation.[59] Prior to the enactment of the High Seas Act, the knotty choice of law problems in applying state law when vessels were jointly owned or mutually at fault would seem to justify enactment of the High Seas Act.[60] Further, there was the problem that states refused to give extra-territorial effect to wrongful death statutes, either by judicial construction[61] or by application of the conflicts rule that the law of the place of injury governs tort recovery. However, most of the courts which allowed High Seas Act claims to be brought as civil actions had involved themselves in nice little semantic arguments and had ignored the crucial question of what Congress had intended by section one of the act.[62] During the House debates on the act, an interesting colloquy occurred:

57. *Id.* at 786.

58. *Ibid.*

59. The pace of major admiralty acts has been about ten years apart, except for the spate of legislation in 1920: Harter Act (1893), Liens on Vessels Act (1910), Ship Mortgage Act (1920), Jones Act (1920), Suits in Admiralty Act (1920), Death on the High Seas Act (1948), Federal Motorboat Act (1958). This snail's pace has not been due to lack of need for such legislation, however, or from lack of invitation by the courts in maritime matters. See, *e.g.*, Benz v. Compania Naviera Hidalgo, 353 U.S. 138, 147 (1957).

60. See S. REP. No. 216, 66th Cong., 1st Sess. (1919); H.R. REP. No. 674, 66th Cong., 1st Sess. (1919). This problem generally still exists within the one marine league limitation of the High Seas Act. See Comment, 64 COLUM. L. REV. 1084, 1096-99 (1964). But *cf.* Weinstein v. Eastern Airlines, Inc., 316 F.2d 758 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963).

61. See, *e.g.*, Armstrong v. Beadle, 1 Fed. Cas. 1138, No. 541 (C.C.D. Calif. 1879).

62. *E.g.*, Sierra v. Pan Am. World Airways, Inc., 107 F. Supp. 319 (D.P.R. 1952); Batkiewicz v. Seas Shipping Co., 53 F. Supp. 802 (S.D.N.Y. 1943); Choy v. Pan Am. Airways, 1941 A.M.C. 483 (S.D.N.Y. 1941); Wyman v. Pan Am. Airways, Inc., 181 Misc. 963, 43 N.Y.S.2d 420 (1943). Usually the question is whether the word "may" in § 1 is a permissive word, and even if permissive, whether it is further limited by the words "in admiralty."

> Mr. MOORE of Virginia . . . "The purpose of this bill, as I understand it, is to give exclusive jurisdiction to the admiralty where the accident occurs on the high seas."
>
> Mr. VOLSTEAD . . . "That is it."
>
> Mr. GOODYKOONTH . . . "Mr. Speaker, if this bill becomes law, the jurisdiction of the admiralty and the State courts will not be concurrent. . . . [T]he provision . . . was wisely inserted by experienced lawyers, who thrashed the matter out; and I have no doubt but that every word in that paragraph has a very particular and precise bearing and was designed to take care of an important legal situation."[63]

If these statements are any litmus of congressional intent, then Congress seems to have limited actions under the High Seas Act to admiralty courts, notwithstanding that state courts under the "saving to suitors" clause are entitled procedurally to enforce admiralty and federally-created rights applicable to admiralty (even where common law substantive rights have been foreclosed).[64] The only cause of action created by the act is one to be brought "in the district courts of the United States, in admiralty," and this would appear to imply that there is no right which can be enforced by state courts under the powers reserved for them.

Since there was no action at common law for a death on the high seas, jurisdiction must be co-extensive with the cause of action created. In this respect both the *Wilson* and *Higa* cases furthered the congressional intent that the High Seas Act be applied exclusively by the admiralty courts in cases beyond one marine league from shore. It was obvious that when the act was presented and passed, Congress did not consider whether or not it should apply to the land-based aircraft that so commonly traverse the oceans today. When this question arose thirty-four years after the act was passed in *Noel v. Linea Aeropostal Venezolana*,[65] it was held that a civil suit could not be brought. A New York to Caracas flight crashed thirty miles off the New Jersey shore, and the plaintiff, who obviously wanted a jury trial, filed a civil complaint alleging that the death took place when the plane hit the water. The complaint was dismissed because it was

63. 59 CONG. REC. 4484, 4486 (1920).

64. Pope & Talbott, Inc. v. Hawn, 346 U.S. 406 (1953); Seas Shipping Co. v. Sieracki, 328 U.S. 85, 88 (1946); Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942).

65. 247 F.2d 677 (2d Cir. 1957), *cert. denied*, 375 U.S. 907 (1957).

not in admiralty. In interpreting the phrase, "may maintain a suit . . . in admiralty," the court observed that the legislative history was clear. "The permissive element relates solely to the grant of the right and not to the forum. . . . Thus, the survival section refers to 'pendency in a court of admiralty,' and if suit could be maintained in other forums, there would be no reason to restrict the survival provision in this manner."[66] However, neither *Wilson*, *Higa* nor *Noel* determined what was sufficient to bring an airplane within the admiralty jurisdiction. This question was left for later admiralty cases.

C. Locality v. Maritime Connection in Tort Cases

The controversy over maritime jurisdiction in tort cases had its origin in *The Plymouth*,[67] where a ship anchored in the Chicago River caught fire, and the fire spread to adjoining houses on the land. The libel brought by the home owners was dismissed for lack of jurisdiction in admiralty because "the whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends—on the high seas or navigable waters."[68] In 1948 the Admiralty Extension Act[69] was passed to remedy this ship-to-shore amphibious tort situation. It extended admiralty jurisdiction to all injuries "caused by a vessel . . . notwithstanding that such damage or injury be done or consummated on land."[70] This act would appear to be inapposite to the situation of an airplane crash in navigable waters, as an airplane is not in the first place deemed to be a "vessel," and in the second place the act was designed to clear up the law of collisions with shore installations.[71] Moreover, it has been argued that this act should not even extend to personal injury cases involving *ships*, let alone airplanes.[72] However, there has been some indication that the Supreme Court is willing to go quite a way to extend

66. *Id.* at 680.
67. 70 U.S. (3 Wall.) 20 (1865).
68. *Id.* at 36.
69. 46 U.S.C. § 40 (1964).
70. *Ibid.*
71. See GILMORE & BLACK, THE LAW OF ADMIRALTY 432-34 (1957), where the inequitable situation in bridge collisions prior to the Act is discussed, along with unusual cases of ship collisions with cars on flooded highways and protruding ship collisions with other shore installations. However, these authors have not considered the effect of this act on injuries sustained aboard airplanes over navigable waters and consummated on land.
72. See Note, 60 MICH. L. REV. 208, 212-13 (1961).

admiralty jurisdiction to matters not strictly within the locality test.[73] Where a longshoreman was injured by slipping on some beans on the *dock*, recovery was allowed for the unseaworthiness of the *ship* in taking on unseaworthy containers from which the beans had escaped. This decision may be rationalized as putting the limits on the ship-to-shore tort situation,[74] but for purposes of deciding what is within the admiralty jurisdiction, it ignores elementary consideration of the two traditional theories—that a maritime connection is required for admiralty jurisdiction, and that maritime jurisdiction may be extended solely because the act in question either was initiated or consummated on navigable waters. Perhaps the latter theory was assumed by the Court.

In the *Wilson* case, which involved an airplane crash on the high seas, there was strong language in support of maritime locality as a sole requirement for admiralty jurisdiction. "Locality has remained the sole test of admiralty tort jurisdiction despite re-occurring expressions of doubt whether the tort must not also bear some relation to the operation of a vessel."[75] On the other hand, when swimmers at public bathing beaches have attempted to use the *Wilson* argument, the courts have not been convinced that mere maritime locality is sufficient for exclusive admiralty jurisdiction, as illustrated by *McGuire v. City of New York*.[76] Even where a water skier is injured while being towed by a boat on navigable waters, the courts have by no means been anxious to declare that admiralty jurisdiction is sustained by the mere maritime locale.[77] However, these recreation cases should not be determinative of admiralty jurisdiction for airplanes crashing into navigable waters because the problem is not the same.[78] There is nothing to distinguish recreation in navigable waters from recreation in non-navigable inland water with regard to formulation of national maritime policy.[79] An airplane, however, is another matter. It is a machine whose operation requires consummate skill, is subject to some extent to

73. Guiterrez v. Waterman Steamship Corp., 373 U.S. 206 (1963), *rehearing denied*, 374 U.S. 858 (1963).

74. *Id.* at 210.

75. Wilson v. Transocean Airlines, 121 F. Supp. 85, 92 (N.D. Calif. 1954).

76. 192 F. Supp. 866 (S.D.N.Y. 1961).

77. See, *e.g.*, King v. Testerman, 214 F. Supp. 335 (E.D. Tenn. 1963).

78. One writer has implied that they should be treated the same. See Note, 32 GEO. WASH. L. REV. 635 (1964).

79. See Putnam, *How the Federal Courts Were Given Admiralty Jurisdiction*, 10 CORNELL L.Q. 460 (1925), and Black, *Admiralty Jurisdiction: Critique and Suggestions*, 50 COLUM. L. REV. 259 (1950).

the vagaries of weather, and when it crashes in navigable waters, is at least as helpless as a ship in the same situation to render assistance to any of its crew or passengers. It traverses the high seas in constant and vital commerce with the nations of the world and between principal cities of this nation. To say that it is not maritime is one thing, but to deny admiralty jurisdiction on the high seas on the basis of a few cases holding that swimmers and water-skiers are not maritime would appear to be stretching these cases too far.

D'Aleman v. Pan Am. World Airways, Inc.[80] is a strong case in favor of extending admiralty jurisdiction to cover airplanes. In flight from Puerto Rico to New York a plane developed engine trouble, and one engine had to be feathered. The suit was brought by one passenger's representative who claimed that the feathering of the engine sent the decedent into a state of shock that resulted in his death four days later. This claim was heard by a judge in admiralty and dismissed *on its merits*.[81] The court of appeals sustained admiralty jurisdiction, saying that the expression "on the high seas" should be capable of expansion to "under" or "over," as scientific advances change the methods of travel. The law would indeed be static if a passenger on a ship was protected by the Act, and another passenger in the identical location three thousand feet above in a plane was not protected. Nor should the plane have to crash into the sea to bring the death within the act, any more than a ship should have to sink.[82] Such a holding is reminiscent of the real property maxim, *cujus est solum, ejus est usque ad coelum.* One might be able to argue that this result is distinguishable on the ground that the libelant should not be able to disclaim admiralty jurisdiction once he has invoked it. However, such is not what the case held. Since recovery was denied on the merits, it cannot be explained away on the theory that the courts are disposed to allow claimants to recover even if traditional jurisdictional concepts are stretched thereby. If followed by other courts, the *D'Aleman* doctrine will eliminate the need to empanel a jury in a plane crash case to decide whether the injury occurred in the air or on the water. Such a procedure was employed where an

80. 259 F.2d 493 (2d Cir. 1958).

81. *Ibid.* Another claim for failure to provide proper care was heard by a jury and disposed of under Virginia law.

82. D'Aleman v. Pan Am. World Airways, Inc., 259 F.2d 493, 495 (2d Cir. 1958).

action was brought under the Alabama Wrongful Death Act after a crash several miles off the Alabama coast.[83] Whether the crash occurred in the air or on the water was thought to be determinative of whether admiralty jurisdiction would extend, or whether the action would have to be tried under Alabama law. The judge treated the jury verdict as merely advisory but followed their advice and dismissed the claim under the state act, stating that Alabama's sovereignty did not extend that far beyond its shores. The action was then transferred to the admiralty docket.

The Third Circuit has taken a further, consistent step in recognizing admiralty jurisdiction over airplanes in *Weinstein v. Eastern Airlines, Inc.*[84] On a scheduled flight between Boston and Philadelphia a plane took off from Logan Airport and crashed into Boston harbor *within* one marine league from shore. A libel *in personam* was filed in admiralty in the United States District Court, Eastern District of Pennsylvania. There was no precedent for holding that an action for death within the marine league limit was in admiralty, but here there was good incentive on the plaintiff's part to try for such a holding, since Massachusetts law would have limited recovery to $30,000.[85] Under the traditional conflict of laws doctrine, a Pennsylvania court also would have to apply this limitation. The court of appeals sustained admiralty jurisdiction, remarking that "the critical factor in determining whether a tort claim comes within the broad statutory grant of admiralty jurisdiction is the situs of the tort, *i.e.*, the place where it happened."[86] On the question of maritime situs as a sufficient criterion for sustaining admiralty jurisdiction in tort, the court extensively reviewed the decisions since *The Plymouth* and came to the conclusion that *McGuire*, involving a swimmer who struck a submerged object, was the only case where a simple maritime locale had not been sufficient to sustain jurisdiction in admiralty. The weight of authority indicated that locality alone determines whether or not a tort claim is within the admiralty jurisdiction. At the time the Constitution was framed and for a century and a half thereafter, ships of various kinds were the only means of transportation and com-

83. Sokolowska v. National Airlines, Inc., 5 Av. Cas. 18, 213 (S.D.N.Y. 1958).

84. 316 F.2d 758 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963).

85. MASS. GEN. LAWS ANN. ch. 229 § 2 (Supp. 1962).

86. Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 761 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963).

merce on or across navigable waters. When an aircraft crashed into navigable waters, the dangers to persons and property are much the same as those arising out of the sinking of a ship or a collision between two vessels. "There can be nothing more maritime than the sea. . . ."[87] The court pointed out, as indeed it had to, that since the crash occurred within the one marine league limit, the High Seas Act gave no cause of action for death. Even though the action must be based on the state wrongful death act[88] instead of the High Seas Act, the admiralty jurisdiction was held to exist.

> If, as it has been held, a tort claim arising out of the crash of an airplane beyond the one marine league line is within the jurisdiction of admiralty, then *a fortiori* a crash of an aircraft just short of that line but still within the navigable waters is within that jurisdiction as well. To hold otherwise would be to impose an illogical and irrational distinction on the operation of the broad grant of admiralty jurisdiction extended by the Constitution and implemented by 28 U.S.C.A. § 1333.[89]

This was the first case to involve an airplane crash in navigable waters within the limit. Therefore, it is a more convincing holding that airplane crashes are cognizable in admiralty than are holdings under the High Seas Act in which there can be no choice in what court the action is brought. It is not clear what effect admiralty jurisdiction may have in death cases, since the action must be based on a state statute, and the Supreme Court has held that "when admiralty adopts a State's right of action for wrongful death, it must enforce the right as an integrated whole, with whatever conditions and limitations the creating State attached."[90] Nevertheless, the *Weinstein* decision was received with great joy in the camps of the admiralty claimants' bar.[91]

87. *Id.* at 763, quoting in part from Pure Oil Co. v. Snipes, 293 F.2d 60, 65 n.6 (5th Cir. 1961).

88. PA. STAT. ANN. tit. 12, §§ 1601-04 (1953). This act has no limitation on amount of recovery for wrongful death.

89. Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 765 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963).

90. The Tungus v. Skovggard, 358 U.S. 588, 592 (1959).

91. The NACCA Law Journal commented that the *Weinstein* court had spurned a static view of admiralty jurisdiction and had been properly responsive to the vitality of modern commercial life, by holding that "new conditions of commerce give rise to enlarged conceptions of maritime jurisdiction. This

If admiralty actions in airplane crash cases are dependent on state death acts where the crash is within the one marine league limit, and if the case is not connected with the shipping industry in the traditional sense, and further if the gravamen of the claim is the same as in a land crash, that is negligence in manufacture and operation, then admiralty jurisdiction in cases like *Weinstein* serves no functional purpose other than perhaps in the conflict of laws area. Such could well be an adequate justification for the extension. The logic of the *Weinstein* rationale is that if admiralty jurisdiction is to be asserted over plane crashes on the high seas, the mere fortuity of a crash within or without the limit should not be determinative of the applicable law. However, the case is illogical because it did not go far enough to consider the fact that any airplane can escape even this admiralty jurisdiction by flying a little bit further and crashing on land. In such a case the choice of the law must be determined by the civil forum.

D. Workmen's Compensation

In *King. v. Pan Am. World Airways*[92] a flight service supervisor for Pan American was killed in the course of his employment when the plane in which he was riding crashed somewhere between San Francisco and Hawaii. His representative filed a libel in the United States District Court, Northern District of California, alleging recovery under the Death on the High Seas Act. His employer had already filed an application before the California Industrial Accident Commission, and a workmen's compensation award had been made.[93] The district court granted a motion for summary judgment against the plaintiff on the grounds that the California Workmen's Compensation Act was an exclusive remedy.[94] On appeal the Ninth Circuit sustained

commendable approach recalls one of the great canons of constitutional judgment expressed by Justice Brandeis: 'If we would guide by the light of reason, we must let our minds be bold.'" 30 NACCA L.J. 324, 326 (1964), quoting in part from Mr. Justice Brandeis's dissenting opinion in New State Ice Co. v. Liebman, 285 U.S. 262 (1932).

The writer indicated his high opinion of *Weinstein* when he stated that if it "did no more than lift from the backs of such embattled crew members the albatross of the harsh contributory negligence doctrine (served by 19th century *laissez faire* out of a medieval concept of cause), it would impressively justify itself as a fine functional decision." 30 NACCA L.J. 324, 326 (1964).

92. 270 F.2d 355 (9th Cir. 1959), *cert. denied*, 362 U.S. 928 (1959).

93. Claim No. SF 183-024, Industrial Accident Commission of the State of California (March 31, 1958).

94. WEST'S ANN. CALIF. LABOR CODE § 3600. This is a common provision in the state workmen's compensation acts. See 2 LARSON, WORKMEN'S COMPENSATION LAW § 86.50 and App. A, Table 6 (1952).

this decision saying that the High Seas Act was intended to be pre-emptive of state death acts, but there was no evidence of congressional intent to make the statute pre-emptive of state workmen's compensation acts. Further, the court held that there was nothing in the "twilight zone" cases to prevent the exclusiveness of workmen's compensation in this instance.[95] From the standpoint of admiralty jurisdiction this case is indeed a poor one. It is incontrovertible that workmen's compensation acts provide a different standard of proof and are designed to apply irrespective of fault. Further, it is arguable that Congress was aware of state workmen's compensation acts when it passed the Death on the High Seas Act and did not intend to pre-empt the area. However, Congress did not manifest this intent, and now when the first case arises, workmen's compensation with its long-outdated award schedules has almost become a defense against adequate recovery. A court should be expected to exercise a little responsibility when it reads congressional intent into the statute. Instead, the court distinguished the *Higa* and *D'Aleman* cases because they were not workmen's compensation cases, a weak rationale indeed when the interpretation of the limits of the constitutional admiralty jurisdiction were involved. The effort to drag in the "twilight zone" cases through the back door is a poor judicial stunt. Those cases are concerned with workers on the fringe of the maritime nexus, on board ships in port or working around docks, and should not be determinative where deaths occur 3,000 miles out on the high seas.[96] The reasoning here seems to be of the same type announced in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*,[97] where the Supreme Court applied state law merely because no admiralty case had come up on that particular point. In *King* precedent clearly showed that such crashes were within admiralty jurisdiction, and the court should not have diminished the existing admiralty jurisdiction in such a fashion. The interest of fifty separate states in exclusively asserting their own workmen's compensation acts on the high seas should not be sufficient to deny recovery under a federal death act based on admiralty jurisdiction.

95. The court relied on Davis v. Department of Labor, 317 U.S. 249 (1942), and Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272 (1959).

96. See, *e.g.*, Calbeck v. Travelers Ins. Co., 370 U.S. 114 (1962); Grant-Smith, Porter Co. v. Rhode, 257 U.S. 469 (1922); Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917).

97. 348 U.S. 310 (1935).

E. Contracts and Implied Warranties

One of the most interesting areas in which admiralty jurisdiction has been invoked over airplanes is that of contracts, or more specifically that protean device, the implied warranty. The basic controversy which classically has determined admiralty jurisdiction over contracts had its origins in *DeLovio v. Boit*,[98] where marine insurance contracts were held to be within the admiralty jurisdiction even though entered into on land. The court said that the words "admiralty" and "maritime" jurisdiction include jurisdiction of all things done upon and relating to the sea, or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea.[99] This view was followed in subsequent decisions involving insurance contracts,[100] but unfortunately later courts have not applied this broad concept of admiralty and maritime jurisdiction. Thus, there exists the ridiculous situation that a contract to repair a ship is held to be maritime,[101] while a contract to build a ship is not.[102] Such casuistry in dealing with ship contracts raises a question of what the courts would do when dealing with contracts for the building of an airplane, and here a real paradox is to be found.

Montgomery v. Goodyear Tire & Rubber Co.[103] could well turn out to be a harbinger of revolution in the law of maritime contracts at least where aviation is concerned. A balloon was airborne some eighteen miles out to sea when gas began to leak out. The warning system, which was supposed to ring a bell in the event of leakage, failed to warn the men aboard in time, and both were killed when the balloon plunged into the sea. A libel *in personam* was filed against Goodyear, who had manufactured the balloon, and against Edwards, who had manufactured the warning device. The court denied the respondents' objection that there was no survivorship claim in admiralty, noting that absent such a cause of action under the Death on the High Seas Act, an action under state statutes would exist, and such could be found both under the laws of Connecticut and Delaware.[104]

98. 7 Fed. Cas. 418 (No. 3776) (C.C.D. Mass. 1815).
99. *Ibid.*
100. Insurance Co. v. Dunham, 78 U.S. 1 (1871).
101. New Bedford Dry Dock Co. v. Purdy, 258 U.S. 96 (1922).
102. People's Ferry Co. v. Beers, 20 How. 693 (U.S. 1857). Gilmore and Black have pronounced this decision "clearly wrong." See GILMORE & BLACK, THE LAW OF ADMIRALTY 27-28 (1957).
103. 231 F. Supp. 447 (S.D.N.Y 1964)
104. *Id.* at 452, citing Romero v. International Terminal Operating Co., 358 U.S. 354, 373 (1959).

Further, the court held that the Death on the High Seas Act was not limited to claims arising from negligence alone but encompassed breaches of warranty, "for a breach of warranty is as much a breach of duty as is a negligent act."[105] A similar claim for breach of warranty had been asserted in the *Weinstein* case and had been denied because the plane traveled mostly over land. For this reason the court thought that there was not a sufficient maritime connection. The *Weinstein* court specifically left open the question whether there could be a sufficient maritime connection in the case of an airplane that flew primarily over water.[106] The court in *Montgomery* seized upon this lacuna, saying that the dirigible involved here came within the exception. "Its manufacture was for the Navy, and it was intended for use primarily over water. Given these facts, it was more likely than not that a crash would take place over water, and so within the admiralty jurisdiction."[107] Having thus found the balloon to be cognizable in admiralty, the court set out to distinguish the cases holding that a contract to build a ship is not in and of itself a maritime contract.

> Despite this principle, recent developments in the Supreme Court indicate a broadening of the scope of implied warranties in admiralty cases. In Italia Societa, etc. v. Oregon Stevedoring Co., 376 U.S. 315 . . . (1964), the Court held that a stevedore company breached its implied warranty of workmanlike service by supplying a defective rope even though there was a finding that the stevedore had not been negligent. A kind of strict liability in warranty was imposed on the stevedore. . . . On several occasions, the absolute liability imposed under an implied warranty of workmanlike service has been analogized by the Supreme Court to the supplier's warranty of the fitness of his product. . . . It is then only a short step to directly recognized [that] implied warranties cover an airship intended for flight over water and sold to the United States Navy.[108]

If this neat syllogism were not enough, the court took a liberal view with regard to the nature of an implied warranty when it

105. *Id.* at 453.

106. Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 766 (3d Cir. 1963), *cert. denied,* 375 U.S. 940 (1963).

107. Montgomery v. Goodyear Tire & Rubber Co., 231 F. Supp. 447, 453 (S.D.N.Y. 1964).

108. *Id.* at 453-54.

said that "the recent trend in personal injury and death cases based on warranty has been to treat the action as one in the nature of tort, ignoring contract considerations."[109] Of course, admiralty clearly has jurisdiction if considered a tort since "the sole test for recognition of a maritime tort is whether the injury occurred over navigable waters."[110]

This case, if followed, promises to shake up some precedents in the long lethargic area of ship contracts. If taken in conjunction with *Weinstein*, it will provide a means of recovery in plane crashes over navigable waters that is uniform throughout the nation. Moreover, this would appear to be a justified result since it places responsibility for death and injury on the manufacturer and the owner of the craft, where it can be most easily prevented.

The body of substantive law built up over the centuries to be applicable to ships on navigable waters is not generally one which would be helpful when an airplane is substituted for a ship. The slow nature of ship commerce has led to a gentlemanly, almost romantic, handling of commercial matters and to special rules of collision that are particularly inapposite to fast-moving craft. The one peculiar admiralty feature that would appear to be functional when applied to airplanes is the law of salvage. In that situation the differences between ships and planes have been reduced to the common denominator of disaster and ruin, and the long experience of admiralty in these matters would serve the interests of all parties.

Personal injury and death are another story. Here, there is logic in having one body of law apply to crashes, if for no other reason than to escape the maze of choice of law problems. Admiralty jurisdiction over the Death on the High Seas Act is now settled, and nothing short of congressional enactment is likely to change it. Since these death claims must be brought in admiralty, there is a good argument for the proposition that *injury* claims arising from a crash on the high seas are also in admiralty. If Congress has assumed that such crashes are within the admiralty jurisdiction, there is no reason why a claim for injury should not be also.

There is the further problem of devising a test for determination of admiralty jurisdiction over injury and death claims when

109. *Id.* at 454.

110. *Id.* at 454. However, the court did dismiss the case against Edwards who had made the warning device on grounds of privity, holding that there was no need to hold a manufacturer of a component part liable since adequate protection was provided by casting the principal manufacturer in liability.

the plane does not crash. As arbitrary as it may seem, no better criterion can be found than to let a maritime nexus be determinative of jurisdiction when the plane crashes on the water, and otherwise to require a maritime connection to bring an airplane within the admiralty. This test would exclude suits in admiralty for injuries and deaths occurring in aircraft above the high seas since there is no connection with the sea below, and the injury could not be said to have anything to do with the sea. Such a test, however, is not without its problems. The most common situation which would strain the rule is where the plane explodes over the coast line and falls partly onto land and partly into the ocean. Another possibility is the over-shooting by a plane of an airport runway which is close to navigable water. In these cases it might be better for a court to use the maritime connection test. Of course, it may be difficult for some judges to recognize this distinction, as is evident from the *D'Aleman* case, especially where the death or injury occurs above the water rather than while floating on its surface or beneath it in a submarine.

The arbitrariness of this criterion is necessitated by the manner in which the courts came to have admiralty jurisdiction in the first place. So long as the law stands as it is with the Death on the High Seas Act, it is indeed hard to say that a judge should bury his altruism in such cases in favor of some abstract theory of jurisdiction. While the manner of drafting of that piece of legislation was indeed an unfortunate circumstance, its language cannot in good conscience be reduced to mere tautology. Perhaps then, the way to look at airplanes over the high seas is to take the view that while there are problems in this approach, they are nothing like the problems that would exist if things were left to the laws of the several states.