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The Boating Boom: Admiralty Jurisdiction Inland

glarious offense are separately punishable. It is submitted, however, that the reasoning supporting the rule is neither satisfactory nor sufficient in view of the severe penalties imposable for burglary alone,[49] and the increased penalties for more serious crimes[50] The California view, that burglary and the burglarious offense are merged so as to earn punishment for only the more serious crime, is reasonable and should be adopted; the *minimum* change which must be made is the general readoption of the common law rule that burglary and theft are punishable by only a single sentence.

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THE BOATING BOOM: ADMIRALTY JURISDICTION INLAND

The recent upsurge in pleasure boating on inland waters has been unfortunately accompanied by a similar increase in boating accidents. Despite the non-commercial nature of these vessels and the inland location of the waterways, legal actions resulting from such accidents may properly be brought in admiralty in some instances. The consequences of applying admiralty law in such actions can be surprising to the unwary.[1] The plaintiff finds that he does not have a sympathetic jury to hear his case;[2] the defendant discovers that under

[49]Apparently, only three states still authorize the death penalty for burglary: Ala. Code tit. 14, § 85 (1958); N.C. Gen. Stat. § 14-52 (1953); Va. Code Ann. § 18.1-86 (1950). However, many states still authorize life imprisonment: e.g., Cal. Pen. Code § 461; Fla. Stat. Ann. § 810.01 (1965); Ill. Ann. Stat. ch. 38 § 19-1 (Smith-Hurd 1964); Iowa Code Ann. § 708.2 (1946); Me. Rev. Stat. Ann. ch. 31, § 751 (1964); Mass. Ann. Laws ch. 266, § 14 (1956); R.I. Gen. Laws Ann. § 11-8-1 (1956); S.C. Code Ann. § 16-331 (1962). And a number of states authorize penalties of 30 years or more imprisonment: e.g., La. Rev. Stat. § 14:60 (1950); N.M. Stat. Ann. §§ 40A-16-4 and 40A-29-3 (Repl. Vol. 1964); N.Y. Pen. Law § 407; Ohio Rev. Code Ann. § 2907.09 (Baldwin 1964).

[50]E.g., under the "felony murder rule" even an unintentional homicide during the course of a burglary is first degree murder.

[1]Although the bringing of such actions in admiralty results in the application of general maritime law, it should be noted that state courts or federal courts sitting as civil courts now apply admiralty substantive law in many cases. See, e.g., Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917); Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918); Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953). See also Gilmore & Black, Admiralty § 6-58 (1957).

[2]The notable exception to the traditional admiralty rule precluding jury trial is found in admiralty actions relating to the Great Lakes. The right to a jury in actions arising out of matters on the Great Lakes was granted by Congress in 5 Stat. 726 (1845).

the admiralty rule of comparative negligence he may still be liable even though the plaintiff was contributorily negligent.[3] And admiralty law imposes no formal statute of limitations, although an action may be barred by the principle of laches.[4] But perhaps the most startling peculiarity of admiralty law is the Limitation of Liability Act.[5] Under this statute the owner of a vessel may, if he meets certain requirements,[6] limit his liability for negligence to the value, if any, of his vessel after the voyage on which the tortious incident occurred. The significance of this statute becomes apparent when a vessel worth a few hundred dollars has caused damage amounting to several thousand dollars.[7]

In order to take advantage of these peculiarities, an injured party must first show that his action is within the admiralty jurisdiction. Admiralty jurisdiction in tort actions requires that the tort have been consummated within the admiralty locality—navigable waters of the United States.[8] Regardless of the nature of the tort, if this locality requirement is satisfied, much long-standing authority holds that the action may be brought in admiralty.[9]

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[3]The Max Morris, 137 U.S. 1 (1890).

[4]Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963).

[5]9 Stat. 635, as amended, 46 U.S.C. §§ 181-95 (1958). Section 183(a) reads: "The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not ... exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." To lessen the harshness of this limitation toward the injured party or his survivors, § 183(b) requires the establishment of a fund of $60 per gross ton of seagoing ships to compensate for bodily injury and death.

[6]The principal substantive requirement is that the damage must be without the owner's privity or knowledge. See note 4, supra. For the procedure to be followed in filing a petition for limitation, see Admiralty Rules 51-55, 28 U.S.C. at 6199 (1964 ed.)

[7]See In re Hocking, 158 F. Supp. 620 (D.N.J. 1958), where the value of the boat was $3500 although the claim of the injured parties exceeded $300,000. An even greater disparity was present in Pershing Auto Rentals, Inc. v. Gaffney, 279 F.2d 546 (5th Cir. 1960), where the boat value was $500 and claims totaled $558,000.

[8]The Plymouth, 70 U.S. (3 Wall.) 20 (1865). "Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." Id. at 36.

[9]See, e.g., The Plymouth, supra note 8. But cf. McGuire v. City of New York, 192 F. Supp. 866 (S.D.N.Y. 1961), which held that "an injury to a bather at a public bathing beach" did not constitute "a cause of action cognizable in admiralty." Id. at 866-67. The court observed that there might be some question whether the waters involved were navigable, but the court did not consider that issue, refusing to accept the libelant's contention "that any tort which occurs in navigable waters

Two recent United States District Court cases, *Madole v. Johnson*[10] and *Marine Office of America v. Manion*,[11] illustrate the problem of determining what inland waters qualify as "navigable waters of the United States" for the purpose of the admiralty locality requirement. Both cases involved pleasure boats, both libels alleged negligence, and both accidents occurred on inland lakes. In addition to being inland waters, both lakes are located entirely within the body of one state.[12] It appears from an affidavit that Lake Winnipesaukee, the New Hampshire lake involved in *Manion*, is landlocked.[13] Lake Hamilton, the Arkansas lake in *Johnson*, also appears to be landlocked, since it is formed by a dam across the Ouachita River with another dam to the south of the lake and a third to the north, and "no locks or other conveyances are available for transporting water craft around or through any of these dams."[14] Despite these similarities, Lake Hamilton was held navigable waters[15] but Lake Winnipesaukee was not.[16]

In *Johnson* a libel in admiralty was filed to recover for personal injuries received in a motorboat accident on Lake Hamilton. The respondents moved to dismiss on the ground that this action should not be heard in admiralty since the accident did not occur on *navigable waters* of the United States. The District Court rejected this argument and held that Lake Hamilton qualified as navigable waters; therefore admiralty had jurisdiction in actions resulting from torts consummated there.

In *Manion* a libel in admiralty was filed against a boat operator who had collided with a dock on Lake Winnipesaukee. The respondent's motion to dismiss the libel for lack of jurisdiction was granted. The court held that the admiralty locality did not extend to Lake Winnipesaukee, because this lake does not qualify as navigable waters of the United States.[18]

In making these determinations, both cases relied principally upon

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is cognizable in admiralty." Id. at 867. The court held that "the basis for admiralty jurisdiction must be a combination of a maritime wrong and a maritime location. A maritime wrong generally has been concluded to be one which in some way is involved with shipping or commerce." Id. at 868-69.

[10]241 F. Supp. 379 (W.D. La. 1965).

[11]241 F. Supp. 621 (D. Mass. 1965).

[12]See Madole v. Johnson, supra note 10; Marine Office of America v. Manion, supra note 11.

[13]Marine Office of America v. Manion, supra note 11, at 622.

[14]Madole v. Johnson, supra note 10, at 381.

[15]Id. at 382.

[16]Marine Office of America v. Manion, supra note 11, at 622.

[17]Madole v. Johnson, supra note 10.

[18]Marine Office of America v. Manion, supra note 11, at 622.

the test of "navigable waters" enunciated in *The Daniel Ball*[19] and all parties to both actions accepted this as the proper test. *The Daniel Ball* defines navigable waters of the United States as those waterways, either used or susceptible of use in interstate or foreign commerce, which form a continuous highway of commerce in their ordinary condition either by themselves or by uniting with other waterways.[20] On this basis *Manion* ruled that Lake Winnipesaukee was not navigable waters of the United States since "it is not connected with any other navigable water which would permit commerce to move... interstate."[21] *Johnson,* relying on the same test, held that Lake Hamilton was navigable since in its ordinary condition[22] it is connected with other waters navigable in interstate commerce.[23]

The problem whether inland waters are within the admiralty locality is not novel, as shown by *The Propeller Genesee Chief v. Fitzhugh,*[24] which upheld the constitutionality of an act[25] extending admiralty and maritime jurisdiction to the Great Lakes. The attack upon this statute centered on the absence of a tide on the Great Lakes. The Court rejected this attack, observing that "there is certainly nothing in the ebb and flow of the tide that makes the waters peculiarly suitable for admiralty jurisdiction, nor any thing in the absence of a tide that renders it unfit."[26] The Court then held that the admiralty locality extended to all "public navigable water, on which commerce is carried on between different States or nations...."[27]

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[19]77 U.S. (10 Wall.) 557 (1870).

[20]Id. at 563.

[21]Marine Office of America v. Manion, supra note 11, at 622.

[22]By "ordinary condition" the court was referring to the condition of Ouachita River before the construction of the dams.

[23]Madole v. Johnson, supra note 10, at 380-81.

[24]53 U.S. (12 How.) 443 (1851). In 1825 the Supreme Court held in The Thomas Jefferson that the admiralty locality was limited to tidal waters. The Thomas Jefferson, 23 U.S. (10 Wheat.) 428 (1825). The Genesee Chief specifically overruled that decision.

[25]5 Stat. 726 (1845). In upholding the constitutionality of the Act of 1845, the Court went much further than necessary. The issue presented was whether an act extending admiralty jurisdiction to the Great Lakes was constitutional. The Court not only held that admiralty jurisdiction extended to the Great Lakes but that it extended to all navigable waters of the United States. The Genesee Chief, supra note 24.

[26]The Propeller Genesee Chief v. Fitzhugh, supra note 24, at 454.

[27]Ibid. At the time the United States Constitution was adopted, the admiralty locality in England was located to tidal waters, consequently it was argued that this same limitation applied in the United States. In rejecting that argument, the Court noted that in England the restriction to tidal waters was reasonable since in England "there was no navigable stream... beyond the ebb and flow of the tide...." Such a restriction was thought unreasonable in the United States because of the great volume of inland waters beyond tidal influence. Id at 454-55.

While *The Genesee Chief* extended the admiralty locality, it did not define navigable waters. This question went unanswered only twenty years, for in 1871 *The Daniel Ball*[28] held that the admiralty locality extends to all navigable waters of the United States and defined such waters as those "used, or... susceptible of being used, in their ordinary condition, as highways for commerce..." in interstate or foreign commerce.[29]

The jurisdictional test enunciated by *The Genesee Chief* and *The Daniel Ball* has been widely applied in recent actions arising from pleasure boat accidents on inland waters. The language and logic of the recent cases is highly reminiscent of the earlier landmark cases, as seen in *Shogry v. Lewis*,[30] which involved a pleasure boat accident on Lake Chautauqua, New York. A libel in admiralty was filed to recover for injuries resulting from the alleged negligent operation of a motorboat. The libel was dismissed on the ground that Lake Chautauqua was not navigable waters of the United States since neither it nor connecting waters could be used in interstate or foreign commerce.[31]

But the recent cases applying the locality test to determine whether there is admiralty jurisdiction have involved some uncertainty. Perhaps the most controversial issue in such cases is whether to consider only the present navigability of a waterway as opposed to its historical navigability. This problem was raised in *Johnson* because of the three dams on the Ouachita River.[32] The respondent there argued that the area of the Ouachita River within the dams should not be considered navigable because the dams are a physical hindrance to passage from one lake to another. *Johnson* dealt with this issue by relying

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[28]Supra note 19.

[29]Id. at 563. This was the definition adopted by Johnson and Manion as the admiralty locality test.

[30]225 F. Supp. 741 (W.D. Pa. 1964). See also Loc-Wood Boat & Motors, Inc. v. Rockwell, 245 F.2d 306 (8th Cir. 1957), which held that the Lake of the Ozarks, Missouri, is navigable waters. This lake, although located entirely within one state, was held navigable since it was formed by Bagnell Dam across the Osage River and the Osage was once navigable in interstate commerce. Johnson cites this opinion for support since the Loc-Wood fact situation is similar to that in Johnson. The test used in Loc-Wood is essentially that of The Daniel Ball, just as the Daniel Ball test was used in both Johnson and Manion.

[31]This test used by Shogry is taken directly from The Daniel Ball. Shogry v. Lewis, supra note 30, at 742.

[32]"In addition to Carpenter Dam [forming Lake Hamilton], Blakely Dam forms Lake Ouachita to the North of Lake Hamilton, and Remmel Dam forms Lake Catherine to the South of Lake Hamilton." Madole v. Johnson, supra note 10, at 381.

upon *Economy Light & Power Co. v. United States*,[33] which held that the presence of artificial obstructions does not deprive a waterway of its navigable quality if it would be navigable in its natural condition.

The effect of such dams upon navigability, however, has been viewed differently, as shown by *In re Howser*.[34] *Howser* involved a limitation of liability proceeding in connection with a collision of two pleasure boats on Lake Hickory, North Carolina. Lake Hickory is one of several lakes formed by a series of eleven dams on the Catawba River, and, as in *Johnson*, there are no water passages around any of the dams. In holding that Lake Hickory is not navigable water, *Howser* places great emphasis on the presence of the dams and the absence of a water passage. The court states that to consider such lakes navigable when they do not have the means of ingress and egress to commerce "is untenable, under settled and clear judicial construction. Common sense is also involved, and 'common sense often makes good law.' "[35] Using this common sense approach, *Howser* points out that it is impossible to travel from one lake to another without portaging.[36] Such language is contrary to the *Johnson* theory that the presence of the dams has no effect on the navigability of the water.

Despite the *Howser* common sense approach, which is essentially an examination of navigability in fact, courts do not always place such emphasis on factual navigability in determining whether a waterway qualifies as navigable water so as to satisfy the admiralty locality test. *United States v. Appalachian Elec. Power Co.*[37] held that the New River, which flows from Virginia to West Virginia, was navigable so as to be within the admiralty locality, even though the Court recognized that "the whole territory traversed by the New is broken and mountainous" with stretches of swift water and precipitous gorges.[38] Despite these physical hindrances, the Court held that present natural condition was not the sole factor determining navigability for the purposes of the admiralty locality test; the availability for navigation if artificial aids were employed to improve the natural condition should also be considered. The use of artificial aids was limited, however, for the Court held that "there must be a balance between cost and need [for navigation] at a time when the improvement would be

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[33]256 U.S. 113 (1921).

[34]227 F. Supp. 81 (W.D.N.C. 1964). See also In re Keller, 148 F. Supp. 513 (D. Minn. 1956), which likewise discussed the effect of dams on the navigability of water.

[35]In re Howser, 227 F. Supp. 81, 87 (W.D.N.C. 1964).

[36]Ibid.

[37]311 U.S. 377 (1940).

[38]Id. at 410.

useful."[39] Although the effect of artificial aids was thus limited, the Court held that it was not necessary that any improvements actually be made or authorized and that a waterway once held navigable remains so as a matter of law.

While *Appalachian* dealt with the effect of natural obstructions on navigability, *Economy Light & Power Co. v. United States*[40] examined the effect of artificial obstructions. The obstructions were private dams and bridges erected on the Des Plaines River contrary to a federal statute.[41] The Court held that the Des Plaines qualified as navigable water in its natural condition since it ultimately flowed into the Mississippi and had been an actual avenue of commerce. Since the Des Plaines was navigable in its natural condition, it was held to remain navigable despite the presence of artificial obstructions. The Court reasoned that the obstructions could be abated by the exercise of public authority and that the Des Plaines could be returned to its natural navigable condition. The inquiry was not directed to navigability in fact, but to the historical navigability of the waterway.

As a result of these two decisions,[42] the test to determine whether

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[39]Id. at 407-08.

[40]256 U.S. 113 (1921).

[41]30 Stat. 1121, 1151, 33 U.S.C. § 401 (1958), which declares it unlawful to construct dams on navigable waters without prior consent from Congress. No consent had been obtained in Economy Light; consequently the dam owners argued that the statute was not applicable on the theory that the Des Plaines was not navigable.

[42]Although both Appalachian and Economy examined the navigability of their respective waterways, these examinations were necessary since the Rivers and Harbors Act, 30 Stat. 1121, 1151 (1899), involved in Economy Light, and the Federal Power Act, 41 Stat. 1063, as amended, 49 Stat. 803, 838 (1935), involved in Appalachian, limited the applicability of the acts to "navigable waters." Despite the inquiries into navigability, both cases appear to have been decided under the commerce power. After examining a series of earlier acts concerning federal control over navigable waters, Economy Light commented in reference to the Ordinance of 1787 that "it [the ordinance] did not regulate internal affairs alone, and was no more capable of repeal by one of the states than any other regulation of interstate commerce enacted by the Congress...." Economy Light & Power Co. v. United States, supra note 40, at 120. The Court then compared the authority of Congress in the earlier acts to that exercised in the Rivers and Harbors Act. Appalachian stated in reference to federal control of the waterways covered by the Federal Power Act: "The power of the United States over its waters which are capable of use as interstate highways arises from the commerce clause of the Constitution." United States v. Appalachian Elec. Power Co., supra note 37, at 404. The limiting of both acts to "navigable waters" was the result of the restrictive definition of "interstate commerce" which generally existed at the time of the passage of the acts. The concept of interstate commerce in 1899, the date of the Rivers and Harbors Act, was basically that of interstate transportation. United States v. E. C. Knight Co., 156 U.S. 1 (1895). Embodying this theory of interstate commerce, the Rivers and Harbors Act limited its applicability to those waters that ultimately flowed across state lines and were therefore avenues of interstate transportation, or navigable waters. The framers of the Act apparently theorized that the Act would

water is navigable becomes twofold: was the waterway historically navigable in fact; and, if not historically navigable, could it be made so in the future by reasonable improvements? If either of these questions is answered affirmatively, then the waterway is within the admiralty locality. Depending upon how far back a court wishes to trace historical navigability and how speculative a court is concerning future improvements, almost any waterway could be classified as navigable provided the water ultimately flows into an interstate waterway. Since even the smallest creeks usually connect with rivers which in turn flow into other rivers, this connection may ordinarily be easily shown. Having reduced the test of navigable waters to a logical absurdity, the test has been greatly lessened, if not destroyed, as a useful test of admiralty jurisdiction.

Despite the reduction of the concept of navigable waters to a logical absurdity, courts continue to apply "navigable waters" as a test of admiralty jurisdiction, as shown by *Madole* and *Johnson*. In neither of those cases was any emphasis laid on the fact that pleasure boats were involved or that the activities causing the injuries were pleasure outings. The sole inquiry was directed at the locality involved:[43] was it navigable waters of the United States? Yet *The Mamie*,[44] one of the

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be more readily upheld as an exercise of the commerce power if the relation to interstate transportation were clearly shown. The restrictive view of interstate commerce was still widely held at the time Economy Light was decided. E.g., Hammer v. Dagenhart, 247 U.S. 251 (1918). Because of the prevalence of this restrictive view, Economy Light interlaced its examination of the commerce power with references to navigable waters. The Federal Power Act similarly embodied a restrictive view of the commerce power. Typical of the restriction interpretation prevalent in 1935, the date of the Federal Power Act, is Schecter Poultry Corp. v. United States, 295 U.S. 495 (1935). Although the restrictive view of the commerce power had been somewhat broadened by 1940, the date of Appalachian, Appalachian chose to utilize both the commerce power and the concept of navigable waters to uphold federal control. As a result of the current broadened interpretation of interstate commerce, both Economy Light and Appalachian would probably be decided today in terms of "affecting interstate commerce" without any significant reference to navigable waters. Wickard v. Filburn, 317 U.S. 111 (1942), illustrates this broadened interpretation. Since "navigable waters" in these cases was not defined in an admiralty context, it appears that the tests for determining navigability enunciated by these cases should not be applicable in admiralty matters.

[43]It is to be remembered that the test for admiralty jurisdiction over tort actions was declared by The Plymouth, supra note 8, to be exclusively a locality test. Admiralty jurisdiction over contracts, however, is not determined by a locality test but by a subject matter test. If a contract relates to the navigation, business, or commerce of the sea, as the courts hypertechnically define "relates to," the contract action is within admiralty jurisdiction regardless of where the contract is made or is to be performed. De Lovio v. Boit, 7 Fed. Cas. 418 (No. 3776) (C.C. Mass. 1815).

[44]5 Fed. 813 (E.D. Minn. 1881).

earliest cases involving a limitation of liability proceeding by a pleasure boat owner,[45] held "if the vessel be not engaged in what is ordinarily understood as maritime commerce, she is not entitled to the benefit of the act."[46] The court reasoned that the Limitation of Liability Act was intended to benefit only commercial vessels, not pleasure boats, and if the vessel itself was not engaged in commerce, the act should not apply.[47]

The argument that admiralty law should apply only in actions arising from commercial maritime activities is also supported by reference to the classic cases defining admiralty jurisdiction in terms of the locality test: *The Daniel Ball*[48] and *The Genesee Chief*.[49] While both cases defined admiralty jurisdiction in terms of navigable waters on which interstate commerce *could* be conducted, each case did involve actual maritime commerce. The steamer Daniel Ball was transporting merchandise and passengers between Grand Rapids and Grand Haven, Michigan, by way of the Grand River, a direct tributary of Lake Michigan.[50] The action in *The Genesee Chief* arose out of a collision between the Genesee Chief, a propeller, and the Cuba, a loaded cargo ship sailing from Ohio to New York on Lake Ontario.[51]

In addition to such cases involving a readily discernible commercial element, some recent cases involving pleasure boat accidents on inland waters have looked to the relation of this activity to maritime commerce. *In re Reading*[52] involved a proceeding to limit liability[53] for claims arising from the explosion of a pleasure boat on Lake George, New York. In determining whether admiralty had jurisdiction to entertain this proceeding,[54] the court looked not to the locality

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[45]This proceeding was, of course, under the Limitation of Liability Act. Supra note 5. The accident giving rise to The Mamie was a collision between the steam-yacht Mamie and the steamboat Garland on the Detroit River. The Mamie, supra note 44. Despite the fact that The Mamie contained some noteworthy observations on pleasure boats and the Limitation of Liability Act, the decision fell into obscurity soon after it was rendered. This obscurity persists today, as shown by the infrequency with which The Mamie is cited. The most recent case referring to The Mamie is The Sakito Maru, 41 F. Supp. 769 (S.D. Cal. 1941).

[46]Supra note 44, at 819.

[47]Ibid.

[48]Supra note 19.

[49]Supra note 24.

[50]The Daniel Ball, supra note 19, at 559. Though the vessel itself traveled only between ports in the same state, some of the goods transported were destined for other states, thereby giving an interstate quality to this activity. Ibid.

[51]The Genesee Chief, supra note 24, at 234.

[52]169 F. Supp. 165 (N.D.N.Y. 1958).

[53]Limitation of Liability Act, supra notes 5 and 6.

[54]The Limitation of Liability Act provides that the limitation proceeding may be in any court. 9 Stat. 635 (1851), as amended, 46 U.S.C. §§ 181-95 (1958). But "any

involved but to the nature of the vessel. Recognizing that the Limitation of Liability Act was intended to encourage investment in American shipbuilding, the court expressed difficulty in understanding "what significance an explosion of a motorboat of a well-to-do owner upon an inland lake bears to the safeguarding of such a fine objective."[55] It has been argued that such logic should apply in any action involving pleasure boat accidents on inland waters.[56]

The scope of admiralty jurisdiction in actions arising from pleasure boat accidents on inland waters has thus been defined, as in *Johnson* and *Madole,* on a pure locality basis while others, notably those involving limitation of liability proceedings, have also examined the relation of the vessel and the particular activity involved to maritime commerce. It should nevertheless be remembered that the function of a separate admiralty jurisdiction is to serve the maritime industry, and the classic cases on admiralty jurisdiction, *The Daniel Ball* and *The Genesee Chief,* seem to adhere to this purpose since commercial activities were involved in each of them. Recognizing the function of admiralty law and taking note of the commercial element in the early cases, it is submitted that the issue of admiralty jurisdiction in tort actions should be determined by the relation of the *particular activity and vessel* involved to maritime commerce and not simply by an examination of the navigability in interstate or foreign commerce of the waterway.[57]

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court" was early interpreted by the Supreme Court to mean a court sitting in admiralty since it was the logical forum for such actions. The primary exception to this interpretation is that a vessel owner is permitted to invoke the act as a defense when not sued in admiralty. This interpretation by the Supreme Court is crystallized in Admiralty Rules 51-55. See Gilmore & Black, Admiralty § 10-14 at 680, 683 (1957).

[55]In re Reading, supra note 52, at 167.

[56]"The proposition ... [of expanding admiralty jurisdiction solely because of the needs of commerce] should work equally well in reverse: where the needs of commerce cease, the need for applying federal law ought also to end." Stolz, Pleasure Boating and Admiralty: Erie at Sea, 51 Calif. L. Rev. 661, 681 (1963).

[57]In Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52 (1914), the Supreme Court was concerned with whether a tort consummated aboard a vessel in navigable waters was properly within admiralty jurisdiction. While the Court finally held that locality alone determined jurisdiction, several statements in the opinion weaken this holding. The Court stated, "Even if it be assumed that the requirement as to locality in tort cases, while indispensable, is not necessarily exclusive, still in the present case the wrong which was the subject of the suit was, we think, of a maritime nature and hence the District Court, from any point of view, had jurisdiction." Id. at 61. Cf. McGuire v. City of New York, supra note 9, which went further than Imbrovek by requiring both a "maritime locality" and a "maritime wrong" for admiralty to have jurisdiction.