Equity and Admiralty: A Turbulent Path to Manifest Destiny

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Equity and Admiralty: A Turbulent Path to Manifest Destiny

George P. Smith, II*

Effective in 1966, the Federal Rules of Civil Procedure were amended "to effect unification of the civil and admiralty procedure."¹ With this amendment, the Advisory Committee intended that, "[j]ust as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."² Thus, rule 1, defining the scope of the rules, now states, "These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty . . . . They shall be construed to secure the just, speedy, and inexpensive determination of every action."³

The last sentence of rule 1, with its simple declaration of purpose, could rightly be viewed as the manifest destiny of the federal rules themselves. A simple declaration of purpose, however, is not a self-achieving mechanism. Rather, as regards the unification of civil and admiralty procedure, the realization of this goal has been fraught with complexities, turbulence, and dissatisfaction; the destiny may be manifest, but the present state of the law is unclear.

A significant obstacle continues to be the uncertain jurisdictional issue of whether courts in admiralty may issue equitable decrees. Despite the fact that the federal district court system abolished its separate

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¹ FED. R. CIV. P. 1 advisory committee note.

² Id. For a general discussion of the effect of the merger of law and equity, see Smith, La Dolce Vita—Law and Equity Merged at Last!, 24 ARK. L. REV. 162 (1970).

³ FED. R. CIV. P. 1.
admiralty "side" and docket in 1966, and thus made admiralty suits or libels "civil actions" and applied the Federal Rules of Civil Procedure to them, the consolidated rules still allow for a type of special or differential treatment to be given cases where admiralty jurisdiction is in fact invoked. Once invoked, the traditional reluctance of the courts to grant admiralty equitable remedial powers arises.

While the amended federal rules do not expressly grant the admiralty courts equity jurisdiction, on their face such an implied grant exists. Further, this appears to have been the intended result of the drafters. Seeking to solidify the 1966 congressional effort toward a workable unification of the Federal Rules of Civil Procedure, the American Law Institute in 1969 took the position that specific provisions affording equitable relief in courts of admiralty should not be advocated. The noble visions of the congressional drafters of the federal rules and the members of the American Law Institute were not realized in a number of post-merger cases. While a sentiment developed that the 1966 unification would simply and effectively resolve the

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4 Rule 9(h), entitled "Admiralty and Maritime Claims," states that:

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82 and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty it is an admiralty or maritime claim for those purposes whether identified or not. The amendment of pleadings to add or withdraw an identifying statement is governed by the principles of Rule 15. The reference in title 28, U.S.C. § 1292(a)(3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision. Fed. R. Civ. P. 9(h).

5 While the amended federal rules do not expressly grant the admiralty courts equity jurisdiction, an argument could be made that such an implicit grant exists. Federal rule 2 directs that there is but one form of action known as a civil action, Fed. R. Civ. P. 2, while rule 9(h) allows for an admiralty claim to be denominated as such and then subject to the Supplemental Rules for Certain Admiralty and Maritime Claims, Fed. R. Civ. P. 9(h). The Supplemental Rules do not indicate that a maritime claim will be subject to any forms of limited relief. Fed. R. Civ. P. 9(h) advisory committee note. Federal rule 65 covers injunctions and provides no language within it which restricts the availability of injunctive relief in maritime claims. Fed. R. Civ. P. 65. Federal rule 18(a), allows for joinder of "as many claims, legal, equitable or maritime," as one may have, Fed. R. Civ. 18(a), and, finally, rule 1 states that the federal rules govern all civil suits, "whether cognizable in cases at law or in equity or in admiralty." Fed. R. Civ. P. 1. Thus, it could be argued that, taken as a whole, the Federal Rules of Civil Procedure appear to evince no intent—explicitly or implicitly—to deny federal courts sitting in admiralty the ability to award equitable relief.


7 Robertson, *supra* note 6, at 1632.
historical problem of admiralty’s lack of basic equitable powers,\(^8\) and with at least one authority having observed that the very notion of admiralty’s pre-1966 equitable impotence lacked total sense,\(^9\) the distinction persists.\(^10\)

This article will survey pre- and post-unification judicial decisions on the breadth of equitable powers available to courts in admiralty. By so doing, it will attempt to glean an understanding of those areas perceived to be problem areas and assess the continued viability and desirability of the restrictions on admiralty courts. The article first explores the historical origins of the restrictions under the English and early American legal systems.\(^11\) The article proceeds to describe the judicial developments during the 20th century which have helped to perpetuate the distinctions between equity and admiralty under the guise of the “Schoenamsgruber Doctrine.”\(^12\) Finally, the article describes positive movements toward the expansion of equitable powers in admiralty by analyzing the variety of equitable remedies now available to those courts\(^13\) and concludes by asserting that the merger under the Federal Rules of Civil Procedure, if not a mandate to abolish traditional distinctions, does provide persuasive authority for rapid movement in that direction.\(^14\) The restrictions evolved from a misunderstanding of the English law, and it is time that American courts acknowledge and remedy that fact.

I. VEXATIOUS BEGINNINGS

In 1340 a High Court of Admiralty was established in England.\(^15\) Sir Matthew Hale stated that this court’s authority was not founded upon the civil law, “but hath both its Power and Jurisdiction by the Law of Custom of the Realm, in such matters as are proper for its Cognizance.”\(^16\) He specified the grant of jurisdiction as directed to the arrest of defendants and the attachment of their goods, and then gave an open-ended resolution that proceedings in admiralty were oftentimes outside the scope of civil law rules and were instead guided by

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\(^8\) See, e.g., Comment, Admiralty Practice After Unification: Barnacles on the Procedural Hull, 81 YALE L.J. 1154 (1972).
\(^9\) Robertson, supra note 6, at 1638.
\(^10\) Id. at 1637-45.
\(^11\) See infra text accompanying notes 15-51.
\(^12\) See infra text accompanying notes 52-82.
\(^13\) See infra text accompanying notes 83-232.
\(^14\) See infra text accompanying notes 233-49.
\(^15\) D. Robertson, Admiralty and Federalism 39 n.41 (1970).
the "ancient laws of Oleron, and other customs introduced by the practice of the sea."\textsuperscript{17}

From the time of the creation of the High Court, strong objections were made that the powers of the courts of admiralty were being improperly exercised.\textsuperscript{18} Not only was there jealousy among the common law courts, the civil-ecclesiastical courts, and between Chancery and the Privy Council over the establishment of the admiralty courts, but the "common people of the land" resented interferences with their everyday business by these new maritime courts.\textsuperscript{19} Parliament reacted to these dissatisfactions by passing legislation in 1390\textsuperscript{20} and in 1392\textsuperscript{21} which was designed basically to delineate the scope of admiralty jurisdiction as between those actions undertaken within the realm and those done outside it upon the seas.\textsuperscript{22} Bickering and contention continued despite the legislation.\textsuperscript{23}

During the formative years of the American colonies, the status of admiralty remained in flux. Although an agreement was reached in 1575 between the common law courts and the admiralty judges regarding the practical extent of their respective jurisdictions,\textsuperscript{24} Sir Edward Coke, when he became Chief Justice of the Court of Common Pleas in 1606, undertook a campaign to restrict further admiralty's jurisdiction.\textsuperscript{25} Admiralty jurisdiction over matters connected with the land was abolished.\textsuperscript{26} Interestingly, despite a constant level of strife engendered by the common law judges, the admiralty business in the early part of the seventeenth century was significant.\textsuperscript{27} In 1632, Charles I commissioned his Privy Council to reconcile once and for all the differences between the admiralty and common law courts.\textsuperscript{28} An agreement largely along the lines of the 1575 one was executed in 1632, which in reality meant little sustaining progress was again recorded.\textsuperscript{29} Although Parliament refused to pass legislation establishing the boundaries of admiralty jurisdiction in 1661, it also failed to act positively to promote

\textsuperscript{17} Id.; see also generally T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW (5th ed. 1956); W. HOLDSWORTH, A HISTORY OF ENGLISH LAW (7th ed. 1955).
\textsuperscript{18} D. ROBERTSON, supra note 15, at 41.
\textsuperscript{19} Id. at 40-41.
\textsuperscript{20} Jurisdiction of admirals and deputy, 13 Rich. II, ch. 5 (1389).
\textsuperscript{21} Admiralty Jurisdiction, 15 Rich. II, ch. 3 (1391).
\textsuperscript{22} D. ROBERTSON, supra note 15, at 43.
\textsuperscript{23} See id. at 43-44.
\textsuperscript{24} Id. at 54.
\textsuperscript{25} See id. at 55-56.
\textsuperscript{26} Id. at 56.
\textsuperscript{27} Id. at 58.
\textsuperscript{28} Id. at 60.
\textsuperscript{29} Id.
or protect admiralty. Thus, for almost two centuries after this time, the
admiralty court's prominence faded and suffered degeneration. During William Scott's (Lord Stowell's) tenure on the High Court of Admi-
ralty which began in 1798, the jurisdiction of the court expanded,
largely through statutory enactments.

Over the succeeding years, the process of redefining and reshaping
the boundaries of jurisdiction continued so that at the beginning of the
19th century English admiralty appears to have embraced the following
jurisdictions: civil droits, salvage, contract, hypothecation, freights,
wages, tort, possession and restraint and an all encompassing miscella-
neous grant.

Confusion in America

When the First Session of the First Congress of the United States
enacted the Judiciary Act of 1789, it established in Section 9 that fed-
eral district courts were to have "exclusive original cognizance of all
civil causes of admiralty and maritime jurisdiction . . . saving to suit-
ors, in all cases, the right of a common law remedy, where the common
law is competent to give it." What it did not establish was the extent
of that jurisdiction.

This became a matter of immediate concern to the courts. In 1815, while serving on the Federal Circuit Court, Chief Justice Story
concluded in DeLovio v. Bolt that maritime jurisdiction "compre-
hends all maritime contracts, torts, and injuries. The latter branch is
necessarily bounded by locality; the former extends over all contracts
(wheresoever they may be made or executed, or whatsoever may be the
form of stipulations) which relate to the navigation, business or com-
merce of the sea."

If the Judiciary Act of 1789, as interpreted by the court in DeLovio, established a separate court of admiralty to entertain suits for
damages for maritime torts or for breach of maritime contracts, did it
also grant that court the power to enjoin the same torts, or to decree
specific performances of the same contract? Logically it should have,

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30 Id. at 62.
32 Id. at 8-11.
33 Act of Sept. 24, 1789, ch. 20, 1 Stat. 73, 76 (current version at 28 U.S.C. § 1333 (1976)).
34 D. Robertson, supra note 15, at 18-27.
35 7 F. Cas. 418 (C.C.D. Mass. 1815) (No. 3776).
36 Id. at 444.
perhaps, but in 1890 the Supreme Court declared in *The Steamer Eclipse*\(^{\text{38}}\) that:

> While the court of admiralty exercises its jurisdiction upon equitable principles, it has not the characteristic powers of a court of equity. It cannot entertain a bill or libel for specific performance, or to correct a mistake . . . or declare or enforce a trust or an equitable title . . . or exercise jurisdiction in matters of account merely . . . or decree the sale of a ship for an unpaid mortgage, or declare her to be the property of the mortgagees and direct possession of her to be given to them.\(^{\text{39}}\)

The immediate questions which demand consideration here are: why did this inconsistency in jurisdiction and power to remedy equitable problems arise, and is this still the state of the law today?

It has been stated that the American law of admiralty is the product of the general maritime law as it was adapted and molded by practice. As such, it was not derived from English jurisprudence as was our common law.\(^{\text{40}}\) While this statement does have a sense of validity, it does not apply uniformly regarding equitable matters. For, in this specific area of concern, the English maritime law has exerted a profound degree of influence upon the American courts of admiralty.\(^{\text{41}}\)

Admiralty courts in Great Britain were relegated early to those maritime causes over which the common law could not take jurisdiction. Since the law courts made no provision for *in rem* proceedings, admiralty assumed total jurisdiction for such causes.\(^{\text{42}}\) But common law forums did have procedural capacity to litigate actions *in personam* and, as a result, admiralty, with few exceptions, was restrained from exercising this jurisdiction.\(^ {\text{43}}\) Admiralty was allowed to hear actions for the possession of vessels, but actions to try title to vessels had to be brought in the law courts.\(^ {\text{44}}\) Thus, admiralty could give protection only to the legal owners, but could not enforce equitable titles or equitable claims in the *res*. In addition, Chancery had jurisdiction of all *in personam* proceedings where equitable relief was sought, and, as a result, admiralty had no power to grant specific performance, injunctions, reformation or cancellation of maritime contracts, or relief against fraud.

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\(^{\text{38}}\) 135 U.S. 599 (1890).

\(^{\text{39}}\) Id. at 608.

\(^{\text{40}}\) 1 E. Benedict, *The Law of Admiralty* § 8 (Knaught 6th ed. 1940). Compare this with D. Robertson, *supra* note 15, ch. 4, wherein Professor Robertson observes that in the early years, the development of United States admiralty jurisdiction rejected the English limitations placed upon it.

\(^{\text{41}}\) See generally D. Robertson, *supra* note 15, ch. 3; G. Gilmore & C. Black, Jr., *supra* note 37, at 37 passim.

\(^{\text{42}}\) Morrison, *The Remedial Powers of the Admiralty*, 43 *Yale L.J.* 1, 8 (1933).

\(^{\text{43}}\) See *id.* at 8-9.

\(^{\text{44}}\) See *id.* at 9-10.
even when the subject matter was clearly maritime.\(^45\)

In the United States, however, as noted in *DeLovio*, it was held that admiralty was to have jurisdiction of both *in rem* and *in personam* actions, saving to suitors remedies available through the common law in *in personam* actions. Admiralty assumed jurisdiction over petitory actions,\(^46\) but remained subject to the English limitation that the court could not adjudicate equitable titles.\(^47\) On possessory actions, jurisdiction was also assumed only where legal title was in dispute,\(^48\) although an equitable title set up as a defense could be adjudicated.\(^49\)

One author indicated the contradictions inherent in relying upon the English limitations:

The High Court of Admiralty could not determine equitable interests in the title to a ship; but this was *not* because of any distinction between equitable interests and legal interests, but because the court was denied the power to deal with questions of title at all. The High Court of Admiralty could *not* cancel a maritime contract or order it specifically performed, *not* because the English judges drew any distinction between legal relief and equitable relief, but because the admiralty was denied the power generally to act *in personam*. In a court restricted to proceedings *in rem*, the matter of equitable relief was eliminated.\(^50\)

Thus, while American admiralty courts disregarded English tradition and assumed jurisdiction in both *in rem* and *in personam* actions, they remained tied to the precedent denying equitable jurisdiction, even though equitable relief was unavailable in English admiralty only because it lacked *in personam* jurisdiction. The American courts have continued to make this distinction despite laws enacted subsequently in England, between 1840 and 1873, removing the limitation upon equitable jurisdiction.\(^51\)

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\(^{45}\) *Id.* at 11. Today in England these limitations upon admiralty jurisdiction have been removed and a suitor in admiralty may obtain any type of relief. Admiralty Court Act, 3 & 4 Vict., ch. 65 (1840); Admiralty Court Act, 24 & 25 Vict., ch. 10 (1861); Supreme Court of Judicature Act, 36 & 37 Vict., ch. 66 (1873).


\(^{48}\) The Daisy, 29 F. 300 (D. Mass. 1886); The G. Reusens, 23 F. 403 (S.D.N.Y. 1885); Thurber v. The Fannie, 23 F. Cas. 1179 (E.D.N.Y. 1876) (No. 14,014).


\(^{50}\) Morrison, *supra* note 42, at 18 (emphasis added).

\(^{51}\) See *supra* note 45.
Legislative and Jurisdictional Issues

Legislation

In three instances, the Supreme Court has had the opportunity to review the constitutionality of legislation extending or implying equitable or quasi-contractual powers to the maritime courts. In all three it upheld the Congressional grants.

The first such legislation reviewed by the Court were the Limited Liability Acts. In three instances, the Supreme Court has had the opportunity to review the constitutionality of legislation extending or implying equitable or quasi-contractual powers to the maritime courts. In all three it upheld the Congressional grants. In three instances, the Supreme Court has had the opportunity to review the constitutionality of legislation extending or implying equitable or quasi-contractual powers to the maritime courts. In all three it upheld the Congressional grants.

The first such legislation reviewed by the Court were the Limited Liability Acts. These statutes enable a shipowner to limit his liability for loss or damage, arising out of the operation of his vessel, to the value of such vessel and its pending freight. The statutes direct individual vessel owners to initiate "appropriate proceedings in any court" to enforce a limitation. Vessel owners, in response, began to seek out the admiralty courts, petitioning them to grant orders restraining multiple suits on one general claim. Their object was to limit all claims to a single admiralty proceeding. The Supreme Court in Norwich Co. v. Wright, and later in Providence & New York Steamship Co. v. Hill Manufacturing Co., interpreted the Limited Liability Acts as impliedly authorizing the issuance in admiralty of injunctions for this purpose, despite the fact that such proceedings are fundamentally equitable in nature.

The issuance of injunctions in admiralty was expressly authorized by Congress in the Longshoremen's and Harbor Workers' Compensation Act of 1927. Section 21(b) of this act provided that, if not in accordance with law, a compensation order may be suspended and set aside through injunction proceedings brought against the deputy commissioner making the order. In Crowell v. Benson the Supreme Court held that Congress, by statutes and rules, could empower courts of admiralty to grant such injunctions.

Finally, Congress authorized admiralty courts to grant equitable relief when it enacted the United States Arbitration Act of 1925. Sec-

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54 80 U.S. (13 Wall.) 104 (1871).
55 109 U.S. 578 (1883).
58 285 U.S. 22 (1932).
59 Id. at 49.
tion 4 of the statute provides that a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may make a judicial petition for an order directing that such arbitration proceed in the manner provided for in the original agreement.\textsuperscript{61} Where contracts otherwise in admiralty are involved, these proceedings are to be brought in the admiralty courts. In effect, this confers upon admiralty the equitable power to enforce specific performance of a contract. This grant of equitable power was attacked, however, in \textit{Marine Transit Corp. v. Dreyfus}.\textsuperscript{62} The Supreme Court upheld its constitutionality and concluded:

The general power of Congress to provide remedies in matters falling within the admiralty jurisdiction of the federal courts, and to regulate their procedure, is indisputable. The petitioner contends that the Congress could not confer upon the courts of admiralty the authority to grant specific performance. But it is well settled that the Congress, in providing appropriate means to enforce obligations cognizable in admiralty, may draw upon other systems. Thus the Congress may authorize a trial by jury in admiralty, as it has done in relation to certain cases arising on the Great Lakes. Courts of admiralty may be empowered to grant injunctions, as in the proceedings for limitation of liability. Similarly, there can be no question of the power of Congress to authorize specific performance when that is an appropriate remedy in a matter within admiralty jurisdiction.\textsuperscript{63}

Admiralty courts, then, as indicated by the Supreme Court in \textit{Norwich, Providence \& New York Steamship Co.}, and \textit{Marine Transit Corp.}, violate no constitutional prohibitions in issuing injunctions or in decreeing specific performance.

\textit{Jurisdiction}

The Supreme Court, in interpreting the Limitation of Liability Acts, the Longshoremen's and Harbor Workers' Compensation Act, and the United States Arbitration Act, dealt with Congressional grants of remedial powers to the admiralty courts. Equity by its nature takes cognizance of an entire problem area and administers justice completely. Thus, critics of the Supreme Court's position could argue that when an admiralty court grants equitable relief it may be taking jurisdiction of both maritime and non-maritime matters, in violation of the jurisdiction granted to it by the Constitution.\textsuperscript{64}

\textsuperscript{62} 284 U.S. 263 (1932).
\textsuperscript{63} \textit{Id.} at 278.
\textsuperscript{64} Morrison, \textit{supra} note 42, at 31. Morrison refers to this position as "the only possible argument" that grants of equitable relief may cause jurisdictional conflicts.
In response to this line of reasoning, one authority answers, that:

jurisdictional limitation . . . can properly be invoked only in a few exception
tional situations where a true preliminary agreement, or something ana
gous is actually involved. In the ordinary run of cases, where equitable or
 quasi-contractual relief is sought, such relief can be given without the ad
judication of any issues which are fundamentally non-maritime. All that
is involved is the application of remedies which are needed in order to do
justice in the adjudication of disputes arising out of maritime

transactions.65

The limitations which have been imposed, in other words, are not limi
tations of jurisdiction imposed by the Constitution, but restrictions ex
isting in substantive maritime law. Thus, the remedial powers of the
admiralty court were limited—not because of constitutional or statu
tory defects of jurisdiction—but because the courts misinterpreted and
misapplied the English maritime law. "If the separate admiralty juris-
diction has any value, it is absurd to force the litigant elsewhere merely
because, upon the same subject matter, justice demands some remedy
other than money damages in tort or for breach of contract."66

II. DEVELOPMENTS FROM 1930 TO 1962

Little significant change was achieved through judicial efforts to
change the substantive law restricting admiralty's equitable jurisdiction
during the 1930s and 1940s. In 1940, one leading commentator sug
suggested that, in certain respects, admiralty courts had the inherent ca
pacity to sit as courts of equity.67 The author, however, was unable to
provide many concrete examples of progress in the recognition of such
capacity. He reasoned that “[i]n deciding the ultimate rights of parties,
from considerations of conscience, justice and humanity, admiralty
sometimes mitigates the severity of contracts,” but qualified his conclu
sions by noting the fact that “[t]he court of admiralty is not a court of
general equity nor has it the characteristic powers of a court of eq
uity.”68

What admiralty was able to do as a court of “equity,” by 1940, was
to take cognizance of general average trusts; appoint a receiver under
the Ship Mortgage Act of 1920,69 require an accounting only as inci

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65 Id. at 31-32.
66 Id. at 33.
67 1 E. BENEDICT, supra note 40, § 71.
68 Id. § 71, at 148. An admiralty court “is bound, by its nature and constitution, to give judg
ment upon equitable principles and according to the rules of natural justice. It cannot in a tech
ical sense be called a court of equity. It is rather a court of justice.” Id. § 71, at 151.
(1976).
dental to the main relief and as to jurisdiction acquired upon acknowledged grounds; and review, within narrow limits, the award of arbitrators and dispose of non-maritime subjects in a limitation of liability proceeding.\textsuperscript{70}

Further, admiralty courts were allowed to give effect to equitable estoppel;\textsuperscript{71} prevent a party from taking advantage of his own fraud in a contract;\textsuperscript{72} treat a contract as nullified by fraud;\textsuperscript{73} or entertain a defense based upon fraudulent misrepresentation.\textsuperscript{74}

In 1950, George C. Sprague, in an extensive footnote in \textit{Cases on the Law of Admiralty},\textsuperscript{75} described the little progress that had been made in expanding admiralty’s equity powers during the preceding decade. To the previous list of equity powers, he could add only that jurisdiction will be taken in a suit for an accounting where the account is incidental to a maritime cause of action,\textsuperscript{76} and that a court of admiralty may look through a “dummy” transaction of maritime nature and hold liable the real principal.\textsuperscript{77} He also cited \textit{Sound Marine & Machine Corp. v. Westchester County},\textsuperscript{78} where admiralty took jurisdiction of a suit by a yacht basin to compel respondent either to lower sewer pipes which interfered with ingress to and egress from the yacht basin at low tide or to pay damages. In addition, he cited \textit{Commercial Trust Co. v. United States Shipping Board Emergency Fleet Corp.},\textsuperscript{79} which held that admiralty, in a suit by a pledgee of freights securing a maritime loan, had jurisdiction to trace such freights into the hands of a third person in whatever form they might be.

\textbf{The Vexatious Dicta or Bad Seed}

For the litigant seeking equitable relief—or, more specifically, injunctive relief—in admiralty, the greatest impediment is the continuing authority of the “Schoenamsgruber Doctrine.”\textsuperscript{80} The landmark United

\textsuperscript{70} E. Benedict, \textit{supra} note 40, § 71, at 148-49; \textit{see also} The Emma B., 140 F. 770 (D.C.N.J. 1905).

\textsuperscript{71} \textit{See} Higgins v. Anglo-Algerian S.S. Co., 248 F. 386 (2d Cir. 1918).

\textsuperscript{72} \textit{Id.}; \textit{see also} The Hero, 6 F. 526 (E.D. Pa. 1881).

\textsuperscript{73} \textit{See} The Stanley H. Miner, 172 F. 486, 493 (E.D.N.Y. 1909) (dicta).

\textsuperscript{74} \textit{See} The Electron, 48 F. 689 (S.D.N.Y. 1891).

\textsuperscript{75} G. Sprague, \textit{Cases on the Law of Admiralty} 90-91 (1950).

\textsuperscript{76} \textit{Id.} (citing, among others, Fischer v. Carey, 159 P. 577 (1916)).

\textsuperscript{77} \textit{Id.} (citing Gardner v. Dantzler Lumber & Export Co., 98 F.2d 478 (5th Cir. 1938)).

\textsuperscript{78} 100 F.2d 360 (2d Cir.), \textit{cert. denied}, 306 U.S. 642 (1938).

\textsuperscript{79} 48 F.2d 113 (2d Cir. 1931). \textit{See} Gardner v. Panama R.R. Co., 342 U.S. 29 (1951), where it was held that the equitable doctrines of estoppel and laches are recognized and applied in admiralty.

\textsuperscript{80} Robertson, \textit{supra} note 6, at 1637.
States Supreme Court decision announced in 1935, *Schoenamsgruber v. Hamburg American Line*,\(^{81}\) is generally regarded as the authority for the proposition that injunctive relief historically and currently is not available in admiralty. Although never overruled, the Schoenamsgruber Doctrine, which, interestingly, emerged from *obiter dicta* in the case, has come to mean that although admiralty courts indeed have the capacity to apply the broad principles of equity designed to promote justice, they do not have what is regarded as equitable jurisdiction; furthermore, except in limitations of liability proceedings, they are not empowered to issue injunctive relief.\(^{82}\)

*Swift, Archawski, and Vaughan: Positive Movements*

In the 1950s two important cases, both decided by the Supreme Court, set the stage for the application of more than just equitable principles by the courts of admiralty. The first of these was *Swift & Co. Packers v. Compania Colombiana Del Caribe*,\(^{83}\) decided in 1950.

In *Swift*, Swift & Co. Packers had purchased a cargo in transit on board the Cali, a ship owned by the Compania Transmaritima Colombiana. The cargo was lost through the alleged negligence of Colombiana, and Swift & Co. brought a libel *in personam* to recover the loss. A foreign attachment was issued against the Alacran, one of Colombiana’s other ships. Swift & Co. then filed a supplemental libel alleging that a few days prior to the suit a new corporation, Compania Colombiana Del Caribe, had been formed under the laws of Columbia to take over Compania Transmaritima Colombiana’s property in fraud of Swift & Co.’s rights. Swift also sought a new attachment against the Alacran, now renamed the Caribe and listed among Del Caribe’s assets.\(^{84}\)

Swift’s plea for attachment against the Caribe was granted, but was subsequently dismissed by the district court after a hearing on Del Caribe’s motion to vacate. The district court dismissed on the theory that the only relief sought was of an equitable nature, i.e., for the court to purge the alleged fraudulent act.\(^{85}\) The Court of Appeals for the Fifth Circuit affirmed, holding that there was no jurisdiction in admi-

\(^{81}\) 294 U.S. 454 (1935).
\(^{82}\) Id. at 457-58.
\(^{83}\) 339 U.S. 684 (1950).
\(^{84}\) Id. at 685-86.
Certiorari was granted by the Supreme Court, which reversed and remanded. The Court held that a libel to set aside a fraudulent conveyance under the circumstances of this case was within admiralty jurisdiction.

In granting such relief the Court was unwilling to depart radically from precedent and expand the remedial powers of the admiralty courts. It was willing, however, to reject the requirement found in prior cases that a claim, to be recognized, must be wholly maritime. The Court reasoned that recognizing the subsidiary powers of admiralty to deal justly with claims within its jurisdiction did not enlarge the admiralty jurisdiction, but avoided its “multilating restrictions.”

The Court opined it would “hobble” admiralty to exclude it rigorously from all contact with non-maritime transactions and from all equitable relief, especially in a “legal system that has been so responsive to the practicalities of maritime commerce and so inventive in adapting its jurisdiction to the needs of that commerce.”

Then, stepping back a little, the Court warned that a court of admiralty will not enforce an independent equitable claim just because it pertains to maritime property. An equitable claim must be incidental to, or arise out of, a cause already within the admiralty court’s jurisdiction. The equitable claim, according to Swift, cannot arise first.

The Supreme Court seemed willing to take the action it did because it viewed Del Caribe’s fraudulent transfer as an attempt to escape its jurisdiction, and stated, “The basis of admiralty’s power is to protect its jurisdiction from being thwarted by a fraudulent transfer, and that applies equally whether it is concerned with executing its judgment or authorizing an attachment to secure an independent maritime claim.”

Six years later, in 1956, the Court in a breach of contract action declared that admiralty had jurisdiction to prevent unjust enrichment when it arose out of the breach of a maritime contract. The case was Archawski v. Hanioti. Petitioners, Archawski, et al., alleged that respondent, Hanioti, after accepting money from them for passage upon

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87 Id. at 695.
88 Id. at 693.
89 Id. at 691.
90 Id. at 690.
91 See id. at 690-93.
92 Id. at 694-95.
93 350 U.S. 532 (1956).
the vessel City of Athens, scheduled for a July 15, 1947 trip to Europe, abandoned the voyage. Petitioner's libel continued by charging Hanioti with wrongfully and deliberately applying the passage money to his own use and benefit.95

Justice Douglas, speaking for the Court, began his opinion by asserting that allegations of wrongfulness and fraud do not alter the essential character of a libel. He cited DuPont de Nemours & Co. v. Vance96 for the ancient admiralty teaching that "[t]he rules of pleading in the admiralty are exceedingly simple and free from technical requirements."97 Justice Douglas attempted, as the Court had in Swift, to ground the equitable relief sought in a thoroughly maritime cause of action—here, breach of contract. He declared, "Though these particular allegations of the libel sound in fraud or in the wrongful withholding of moneys, it is plain in the context that the obligation to pay the moneys arose because of the contract to transport passengers."98

In response to authorities who had denied admiralty's power to grant relief in assumpsit cases "because the implied promise to repay the moneys which cannot in good conscience be retained . . . is not a maritime contract,"99 Justice Douglas cited Justice Stone in Krause Bros. Lumber Co. v. Dimon S.S. Corp.:100

Even under the common law form of action for money had and received there could be no recovery without proof of the breach of the contract involved in demanding the payment, and the basis of the recovery there, as in admiralty, is the violation of some term of the contract of affreightment, whether by failure to carry or by exaction of freight which the contract did not authorize.101

Douglas concluded that cases like Archawski involve neither second contracts nor actual promises to repay passage money. Rather, the problem, as he perceived it, was to prevent unjust enrichment from a maritime contract. He continued with the statement, "A court that prevents a maritime contract from being exploited in that way does not reach beyond the domain of maritime affairs. We conclude that, so long as the claim asserted rises out of a maritime contract, the admi-

95 Id. at 533-34.
97 Id. at 171-72.
99 Id., quoting United Transportation & Lading Co. v. New York & B.T. Line, 185 F. 386, 391 (2d Cir. 1911).
100 290 U.S. 117 (1933).
Finally, while admitting that "[r]ights which admiralty recognizes as serving the ends of justice are often indistinguishable from ordinary quasi-contractual rights created to prevent unjust enrichment," the Court did not hold it necessary to decide how far the concept of quasi-contracts might be applied in admiralty.

Particularly after Archawski, it can readily be seen that Justice Frankfurter's opinion in Swift in 1950 heralded what may be regarded as a shift in judicial attitude by the Supreme Court. For with this case it was recognized that the federal courts sitting in admiralty no longer were to be limited in their use of equitable principles merely to further the ends of justice. Instead, Swift determined that in the disposition of a true maritime claim, subsidiary issues could be disposed of even though they may be of a traditionally equitable nature. Without over-extending the current emphasis of Swift, the case should be viewed as holding that admiralty should not become so self-restrictive as to prevent justifiable maritime claims from being adjudicated.

In Vaughan v. Atkinson, a 1962 decision, the Supreme Court again considered whether admiralty could award equitable relief. Justice Douglas, again speaking for the Court, declared, "Equity is no stranger in admiralty; admiralty courts are, indeed, authorized to grant equitable relief." Although this statement appears to be the Supreme Court's broadest statement on the topic, the facts of the case tend to diminish its impact. In Vaughan, the Court provided the equitable remedy of attorney's fees. These attorney's fees were awarded as part of compensatory damages; they were not based on an independent equitable recovery. Therefore, as in Swift, the claim for equitable relief in Vaughan was founded on an issue that was subsidiary to the maritime claim.

It is indisputable that the Supreme Court in Swift, Archawski, and Vaughan, while taking a very cautious approach to the status of independent equitable claims, did extend admiralty's power to grant relief in cases where claims for relief arise out of a maritime action.
Equitable claims, to be judicially recognized, need not be wholly maritime.

III. TOWARD A POLICY OF EXPANSION OR MEASURED CONFUSION

By 1963 four circuit courts had issued decisions interpreting either the Swift, Archawski, or Vaughan opinions. The availability of equitable relief from a federal district court sitting in admiralty was far from a clear matter.

While the Fifth Circuit expressed a willingness to grant equitable relief whenever it was appropriate, the Second and Ninth Circuits continued to make injunctive relief unavailable and relied on historical reasons for making this decision. The Seventh Circuit tended to follow the Second Circuit’s approach.

Since Swift, Archawski, and Vaughan, the federal district courts and circuit courts of appeal sitting in admiralty have had increasing occasion to exercise and extend their remedial powers. Traditionally, admiralty is said to lack the “jurisdiction” of equity, though it may apply equitable principles to the subject matter of its jurisdiction. Justice Frankfurter would take issue with such a distinction; speaking for the Court in Swift, he declared:

The reasoning of the District Court was based on the view that a claim of fraud in the transfer of a vessel was a matter for determination by a court of equity and therefore outside the bounds of admiralty jurisdiction. There is a good deal of loose talk to this effect in the reports, concurrent with talk that courts of admiralty exercise their jurisdiction upon equitable principles.

In answer he responded:

We find no restriction upon admiralty by chancery so unrelenting as to bar the grant of any equitable relief even when that relief is subsidiary to issues wholly within admiralty jurisdiction. Certainly there is no ground for believing that this restriction was accepted as a matter of

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114 Cummins Diesel Michigan, Inc. v. The Falcon, 305 F.2d 721 (7th Cir. 1962).

115 G. Gilmore & C. Black, Jr., supra note 37, at 37-38.

course by the framers of the Constitution so that such sterilization of ad-
miralty jurisdiction can be said to have been presupposed by Article III of
the Constitution.\footnote{117}

The admiralty courts have not been consistent in the way they ap-
proach equity jurisdiction (as distinguished from the application of eq-
uitable principles). A New York district court in \textit{Esso Standard (Switzerland) v. The Arosa Sun}\footnote{118} held in 1960 that in the admiralty
practice generally “equitable principles rather than technical rules and
forms should be the paramount consideration[;] . . . the objective is to
do substantial justice between the parties.”\footnote{119} Four years later, in \textit{Diddlebock v. Aloca S.S. Co.},\footnote{120} a Pennsylvania district court was more
assertive in stating that “equity is not a stranger in Admiralty, and the
Admiralty Courts may grant or deny any equitable relief depending
upon the merits of the relief sought.”\footnote{121}

In 1966, the same court in \textit{Gooden v. Texaco, Inc.}\footnote{122} suggested that
the court, while sitting in admiralty, was largely a court of equity at-
temptsing to render natural justice between the parties involved, and
further held that an admiralty court was bound to determine cases sub-
titted to it upon equitable principles and according to the rules of nat-
ural justice. A Michigan district court, in \textit{Nice v. Chesapeake \& Ohio
Railroad Co.},\footnote{123} made the same appeal, declaring that equity and jus-
tice were the foundation and substance of admiralty law. Admiralty
courts, therefore, follow the principles of equity and natural justice and
are not bound by common law rules.

The United States Court of Appeals for the Fifth Circuit in the
case of \textit{Keystone Shipping Co. v. S.S. Monfiore},\footnote{124} referred to the admi-
ralty trial judge as a seagoing chancellor.\footnote{125} Finally, the Second Cir-
cuit Court of Appeals in a 1970 decision, \textit{Oceanic Trading Corp. v.
Vessel Diana},\footnote{126} noted that “[t]he proceedings in admiralty and the
powers of the admiralty court have long been held to be ‘akin to those
of a court of equity.’ ”\footnote{127}

\footnotesize
\begin{itemize}
\item \footnote{117} \textit{Id.} at 691-92.
\item \footnote{118} 184 F. Supp. 124 (S.D.N.Y. 1960).
\item \footnote{119} \textit{Id.} at 127.
\item \footnote{120} 234 F. Supp. 811 (E.D. Pa. 1964).
\item \footnote{121} \textit{Id.} at 814.
\item \footnote{122} 255 F. Supp. 343 (E.D. Pa. 1966), \textit{vacated and remanded on other grounds}, 378 F.2d 576 (3d
Cir. 1967).
\item \footnote{123} 305 F. Supp. 1167 (D. Mich. 1969).
\item \footnote{124} 409 F.2d 1345 (5th Cir. 1969).
\item \footnote{125} \textit{Id.} at 1346.
\item \footnote{126} 423 F.2d 1 (2d Cir. 1970).
\item \footnote{127} \textit{Id.} at 4, quoting \textit{The Minnetoka}, 146 F. 509 (2d Cir. 1906).
\end{itemize}
Whether the courts have been willing to admit fully to an equitable jurisdiction or partially to an expansive application of equitable principles, the result in the years since Archawski has been a steady growth of equitable relief available to an admiralty claimant.

In the remainder of this section, the article explores the developments under the following equitable doctrines: fraud and misrepresentation,\textsuperscript{128} injunctions,\textsuperscript{129} quasi-contract and unjust enrichment,\textsuperscript{130} subrogation and laches,\textsuperscript{131} and constructive trusts,\textsuperscript{132} as well as the areas of seamen's injuries,\textsuperscript{133} implied warranty and indemnification,\textsuperscript{134} and declaratory judgments.\textsuperscript{135} 

Fraud and Misrepresentation

Less than three months after Archawski was decided, the Ninth Circuit Court of Appeals, in \textit{Putnam v. Lower},\textsuperscript{136} was again attempting to define the boundaries of admiralty's equitable jurisdiction. This action was brought subsequent to the attachment and sale of the Silver Spray to pay for debts incurred in a failed tuna fishing venture. The venture was in part financed by the appellants, who each paid $2,500 for a working one-tenth share on the Silver Spray.

The appellees were holders of a valid, recorded ship mortgage on the vessel in the amount of $30,000. Both sets of parties filed libels and both were awarded money damages. However, when the Silver Spray was attached and sold by the United States Marshall, only $11,000 was realized from the sale. Because that amount was inadequate to satisfy, even partially, their subordinated mortgage lien, appellants Putnam and Overman brought this appeal.\textsuperscript{137}

The district court foreclosed the mortgage, subordinating it to the wage liens of the sharemen. The Ninth Circuit affirmed in part and reversed and remanded in part.\textsuperscript{138} In reaching its decision, the circuit court was forced to respond to the contention of Putnam and Overman that the causes of action asserted by the sharesmen were essentially common law actions for fraud and deceit, and thus not cognizable by

\textsuperscript{128} See infra notes 136-49 and accompanying text.
\textsuperscript{129} See infra notes 150-58 and accompanying text.
\textsuperscript{130} See infra notes 158-73 and accompanying text.
\textsuperscript{131} See infra notes 174-96 and accompanying text.
\textsuperscript{132} See infra notes 197-207 and accompanying text.
\textsuperscript{133} See infra notes 208-12 and accompanying text.
\textsuperscript{134} See infra notes 213-25 and accompanying text.
\textsuperscript{135} See infra notes 226-32 and accompanying text.
\textsuperscript{136} 236 F.2d 561 (9th Cir. 1956).
\textsuperscript{137} \textit{Id.} at 563-65.
\textsuperscript{138} \textit{Id.} at 573.
the district court sitting as a court of admiralty.\textsuperscript{139}

The court replied that the mere entrance of fraud in any form into a case otherwise maritime did not oust admiralty of its jurisdiction.

Where the first and fundamental exercise of judicial power is maritime, and the issue of fraud arises incidental to its general jurisdiction, then a court of admiralty may deal with the question of fraud, though intrinsically non-maritime, pursuant to its power to make a complete adjustment of rights over which admiralty has independent jurisdiction.\textsuperscript{140}

Speaking for the court, Circuit Judge Stephens noted that “where the original jurisdiction is maritime, a court of admiralty may entertain an issue of fraud, mistake, or other equitable claim, where either is alleged as affecting the rights of the parties to a maritime action.”\textsuperscript{141}

The court awarded appellees the respective amounts expended by them for the working share agreements, as well as a fair allowance for their time and services in sailing the Silver Spray. However, only the latter award, which took the form of seamen’s wages, took priority over the mortgage of the appellants. The former sums were awarded strictly on the basis of breach of contract.\textsuperscript{142}

Even before \textit{Swift}, the Southern District of New York in 1952, in a suit at law for a seaman’s injury, held that a district court had power to ignore or to set aside an enforcement of a prior state court judgment obtained by fraud.\textsuperscript{143} As a result, the plaintiff in \textit{Mortensen v. Alcoa S.S. Co.} was allowed to set up alleged fraud as a defense to the defendant’s plea of the bar of the state court judgment.\textsuperscript{144}

Similarly, the District Court of Oregon held in \textit{United States v. The Tug Manzanillo & Shaver Transportation Co.},\textsuperscript{145} a 1960 case, that equitable principles prohibited dual recovery by a seaman, first for maintenance and cure from his employer, and then for loss of earnings and medical and hospital expenses, from a negligent third party.

Corporate fraud was the issue in \textit{Zubik v. Zubik},\textsuperscript{146} a 1967 case decided by the Third Circuit Court of Appeals. The suit was brought in admiralty by the owners of moored vessels to recover for damages caused to their vessels by drifting barges which had broken from their moorings. Originally brought in the Western District of Pennsylvania,
the libel allowed negligence by Charles Zubik, individually, and Charles Zubik & Sons, Inc., a corporate entity. The appellees in this action petitioned the circuit court to affirm the district court's award of damages against both Zubik and the corporation as one and the same.\footnote{Id. at 269-70.}

The circuit court, instead, reversed the award against Zubik on the grounds that the district court had erred in piercing the corporate veil.\footnote{Id. at 275-76.} It did not deny that admiralty had sufficient jurisdiction to disregard corporate existence in order to prevent fraud, illegality, or injustice, or when it recognized that that entity would defeat public policy or shield someone from liability for crime. But it did find that the court had misapplied the test in directing an award against Zubik individually.\footnote{Id. at 274.} Zubik was a strong statement affirming admiralty's power to deal with corporate fraud in a maritime action.

Injunctions

The courts generally appear willing to do justice in seamen's injury cases. In 1961 the Ninth Circuit upheld a district court's decree in admiralty permanently enjoining a litigious seaman from making further claims on a sixteen-year-old cause of action. The case was \textit{Clinton v. United States}.\footnote{297 F.2d 899 (9th Cir. 1961), cert. denied, 369 U.S. 856 (1962).}

The courts, however, have been less willing to grant injunctive relief in other areas. In \textit{Moran Towing \& Transportation Co. v. United States},\footnote{290 F.2d 660 (2d Cir. 1961).} the United States brought a motion before the Second Circuit Court of Appeals to dismiss an appeal from an order of the District Court for the Southern District of New York granting a stay pending the determination of certain questions of fact pursuant to a disputes clause in a maritime contract. The circuit court granted the government's motion, finding the order interlocutory and not appealable.\footnote{Id. at 662-63.}

Appellants had also claimed that the order was appealable as an injunction under section 1292 of 28 U.S.C.\footnote{28 U.S.C. § 1292(a)(1) (1976) provides, in pertinent part, that the court of appeals shall have jurisdiction of appeals from "[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve injunctions, except where a direct review may be had in the Supreme Court."} The court responded that it was in fact a mere calendar order and that even if it had been an...
injunction "[t]he power of admiralty to issue injunctions appears to be circumscribed."154

In 1959, Gilmore and Black hypothesized that perhaps the language in Swift indicated that a “‘doctrinal trend’ is in the making that would render the ordinary equitable remedies of specific performance and injunction available to the admiralty court, in cases of maritime contract and tort.”155 At least for injunctions, a trend has not developed. One commentator has observed, “It remains to be seen whether the Court will in later cases find that admiralty has power to give the equitable relief of injunction, reformation or specific performance when that relief is subsidiary to issues wholly within admiralty jurisdiction.”156 In a 1960 case, Khedivial Line, S.A.E. v. Seafarers’ International Union,157 the Second Circuit dismissed a complaint by an Egyptian corporation seeking a temporary restraining order against union picketing of its vessel. While sufficient to support jurisdiction in admiralty and to authorize a future award of damages, the court said that admiralty could not grant injunctive relief.158

Quasi-Contract and Unjust Enrichment

Unlike the situation with injunctions, there has been some measurable progress in the area of quasi-contractual jurisdiction. In 1939, Professor Robinson stated in his text on admiralty, “There is no admiralty jurisdiction in quasi-contract even when the claim arises out of a maritime contract.”159 Twenty years later, Gilmore and Black identified quasi-contractual claims arising out of maritime transactions as a “doubtful area” of admiralty jurisdiction “where generalization is dangerous.”160 Herbert Baer, in 1969, quoted Justice Douglas in Archawski:

How far the concept of quasi-contracts may be applied in admiralty it is unnecessary to decide. It is sufficient this day to hold that admiralty has jurisdiction, even where the libel reads like indebitatus assumpsit at common law, provided that the unjust enrichment arose as a result of the

154 Moran Towing & Transp. Co. v. United States, 290 F.2d at 660.
157 278 F.2d 49 (2d Cir. 1960).
158 Id. at 53.
Baer concluded that "[i]t thus appears that given the necessary nexus with a maritime contract, admiralty has jurisdiction of causes of action based upon the concept of unjust enrichment which in common law courts are denominated as actions in quasi-contract."\(^{162}\)

Case law confirms Baer. In 1961, in *Hadjipateras v. Pacifica, S.A.*,\(^{163}\) the Fifth Circuit held that resort to quasi-contract principles will not deprive admiralty of jurisdiction as long as the claim asserted arises out of a maritime contract over which an admiralty court has jurisdiction.

The action in *Hadjipateras* was a libel *in personam* by owners of the S.S. Athenoula against the Pacifica Shipping Co. and its stockholders and officers for a money decree based upon nonperformance of a contract to manage the Athenoula for a specific period. Respondents argued that the court could not take jurisdiction of an action for *indebitatus assumpsit*. The court replied that *Archawski* had rejected that argument once and for all.\(^{164}\) Circuit Judge John Brown, speaking for the court, continued:

And if there ever were any real basis for doubting the capacity—if not the imperative duty—of admiralty to consider equitable doctrines in arriving at just judgments, it was certainly dispelled in *Swift and Company Packers v. Compania Colombiana Del Caribe* . . . . If the admiralty has the power to penetrate fraud to say that a vessel standing in the name of one belongs in fact to another, and then effectively lays hold of that vessel, it is perfectly evident, especially with the availability of modern innovations such as declaratory judgments, 28 U.S.C.A. § 2201, that hoary expressions about equity require careful re-evaluation.\(^{165}\)

Respondents had also objected that this was a suit for an accounting. The court observed that it is an "accounting" here only in the sense that a "counting" was necessary to determine the amount of the judgment. Citing language in *Swift*, the court stated that while admiralty will not entertain a suit for an accounting as such, when accounting is necessary to complete adjudgment of rights over which admiralty has independent jurisdiction, it will not suspend its remedies midway and require parties to resort to another court.\(^{166}\)

Unjust enrichment was the issue in *Sommer Corp. v. Panama Ca-


\(^{162}\) *Id.* at 476.

\(^{163}\) 290 F.2d 697 (5th Cir. 1961).

\(^{164}\) *Id.* at 704.

\(^{165}\) *Id.*

\(^{166}\) *Id.*
a case decided ten years after Hadjipateras by the District Court for the Canal Zone. Sommer Corp., a contractor, brought this action against the Panama Canal Co. for damages to its goods carried aboard one of the company’s vessels, the S.S. Cristobal.

The Panama Canal Co. was then a wholly-owned agency of the United States. In June 1967, it entered into a contract with Sommer whereby the plaintiff agreed to install electrical equipment in the company’s power plant and defendant agreed to pay for the work. The electrical equipment was shipped to the Canal Zone aboard the Cristobal, and during the voyage the Carriage of Goods by Sea Act (COGSA) was in effect and governed the contract of carriage.

When the goods were discharged in the Canal Zone the act was no longer operative, but its provisions were incorporated into and made a part of a contract governing their transisthmian rail transportation. As a result, the relationship between the parties became contractual. At some time after the goods were discharged from the defendant’s custody, Sommer’s goods were damaged.

The Panama Canal Co. argued that by the terms of COGSA, the parties were actually an independent shipper and an independent carrier. The court rejected this argument and found instead a close contractual relationship, with the effect that rather than being a contract for shipping in the regular channels of commerce this was actually a contract for construction where the defendant had agreed, as a part of its obligations, to transport the goods to the construction site. Thus, to deny plaintiff his relief for over $9,600 in damages would result in unjust enrichment for the defendant.

The court concluded, citing Baer’s Admiralty Law of the Supreme Court, “Admiralty has power to give equitable relief in causes of action based upon the concept of unjust enrichment when the claim arises out of a maritime contract.”

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170 Id. at 1190.
171 The point of the Panama Canal Co.’s argument here is unclear. While COGSA defines “carrier,” see 46 U.S.C. § 1301(a), it does not specifically state independent shipper or carrier. Nevertheless, it is highly speculative whether this is significant.
173 Id.
Subrogation and Laches

Subrogation is also an equitable remedy, one borrowed from the civil law.\textsuperscript{174} It is a legal fiction through which a person who pays the debt of another is substituted for the other with regard to all rights and remedies of the other;\textsuperscript{175} the debt is treated in equity as still existing for his benefit. The underlying principle here is that the person seeking the subrogation must have paid the debt under grave necessity to save himself a loss and, thus, the right is never accorded to a volunteer.\textsuperscript{176} It is also a remedy recently available in admiralty.

In \textit{Compania Anonima Venezolana De Navegacion v. A.J. Perez Export Co.},\textsuperscript{177} the Fifth Circuit noted that through subrogation equity seeks to prevent the unearned enrichment of one party at the expense of another. The case itself involved a shipper, A.J. Perez, which sought to pay in advance freight charges due the Compania Anonima Venezolana through Alonzo Shipping Co., a freight forwarder. The freight forwarder, however, failed to remit the funds to the local agent of the carrier. Though the agent knew that the freight forwarder was not honoring its promise to pay or return within four days of release of the bill of lading, it did nothing to put the shipper on notice until more than five months after one shipment and nearly ten months after a second. Instead, the local agent, acting as a sort of guarantor, paid the carrier himself.\textsuperscript{178}

When its agent was not identified, the carrier, Compania Anonima, sued A.J. Perez as the shipper for the freight due. The District Court for the Eastern District of Louisiana rendered judgment for the shipper.\textsuperscript{179} The circuit court on appeal observed that “[i]t is harsh enough when \textit{vis-a-vis} Carrier and Shipper it is \textit{law} that commands a shipper to pay twice if the carrier has not in fact received the money. It is shocking to say that \textit{equity} would compel it.”\textsuperscript{180}

The court found that the agent’s failure to notify the shipper that freight charges were still due and owing—in an attempt to preserve the good will of the freight forwarder who might throw him more business—was “\textit{laches, in its plainest form.”}\textsuperscript{181} “As such,” the court contin-

\textsuperscript{175} \textit{id.} at 830.
\textsuperscript{177} 303 F.2d 692 (5th Cir.), \textit{cert. denied}, 371 U.S. 942 (1962).
\textsuperscript{178} \textit{id.} at 694-95.
\textsuperscript{179} \textit{See id.} at 694.
\textsuperscript{180} \textit{id.} at 698 (emphasis in original).
\textsuperscript{181} \textit{id.} at 699.
ued, "it bars equitable relief by one claiming an equitable status [the agent as subrogee to the carrier's rights against the shipper] even though, as between carrier and shipper, limitations may not have run."\(^{182}\)

Circuit Judge Brown did not deny admiralty's ability to grant a subrogation. In fact, he concluded that the trial judge was correct in concluding that the agent, who had paid the entire amount due to the carrier, "had the right to seek subrogation to the rights of the Carrier (as creditor) against the Shipper (as debtor or principal)."\(^{183}\) But, he continued, "the equities were overwhelmingly in favor of the Shipper, and to grant what the Agent sought would produce, not equity, but inequity."\(^{184}\)

In poetic language he finally noted that "[t]he Chancellor is no longer fixed to the woolsack. He may stride the quarter-deck of maritime jurisprudence and, in the role of admiralty judge, dispense, as would his landlocked brother, that which equity and good conscience impels."\(^{185}\)

Subrogation was also the issue in *Amerind Shipping Corp. v. The Jordan International Co.*\(^{186}\) Amerind Shipping Corp., acting as an agent for Federal Commerce & Navigation Co., an ocean carrier, accepted a shipment of steel and steel products from Jordan International Co. through the Port of New Orleans. The Port's tariff imposed a wharfage charge in the amount of $9,360.87 against the cargo when it was delivered and loaded into barges. Amerind paid the wharfage and claimed reimbursement from Jordan.

Jordan answered by claiming that Amerind's true debtor was Federal Commerce, to which Amerind contended that it had a claim against Jordan either as the subrogee of the Dock Board, or under the doctrine of *negotiorium gestio*.\(^{187}\)

The court replied that the claim appeared to be either one in subrogation or one in quasi-contract. Both claims were cognizable in admiralty: subrogation by the language in *Compania Anonima...*

\(^{182}\) *Id.*

\(^{183}\) *Id.* at 696 (emphasis in original).

\(^{184}\) *Id.* at 699.

\(^{185}\) *Id.*


\(^{187}\) *Id.* at 1325. *Negotiorium gestio* is classically defined in the civil law as "[a] species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority." *Black's Law Dictionary* 934 (5th ed. 1979).
Venezolana and quasi-contract by the language in Archawski v. Hanioti. The jurisdiction of admiralty courts, it warned, should not be restricted to the narrow concept set forth in Jordan’s motion to dismiss and motion for summary judgment. Quoting Swift, it concluded that failure to recognize admiralty’s jurisdiction over claims in subrogation or quasi-contract would “hobble” the maritime legal system.

Compania Anonima weighed the rights of two parties to equitable relief, one in subrogation and one in laches. Without denying the first party’s right to seek subrogation the court found on balance the subrogee’s subsequent conduct constituted laches in its plainest form. In Florida Bahamas Lines v. Steel Barge “Star 800” of Nassau, Judge John Brown, again speaking for the Fifth Circuit, granted laches in a lien-priority contest. He reasoned that “laches was a flexible measure of the time within which a claim in admiralty must be asserted.” The important constituent elements of laches as he saw them were unreasonable delay by one party in his remedy and prejudice to another as a result of the delay. Finally, the crucial question in determining whether laches applies is whether it would be inequitable because of delay to enforce the claim. Here, Judge Brown held that laches barred enforcement of a lien for wharfage as prior to a mortgage.

Constructive Trust

Equity has also been invoked in determining the existence of a constructive trust. Thus, Compania De Navegacione Almirante S.A. Panama v. Certain Proceeds of Cargo of the Vessel S.S. Searaven, decided in 1967, involved an action by an unpaid owner of a chartered vessel to libel the proceeds of cargo, freights and subfreights of the vessel. Under the terms of the charter party, libelant, a Panamanian cor-

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189 350 U.S. 532 (1956). For a discussion of Archawski, see supra notes 94-103 and accompanying text.
192 See supra text accompanying note 181.
193 433 F.2d 1243 (5th Cir. 1970).
194 Id. at 1250.
195 Id.
196 Id. at 1251.
poration, had an express lien upon the cargo for freight. The shipper’s bank, however, to which it owed a large indebtedness, also asserted its banker’s lien against such proceeds.\textsuperscript{198}

The respondent bank, Beverly Hills Bank & Trust Co., as constructive trustee, was ordered by the United States District Court for the Central District of California to deposit enough money in the shipper’s account to satisfy the charter hire. It was ordered to do so without prejudice to its right to contend that the court’s action was improper.\textsuperscript{199}

The bank contended that the libelant shipowner lost its lien on the cargo by failing to libel the cargo for charter hire prior to its delivery to the consignees. The court disagreed, stating, “[H]ere libelant’s claim that it would be grossly inequitable if the Bank could avoid the payment of the charter hire, i.e. reasonable freight, was sound.”\textsuperscript{200} The shipowner had attached the proceeds of the freight earned by the cargo while they were in the charter’s bank and while the cargo was still in the ship’s possession.

The court concluded:
As the Supreme Court in \textit{Swift & Co. v. Compania Colombiana Del Caribe} . . . ruled, an Admiralty Court can, as a means of effectuating a claim incontestably in Admiralty, determine subsidiary or derivative equitable issues. To stay the hands of Admiralty as to a matter intrinsically non-maritime but necessary to the complete adjustment of rights over which admiralty has independent jurisdiction would seriously impair the discharge by Admiralty of the task which belongs to it.\textsuperscript{201}

The district court’s decision on its face appeared to contravene a long-standing precedent foreclosing admiralty courts from declaring or enforcing a trust. The Ninth Circuit was more cautious on appeal; in 1971 in \textit{Beverly Hills National Bank & Trust Co. v. Compania De Navegacione Almirante S.A., Panama},\textsuperscript{202} it reversed the district court. Circuit Judge Browning, speaking for the court, found that had Compania advanced its constructive trust theory as the sole support for its claim, there would have been no jurisdiction in admiralty.\textsuperscript{203}

But it also advanced the theory—clearly in admiralty—that it had a maritime lien on the fund held by Beverly Hills National Bank. Thus, the district court, despite the fact that it purported to exercise admiralty jurisdiction, did have, under \textit{United Mine Workers of
America v. Gibbs,\textsuperscript{204} pendent jurisdiction over the equitable claim.\textsuperscript{205} Then, turning to the merits of the case, the circuit court agreed with the appellant that the district court's findings did not support the imposition of constructive trust for Compania’s benefit.\textsuperscript{206}

Thus, the circuit court, while reversing the district court, still left the door open to admiralty courts to decide an equitable constructive trust where there is pendent jurisdiction. And it did this despite language in The Eclipse that the court of admiralty cannot “declare or enforce a trust.”\textsuperscript{207}

Seamen’s Injuries

The courts in recent years have exercised remedial powers in a number of suits arising out of seamen’s injuries. One of the most widely quoted is Vaughan v. Atkinson,\textsuperscript{208} a case heard by the United States Supreme Court on certiorari to the Fourth Circuit in 1962. In that case, petitioner Vaughan, a seaman, was discharged from respondent’s ship at the end of a voyage and received from its master a certificate to enter a Public Health Service Hospital. The hospital admitted him as an inpatient, treated him for suspected tuberculosis for several weeks, and then treated him as an outpatient for over two years before declaring him fit for duty.

When he was admitted to outpatient status, Vaughan sent the shipowner a copy of his medical record and requested payment for maintenance and cure. His request was denied and he went to work as a taxi driver to support himself while receiving outpatient treatment. Finally, he brought suit in admiralty to recover maintenance and cure and for damages.\textsuperscript{209}

Justice Douglas, speaking for the Court, awarded both elements. The damages included Vaughan’s counsel fees as a necessary expense of collecting his recovery. Douglas justified the Court’s award in these words, “Equity is no stranger in admiralty; admiralty courts are indeed authorized to grant equitable relief.”\textsuperscript{210}

Quoting Vaughan, the Eastern District of Louisiana, New Orleans Division, passed on the responsibility for maintenance and cure to a

\textsuperscript{204} 383 U.S. 715 (1966).
\textsuperscript{205} Beverly Hills Nat’l Bank & Trust Co., 437 F.2d at 305-06.
\textsuperscript{206} Id. at 307.
\textsuperscript{207} The Eclipse, 135 U.S. 599, 608 (1890).
\textsuperscript{208} 369 U.S. 527 (1962). See supra notes 106-09 and accompanying text for a limited analysis of this important case.
\textsuperscript{209} Vaughan v. Atkinson, 369 U.S. at 527-29.
\textsuperscript{210} Id. at 530.
negligent tortfeasor six years later in *Richardson v. St. Charles-St. John the Baptist Bridge & Ferry Authority*.\(^{211}\) In that action, a ferry boat deckhand, struck by a motorist driving off the ferry, sued the bridge and ferry authority and its insurer for maintenance and cure. The court concluded that:

> it seemed only fair that in allocating the burden of paying for maintenance and cure between an innocent shipowner and a tortfeasor whose negligence caused a seaman’s injury, the person who caused the injury ought to bear the responsibility. Equity is no stranger in admiralty . . . and equity is done in such situations by placing primary liability for maintenance and cure on the tortfeasor who caused the seaman’s injury.\(^{212}\)

### Implied Warranty and Indemnification

Breach of an implied warranty was the basis of an award granted by the Eastern District of Pennsylvania in *Nikforow v. Rittenhouse*,\(^ {213}\) which involved another personal injury action, this one brought in 1970. The suit resulted from an injury sustained by a member of the United States Coast Guard in attempting to tow defendant Rittenhouse’s yacht from a sand bar. After a jury trial, plaintiff Nikiforow received a verdict and judgment of $60,000 against the defendant.\(^ {214}\)

Subsequent to the entry of the judgment, the United States sought, under the Medical Care Recovery Act,\(^ {215}\) to recover expenses incurred in providing medical treatment for the plaintiff. In answer, Rittenhouse filed a counterclaim against the United States seeking indemnity, a remedy in equity.\(^ {216}\)

The court found that Rittenhouse’s negligence was merely “passive” or “secondary” to the “active” and “primary” negligence of the United States in failing to train or instruct Nikiforow in the necessity of


\(^{212}\) Id. at 716.


\(^{214}\) Id. at 702.

\(^{215}\) The Medical Recovery Act, 42 U.S.C. §§ 2651-2653 (1976). Section 2651 provides that:

(a) In any case in which the United States is authorized or required to furnish hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease . . . under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of Section 249 of this title) to pay damages therefor, the United States shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment as furnished or to be furnished . . . .”

an inspection preliminary to towing. Furthermore, the district court continued, when the Coast Guard undertook to free the vessel from the sandy bottom in return for the execution of a waiver of liability, an admiralty contract was formed. "Under this contract the Coast Guard impliedly warranted it would perform its service in a careful, safe and seamanlike manner . . . . Having breached this implied warranty, which directly resulted in defendant's liability to the plaintiff, defendant is entitled to full indemnity from the United States."218

Following Nikiforow, two actions were brought in the district courts for breach of implied warranty and product liability. Both were brought in 1971, one in the Southern District of Alabama and the other in the Western District of Pennsylvania. In the first, Dudley v. Bayou Fabricators,219 the court was unequivocal in stating that an action to recover damages for breach of implied warranty in the sale of a vessel and for her negligent construction were not within admiralty jurisdiction.220 It did, however, grant relief in tort, and stated:

There is ample authority—all of recent vintage—that a products liability action predicated on negligence will lie in admiralty. . . . Whether the action be called products liability, breach of implied warranty sounding in tort or tort on navigable waters, if the action is based on a negligent act or omission by the manufacturer or builder that is the proximate cause of subsequent personal or property injury, liability attaches and is actionable under admiralty.221

One of the cases "of recent vintage" that Dudley cited was the Western Pennsylvania District Court's decision in Ohio Barge Line v. Dravo Corp.222 The court in Ohio Barge tied recovery under the theory of products liability to "the modern concept which permits implied warranty to fly the colors of tort, rather than contract, and sail into the admiralty harbor."223

The plaintiff corporation in this action was seeking indemnification from defendants Dravo Corp. and Westinghouse Air Brake Co. for damages it was forced to pay to Delta Concrete Co. when the M/V Steel Express, a towboat it had purchased from the defendants, went out of control and struck several barges and the landing to which they were moored. Ohio Barge Lines also asserted a claim against the de-

217 Id. at 701.
218 Id. at 702.
220 Id. at 790-91.
221 Id. at 791.
223 Id. at 866.
fendants for repairs to the Steel Express.\textsuperscript{224}

District Judge Weis, speaking for the court and quoting at length from \textit{Swift}, held that admiralty could determine, by utilizing pendent jurisdiction, the claim for indemnification even though Ohio Barge Lines chose to employ theories under many labels, some of them non-maritime.\textsuperscript{225}

\textbf{Declaratory Judgments}

Courts have also begun to grant declaratory relief to petitioners in admiralty actions, but not without considerable disagreement among themselves. In 1960, the District Court for the Northern District of California, Southern Division, citing the Suits in Admiralty Act, section 3,\textsuperscript{226} held in \textit{States Marine Lines v. United States}\textsuperscript{227} that declaratory judgment proceedings are not available in admiralty. Again, in 1968, a district court, this time for the Southern District of New York, held that a declaratory judgment was not available in admiralty actions. The case was \textit{American Manufacturers Mutual Insurance Co. v. Manor Investment Co.}\textsuperscript{228}

\textit{Insurance Co. of North America v. Langan Construction Co.}\textsuperscript{229} was decided in 1971 by the District Court for the Southern District of Alabama. The court in that case took issue with both \textit{States Marine} and \textit{American Manufacturers} and held that actions seeking declaratory judgments on marine insurance policies are within the purview of admiralty jurisdiction.\textsuperscript{230} Chief Judge Daniel Halcombe Thomas noted:

Prior to 1961, it had been held that Admiralty could not grant declaratory relief [citing \textit{States Marine}] . . . In 1961, the Supreme Court remedied the situation by adopting General Admiralty Rule 59 which authorized declaratory relief in appropriate Admiralty cases . . . Admiralty Rule 59 was rescinded in 1966 with the unification of Admiralty and Civil procedure and was replaced by Rule 57 of the Federal Rules of Civil Procedure.\textsuperscript{231}

Judge Thomas continued:

\textsuperscript{224} Id. at 864-65.

\textsuperscript{225} Id. at 868.

\textsuperscript{226} Section 3 of the Suits in Admiralty Act provides, in pertinent part, that “[s]uch [admiralty] suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties.” Act of Mar. 9, 1920, ch. 95, § 3, 41 Stat. 525, 526, codified at 46 U.S.C. § 743 (1976).

\textsuperscript{227} 196 F. Supp. 562 (N.D. Cal. 1960).

\textsuperscript{228} 286 F. Supp. 1007 (S.D.N.Y. 1968).

\textsuperscript{229} 327 F. Supp. 567 (S.D. Ala. 1971).

\textsuperscript{230} Id. at 567-68.

\textsuperscript{231} Id. at 567.
The defendant does cite a 1968 case that unequivocally states that an admiralty court cannot grant declaratory relief (American Manufacturer’s Mutual Company v. Manor Investment Co. . . .) but this Court specifically rejects that Court’s holding. . . . The only authority cited by the New York District Court [In American Manufacturer’s Mutual] for its position was the pre-Admiralty Rule 59 case of States Marine. . . .

IV. **PINO AND THE HOPES FOR A BRIGHTER DAY**

The cases subsequent to the 1966 unification reveal an interesting and often times confused approach to the exercise of equitable powers of an admiralty court. While some courts have relied on Swift and Vaughan—together with the amended federal rules—in holding courts of admiralty empowered to grant equitable relief, there are no instances in which equitable relief was awarded in conjunction with an independent maritime claim until 1979. In that year, the First Circuit in Pino v. Protection Maritime Insurance Co. upheld the decision made in admiralty to enjoin a maritime tort.

Here, seaman Pino and others brought an admiralty action against the defendant insurer in order to seek recovery for a wrongful or tortious interference with their seagoing employment relationships. The district court awarded interim injunctive relief enjoining, as such, the insurer from charging any added premium to the owner of any commercial fishing vessel simply because he had signed on as a member of a crew one or more of the plaintiffs. On appeal, the court of appeals affirmed in part and remanded in part, holding that the action was within the court’s grant of admiralty jurisdiction and that acting within such jurisdiction, injunctive relief could be awarded. The court specifically declared:

> We hold, with the question now before us, that courts sitting in admiralty may award injunctive relief in accordance with Fed. R. Civ. P. 65 in situations where such relief would be appropriate on land. This is a departure from the traditional rule, but we find no constitutional, statutory or policy reasons of substance for recognizing a continued limitation upon the power of federal courts sitting in admiralty, nor does it seem likely that the Supreme Court would today adhere to the traditional rule.

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232 Id., at 567-68.
236 *Id.*. Circuit Judge John R. Brown noted in *Stern, Hays & Lang, Inc. v. M/V Nili* that “[t]he melding of the civil with admiralty . . . invests the [judge] with all the applicable statutory powers, whether their genesis be formerly at law, in equity, or in admiralty.” 407 F.2d 549, 551 (5th Cir. 1969). See also supra note 68.
While the court did rely on *Swift, Vaughan*, and the unification when making its decision, it should be noted that a heavy emphasis was placed on *Lewis v. S.S. Baune*, a Fifth Circuit decision which had held that district courts could grant injunctive relief under rule 65 of the Federal Rules of Civil Procedure.\(^{237}\) In *Pino*, the defendants distinguished *Lewis* as a case where “injunctive relief was awarded on a claim ancillary to the maritime claim that formed the basis of jurisdiction.”\(^{238}\) The *Pino* court was quick in its negation of this point by stating that “the Fifth Circuit’s discussion of the issue did not distinguish between injunctive relief for admiralty claims and such relief for claims heard in admiralty by virtue of the court’s ancillary jurisdiction.”\(^{239}\)

The request for injunctive relief in *Pino* did not involve a pendent or ancillary issue. Thus, the case allowed the First Circuit to address the question whether federal courts sitting in admiralty have equity jurisdiction over independent maritime claims. In responding affirmatively to this question, the First Circuit has structured a valuable precedent. One recent Fifth Circuit case, *Treasure Salvors, Inc. v. The Unidentified Wrecked & Abandoned Sailing Vessel*,\(^ {240}\) has utilized *Pino* as a basis for its analysis. And, in fact, it could be said that the “*Pino* acknowledgement” of admiralty’s injunctive power was underscored.

In *Treasure Salvors*, a salvage unit was instituted in order to obtain an injunction to prevent rival salvors from conducting any salvage operations in an area of some 2,500 yards on either side of a line drawn between points contained in the description of the wreck site. A preliminary injunction was granted.\(^ {241}\) On appeal, it was held by Circuit Judge Randall that although the district court had not abused its discretion in entering judgment, a modification of the injunction as to its duration would be set.\(^ {242}\) The court noted the presumption that—prior to the unification of the admiralty rules with the federal civil rules—an admiralty judge lacked the power of a chancellor to order injunctive relief.\(^ {243}\) However, the court went on to conclude that since the 1966 unification, the admiralty rules have authorized equitable relief, in the form of an injunction, to be granted by a federal court sitting in admir-
In order to sustain this proposition, the court cited Lewis and Pino. Finally, the court held, "When such relief is ordered in the course of a proceeding within the court's admiralty jurisdiction we see no legal, or logical or policy obstacle to permitting interlocutory appeals of such orders . . . ."246

V. CONCLUSIONS

The Supreme Court’s refusal to grant the defendant’s petition for certiorari in Pino has left the circuit courts with conflicting rules and approaches to problem-solving in this area.247 The rationale for Pino’s holding is admirable and, at the same time, reasonable. A plaintiff should have the same remedies available to him if his case is in admiralty as he would if it were not. As has been shown, there is a sufficient bulk of decisional law, together with sound and persuasive reasoning, regarding the accommodation of the Federal Rules of Civil Procedure in order to allow equitable remedies to be recognized which, if acted upon, can go far to resolve the present turmoil.248 A uniform approach will be lacking among both the district and the appellate courts until the United States Supreme Court says but the word to heal the heavy and confused souls in the federal judicial system.

Complete equity—in its most basic designation, Justice—should be available to all manner and nature of claims submitted in Admiralty. Absent a strong posture by the Supreme Court by a total and final reversal of the “Schoenamsgruber Doctrine”249 or a ready acceptance of the “Pino Acknowledgement,”250 or both, the federal courts must assert their fundamental mission as judicial organizations to both promote and to render full justice. As such, procedure must always be the handmaiden to justice—and never viewed as an uncompromising mistress!

244 Id. at 565.
245 Id. at 565 n.3.
246 Id. at 565.
248 See supra text accompanying notes 233-46.
249 See supra notes 81-82 and accompanying text.
250 See supra notes 233-39 and accompanying text.