

THE UNIVERSITY OF CHICAGO LAW REVIEW

VOLUME 10

APRIL 1943

NUMBER 3

BOARD OF EDITORS

WILLIAM DURKA
SYLVESTER PETRO

GEORGE B. PLETSCH
VIRGINIA SPENCE

CHARLES D. STEIN

HENRY SYNEK
Business Editor

E. W. PUTTKAMMER
Faculty Adviser

NOTES AND RECENT CASES

WORKMEN'S COMPENSATION FOR MARITIME EMPLOYEES: THE JENSEN DOCTRINE RE-EXAMINED

The question of when a state may and when it may not grant relief under a compensation act to maritime employees has precipitated a set of such tenuous distinctions that the recent re-examination by the Supreme Court of the settled criterion² has surprised no observers. On the contrary, that test was expected by many to suffer more radically than it did, in view of its anomalous history.

In Article III, Section 2, of the Constitution, it is said that the judicial power of the United States shall extend "to all Cases of admiralty and maritime Jurisdiction. . . ."² It was early settled that this jurisdiction was not exclusive, the states possessing concurrently the power to entertain maritime cases wherever the common law afforded an adequate remedy.³

¹ *Davis v. Dept. of Labor and Industries of Wash.*, 63 S. Ct. 225 (1942).

² For the significance of the presence of both "admiralty" and "maritime," see the elaborate opinion of Mr. Justice Story in *De Lovio v. Boit*, Fed. Cas. No. 3,776 (C.C. Mass. 1815).

³ The United States Supreme Court has consistently approved the exercise of maritime jurisdiction by state courts under the clause in which the first Congress gave to the federal district courts "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. . . ." (italics inserted) Judicial Act of 1789, c. 20, § 9, 1 Stat. 76, 28 U.S.C.A. § 41(3) (1927), 28 U.S.C.A. § 371 (1928); see cases cited *infra* note 7.