

EXTENDING THE TIME LIMIT WITHIN WHICH CERTAIN SUITS IN ADMIRALTY MAY BE BROUGHT AGAINST THE UNITED STATES

SEPTEMBER 11 (legislative day, JULY 20), 1950.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 483]

The Committee on the Judiciary, to whom was recommitted the bill (H. R. 483) to extend the time limit within which certain suits in admiralty may be brought against the United States, having re-examined the same, report favorably thereon without amendment and renew their recommendation that the bill do pass.

PURPOSE OF THE BILL

The bill will relieve certain litigants by enlarging the present 2-year statute of limitations of the Suits in Admiralty Act (46 U. S. C. 741 et seq.), as amended and supplemented by the Public Vessels Act (46 U. S. C. 781 et seq.), and by the War Shipping Administration (Clarification) Act (50 App. U. S. C. 1291), by granting them an additional year after its enactment within which to bring suit against the United States. Relief is confined to only those cases where timely suits, brought against Government agents or shipmasters, solely in the mistaken belief that they were the operators of vessels in fact operated by the Government, have been dismissed because the named defendant was not the operator. To prevent future repetition of such mistakes the bill expressly restates the existing law that the remedy by suit against the United States is exclusive of every other type of action by reason of the same subject matter against the United States or against its employees or agents.

STATEMENT

The bill merely amends section 5 of the Suits in Admiralty Act so as to lift the bar of the statute of limitations in a few cases where litigants were mistaken as to the identity of the operator of certain Government vessels. The bill will not in any way change the existing rights of seamen, under either the Jones Act or the general maritime law, to bring suits in admiralty or at law against their private employers who operate, under bare-boat charter or similar arrangements, vessels which are merely owned by the Government. In order to prevent any future recurrence of the past mistakes as to the rights of seamen and others where vessels operated by the Government are involved, the bill additionally declares in express statutory terms the existing law as established by decisions of the courts. It is provided that where suit is authorized against the United States it is exclusive of any other action by reason of the same subject matter against the agent or employee of the Government agency involved. Retention of this existing rule is obviously indispensable for security reasons. It is only by confining all such litigation to the admiralty courts where proceedings may be held in camera and pleadings and records impounded that essential wartime secrecy can be adequately preserved.

The bill, similarly, preserves existing law in respect of the right of litigants to recover interest against the United States under the Suits in Admiralty Act. The courts of appeal for three of the most important maritime circuits have held that under the existing language of the 1932 amendment of section 5 of the Suits in Admiralty Act (47 Stat. 420; 46 U. S. C. 745), interest runs from the date of the filing of the libel. *The Wright* ((2d Cir., 1940) 109 F. 2d 699, 701); *National Bulk Carriers v. United States* ((3d Cir., 1948) 169 F. 2d 943, 950); *Eastern SS. Lines v. United States* ((1st Cir., 1948) 171 F. 2d 589, 593). Under the bill, litigants suing under the Suits in Admiralty Act will thus continue to receive more favorable treatment than those suing under the Tort Claims Act, the Tucker Act, or the Public Vessels Act, who are not permitted to recover interest prior to the entry of the judgment or decree (28 U. S. C. 2411; 46 U. S. C. 782). Slight changes in phraseology are made in the existing language of the interest provision of section 5 so that it will be clear that no implied repeal and reenactment of the 1932 amendment, which permits interest from the date of filing suit, is intended. No attempt is made in the present bill to abolish the preferential treatment granted under the Suits in Admiralty Act and bring it into uniformity with the other statutes granting jurisdiction of suits against the United States.

The background and reasons for the enactment of the bill are fully explained in the prior report of the Committee on the Judiciary submitted June 7, 1950 (S. Rept. No. 1782, 81st Cong., 2d sess.), which favorably recommended the bill. They are not repeated here.

ANALYSIS OF THE BILL

The bill restates the whole of section 5 with appropriate amendments. The first clause reenacts the existing 2-year statute of limitations which is common to the Suits in Admiralty, Tort Claims and Public Vessels Acts.

The first proviso declares the rule announced by the Supreme Court in *Cosmopolitan Shipping Co. v. McAllister* (337 U. S. 783), *Caldarola v. Eckert* (332 U. S. 155), and *Johnson v. Emergency Fleet Corp.* (280

U. S. 320), that the remedy under the Suits in Admiralty Act is exclusive.

The second proviso gives an additional year to sue the United States to those litigants whose timely suits, brought against Government agents as operators of the Government's vessels, were dismissed solely as brought against the wrong defendant.

The last proviso retains and carries forward the 1932 amendment of the Suits in Admiralty Act which permits the award of interest from the date of filing suit instead of from the date of entry of judgment.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, April 8, 1949.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 483) to extend the time limit within which certain suits in admiralty may be brought against the United States. A study has also been made of the bill introduced in the nature of a substitute, H. R. 4051.

The primary purpose of both bills is to enlarge the present 2-year statute of limitations contained in section 5 of the Suits in Admiralty Act (47 Stat. 420), by granting an additional 1 year after the enactment of the bill within which suit may be brought against the United States on causes of action where suit has been mistakenly brought against an agent of shipmaster employed by the former War Shipping Administration. In this respect both bills are identical. In addition, however, the bills contain other provisions respecting the exclusiveness of the claimant's remedy by suit against the United States and the allowance of interest in such suits. In these respects the two bills differ widely.

Both bills are intended to relieve a small number of litigants, whose rights to sue the United States under the Suits in Admiralty and Public Vessels Acts have been permitted by their attorney to become time barred in consequence of the confusion regarding the absence of liability of the ship's husbands or shore-side agents employed by the Government to operate the accounting and certain other shore-side business of its vessels under the wartime standard form general-agency agreement (GAA 4-4-42, 7 Fed. Reg. 7561, 46 Code of Fed. Regs., 1943 Com. Supp., p. 11427, sec. 306.44). Such ships' husbands or shore-side agents were held by the Supreme Court in *Caldarola v. Eckert* (332 U. S. 155), not to be owners pro hac vice—operating owners for the voyage of the Government's vessels—as were the operating agents to whom the Government demised its vessels in peacetime. Not being operating agents in possession and control of the vessels, such general agents, were they employed by private shipowners, would, of course, not be subject to vicarious liability for the negligence of the master and crew engaged to manage and navigate the vessel as agents and employees of the vessel's operating owner. Counsel for third parties such as seamen and shippers have, however, attempted to maintain that a different rule should be applied to Government agents.

In the earlier case of *Hust v. Moore-McCormack* (328 U. S. 707), the Supreme Court without discussion accepted the admission in the agent's answer that it was an operating agent for the Government and held that despite the absence of the common law employer-employee relationship between the agent and the seaman on vessels operated by the Government under general agency, the seaman could bring the statutory Jones Act suits against the agent. No determination was made by the Supreme Court as to the seaman's right to recover in such an action, but if the agent were in fact the operator of the vessel, liability would follow. Prior to the *Caldarola* case, attorneys representing seamen and other third parties, however, misinterpreted the *Hust* case as holding not only that a seaman might bring the statutory Jones Act suit against the agent, although the latter was not his employer, but might recover from the agent as if it were in fact operating the vessel so as to be responsible for the negligence of the master and crew. Accordingly, in a few instances, attorneys sued only the agent and failed to join the United States and their claims are now time barred as to the latter, while the former is not liable under the law as established in the *Caldarola* case.

With respect to the question of the exclusiveness of the remedy by suit against the United States, H. R. 483, with a view to the prevention of any future repetition of such mistakes, expressly declares the remedy provided by the Suits in Admiralty Act to be exclusive of any remedy against an employee, agent, or instrumentality of the United States on account of the same subject matter. H. R. 4051, on the other hand, declares that the remedy by suit against the United States shall be exclusive for only the period of the recent war ("between December 7, 1941, and June 23, 1947"), thus giving rise to the implication that except for the period specified the remedy shall not be exclusive.

As for the question of interest, the courts of appeals have uniformly held that under section 5 of the act, as amended in 1932, interest runs from the date of the filing of the libel (*The Wright* (2d Cir., 1940), 109 F. 2d 699, 701; *National Bulk Carriers v. United States* (3d Cir., 1948), 169 F. 2d 943, 950; *Eastern S. S. Lines v. United States* (1st Cir., 1948), 171 F. 2d 589, 593). H. R. 483 expressly retains this existing preferential interest provision of section 5 as opposed to the provisions for interest from the entry of final judgment found in all other acts permitting suit against the United States (Public Vessels Act, 46 U. S. C. 782; Tucker Act and Tort Claims Act, 28 U. S. C. 2411). H. R. 4051, on the other hand, repeals this existing provision of section 5 and grants an even greater preference to claimants who bring suit under the Suits in Admiralty Act by permitting the allowance of interest from the date of the accident. H. R. 4051 excepts, however, the claims which are being reinstated and those reinstated by the 1932 amendment. Either of these methods of computing interest results in the preferential treatment of those suing under the Suits in Admiralty Act and imposes upon the Government an increased liability amounting to many hundreds of thousands of dollars.

If any bill is to be enacted for the purpose of relieving litigants from the bar of the statute of limitations in cases where they erroneously have brought suit against the Government's agent or shipmaster, it is believed essential that it contain declaratory language respecting the exclusive character of the remedy by suit against the United States. This will make it clear that the remedy by such suit is exclusive of any independent suit against any employee, agent, or instrumentality acting for or on behalf of the United States. This clarification can be achieved by amending the first proviso of the bills, commencing on line 8 of page 1, to read as follows:

"That where a remedy is provided by this act it shall hereafter be exclusive of any other action by reason of the same subject matter against any employee, agent or instrumentality, whether incorporated or unincorporated, acting for or on behalf of the United States in the management and operation of its vessels."

It is further believed that opportunity should be taken to correct the unjustified preference with respect to interest under the Suits in Admiralty Act by bringing the interest provision of that act into harmony with those of the other acts providing for suits against the Government. These other acts contain provisions for interest to be computed from the date judgment is rendered. Only the Suits in Admiralty Act provides that interest may be computed from the date of the commencement of the suit. The suggested change can be achieved by amending the last proviso, commencing on line 13, page 2, of H. R. 483, and on line 15, page 2, of H. R. 4051, to read as follows:

"That hereafter interest shall be allowed in accordance with title 28, United States Code, section 2411, on any claim on which suit is brought as authorized by section 2 of this Act."

Incidentally, it is suggested that the enacting clause should, for clarity and accuracy, be amended so that lines 4 and 5 read as follows:

"46 U. S. C. 745, approved March 9, 1920, as amended, is amended to read as follows:"

The Department of Justice has in the past opposed proposals to lift the bar of limitations in cases where claimants who are subject to no disability have misconceived their rights and have failed to institute suit against the United States within the period provided by law. Generally speaking, to relieve claimants in any such circumstances might serve as a precedent for similar action in every case where a claimant has failed to exercise diligence in instituting suit in the manner and within the time limitations provided by law. Likewise, this Department has invariably insisted upon the exclusive character of the remedy by suit against the United States under the Public Vessels and Suits in Admiralty Acts. It has also opposed attempts to provide for interest prior to the entry of judgment in suits against the United States. No reason exists for according preferential treatment to claimants in suits instituted pursuant to the Suits in Admiralty Act.

Accordingly, it is the view of the Department of Justice that the enactment of either of these measures is undesirable. However, if the Congress accords favorable consideration to either measure, it is essential that the suggested amendments be adopted in order to avoid the above-mentioned preferential treatment and huge additional expense to the Government.

This Department has not been advised by the Director of the Bureau of the Budget of the relationship of this report to the program of the President.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, there is printed below in one column in roman existing law, and in the opposite column in italics the new matter proposed by the bill as reported to replace existing law:

SECTION 5 OF THE SUITS IN ADMIRALTY ACT, AS AMENDED (47 STAT. 420; 46 U. S. C. 745)

H. R. 483

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided*, That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises: *Provided further*, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Merchant Fleet Corporation, formerly known as the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under the Tucker Act of March 3, 1887 (24 Stat. 505; U. S. C., title 28, sec. 250, subdiv. 1), was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this Act, or otherwise not commenced or prosecuted in accordance with its provisions: *Provided further*, That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: *Provided further*, That there shall not be revived hereby any suit at law, in admiralty, or under the Tucker Act heretofore or hereafter dismissed for lack of prosecution after filing of suit: *And provided further*, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.

"Sec. 5. Suits as herein authorized may be brought only within two years after the cause of action arises: Provided, That where a remedy is provided by this Act it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after the enactment of this amendatory Act, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bare-boat chartered by the United States or against the master of any such vessel: And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 2 of this Act unless upon a contract expressly stipulating for the payment of interest."