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 SCALIA delivered the opinion of the Court.

This case presents the question whether, in admiralty cases filed in a state court under the Jones Act, 46 U. S. C. App. §688, and the "saving to suitors clause," 28 U. S. C. §1333(1), federal law pre-empts state law regarding the doctrine of *forum non conveniens.*

Respondent William Robert Miller, a resident of Mississippi, moved to Pennsylvania to seek employment in 1987. He was hired by petitioner American Dredging Company, a Pennsylvania corporation with its principal place of business in New Jersey, to work as a seaman aboard the M/V John R., a tug operating on the Delaware River. In the course of that employment respondent was injured. After receiving medical treatment in Pennsylvania and New York, he returned to Mississippi where he continued to be treated by local physicians.

On December 1, 1989, respondent filed this action in the Civil District Court for the Parish of Orleans, Louisiana. He sought relief under the Jones Act, which authorizes a seaman who suffers personal injury "in the course of his employment" to bring "an action for damages at law," 46 U. S. C. App. §688(a),

and over

which state and federal courts have concurrent jurisdiction. See *Engel* v. *Davenport*, 271 U. S. 33, 37 (1926). Respondent also requested relief under general maritime law for unseaworthiness, for wages, and for maintenance and cure. See *McAllister* v. *Magnolia Petroleum Co.*, 357 U. S. 221, 224 (1958) (setting forth means of recovery available to injured seaman).

The trial court granted petitioner's motion to dismiss the action under the doctrine of *forum non conveniens*, holding that it was bound to apply that doctrine by federal maritime law. The Louisiana Court of Appeal for the Fourth District affirmed. 580 So. 2d 1091 (1991). The Supreme Court of Louisiana reversed, holding that Article 123(C) of the Louisiana Code of Civil Procedure, which renders the doctrine of *forum non conveniens* unavailable in Jones Act and maritime law cases brought in Louisiana state courts, is not pre-empted by federal maritime law. 595 So. 2d 615 (1992). American Dredging Company filed a petition for a writ of certiorari, which we granted. 507 U. S. ___ (1993).

The Constitution provides that the federal judicial power "shall extend . . . to all Cases of admiralty and maritime Jurisdiction." U. S. Const. Art. III, §2, cl. 1. Federal-court jurisdiction over such cases, however, has never been entirely exclusive. The Judiciary Act of 1789 provided:

> "That the district courts shall have, exclusively of the courts of the several States . . . exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . within their respective districts as well as upon the high seas; *saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it*." §9, 1 Stat. 76–77

(emphasis added).

The emphasized language is known as the "saving to suitors clause." This provision has its modern expression at 28 U. S. C. §1333(1), which reads (with emphasis added):

> "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*."

We have held it to be the consequence of exclusive federal jurisdiction that state courts "may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction." *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 124 (1924). An *in rem* suit against a vessel is, we have said, distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts. *The Moses Taylor*, 4 Wall. 411, 431 (1867). In exercising *in personam* jurisdiction, however, a state court may "`adopt such remedies, and . . . attach to them such incidents, as it sees fit' so long as it does not attempt to make changes in the `substantive maritime law.'" *Madruga* v. *Superior Court of California*, 346 U. S. 556, 561 (1954) (quoting *Red Cross Line*, *supra*, at 124). That proviso is violated when the state remedy "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 216 (1917). The issue before us here is whether the doctrine of *forum non conveniens* is either a "characteristic feature" of admiralty or a doctrine whose uniform application is necessary to maintain the "proper harmony" of maritime law. We think it is neither.[1]

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[1]JUSTICE STEVENS asserts that we should not test the

Under the federal doctrine of *forum non conveniens*, "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would `establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the `chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case," even if jurisdiction and proper venue are established. *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 241 (1981) (quoting *Koster* v. *(American) Lumbermens Mut. Casualty Co.*, 330 U. S. 518, 524 (1947)). In *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947), Justice Jackson described some of the multifarious factors relevant to the *forum non conveniens* determination:

"An interest to be considered, and the one likely

Louisiana law against the standards of *Jensen*, a case which, though never explicitly overruled, is in his view as discredited as *Lochner* v. *New York*, 198 U. S. 45 (1905). See *post*, at 1–2. Petitioner's pre-emption argument was primarily based upon the principles established in *Jensen*, as repeated in the later cases (which JUSTICE STEVENS also disparages, see *post*, at 2) of *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920), and *Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219 (1924), see Brief for Petitioner 12–13. Respondent did not assert that those principles had been repudiated; nor did the Solicitor General, who, in support of respondent, discussed *Jensen* at length, see Brief for the United States as *Amicus Curiae* 5, 11–13, and n. 12. Since we ultimately find that the Louisiana law meets the standards of *Jensen* anyway, we think it inappropriate to overrule *Jensen* in dictum, and without argument or even invitation.

to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility [*sic*] of a judgment if one is obtained. . . .

"Factors of public interest also have [a] place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." *Id.*, at 508–509.[2]

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[2]*Gilbert* held that it was permissible to dismiss an action brought in a District Court in New York by a Virginia plaintiff against a defendant doing business in Virginia for a fire that occurred in Virginia. Such a dismissal would be improper today because of the federal venue transfer statute, 28 U. S. C. §1404(a): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it

Although the origins of the doctrine in Anglo-American law are murky, most authorities agree that *forum non conveniens* had its earliest expression not in admiralty but in Scottish estate cases. See *Macmaster* v. *Macmaster*, 11 Sess. Cas. 685, 687 (No. 280) (2d Div. Scot.) (1833); *McMorine* v. *Cowie*, 7 Sess. Cas. (2d ser.) 270, 272 (No. 48) (1st Div. Scot.) (1845); *La Société du Gaz de Paris* v. *La Société Anonyme de Navigation "Les Armateurs Français,"* [1926] Sess. Cas. (H. L.) 13 (1925). See generally Speck, Forum Non Conveniens and Choice of Law in Admiralty: Time for an Overhaul, 18 J. Mar. Law & Com. 185, 187 (1987); Barrett, The Doctrine of *Forum Non Conveniens*, 35 Cal. L. Rev. 380, 386–387 (1947); Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 909 (1947); but see Dainow, The Inappropriate Forum, 29 Ill. L. Rev. 867, 881, n. 58 (1935) (doctrine in Scotland was "borrowed" from elsewhere before middle of 19th century).

Even within the United States alone, there is no basis for regarding *forum non conveniens* as a doctrine that originated in admiralty. To be sure, within federal courts it may have been given its earliest and most frequent expression in admiralty cases. See *The Maggie Hammond*, 9 Wall. 435, 457 (1870); *The Belgenland*, 114 U. S. 355, 365–366 (1885). But the doctrine's application has not been unique to admiralty. When the Court held, in *Gilbert*, *supra*, that *forum non conveniens* applied to all federal diversity cases, Justice Black's dissent argued

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might have been brought." By this statute, "[d]istrict courts were given more discretion to transfer . . . than they had to dismiss on grounds of *forum non conveniens*." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 253 (1981). As a consequence, the federal doctrine of *forum non conveniens* has continuing application only in cases where the alternative forum is abroad.

that the doctrine had been applied in maritime cases "[f]or reasons peculiar to the special problems of admiralty." *Id*., at 513. The Court disagreed, reciting a long history of valid application of the doctrine by state courts, both at law and in equity. *Id*., at 504–505, and n. 4. It observed that the problem of plaintiffs' misusing venue to the inconvenience of defendants "is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it." *Id*., at 507. Our most recent opinion dealing with *forum non conveniens*, *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235 (1981), recognized that the doctrine "originated in Scotland, and became part of the common law of many States," *id*., at 248, n. 13 (citation omitted), and treated the *forum non conveniens* analysis of *Canada Malting Co.* v. *Paterson S. S., Ltd.*, 285 U. S. 413 (1932), an admiralty case, as binding precedent in the nonadmiralty context.

In sum, the doctrine of *forum non conveniens* neither originated in admiralty nor has exclusive application there. To the contrary, it is and has long been a doctrine of general application. Louisiana's refusal to apply *forum non conveniens* does not, therefore, work "material prejudice to [a] characteristic featur[e] of the general maritime law." *Southern Pacific Co.* v. *Jensen*, 244 U. S., at 216.

Petitioner correctly points out that the decision here under review produces disuniformity. As the Fifth Circuit noted in *Ikospentakis* v. *Thalassic S. S. Agency*, 915 F. 2d 176, 179 (1990), maritime defendants "have access to a *forum non conveniens* defense in federal court that is not presently recognized in Louisiana state courts." We must therefore consider whether Louisiana's rule "interferes with the proper

harmony and uniformity" of maritime law, *Southern Pacific Co.* v. *Jensen*, *supra*, at 216.

In *The Lottawanna*, 21 Wall. 558, 575 (1875), Justice Bradley, writing for the Court, said of the Article III provision extending federal judicial power "to all Cases of admiralty and maritime Jurisdiction":

> "One thing . . . is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

By reason of this principle, we disallowed in *Jensen* the application of state workers' compensation statutes to injuries covered by the admiralty jurisdiction. Later, in *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 163–164 (1920), we held that not even Congress itself could permit such application and thereby sanction destruction of the constitutionally prescribed uniformity. We have also relied on the uniformity principle to hold that a State may not require that a maritime contract be in writing where admiralty law regards oral contracts as valid, *Kossick* v. *United Fruit Co.*, 365 U. S. 731 (1961).

The requirement of uniformity is not, however, absolute. As *Jensen* itself recognized: "[I]t would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied." 244 U. S., at 216. A later case describes to what breadth this "some extent" extends:

> "It is true that state law must yield to the needs of a uniform federal maritime law when this Court

> finds inroads on a harmonious system[,] [b]ut this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions . . . have been upheld when applied to maritime causes of action. . . . State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 373–374 (1959) (footnotes omitted).

It would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible in our admiralty jurisprudence, or indeed is even entirely consistent within our admiralty jurisprudence. Compare *Kossick*, *supra* (state law cannot require provision of maritime contract to be in writing), with *Wilburn Boat Co.* v. *Fireman's Fund Ins. Co.*, 348 U. S. 310 (1955) (state law can determine effect of breach of warranty in marine insurance policy).[3] Happily, it is unnecessary

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[3]Whatever might be the unifying theme of this aspect of our admiralty jurisprudence, it assuredly is *not* what the dissent takes it to be, namely, the principle that the States may not impair maritime commerce, see *post*, at 3, 6. In *Fireman's Fund*, for example, we did not inquire whether the breach-of-warranty rule Oklahoma imposed would help or harm maritime commerce, but simply whether the State had power to regulate the matter. The no-harm-to-commerce theme that the dissent plays is of course familiar to

to wrestle with that difficulty today. Wherever the boundaries of permissible state regulation may lie, they do not invalidate state rejection of *forum non conveniens*, which is in two respects quite dissimilar from any other matter that our opinions have held to be governed by federal admiralty law: it is procedural rather than substantive, and it is most unlikely to produce uniform results.

As to the former point: At bottom, the doctrine of *forum non conveniens* is nothing more or less than a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined. But venue is a matter that goes to process rather than substantive rights—determining which among various competent courts will decide the case. Uniformity of process (beyond the rudimentary elements of procedural fairness) is assuredly not what the law of admiralty seeks to achieve, since it is supposed to apply in all

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the ear—not from our admiralty repertoire, however, but from our "negative Commerce Clause" jurisprudence, see *Bendix Autolite Corp.* v. *Midwesco Enterprises, Inc.*, 486 U. S. 888, 891 (1988). No Commerce Clause challenge is presented in this case.

Similarly misdirected is the dissent's complaint that Article 123 of the Louisiana Code of Civil Procedure unfairly discriminates against maritime defendants because it permits application of *forum non conveniens* in nonmaritime cases, see *post*, at 1–2. The only issue raised and argued in this appeal, and the only issue we decide, is whether state courts must apply the federal rule of *forum non conveniens* in maritime actions. Whether they may accord discriminatory treatment to maritime actions by applying a state *forum non conveniens* rule in all except maritime cases is a question not remotely before us.

the courts of the world. Just as state courts, in deciding admiralty cases, are not bound by the venue requirements set forth for federal courts in the United States Code, so also they are not bound by the federal common-law venue rule (so to speak) of *forum non conveniens*. Because the doctrine is one of procedure rather than substance, petitioner is wrong to claim support from our decision in *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406 (1953), which held that Pennsylvania courts must apply the admiralty rule that contributory negligence is no bar to recovery. The other case petitioner relies on, *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 248–249 (1942), held that the traditional maritime rule placing the burden of proving the validity of a release upon the defendant pre-empts state law placing the burden of proving invalidity upon the plaintiff. In earlier times, burden of proof was regarded as "procedural" for choice-of-law purposes such as the one before us here, see, *e.g.*, *Levy* v. *Steiger*, 233 Mass. 600, 124 N. E. 477 (1919); Restatement of Conflict of Laws §595 (1934). For many years, however, it has been viewed as a matter of substance, see *Cities Service Oil Co.* v. *Dunlap*, 308 U. S. 208, 212 (1939)—which is unquestionably the view that the Court took in *Garrett*, stating that the right of the plaintiff to be free of the burden of proof "inhered in his cause of action," "was a part of the very substance of his claim and cannot be considered a mere incident of a form of procedure." 317 U. S., at 249. Unlike burden of proof (which is a sort of default rule of liability) and affirmative defenses such as contributory negligence (which eliminate liability), *forum non conveniens* does not bear upon the substantive right to recover, and is not a rule upon which maritime actors rely in making decisions about primary conduct—how to manage their business and what precautions to take.[4]

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[4]It is because *forum non conveniens* is not a

But to tell the truth, *forum non conveniens* cannot really be *relied* upon in making decisions about secondary conduct—in deciding, for example, where to sue or where one is subject to being sued. The discretionary nature of the doctrine, combined with the multifariousness of the factors relevant to its application, see the quotation from *Gilbert*, *supra*, at 4–5, make uniformity and predictability of outcome almost impossible. "The *forum non conveniens* determination," we have said, "is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference." *Piper Aircraft Co.* v. *Reyno*, 454 U. S., at 257. We have emphasized that "`[e]ach case turns on its facts'" and have repeatedly rejected the use of per se rules in applying the doctrine. *Id*., at 249; *Koster* v. *(American) Lumbermens Mut. Casualty Co.*, 330 U. S., at 527. In such a regime, one can rarely count on the fact that jurisdiction will be

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substantive right of the parties, but a procedural rule of the forum, that the dissent is wrong to say our decision will cause federal-court *forum non conveniens* determinations in admiralty cases to be driven, henceforth, by state law—*i. e.*, that the federal court in a State with the Louisiana rule may as well accept jurisdiction, since otherwise the state court will. See *post*, at 7–8. That is no more true of *forum non conveniens* than it is of venue. Under both doctrines, the object of the dimissal is achieved whether or not the party can then repair to a state court in the same location. Federal courts will continue to invoke *forum non conveniens* to decline jurisdiction in appropriate cases, whether or not the State in which they sit chooses to burden its judiciary with litigation better handled elsewhere.

declined.

What we have concluded from our analysis of admiralty law in general is strongly confirmed by examination of federal legislation. While there is an established and continuing tradition of federal common lawmaking in admiralty, that law is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field. Foremost among those enactments in the field of maritime torts is the Jones Act, 46 U. S. C. App. §688.

That legislation, which establishes a uniform federal law that state as well as federal courts must apply to the determination of employer liability to seamen, *Garrett*, *supra*, at 244, incorporates by reference "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees." 46 U. S. C. App. §688(a). Accordingly, we have held that the Jones Act adopts "the entire judicially developed doctrine of liability" under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. §51 *et seq*. *Kernan* v. *American Dredging Co.*, 355 U. S. 426, 439 (1958). More particularly, we have held that the Jones Act adopts the "uniformity requirement" of the FELA, requiring state courts to apply a uniform federal law. *Garrett*, *supra*, at 244. And—to come to the point of this excursus—despite that uniformity requirement we held in *Missouri ex rel. Southern R. Co.* v. *Mayfield*, 340 U. S. 1, 5 (1950), that a state court presiding over an action pursuant to the FELA "should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law." We declared *forum non conveniens* to be a matter of "local policy," *id*., at 4, a proposition well substantiated by the local nature of the "public factors" relevant to the *forum non conveniens* determination. See *Reyno*, *supra*, at 241,

and n. 6 (quoting *Gilbert*, 330 U. S., at 509).

We think it evident that the rule which *Mayfield* announced for the FELA applies as well to the Jones Act, which in turn supports the view that maritime commerce in general does not require a uniform rule of *forum non conveniens*. *Amicus* Maritime Law Association of the United States argues that "whether or not it is appropriate to analogize from FELA to the Jones Act, *Mayfield* cannot save the result below because the Louisiana statute abolishes the *forum non conveniens* doctrine in *all* maritime cases, not just those arising under the Jones Act." Brief for Maritime Law Association as *Amicus Curiae* 16. It is true enough that the *Mayfield* rule does not operate *ex proprio vigore* beyond the field of the FELA and (by incorporation) the Jones Act. But harmonization of general admiralty law with congressional enactments would have little meaning if we were to hold that, though *forum non conveniens* is a local matter for purposes of the Jones Act, it is nevertheless a matter of global concern requiring uniformity under general maritime law. That is especially so in light of our recognition in *McAllister* v. *Magnolia Petroleum Co.*, 357 U. S., at 224–225, that, for practical reasons, a seaman will almost always combine in a single action claims for relief under the Jones Act and general maritime law. It would produce dissonance rather than harmony to hold that his claims for unseaworthiness and maintenance and cure, but not his Jones Act claim, could be dismissed for *forum non conveniens*.

The Jones Act's treatment of venue lends further support to our conclusion. In *Bainbridge* v. *Merchants & Miners Transportation Co.*, 287 U. S. 278, 280–281 (1932), we held that although 46 U. S. C. App. §688(a) contains a venue provision, "venue [in Jones Act cases brought in state court] should . . . [be] determined by the trial court in accordance with the law of the state." The implication of that holding is

that venue under the Jones Act is a matter of judicial housekeeping that has been prescribed only for the federal courts. We noted earlier that *forum non conveniens* is a sort of supervening venue rule—and here again, what is true for venue under the Jones Act should ordinarily be true under maritime law in general. What we have prescribed for the federal courts with regard to *forum non conveniens* is not applicable to the States.

* * *

Amicus the Solicitor General has urged that we limit our holding, that *forum non conveniens* is not part of the uniform law of admiralty, to cases involving domestic entities. We think it unnecessary to do that. Since the parties to this suit are domestic entities it is quite impossible for our holding to be any broader.

The judgment of the Supreme Court of Louisiana is

Affirmed.