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Times Change – or Do They?

By Marilyn Raia

The beginning of a new year often leads to reflection on events of the past year. Instead of a review of legal developments of 2011, a review of legal developments of 1812 and 1912, namely, 200 and 100 years ago, seemed far more interesting.

Admiralty Courts Until 1966

In 1812 and 1912, the federal district courts handled admiralty cases under special admiralty rules. Some of the legal terms were different under those rules. For example, a maritime lawyer was called a "proctor in admiralty." A complaint in an admiralty case was called a "libel". The plaintiff was called the "libellant" and the defendant was called the "respondent". Without a doubt, there were no female proctors in admiralty in 1812. In the 1920's though, there was a female attorney practicing admiralty law in the San Francisco office of the United States Attorney.

In 1966, the admiralty rules were merged into the general civil procedural rules. A few of the original admiralty rules were retained as supplemental rules. Many years ago, some federal district courts had an informal practice of assigning admiralty cases to judges thought to have greater expertise in admiralty law, but now cases are randomly assigned.

Some Admiralty Cases from 1812

On January 1, 1812, only 17 states were in the union; Louisiana was admitted later that year. In June 1812, the United States declared war on Great Britain, in part because of certain acts by Great Britain impeding America's maritime commerce with France.

Many of the cases decided in 1812 involved the lack of proper government documentation for vessels or cargo . For example, in The SLOOP ***ACTIVE*** v. The United States, 11 U.S. 100 (1812), the sloop ***Active*** had a license for the cod fishery and had posted the required bond for that trade. During the night of July 4th 1808, the vessel took on cargo worth more than $600 at New London, CT. The cargo included beef, fish, and butter destined for an unknown port, but apparently within the United States. Some of the cargo belonged to the vessel owners and the rest belonged to a third party. The vessel left the dock without obtaining the proper documentation and clearance from customs, and was seized before getting out of the port. The vessel and all of the cargo on board were deemed forfeited and the forfeiture was upheld on appeal. The United States Supreme Court affirmed in part. It held the vessel and the cargo belonging to the vessel owners were properly forfeited. But, it reversed the forfeiture of the cargo belonging to the third party because the forfeiture statute exempted 1) cargo belonging to parties other than the vessel owner, master and mariners, and 2) cargo for which no duty was owed, in that case because it was to be transported within the United States.

Two hundred years ago, seamen were suing their employers for unpaid wages. In Wesly v. Davis, 29 F.Cas. 709 (Cir. Ct. D. Md. 1812), the vessel on which the seamen were employed was captured and ordered forfeited. The forfeiture was eventually reversed on appeal and the vessel continued her voyage. During the legal proceedings, the master offered to discharge the seamen and arrange their return home. The seamen refused to leave the vessel. The district court held the vessel owner liable for the seamen's wages incurred during the delay in port during the forfeiture proceedings. The award was affirmed on appeal.

Marine insurance cases were also decided in 1812. Popleston v. Kitchen, 19 F.Cas. 1048 (Cir. Ct. D. Penn 1812), involved a suit on marine insurance policies covering a vessel and her cargo. The insurers defended on the grounds 1) the insured had not told them the vessel's age

and where she was built; and 2) the insured had not proved the vessel was sufficiently found and manned, although the hull of the vessel was seaworthy for the voyage.

Judgment was entered for the insureds. The court held the insured did not have to tell the insurers about the age of the vessel or where she was built, unless asked by them. Also, the court held the insured had to prove the seaworthiness of the vessel only if put in issue by the insurers. It noted seaworthiness includes being sufficiently found and manned. Of course, as readers will know, today an insured is required to disclose all material information about the vessel to be insured even if not asked for.

Some Admiralty Cases From 1912

By January 1, 1912, there were 46 states in the union; New Mexico and Arizona were admitted later that year. The ***Titanic*** sank in 1912 en route to New York from Southampton. That tragedy led to many changes in the maritime industry and provided maritime lawyers with a continuing source of legal issues to consider and address including recently litigated disputes over the ownership rights to the ***Titanic*** wreckage.

Many of the reported cases from 1912 involved vessel collisions. However, the courts dealt with other interesting issues. For example, In Billings v. Bausbach, 200 F. 523 (9th Cir. 1912), seamen from the Schooner ***W.H.Talbo***t sued for compensation for inadequate provisions during an 84-day voyage from Newcastle, Australia to San Francisco. They alleged they were not provided with the statutorily required quantities of certain items such as potatoes, butter, beans, peas, onions, sugar, and similar staples. They also alleged the biscuits served to them were maggot-infested. The vessel owner conceded certain fresh food items were depleted during the voyage but argued canned items were substituted. The vessel owner also argued the seamen accepted what was provided and could not then demand what was due under the statute. Finally, the vessel owner argued the seamen had released their claims when signing off the vessel. The district court rejected all of the vessel owner's arguments. It found the seamen had released only wage claims and not other types of claims. It found the seamen had little choice but to accept what was given to them or go hungry. It also noted the master knew of the seamen's dissatisfaction with the food and had to remedy the situation or bear the consequences. The appellate court affirmed.

In Red Star Towing & Transportation Co. v. Snare & Trieste Co. 194 F. 672 (2d Cir. 1912), the steam tug C.F. Roe was damaged when it collided with piles being stored in the water where a bridge was being built. The piles were submerged at high tide and not marked. Ruling in Red Star's favor, the court held the authority to obstruct a navigable waterway when building bridge abutments was not authority to leave the piles in the area without properly marking them. The court also noted the absence of any evidence the tug operator knew the submerged piles were there because he had only transited the area on a high tide.

Marine insurance disputes also found themselves on the courts' dockets in 1912. Listers Agricultural Chemical Work v. Home Ins. Co. 202 F. 1011 (S.D.N.Y. 1912) involved a hull policy covering a steam lighter against "perils of the harbor" but excluding coverage for bursting or explosion of boilers. The policy also contained a warranty that the insured would not carry gunpowder or other explosives on the lighter.

While the lighter was navigating in the harbor, dynamite exploded while being transferred from a rail car on a pier to a barge, causing significant loss of life and property damage. The lighter suffered damage by shock or concussion and not by waves or swell or debris from the explosion. Coverage was denied because of the lack of a covered peril.

The district court found the coverage issue to be "novel". The insured admitted the damage was not caused by a peril of the sea, but argued the policy covered all perils of/in the harbor, not just those caused by the action of the waves. The court disagreed and held there was no coverage. It reasoned if a boiler on the lighter had exploded or if the lighter had been carrying explosives, there would be no coverage because of the policy exclusion and warranty. It also reasoned if the lighter had been damaged by a projectile from a cannon on shore one mile away, or by the explosion of a steam boiler on shore, there would be no coverage either. It found the facts of the case to be analogous to those situations and held he insurer made clear its intent not to insure against damage to the lighter caused by an explosion, regardless of its origin.

The maritime industries of 1812 and 1912 could never have imagined the technology available to the maritime industry in 2012. Nonetheless, the issues being litigated in 2012 have not changed much since 1812 and 1912. Among others, documentation problems, seamen's wages and benefits, collisions, and marine insurance disputes have kept, and still keep, maritime lawyers busy.

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