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What is a "Vessel" in Admiralty Law?

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ROBINSON, IN HIS BOOK ON *admiralty*,[1] gives as a definition of a *vessel* the following: "By statutory definition the word vessel includes every description of water craft used or capable of being used as a means of transportation on water. In fact, neither size, form, equipment or means of propulsion are determinative factors upon the question of jurisdiction, which regards only the purpose for which the craft was constructed and the business in which it is engaged." Then, is an airplane a vessel? —a raft? —a *Regulus* guided missile? —a ferry dock-float?

Any structure made to float upon the water for the purpose of commerce or war, whether impelled by wind, steam or oars—this is the explanation of a *vessel* given in the American-English Encyclopedia of Law.[2]

A *vessel* has been further defined in the Revised Statutes of the United States as *including* every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water.

A controversial question however, that often creates confusion, is this: When, during the course of *construction,* is a craft considered to be a full-fledged *vessel.*[3] Theories and applications of maritime laws of foreign countries, on this as on other points, are often deprecated by the courts of the United States. And to further complicate matters, there may be a definite variance between the treatment of the same waterborne structure in contract and in tort. Moreover, a decisive split exists between the United States and foreign maritime law as to the actual birth of a vessel.

As to the controversy regarding contract or tort jurisdiction, it has been held that during the construction of a craft which unquestionably will be a vessel, at any specific time before completion it is not considered to be a definite vessel. Maritime flavor thus is absent from a contract for work done on a craft, even after it has been launched into its environment.

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1 Robinson, Handbook of Admiralty Law in the United States, 42 (1939 ed.).

2 Second Edition, 1929.

3 Benedict on Admiralty, Vol. I, 107-120 (1940 ed.).

Arguing for admiralty jurisdiction in tort, stands the case of *Grant-Smith Porter Ship Co. v. Rohde.*[4] There an employee was accidentally injured while aboard a newly launched vessel. It was held that this action fell under the authority of the Admiralty Court[5] (e.g., in tort).

There often are instances where partially constructed craft must be towed to a distant yard. If, while enroute, the incomplete craft has a collision, the courts will hold that the craft can be considered enough of a "vessel" to incur a maritime lien, though the structure did not qualify as a complete vessel for an action in libel for her own finishing. In effect, this means that the craft would be eligible for being sued for damages inflicted while in transit from one yard to another. But the contractors who performed the construction presumably would not bring suit for monetary compensation if the owners failed in business.

At the present time, almost all traditional sea codes regard a contract for building a ship as a maritime contract. But, as stated before, this theory is not applicable to the United States.

Benedict, the classic admiralty authority, says that a ship is born when it is launched. He further makes the point that a ship-building contract is non-maritime; and this conclusion has become a part of admiralty jurisprudence.

This doctrine may become quite confusing when a major building task is involved. Many ship alteration contracts frequently refer to *re*building. Thus, a ship may be dry-docked, cut in half, and drawn apart, after which a new section is inserted. Then, too, new propelling equipment may be necessitated, and additional accommodations added, such as a new deck, and other revamping that exceeds the original cost of the craft. A contract of this nature would be construed as maritime, and the facts in these situations would contribute to the factors decisive of whether or not it then is a *vessel.*

In almost every actual case, the determination of "When is a vessel a vessel?" creates difficulties and leads to fine-point divisions.

Admiralty Court Decisions

The primary force which motivates the decisions of the Admiralty Courts on this subject is the need for clarification of

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[4] Grant-Smith Porter Co. v. Rohde, 275 U. S. 469, 42 S. Ct. 157, 66 L. Ed. 321 (certif. from C. C. A. 9, 1922).

[5] Ibid., n. 4.

the question whether or not the craft is to fall within the definition of a vessel. Before the Admiralty Court will decide a specific case, it usually must determine whether or not the case is one within its admiralty jurisdiction. To further complicate matters, the courts are expected to rule on cases ranging from a raft to a super-dreadnaught. In essence, the major question that usually is posed is: "What is a vessel?"

To demonstrate the difficult problems that have and may arise, it is desirable to present some actual cases and principles that have confronted the courts.

Case No. 1

A company bound numerous lengths of timber together in the form of a raft, and floated the mass, as a convenient mode of taking the timber to market. This raft, carrying a pilot, crew and cook, who lived and were sheltered thereon during the many-days voyage, was considered to be a vessel. The raft was propelled by oars, poles and the tides. Declaring it to be a vessel gave jurisdiction to admiralty, when there was a libel in rem against it for a collision in navigable waters.[6]

In a case involving salvage services and a raft, it was held that such services *were* performed when a raft of lumber was rescued from peril in navigable waters. A claim for such services may be sought in admiralty courts, because this craft would fall within the definition of a vessel.[7]

In another such case a raft was considered to be a vessel and was compelled to display lights while traveling at night. By statute, a raft lacking such lights is subject to seizure if it comes within the jurisdiction of admiralty, providing that the seizure is properly executed.[8]

Case No. 2

Often times a split in opinion will arise as to whether or not a craft is a vessel for maritime purposes. The arguments used for denial of vessel status often have been based on the fact that the craft were used and operated in small areas, and that the craft were small in size. But these arguments generally have been unheeded by the courts, because the fact that they were

[6] Muntz v. A Raft of Timber, 15 F. 555 (C. C., E. D. La. 1883).

[7] United States v. One Raft of Timber, 13 F. 796 (C. C., So. Car., 1882).

[8] Admiralty, Revised Statute 4233, 4234—Concerning Rafts.

engaging in, and aiding, commerce upon navigable waters was sufficient to create jurisdiction.[9] Yet, some other cases have held otherwise. A mere float or lighter, however, was held to come within the jurisdiction of the court.[10] So was a barge without sails or rudder,[11] used for transporting brick, on which men were employed, in a claim for wages of the men.

A floating pontoon,[12] having no motive power of its own nor capacity for cargo, tied to land and used as a ferry landing, was held to be a maritime object, and basis for admiralty jurisdiction when involved in an accident with a ship.

Case No. 3

In situations involving floating dredges, it has been held that a dredge[13] opening up a channel for navigation is a vessel and is under admiralty jurisdiction. Likewise, a steam dredge[14] is a vessel within the meaning of the law. As such it is subject to a maritime lien for supplies under the law of the United States. The absence from the dredge of power of propulsion; the fact that she is not propelled by oars or sails; that she is flat bottomed; that she is engaged in harbors, rivers, or docks, and that she has to be moved to a distant point by means of a tug; that she has no power of her own; that she is not and cannot be a sea- or lake-going vessel—none of these facts nor all of them support the conclusion that she is *not* a vessel.[15]

Another case of a steam dredge falling within admiralty jurisdiction is seen in that it is liable for tax duties imposed by the collector of customs. Further proof of the classification of barges as *vessels* is found in *The Star Buck* case,[16] where a hopper used for dredging purposes, not fitted with oars or other

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[9] Kerlak v. The Pearl Jack, 79 F. Supp. 802 (D. C. Mich., 1948); Feige v. Hurley, 89 F. 2d 575 (C. C. A. 6, 1937).

[10] The General Cass, Federal Case Number 5,307 (D. C., E. D., Mich., June, 1871); The Robert W. Pasons, 191 U. S. 17, 30, 24 Sup. Ct. 8 (1903).

[11] Disbow v. The Walsh Brothers, 36 F. 607 (1888).

[12] Hezekiah Boldwin, Federal Case Number 6,449 (D. C., E. D., N. Y., 1876); The Mackinaw, 165 F. 351 (D. C., Ore., 1908). But see below, notes 20, 22, 24.

[13] Walderck v. Deal Dredge Company, 45 F. 2d 951 (C. C. A., 4, 1930).

[14] The Pioneer, 30 F. 206 (D. C., E. D., N. Y., 1886).

[15] The International, 89 F. 489 (C. C. A. 3, 1898); Ellis v. U. S., 206 U. S. 246 (1907).

[16] The Star Buck, 61 F. 502 (D. C., E. D. Penn., 1894); The Steam Dredge No. 6, 222 F. 576 (S. D. N. Y., 1916), aff'd 241 F. 69 (C. C. A. 2, 1917).

means of propulsion, and generally moved by towing, was held to be a ship. This is further supported by the *Atlantic* case,[17] mentioning dredges and scows, towboats and barges.

Case No. 4

Cases involving Floating Dry Docks have held that these are not constructed nor used for purposes of navigation or commerce.[18] A dry dock, for example, was likened to a stage which was designed to be used in connection with painting or repairing the side of a vessel, which floated on the water, rising and falling with the tide.[19] Thus floating dry docks are not within the definition of a vessel.[20] It has also been held that they are not proper subjects for *salvage*.[21] It was pointed out that a fixed structure such as a dry dock is not used for the purposes of navigation, and is not a subject of salvage service any more than is a wharf or a warehouse when projecting into or upon the water. The mere fact that it floats on the water does not make it a ship or vessel, and no structure that is not a ship or vessel ordinarily is a subject of salvage.[22] The court pointed out that a fixed structure, designed for the purpose of taking ships out of water in order to repair them, and for no other purpose, could not possibly fall under jurisdiction of admiralty. This would not relieve the liability of the owner if the floating dry dock was to break away from its mooring lines and collide with another craft while adrift. Under such circumstances the courts have ruled the structure to be a vessel.

Case No. 5

A libel involving a large houseboat, without motive power and without rudder, was held to be within admiralty jurisdiction. The craft had been tied up for a period of four years and had not during this time been dismantled in any way or put to any other

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[17] The Atlantic, 53 F. 607 (D. C., So. Car., 1893); North American Dredging Co. v. Pacific Mail S. S. Co., 185 F. 698 (C. C. A. 9, 1911).

[18] Snyder v. A Floating Dock, 22 F. 685 (D. C., N. J., 1884); The Wayfield, 120 F. 847 (E. D., N. Y., 1903).

[19] Berton v. Tietyen & Lang Dry Dock Co., 219 F. 763 (D. C., N. J., 1915).

[20] But see above, n. 12.

[21] Cope v. Vallette Dry Dock Co. (Ap. from C. C. E. D. La. Argued Dec. 6, 1886. Decided Jan. 10, 1887); U. S. v. Bruse Dry Dock Co., 65 F. 2d 938 (C. C. A. 5, 1933).

[22] But see above, n. 12.

use. It was consequently purchased for the purpose of navigation. The court ruled that during the time the houseboat was tied up it still retained its identity as a vessel.[23]

Case No. 6

A floating crane[24] which was mounted on a pontoon and was shaped like a ship, with decks but no engine (except for the engine which worked the crane) was held *not* to be a vessel for the purposes of admiralty jurisdiction. The pontoon was permanently chained to a staging and to some old warships. Communication between the shore and the structure was by means of a gangway. It appeared that the pontoon with the crane on it had been for years permanently in this position and had been employed for lifting guns and ammunition, and for raising sunken submarines. It could have been moved, however, by tugs. A staff, called "the crew," manned the crane. Although the pontoon was capable of movement, movement was the exception rather than the rule. The apparent permanence of the crane invoked the decision of the court that it was not a vessel. This conflicts directly with the American holding regarding a floating ferry pontoon-stage mentioned above.[25]

Admiralty Jurisdiction in Air Law

Prior to the middle 1920's, several schools of thought emphasized different opinions as to the method and execution of authority to regulate air commerce. There were those who felt that Congress should be given full command by the passage of an amendment to the federal Constitution. Another group urged usage of the interstate commerce clause, disregarding the fact that each state would cast the decisive ballot when air commerce applied to intrastate action. Still another group urged the application of the admiralty clause of the constitution.

Conventions at Warsaw and Poland, held in 1929 and 1933 respectively, met to discuss, and draw up rulings regarding, international aerial law. In particular, the Warsaw Convention provided for: (a) form, contents and legal effect of transporta-

[23] Kilb v. Menke, 121 F. 2d 1013 (C. C. A. 5, 1941).

[24] Mr. Justice Roche in Merchant Marine Company, Ltd. v. North of England Protecting and Indemnity Association, London, The Times, July 21, 1926.

[25] At n. 12.

tion documents; (b) liability of a carrier and his defenses; (c) limitation of a carrier's liability; (d) venue for bringing suit, and time limitation; (e) liability of combined and connected carriers. The question of application of "vessel" status to aircraft was not settled.

The Rome Convention attempted to make uniform the rules of liability for damage caused by aircraft to third parties. The United States has signed but not yet ratified these provisions. Again, "vessel" status is left uncertain.

The followers of the admiralty theory stressed many convincing similarities and differences between water and air craft. Thus, airships engage in aerial navigation, take to the air under the guidance of pilots, and are required to abide by such rules as the display of colored navigation lights analogous to those of water craft. Furthermore, the registration and nationality of aircraft, the requirements as to their log books, flag, protection, prevention of collision, and airmen (crews), bear a striking resemblance to the rules applicable to ships.

However, this theory did not influence the action of Congress. This law-making organization chose to base its action on the Interstate Commerce Clause, and thus theoretically ended the debate.

Jurisdiction over a libel in rem for repairs to a seaplane has been declined on the ground that aircraft are neither of the land nor of the sea. Thus, not being of the sea, not restricted in their activities to navigable waters, they are not *maritime*.[26] The seaplane, however, is substantially a flying boat, and often is used as an instrumentality of overseas commerce and of naval warfare, being designed to go upon the surface of the water as well as over it. While afloat on navigable waters, it was said by the Common Law Court in 1921 to be subject to admiralty, because location and function stamp it as a means of water transportation.[27] Subsequently, the Air Commerce Act of 1926[28] expressly provided that a seaplane should not be deemed a "vessel" for the purposes of any of the statutes regulating vessels. It should be noted that the Act does not go so far as to deny the existence of admiralty and maritime jurisdiction generally over

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[26] Cushing v. Smith, 119 Misc. 294, 196 N. Y. Supp. 241, 1928 U. S. Av. R. 73 (App. Div., 3rd Dept., 1922).

[27] 1928 U. S. Av. R. 4.

[28] 49 U. S. Code 176.

aircraft actually navigating or at rest on navigable waters. It has been held in Scotland that a seaplane is not a vessel, and hence a salvor of valuable cargo from a wrecked plane was denied salvage.[29] Parliament shortly thereafter expressly extended the principle of maritime salvage to aircraft and their cargoes in distress upon navigable waters,[30] and the Irish Free State did likewise.[31] Justice Cardozo judicially determined the status of seaplanes in the case of *Reinhardt v. Newport Flying Service Corporation.*[32]

Vessels in navigable waters are within the jurisdiction of admiralty, since any structure used, or capable of being used, for transportation upon water is a vessel. Admiralty has jurisdiction, though the structure is airplane and seaplane combined, when the ship falls within the definition of admiralty. More specifically, an airplane is a vessel and under the jurisdiction of admiralty law when it is in the fulfillment of its functions as a traveler on water and has put aside its functions and capacities as a traveler through air.

This decision applies to seaplanes and amphibians, when the latter seek waterways for landing, rather than land. The court referred with approval to a federal decision of 1914 stating that an ordinary land plane, incapable of using water as an adequate landing area, which had fallen into a bay, was not subject to admiralty jurisdiction for the purpose of salvage.[33] This decision has been supported by the Air Commerce Act.

Further qualification of a seaplane as a vessel was demonstrated when a claimant was employed to care for a seaplane that was resting on navigable waters. The plane began to drag anchor, and when the claimant attempted to turn the plane by wading into the water, he was injured by the propeller. Justice Cardozo determined that the plane was a vessel and fell within the jurisdiction of admiralty, while it thereby was excluded from the authority of the New York Industrial Commission.

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[29] R. C. A. Victor Co. v. Watson, 50 Lloyds List. L. Rep. 77, 1935 A. M. C. 1251 (Scotland).

[30] (British) Air Navigation Act 1936, 1 Edw. 8, C. 44, 1937 U. S. Av. R., 415; 1939 U. S. Av. R. 259.

[31] (Irish) Air Navigation Act 1936, Public Statute of the Oirachtas, No. 40 of 1936, Part VII.

[32] Reinhart v. Newport Flying Service Corp., 232 N. Y. 115, 133 N. E. 371, 18 A. L. R. 1324 (1921).

[33] The Crawford Brothers, No. 2, 215 F. 269 (D. C., Wash., 1914).

In the case of *Archin fuer Luftrecht,* a seaplane enroute to an island broke a propeller and came down on water near its destination. A passing ship towed the invalid seaplane without transferring passengers. Because of choppy waters, the damaged plane capsized and many of its inhabitants died. To prevent future disasters, the foreign admiralty court made recommendations and findings. It concluded that a seaplane, whether it voluntarily or involuntarily lands on water, is a ship, unless it is already a wreck when it reaches the water.[34]

In the case of *Watson v. R. C. Victor Co., Inc.,*[35] a seaplane was forced to land on water, before reaching its destination. The passengers sent out a signal for help, but before it came, they perished from exposure. The *Lord Talbot,* the rescuing fishing boat, recovered a valuable camera, part of the supplies of the unfortunate seaplane, that was abandoned on a nearby island. The *Lord Talbot* submitted a salvage claim, but was refused salvage by the Sheriff's Court of Aberdeen, Scotland, on the ground that no salvage service was rendered, for the reason that the property saved from destruction was not part of a ship's cargo, the seaplane not being considered a ship. The court stressed that the main purpose of a seaplane is to take to the air, and that its water navigability is immaterial. The Merchants' Shipping Act defined a vessel as any ship or boat "used in navigation" and it was determined that a seaplane was not used in navigation within the meaning of these terms.[36]

Development in aircraft has advanced rapidly with the perfection and use of jet propulsion and guided missiles. Admiralty laws with respect to these new craft must open a new field; so new that no decisions have been found on this matter, as yet. It will be interesting to learn, for instance, whether or not rockets launched from ships or submarines are "vessels," and subject to admiralty jurisdiction.

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[34] 54, 2 J. Air Law, 588, 590 (1935).

[35] 50 L. 1, L. R. 77 Great Britain, Aberdeen Sheriff Court, October 31, 1935; 1935 U. S. Av. Rep. 147.

[36] See also, Sweeney, Is Special Aviation Liability Legislation Essential?, 19 J. Air L. & Com. 166 (1952).