SUPREME COURT OF THE UNITED STATES

No. 91–1950

AMERICAN DREDGING COMPANY, PETITIONER *v.*
WILLIAM ROBERT MILLER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

[February 23, 1994]

JUSTICE KENNEDY, with whom JUSTICE THOMAS joins, dissenting.

The Court gives a careful and comprehensive history of the *forum non conveniens* doctrine but, in my respectful view, draws the wrong conclusions from this account and from our precedents. Today's holding contradicts two just and well-accepted principles of admiralty law: uniformity and the elimination of unfair forum selection rules. When hearing cases governed by the federal admiralty and maritime law, the state courts, to be sure, have broad discretion to reject a *forum non conveniens* motion. They should not be permitted, however, to disregard the objection altogether. With due respect, I dissent.

Neither the Court nor respondent is well positioned in this case to contend that the State has some convincing reason to outlaw the *forum non conveniens* objection. For the fact is, though the Court seems unimpressed by the irony, the State of Louisiana commands its courts to entertain the *forum non conveniens* objection in all federal civil cases except for admiralty, the very context in which the rule is most prominent and makes most sense. Compare La. Code Civ. Proc. Ann. Art. 123(B) (West Supp. 1993) ("Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that

there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice . . . .") with Art. 123(C) ("The provisions of Paragraph B shall not apply to claims brought pursuant to 46 U. S. C. §688 [the Jones Act] or federal maritime law."). Louisiana's expressed interest is to reach out to keep maritime defendants, but not other types of defendants, within its borders, no matter how inconvenient the forum. This state interest is not the sort that should justify any disuniformity in our national admiralty law.

In all events, the Court misapprehends the question it should confront. The issue here is not whether *forum non conveniens* originated in admiralty law, or even whether it is unique to that subject, but instead whether it is an important feature of the uniformity and harmony to which admiralty aspires. See *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 216 (1917). From the historical evidence, there seems little doubt to me that *forum non conveniens* is an essential and salutary feature of admiralty law. It gives ship owners and operators a way to avoid vexatious litigation on a distant and unfamiliar shore. By denying this defense in all maritime cases, Louisiana upsets international and interstate comity and obstructs maritime trade. And by sanctioning Louisiana's law, a rule explicable only by some desire to disfavor maritime defendants, the Court condones the forum shopping and disuniformity that the admiralty jurisdiction is supposed to prevent.

In committing their ships to the general maritime trade, owners and operators run an unusual risk of being sued in venues with little or no connection to the subject matter of the suit. A wage dispute between crewman and captain or an accident on board the vessel may erupt into litigation when the ship docks in a faraway port. Taking jurisdiction in these cases, instead of allowing them to be resolved when the ship returns home, disrupts the schedule of the ship and may aggravate relations with the state from which it hales. See Bickel, The Doctrine of Forum Non Conveniens As Applied in the Federal Courts in Matters of Admiralty, 35 Cornell L. Q. 12, 20–21 (1949) (“holding a ship and its crew in an American port, to which they may have come to do no more than refuel, may, in the eyes of the nation of the flag be deemed an undue interference with her commerce, and a violation of that `comity and delicacy' which in the more courtly days of some of the earlier cases were considered normal among the

nations" (footnote omitted)).

From the beginning, American admiralty courts have confronted this problem through the *forum non conveniens* doctrine. As early as 1801, a Pennsylvania District Court declined to take jurisdiction over a wage dispute between a captain and crewman of a Danish ship. *Willendson* v. *Forsoket*, 29 F. Cas. 1283 (No. 17,682) (Pa. 1801). "It has been my general rule," explained the court, "not to take cognizance of disputes between the masters and crews of foreign ships." *Id.*, at 1284. "Reciprocal policy, and the justice due from one friendly nation to another, calls for such conduct in the courts of either country." *Ibid.*

Dismissals for reasons of comity and *forum non conveniens* were commonplace in the 19th century. See, *e.g.*, *The Infanta*, 13 F. Cas. 37, 39 (No. 7,030) (SDNY 1848) (dismissing claims for wages by two seamen from a British ship; "This court has repeatedly discountenanced actions by foreign seamen against foreign vessels not terminating their voyages at this port, as being calculated to embarrass commercial transactions and relations between this country and others in friendly relations with it"); *The Carolina*, 14 F. 424, 426 (La. 1876) (dismissing seaman's claim that he was beaten by his crewmates while on board a British ship; "for courts to entertain this and similar suits during a voyage which the parties had agreed to make at intermediate points at which the vessel might touch, would impose delays which might seriously and uselessly embarrass the commerce of a friendly power"); *The Montapedia*, 14 F. 427 (ED La. 1882) (dismissing suit by Chinese plaintiffs against a British ship); *The Walter D. Wallet*, 66 F. 1011 (SD Ala. 1895) (dismissing suit by British seaman against master of British ship for costs of medical care while in a United States marine hospital). The practice had the imprimatur of this Court. See *Mason* v. *Ship Blaireau*, 2 Cranch 240, 264 (1804)

(Marshall, C.J.) (recognizing *forum non conveniens* doctrine but not applying it in that case); *The Belgenland*, 114 U. S. 355, 362–369 (1885) (same); *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515, 517 (1930) (affirming *forum non conveniens* dismissal of maritime dispute between British firms). By 1932, Justice Brandeis was able to cite "an unbroken line of decisions in the lower federal courts" exercising "an unqualified discretion to decline jurisdiction in suits in admiralty between foreigners." *Canada Malting Co.* v. *Paterson Steamships, Ltd.*, 285 U. S. 413, 421– 422, and nn. 2–4 (affirming *forum non conveniens* dismissal of maritime dispute between Canadian shipping companies).

Long-time foreign trading partners also recognize the *forum non conveniens* doctrine. The Court notes the doctrine's roots in Scotland. See *La Société du Gaz de Paris* v. *La Société Anonyme de Navigation "Les Armateurs Français,"* [1926] Sess. Cas. 13 (H. L. 1925) (affirming dismissal of breach of contract claim brought by French manufacturer against French ship owner who had lost the manufacturer's cargo at sea). English courts have followed Scotland, although most often they stay the case rather than dismiss it. See *The Atlantic Star*, [1974] App. Cas. 436 (H. L. 1973) (staying action between a Dutch barge owner and a Dutch ship owner whose vessels had collided in Belgian waters, pending the outcome of litigation in Antwerp); *The Po*, [1990] 1 Lloyd's Rep. 418 (Q. B. Adm. 1990) (refusing to stay action between Italian ship owner and American ship owner whose vessels had collided in Brazilian waters); *The Lakhta*, [1992] 2 Lloyd's Rep. 269 (Q. B. Adm. 1992) (staying title dispute between Latvian plaintiffs and Russian defendant, so that plaintiffs could sue in Russian court). The Canadian Supreme Court has followed England and Scotland. See *Antares Shipping Corp.* v. *Delmar Shipping Ltd. (The Capricorn)*, [1977] 1 Lloyd's Rep. 180, 185 (1976) (citing *Atlantic Star* and

Société du Gaz).

From all of the above it should be clear that *forum non conveniens* is an established feature of the general maritime law. To the main point, it serves objectives that go to the vital center of the admiralty pre-emption doctrine. Comity with other nations and among the States was a primary aim of the Constitution. At the time of the framing, it was essential that our prospective foreign trading partners know that the United States would uphold its treaties, respect the general maritime law, and refrain from erecting barriers to commerce. The individual States needed similar assurances from each other. See The Federalist No. 22, pp. 143–145 (C. Rossiter ed. 1961) (Hamilton); Madison, Vices of the Political System of the United States, 2 Writings of James Madison 362–363 (G. Hunt ed. 1901). Federal admiralty and maritime jurisdiction was the solution. See 2 J. Story, Commentaries on the Constitution of the United States §1672 (5th ed. 1833); The Federalist No. 80, *supra*, at 478 (Hamilton). And so, when the States were allowed to provide common law remedies for *in personam* maritime disputes through the saving to suitors clause, it did not follow that they were at liberty to set aside the fundamental features of admiralty law. "The confusion and difficulty, if vessels were compelled to comply with the local statutes at every port, are not difficult to see. . . . [T]he Union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control." *Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219, 228 (1924). Accord, *The Lottawanna*, 21 Wall. 558, 575 (1875); *Jensen*, 244 U. S., at 215–217.

Louisiana's open forum policy obstructs maritime commerce and runs the additional risk of impairing relations among the states and with our foreign trading partners. These realities cannot be obscured by characterizing the defense as procedural. See

ante, at 10-11; but see Bickel, 35 Cornell L. Q., at 17 ("[T]he *forum non conveniens* problem . . . is inescapably connected with the substantive rights of the parties in any given type of suit, rather than . . . `merely' an `administrative' problem"). The reverse-*Erie* metaphor, while perhaps of use in other contexts, see *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207, 222–223 (1986), is not a sure guide for determining when a specific state law has displaced an essential feature of the general maritime law. See *Exxon Corp.* v. *Chick Kam Choo*, 817 F. 2d 307, 319 (CA5 1987) ("drawing conclusions from metaphors is dangerous"). Procedural or substantive, the *forum non conveniens* defense promotes comity and trade. The States are not free to undermine these goals.

It is true that in *Missouri ex rel. Southern R. Co.* v. *Mayfield*, 340 U. S. 1 (1950), we held the state courts free to ignore *forum non conveniens* in FELA cases. But we did not consider the maritime context. Unlike FELA, a domestic statute controlling domestic markets, the admiralty law is international in its concern. A state court adjudicating a FELA dispute interposes no obstacle to our foreign relations. And while the Jones Act in turn makes FELA available to maritime claimants, that Act says nothing about *forum non conveniens*. See 46 U. S. C. App. §688.

In any event, the Court's ruling extends well beyond the Jones Act; it covers the whole spectrum of maritime litigation. Courts have recognized the *forum non conveniens* defense in a broad range of admiralty disputes: breach of marine insurance contract, *Calavo Growers of Cal.* v. *Generali Belgium*, 632 F. 2d 963 (CA2 1980); collision, *Ocean Shelf Trading, Inc.* v. *Flota Mercante Grancolumbiana S.A.*, 638 F. Supp. 249 (SDNY 1986); products liability, *Matson Navigation Co.* v. *Stal-Laval Turbin AB*, 609 F. Supp. 579 (ND Cal. 1985); cargo loss, *The Red Sea Ins. Co.* v. *S.S. Lucia Del Mar*, 1983 A. M. C. 1630 (SDNY 1982), aff'd, 1983 A. M. C. 1631 (CA2 1983);

and breach of contract for carriage, *Galban Lobo Trading Co.* v. *Canadian Leader Ltd.*, 1963 A. M. C. 988 (SDNY 1958), to name a few. See Brief for Maritime Law Association of the United States as *Amicus Curiae* 12. In all of these cases, federal district courts will now hear *forum non conveniens* motions in the shadow of state courts that refuse to consider it. Knowing that upon dismissal a maritime plaintiff may turn around and sue in one of these state courts, see *Chick Kam Choo* v. *Exxon Corp.*, 486 U. S. 140 (1988), a federal court is now in a most difficult position. May it overrule a *forum non conveniens* motion it otherwise would have granted, because the state forum is open? See *Ikospentakis* v. *Thalassic S. S. Agency*, 915 F. 2d 176, 180 (CA5 1990) (reversing the grant of plaintiff's voluntary dismissal motion, because the *forum non conveniens* defense was not available to defendants in the Louisiana court where plaintiff had also sued; refusing "to insist that these foreign appellants become guinea pigs in an effort to overturn Louisiana's erroneous rule"). Since the Court now makes *forum non conveniens* something of a derelict in maritime law, perhaps it is unconcerned that federal courts may now be required to alter their own *forum non conveniens* determinations to accommodate the policy of the State in which they sit. Under federal maritime principles, I should have thought that the required accommodation was the other way around. The Supreme Court of Texas so understood the force of admiralty; it has ruled that its state courts must entertain a *forum non conveniens* objection despite a Texas statute mandating an open forum. *Exxon Corp.* v. *Chick Kam Choo*, No. D-1693 (Sup. Ct. Tex., Jan. 12, 1994).

The Court does seem to leave open the possibility for a different result if those who raise the *forum non conveniens* objection are of foreign nationality. The Court is entitled, I suppose, to so confine its holding,

but no part in its reasoning gives hope for a different result in a case involving foreign parties. The Court's substance-procedure distinction takes no account of the identity of the litigants, nor does the statement that *forum non conveniens* remains "nothing more or less than a supervening venue provision," *ante*, at 10. The Court ought to face up to the consequences of its rule in this regard.

Though it may be doubtful that a *forum non conveniens* objection will succeed when all parties are domestic, that conclusion should ensue from a reasoned consideration of all the relevant circumstances, including comity and trade concerns. See *Anderson* v. *Great Lakes Dredge & Dock Co.*, 411 Mich. 619, 309 N. W. 2d 539 (1981) (dismissing Jones Act claim brought by Florida seaman against Delaware dredge owner for injuries suffered in Florida); *Vargas* v. *A. H. Bull S. S. Co.*, 44 N. J. Super. 536, 131 A. 2d 39 (1957) (dismissing Jones Act claim brought by Puerto Rican residents against New Jersey shipper for accidents that occurred in Puerto Rico). An Alaskan shipper may find a lawsuit in Louisiana more burdensome than the same suit brought in Canada. It is a virtue, not a vice, that the doctrine preserves discretion for courts to find *forum non conveniens* in unusual but worthy cases. At stake here is whether the defense will be available at all, not whether it has merit in this particular case. Petitioner may not have prevailed on its *forum non conveniens* motion, but it should at least have a principled ruling on its objection.

For these reasons, I would reverse the judgment.