SEAMEN'S INJURIES: THE JONES ACT, UNSEAWORTHINESS, AND MAINTENANCE AND CURE—THE SIAMESE TRIPLETS

I

INTRODUCTION

In a seaman's suit for personal injuries, the complaint or libel may contain three grounds of recovery: the unseaworthiness doctrine,[1] maintenance and cure,[2] and a claim under the Jones Act.[3] The appearance of these three claims in the same suit gives rise to many complex problems, including joinder of claims, jury trial, res judicata, statutes of limitations, removal of claims from a state to a federal court, survival and wrongful death actions, maritime liens, and the claims of foreign seamen. The purpose of this comment is to examine the interrelation of these claims, with an analysis of the problems arising from their being brought in one suit.

Although the three grounds are stated in the complaint, there is a great deal of overlapping as to the scope of recovery. Thus, recovery under unseaworthiness and Jones Act claims is identical. The injured seaman is entitled to medical expenses, past and prospective, indemnity for loss of earnings, past and prospective, and an amount on account of his physical injuries and for pain and suffering.[4] Under maintenance and cure, the injured or ill seaman is entitled to maintenance —a living allowance sufficient to enable him to maintain himself in a manner comparable to that which he received aboard ship—medical expenses until he reaches the point of maximum recovery, and wages computed to the end of the voyage on which he was injured.[5] Although duplication of damages is not permitted when a seaman recovers on both a Jones Act or unseaworthiness claim and maintenance and cure, the burden of proving such duplication, often a difficult one, is placed on the defendant.[6]

II

JOINDER

The Jones Act, enacted by Congress in 1920,[7] provides that a seaman injured in the course of his employment by the negligence of the shipowner, master, or fellow crew member can recover damages for his injury.[8] The doctrine of unseaworthiness, which is a part of the general maritime law, imposes the duty upon the shipowner to provide a seaworthy vessel. Based not on negligence but on strict liability, the shipowner is held liable for failure to perform this duty.[9] Mainte-

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[1] The Osceola, 189 U.S. 158 (1903).

[2] *Ibid.*

[3] 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1958).

[4] See, *e.g.*, Bartholomew v. Universe Tankships, Inc., 279 F.2d 911 (2d Cir. 1960).

[5] *Ibid.*

[6] *Ibid.*

[7] 41 Stat. 1007 (1920) (codified in scattered sections of 46 U.S.C.).

[8] GILMORE & BLACK, ADMIRALTY § 6-3 (1957) [hereinafter cited as GILMORE & BLACK].

[9] Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960); Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).

nance and cure, also a part of the general maritime law, provides a seaman with the right to maintenance and cure for injury or illness occurring while he is in the service of a ship. This right, based on the seaman's employment relationship, does not depend on the shipowner's fault.[10]

These three claims, different in their nature, are often joined in a seaman's suit for personal injury and brought in either one of three places: the admiralty side of the federal district court, the civil side of the federal district court, or a state court. Where such a joinder appears in a suit on the admiralty side[11] or the civil side of the federal district court, brought there because of diversity of citizenship, the joinder presents no difficulty.[12] However, where there is no diversity and federal jurisdiction is sought on the basis of a federal question, the joinder of the three claims creates problems.

In *Romero v. International Terminal Operating Co.*,[13] a suit containing a joinder of the three claims was brought on the civil side of the federal district court. Diversity of citizenship was not present. The United States Supreme Court held that a claim based on general maritime law is not a "federal question" within the meaning of 28 U.S.C. section 1331.[14] Nevertheless, the Court did not dismiss the unseaworthiness and the maintenance and cure claims, stating that the federal district court had "pendent jurisdiction" over these two claims by virtue of their joinder to the Jones Act claims, the latter involving a federal question. Hence, the joinder was allowed.

The Court pointed out the anomaly of applying the "pendent jurisdiction" doctrine of *Hurn v. Oursler*[15]—that the assertion of a federal claim permits a federal court to decide a sufficiently related nonfederal claim otherwise outside its jurisdiction—to general maritime law claims, which are always within federal jurisdiction under 28 U.S.C. section 1331(1).[16] The Court stated:

> Of course the considerations which call for the exercise of pendent jurisdiction of a state claim related to a pending federal cause of action within the appropriate scope of the doctrine of *Hurn v. Oursler*, . . . are not the same when, as here, what is involved are related claims based on the federal maritime law. We perceive no barrier to the exercise of "pendent jurisdiction" *in the very limited circumstances before us.*[17]

Given this language and the anomalous origin of the "pendent jurisdiction" doctrine as it is used in *Romero*, it would seem that the courts will not be willing to extend its application beyond the circumstances contained in the *Romero* case.[18] The presence of a bona fide Jones Act claim would seem to be necessary for the doctrine of "pendent jurisdiction" to apply.[19]

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[10] GILMORE & BLACK § 6–6.

[11] 28 U.S.C. § 1333 (1958).

[12] See, *e.g.*, Fitzgerald v. United States Lines Co., 306 F.2d 461 (2d Cir. 1962) (dictum), *cert. granted*, 83 Sup. Ct. 307 (1962) (No. 463).

[13] 358 U.S. 354 (1959).

[14] 28 U.S.C. § 1331(a) (1958) states: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

[15] 289 U.S. 238 (1933).

[16] 358 U.S. at 380–81.

[17] *Ibid.* (Emphasis added.)

[18] See Maher v. Newtown Creek Towing Co., 190 F. Supp. 933 (S.D.N.Y. 1961).

[19] *Cf.* Maher v. Newtown Creek Towing Co., *supra* note 18.

III

JURY TRIAL

When a suit involving the Jones Act, unseaworthiness, and maintenance and cure is brought in a state court pursuant to the "savings to suitors" clause,[20] a jury trial may be obtained for all three claims.[21] When such a suit is filed on the civil side of the federal distict court based on diversity of citizenship, a jury trial is likewise obtainable for all three claims.[22] But when diversity is lacking and a suit containing the three claims is brought on the civil side of the federal district court, although a jury trial can be obtained for the claim under the Jones Act,[23] as respects the unseaworthiness and the maintenance and cure claims, the question is unresolved.

In *Romero,* the Supreme Court held that a claim based on general maritime law was not a federal question within 28 U.S.C. section 1331. In holding that the district court had pendent jurisdiction over the unseaworthiness and the maintenance and cure claims by virtue of their joinder with the Jones Act claim, the Court had to decide whether a jury trial was obtainable for the pendent general maritime law claims. On this point the Court stated:

> Here we merely decide that a district judge has jurisdiction to determine whether a cause of action has been stated if that jurisdiction has been invoked by a complaint at law rather than by a libel in admiralty, as long as the complaint also properly alleges a claim under the Jones Act. We are not called upon to decide whether the District Court may submit to the jury the "pendent" claims under the general maritime law in the event that a cause of action be found to exist.[24]

In a later case, the Court again expressly refused to decide this question, leaving to the courts of appeals the task of working out their own solutions.[25]

The Second Circuit, when faced with suits containing Jones Act, unseaworthiness, and maintenance and cure claims filed on the civil side of the federal district court in nondiversity cases, has sent the Jones Act and unseaworthiness claims to the jury and tried the maintenance and cure claims to the court.[26] The Fifth Circuit has also sent the Jones Act and unseaworthiness claims to the jury.[27] Moreover, when a maintenance and cure claim was sent to the jury along with Jones Act and unseaworthiness claims, the Fifth Circuit declared on appeal that this was not

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[20] 28 U.S.C. § 1333 (1958) states: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors* in all cases all other remedies to which they are otherwise entitled." (Emphasis added.)

[21] Fitzgerald v. United States Lines Co., *supra* note 12 (dictum); *cf.* Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355 (1962).

[22] This result is based on the theory that extends the application of the "savings to suitors" clause to a suit brought on the civil side of the federal district court. Because the district court is exercising diversity jurisdiction and a jury trial is obtainable in a state court, a jury trial should be afforded all the claims set forth in the complaint. Fitzgerald v. United States Lines Co., *supra* note 12 (dictum); *cf.* Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355 (1962).

[23] 41 Stat. 1007 (1920), 40 U.S.C. § 688 (1958).

[24] 358 U.S. at 381.

[25] Michalic v. Cleveland Tankers, Inc., 364 U.S. 325 (1960).

[26] Fitzgerald v. United States Lines Co., *supra* note 12; Bartholomew v. Universe Tankships, Inc., 263 F.2d 437 (2d Cir. 1959); see Voyiatzis v. National Shipping & Trading Corp., 199 F. Supp. 920 (S.D.N.Y. 1961).

[27] Vickers v. Tumey, 290 F.2d 426 (5th Cir. 1961); Mitchell v. Trawler Racer, Inc., 265 F.2d 426 (1st Cir. 1959), *rev'd on other grounds,* 362 U.S. 539 (1960); Reiersen v. Mississippi Shipping Co., 268 F.2d 613 (5th Cir. 1959).

an abuse of discretion by the trial judge.[28] There is some indication that the Second Circuit might follow this result.[29] Hence, the two general maritime law claims of unseaworthiness and of maintenance and cure have been treated differently as respects trying them before a jury.

There is much to be said for trying all three claims to the jury. It has been urged that reasons of judicial economy as well as the danger of duplication of damages call for a joint trying of these claims.[30] In addition, there are other compelling reasons why the Jones Act and unseaworthiness claims should be tried together. The Jones Act and the unseaworthiness claims are considered as one cause of action, giving rise to but one recovery[31] where both claims arise out of the same facts. Thus, it has been held that the bringing of an unseaworthiness suit will act as a bar to a subsequent Jones Act suit based on the same facts.[32] To try one claim to the jury and the other claim to the judge would divide one cause of action for the purpose of the mode of trial. It is not surprising that no case has been found where a suit containing both a Jones Act and an unseaworthiness claim brought on the civil side of the federal district court without diversity resulted in the Jones Act claim being tried to the jury and the unseaworthiness claim being tried to the court. Although the claim of maintenance and cure is generally deemed separate and independent from the Jones Act and unseaworthiness claims,[33] judicial economy and the avoidance of duplication of damages suggest that a jury trial for all three claims is still the better solution, whether or not the maintenance and cure claim is based on the same facts as the other two claims.[34]

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[28] Mitchell v. Trawler Racer, Inc., *supra* note 27; Reiesen v. Mississippi Shipping Co., *supra* note 27.

[29] In Fitzgerald v. United States Lines Co., 306 F.2d 461 (2d Cir. 1962), *cert. granted,* 83 Sup. Ct. 307 (1962) (No. 463), a suit was brought on the civil side of the federal district court based on the claims of the Jones Act, unseaworthiness, and maintenance and cure. Diversity of citizenship was not present. The trial court sent the Jones Act and the unseaworthiness claims to the jury, and tried the maintenance and cure claim to the court. The Second Circuit, sitting en banc, upheld the trial court's refusal to send the maintenance and cure claim to the jury. The dissenting opinion, with three judges subscribing, stated that a jury trial was mandatory for the maintenance and cure claim in this situation because it arose out of the same facts as the Jones Act and unseaworthiness claims. The concurring opinion, two judges subscribing stated that it was within the discretion of the trial judge to send the maintenance and cure claim to the jury where this claim was based on the same factual situation as the Jones Act and unseaworthiness claims. Hence only three judges voted that a jury trial could not be obtained for the maintenance and cure claim. If the trial court had granted a jury trial for the maintenance and cure claim and had this claim been based on the same factual situation as the other claims, five judges apparently would have voted to uphold the action of the trial judge.

[30] See Romero v. International Terminal Operating Co., 358 U.S. 354 (1959) (separate opinion of Brennan, J.); Fitzgerald v. United States Lines Co., 306 F.2d 461, 475 (2d Cir. 1962) (dissenting opinion), *cert. granted,* 83 Sup. Ct. 307 (1962) (No. 463); Bartholomew v. Universal Tankships, Inc., 279 F.2d 911 (2d Cir. 1960); Vickers v. Tumey, 290 F.2d 426 (5th Cir. 1959); Mitchell v. Trawler Racer, Inc., 265 F.2d 426 (5th Cir. 1959), *rev'd on other grounds,* 362 U.S. 539 (1960).

[31] See McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958); Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927); Fitzgerald v. United States Lines Co., *supra* note 12.

[32] Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927).

[33] Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928); see Bartholomew v. Universe Tankships, Inc., 279 F.2d 911 (2d Cir. 1960).

[34] See Romero v. International Terminal Operating Co., 358 U.S. 354 (1959) (separate opinion of Brennan, J.); Fitzgerald v. United States Lines Co., *supra* note 30 (dissenting opinion); Bartholomew v. Universal Tankships, Inc., 279 F.2d 911 (2d Cir. 1960); Mitchell v. Trawler Racer, Inc., 265 F.2d 426 (5th Cir. 1959), *rev'd on other grounds,* 362 U.S. 539 (1960).

IV

RES JUDICATA AND STATUTES OF LIMITATIONS

In *Baltimore S.S. Co. v. Phillips*,[35] the Supreme Court held that a judgment on a claim for personal injuries based on unseaworthiness will bar assertion of a claim for the same injury based on the Jones Act. This result is based on the reasoning that because the seaman suffered a single wrongful invasion of a single primary right, both claims must be tried in the same suit. As respects the maintenance and cure claim, however, the bringing of such a suit does not bar a subsequent suit based on the Jones Act or unseaworthiness, even where the claims arise from the same facts.[36]

Similar to the res judicata problem is that involving statutes of limitations. In the leading case of *McAllister v. Magnolia Petroleum Co.*,[37] the Supreme Court held that where an action for unseaworthiness is combined with an action under the Jones Act, a state court cannot apply to the former a shorter period of limitations than Congress has prescribed for the latter. The Court reasoned that the seaman's full remedies included claims for both unseaworthiness and Jones Act negligence.[38] As this could only be done in a single proceeding under the rule stated in *Phillips*, the state's time limitation on the unseaworthiness was said to effect in substance a similar and therefore improper limitation on the Jones Act claim, which has its own statutory limitation.[39]

While the unseaworthiness claim must be allowed at least three years to be brought in a state court,[40] it has occasionally been afforded a longer time limitation.[41] Some courts have demonstrated an inclination to extend the doctrine of laches to a period greater than the three year statute of limitations provided by the Jones Act, either by applying a state statute by analogy[42] or by finding a lack of prejudice against the defending party.[43] Unseaworthiness and maintenance and cure seem to be treated identically as respects the doctrine of laches.[44]

V

REMOVAL

It has been held that where a seaman sues under the Jones Act in a state court, the defendant cannot obtain removal to the federal court on the grounds of diversity of citizenship, because a claimant under the Jones Act has his choice of the

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[35] 274 U.S. 316 (1927).

[36] Cases cited note 33 *supra*.

[37] 357 U.S. 221 (1958).

[38] *Id.* at 225.

[39] *Id.* at 226.

[40] See text accompanying notes 37–39 *supra*.

[41] Claussen v. Mene Grande Oil Co., 275 F.2d 108 (3d Cir. 1960); Scott v. United Fruit Co., 195 F. Supp. 278 (S.D.N.Y. 1961); Campanile v. Malvicini, 170 F. Supp. 667 (S.D.N.Y. 1959).

[42] Claussen v. Mene Grande Oil Co., 275 F.2d 108 (3d Cir. 1960); Campanile v. Malvicini, 170 F. Supp. 667 (S.D.N.Y. 1959); *cf.* Burns v. Marine Transp. Lines, Inc., 207 F. Supp. 276 (S.D.N.Y. 1962).

[43] Scott v. United Fruit Co., 195 F. Supp. 278 (S.D.N.Y. 1961); *cf.* Wounick v. Pittsburgh Consolidation Coal Co., 283 F.2d 325 (3d Cir.), *cert. denied*, 364 U.S. 902 (1960).

[44] See, *e.g.*, Claussen v. Mene Grande Oil Co., 275 F.2d 108 (3d Cir. 1960).

forum.[45] There would seem to be no reason why a defendant could not remove a suit brought in a state court solely on a general maritime law claim, if the proper diversity of citizenship be shown. In cases where a Jones Act and an unseaworthiness claim have been brought together in a state court, the defendant, in arguing for removal, has urged that such a joinder of a general maritime law claim with the Jones Act claim allows removal of both claims by the defendant.[46] The courts have uniformly rejected this argument.[47] In denying removal in such a situation, the courts have found support in the reasoning discussed above that the Jones Act and the unseaworthiness doctrine do not state separate and independent claims, but are rather one cause of action, and hence should be treated similarly.[48] The same reasoning would apparently preclude the defendant from removing the unseaworthiness claim to the federal court, leaving the Jones Act claim to be tried in the state court, since this would be splitting the same cause of action.[49] Although it might be possible to remove the maintenance and cure claim to the federal court and try it separately there, the danger of duplication of damages argues against such a procedure.[50]

VI

SURVIVAL AND WRONGFUL DEATH ACTIONS

Although under general maritime law there is no remedy for wrongful death,[51] nor for survival of a fatally injured seaman's cause of action,[52] the Jones Act provides both a cause of action for wrongful death[53] and the survival of a seaman's cause of action for personal injury.[54] But although there is no survival for maintenance and cure claims under general maritime law, a seaman's death resulting from a failure of providing maintenance and cure has been held to be a personal injury arising from negligence and within the purview of the Jones Act.[55] The Jones Act apparently does not provide for the survival of an injured seaman's cause of action based on unseaworthiness.[56]

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[45] Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952); see Civil v. Waterman S.S. Corp., 217 F.2d 94 (2d Cir. 1954); Mikkelson v. Pacific S.S. Co., 46 F.2d 124 (W.D. Wash. 1930); Petterson v. Standard Oil Co., 41 F.2d 219 (S.D.N.Y. 1924).

[46] Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952); Nickerson v. American Dredging Co., 129 F. Supp. 602 (D.N.J. 1955); Crespo v. Pacific-Atlantic S.S. Co., 117 F. Supp. 504 (S.D.N.Y. 1953); Ducoff v. Cities Serv. Oil Co., 102 F. Supp. 423 (S.D. Tex. 1951).

[47] *Ibid.*

[48] Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952); Nickerson v. American Dredging Co., 129 F. Supp. 602 (D.N.J. 1955); Crespo v. Pacific-Atlantic S.S. Co., 117 F. Supp. 504 (S.D.N.Y. 1953); Pearson v. Tide Water Associated Oil Co., 223 P.2d 669 (Cal. App. 1950).

[49] See text accompanying notes 35–39 *supra*.

[50] See, *e.g.*, Bartholomew v. Universe Tankships, Inc., 279 F.2d 911 (2d Cir. 1960); GILMORE & BLACK § 6–9.

[51] See, *e.g.*, McLaughlin v. Blidberg Rothchild Co., 167 F. Supp. 714 (S.D.N.Y. 1958); Holland v. Steag, 143 F. Supp. 203 (D. Mass. 1956).

[52] See, *e.g.*, Cortes v. Baltimore Insular Line, Inc., 287 U.S. 367 (1932); Holland v. Steag, 143 F. Supp. 203 (D. Mass. 1956).

[53] See, *e.g.*, Lindgren v. United States, 281 U.S. 38 (1930).

[54] See, *e.g.*, Cortes v. Baltimore Insular Line, Inc., 287 U.S. 367 (1932); Socony-Vacuum Oil Co. v. Premeaux, 187 S.W.2d 690 (Tex. Civ. App. 1945), *aff'd in part and rev'd in part on other grounds*, 144 Tex. 558, 192 S.W.2d 138 (1946).

[55] *Ibid.*

[56] See Holland v. Steag, 143 F. Supp. 203 (D. Mass. 1956).

Turning to state-created causes of action, a claim for wrongful death cannot be brought pursuant to a state wrongful death statute where the Jones Act provides a claim for the seaman's death. This principle has its origin in the case of *Lindgren v. United States*,[57] in which a suit was brought to recover damages for a seaman's death under a Virginia wrongful death statute. The Supreme Court, in holding that the Jones Act was applicable and that an action under the Virginia wrongful death statute would not lie, stated that the Jones Act "covers the entire field of liability for injuries to seamen, . . . is paramount and exclusive, and supercedes the operation of all state statutes dealing with the subject."[58] In a dictum, the court further stated that

> the right of action given the personal representative by [the Jones Act] to recover damages for the seaman's death when caused by negligence . . . is necessarily exclusive and precludes the right of recovery of indemnity for his death *by reason of unseaworthiness of the vessel* irrespective of negligence, which cannot be eked out by resort to the death statute of the state in which the injury was received.[59]

This dictum has become the general rule under which an unseaworthiness suit based on a state wrongful death statute will not lie where the deceased was a seaman whose death was covered by the Jones Act.[60]

As respects the survival of a seaman's cause of action for pain and suffering, however, the application of state survival statutes has been approved, even though the seaman had a survival claim under the Jones Act.[61] This seems contrary to the broad language in *Lindgren,* which would appear to foreclose such a result.[62] Where the deceased is not a seaman, and hence cannot sue under the Jones Act, an unseaworthiness claim based on a state wrongful death statute will lie.[63]

VII

MARITIME LIENS

Under general maritime law, a seaman may obtain a maritime lien based on a personal injury claim.[64] In *Plamals v. S.S. Pinar Del Rio*,[65] wherein a seaman sought to obtain a maritime lien pursuant to a Jones Act claim, the United States Supreme Court held that the Jones Act does not afford a maritime lien. Thus, a seaman can apparently seek a maritime lien for unseaworthiness and for maintenance and cure claims[66] but not for Jones Act claims. In view of the *McAllister* and *Phillips* cases discussed above, which demonstrate the coalescense for many

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[57] 281 U.S. 38 (1930).

[58] *Id.* at 47.

[59] *Id.* at 48. (Emphasis added.)

[60] See, *e.g.*, Burns v. Marine Transp. Lines, Inc., 207 F. Supp. 276 (S.D.N.Y. 1962); Bath v. Sargent Line Corp., 166 F. Supp. 311 (S.D.N.Y. 1958).

[61] Burns v. Marine Transp. Lines, Inc., 207 F. Supp. 276 (S.D.N.Y. 1962); McLaugblin v. Blidberg Rothchild Co., 167 F. Supp. 714 (S.D.N.Y. 1958); Holland v. Steak, 143 F. Supp. 203 (D. Mass. 1956).

[62] See text accompanying notes 58–60 *supra.*

[63] See The Tungus v. Skovgaard, 358 U.S. 588 (1959).

[64] The Osceola, 189 U.S. 158 (1903); GILMORE & BLACK § 6–7.

[65] 277 U.S. 151 (1928).

[66] *Cf.* Brown v. C. D. Mallory & Co., 122 F.2d 98 (3d Cir. 1941); The Baymead, 88 F.2d 144 (9th Cir. 1937); The State of Maryland, 85 F.2d 944 (4th Cir. 1936); Standard Dredging Co. v. Kristiansen, 67 F.2d 548 (2d Cir. 1933); The Birkenhead, 51 F.2d 116 (E.D. Pa. 1930).

purposes of the unseaworthiness and Jones Act claims when arising from the same facts, this result would appear to be anomalous.[67]

When a seaman dies of his injuries, general maritime law does not permit a lien to be obtained for his survival or wrongful death.[68] However, a maritime lien may be obtained under a state wrongful death statute.[69] In *The Tungus v. Skovgaard*[70] a worker who was not a seaman was killed aboard a ship. The decedent's administratrix commenced a libel in rem based on the New Jersey wrongful death statute pursuant to an unseaworthiness claim. The Supreme Court upheld the conclusion of the court of appeals that the unseaworthiness claim was encompassed in the New Jersey statute. The Court did not discuss, and thus apparently approved, the bringing of the libel in rem thereby affording a maritime lien under a state wrongful death statute.

The administrator of a seaman whose death is covered by the Jones Act who brings a libel in rem based on a state wrongful death statute pursuant to an unseaworthiness claim would seem to be defeated by the application of the rule of *Lindgren v. United States*.[71]

VIII

CLAIMS OF A FOREIGN SEAMAN

Following the leading case of *Lauritzen v. Larsen*,[72] the Supreme Court, in *Romero v. International Terminal Operating Co.*,[73] dismissed a Jones Act claim against a Spanish corporation owning the ship upon which the plaintiff was injured. In reaching this result, the Court pointed to the many contacts of the injured seaman, ship, and shipowner with Spain, as well as other choice of law criteria.[74] The Court then disposed of the unseaworthiness and the maintenance and cure claims by stating:

> The broad principles of choice of law and the applicable criteria of selection set forth in *Lauritzen* were intended to guide courts in the application of maritime law generally. Of course, due regard must be had for the differing interests advanced by varied aspects of maritime law. But the similarity in purpose and function of the Jones Act and the general maritime principles of compensation for personal injury, admit of no rational differentiation of treatment for choice of law purposes. Thus the reasoning of *Lauritzen v. Larsen* governs *all* claims here.[75]

The courts have apparently been consistent in applying the same choice of law rules to the Jones Act, unseaworthiness, and maintenance and cure claims.[76] While

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[67] *Cf.* text accompanying notes 35–39 *supra*.

[68] See cases cited notes 51 & 52 *supra*.

[69] See The Tungus v. Skovgaard, 358 U.S. 588 (1959); Vancouver S.S. Co. v. Rice, 288 U.S. 445 (1933); Continental Cas. Co. v. The Benny Skou, 200 F.2d 246 (4th Cir. 1952); Andrade v. United States, 107 F. Supp. 463 (D.R.I. 1952) (dictum); GILMORE & BLACK § 9–35.

[70] 358 U.S. 588 (1959).

[71] See text accompanying notes 58–60 *supra*.

[72] 345 U.S. 571 (1953).

[73] 358 U.S. 354 (1959).

[74] *Id.* at 383.

[75] *Id.* at 382. (Emphasis added.)

[76] See Kontos v. The S.S. Sophie Co., 288 F.2d 437 (3d Cir. 1961); Mpampouros v. Steamship Auromar, 203 F. Supp. 944 (D. Md. 1962); Moutzouris v. National Shipping & Trading Co., 196 F. Supp. 482 (S.D.N.Y. 1961); Voyiatzis v. National Shipping & Trading Corp., 199 F. Supp. 920 (S.D.N.Y. 1961); Retzekas v. Vygla S.S. Co., 193 F. Supp. 259 (D.R.I. 1960); Giatilis v. The Darnie, 171 F. Supp. 751 (D. Md. 1959); Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F. Supp. 236 (S.D.N.Y. 1958).

it has been stated that dismissal of a Jones Act claim does not compel a court to refuse to retain jurisdiction over the unseaworthiness and the maintenance and cure claims,[77] dismissal of these claims has been the result.[78] Conversely, where the Jones Act claim has been accepted by the court, the result has been that the claims based on general maritime law have also been retained.[79]

CONCLUSION

The Jones Act and the unseaworthiness doctrine would seem to have coalesced in the areas of joinder, jury trial, res judicata, removal, and claims of foreign seamen. Maintenance and cure appears to be part of this union in the areas of joinder, claims of foreign seamen, and perhaps jury trial. At least in those areas where there seems to be no sound reason for treating the three claims separately, e.g., removal, maritime liens, and jury trial, it is urged that the three claims be given identical treatment.

It is suggested that the claims of the Jones Act, the unseaworthiness doctrine, and maintenance and cure be viewed as a single package containing an injured seaman's full remedies. Judicial economy, the avoidance of double recovery, and more equitable treatment of the case would be the benefits of such an approach.

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[77] Mpampouros v. Steamship Auromar, 203 F. Supp. 944 (D. Md. 1962).

[78] Romero v. International Terminal Operating Co., 358 U.S. 354 (1959); Mpampouros v. Steamship Auromar, 203 F. Supp. 944 (D. Md. 1962); Mota v. Boyd, Weir & Sewell, Inc., 206 F. Supp. 306 (S.D.N.Y. 1962); Moutzouris v. National Shipping & Trading Co., 196 F. Supp. 482 (S.D.N.Y. 1961).

[79] Voyiatzis v. National Shipping & Trading Corp., 199 F. Supp. 920 (S.D.N.Y. 1961); Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F. Supp. 236 (S.D.N.Y. 1958).