

EXTENDING ADMIRALTY LAWS TO THE VIRGIN ISLANDS

APRIL 22, 1932.—Referred to the House Calendar and ordered to be printed

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

REPORT

[To accompany S. 418]

The Committee on the Judiciary, to whom was referred the bill (S. 418) to extend the admiralty laws of the United States of America to the Virgin Islands, having considered the same, reports favorably thereon with the recommendation that the bill do pass.

The bill has the approval of the Secretary of the Interior and the Attorney General. There is printed herewith and made a part of this report letter from the Secretary of the Interior under date of January 4, 1932, addressed to Hon. Hiram W. Johnson, and also a memorandum from the Department of Justice, explaining the necessity for the enactment of this legislation.

DEPARTMENT OF THE INTERIOR,
Washington, January 4, 1932.

Hon. HIRAM W. JOHNSON,
Chairman Committee on Commerce, United States Senate.

MY DEAR SENATOR JOHNSON: Reference is made to your letter of December 15, 1931, to the Secretary of War requesting report on Senate bill No. 418, to extend the admiralty laws of the United States to the Virgin Islands. The letter was referred here for answer and was forwarded to Governor Pearson, of the Virgin Islands, for his views, and also an expression of opinion from Judge Edrington, of the local district court. A reply by radiogram from the governor reads as follows:

"Judge Edrington and I agree on desirability of extending to Virgin Islands admiralty laws of United States for reasons:

"First. That Danish admiralty law in force here is archaic and such law and its jurisprudence unknown to local attorneys.

"Second. Entire admiralty law and decisions of Danish courts in Danish language and not available here.

"Third. As appeals from Virgin Islands are made to third circuit court of appeals, Philadelphia, difficult for appellate court interpret foreign law.

"Fourth. Uniformity of law very desirable.

"Fifth. Shipping interests as well as libellants would know their remedies.

"In view of confusion which arose on interpretation of act of Congress to extend United States naturalization laws to Virgin Islands due to the fact that

specific jurisdiction was not vested in district court Virgin Islands, Judge Edrington recommends, and I concur, that bill to extend admiralty laws be amended as follows: 'That the admiralty laws and jurisprudence in force and effect in the United States of America be, and the same are hereby, extended to the Virgin Islands. That the district court of the Virgin Islands shall have jurisdiction to try and determine all cases arising in admiralty' [Omission of words] 'except where the same is locally inapplicable' is particularly essential to avoid future conflict."

I concur in the recommendation for enactment of the bill with the amendment as suggested by Governor Pearson and Judge Edrington.

Very truly yours,

RAY LYMAN WILBUR.

EXTENDING THE ADMIRALTY LAWS OF THE UNITED STATES TO THE VIRGIN ISLANDS

DEPARTMENT OF JUSTICE,

Washington, D. C., January 30, 1932.

Memorandum for Assistant Attorney General Sisson, regarding S. 418, a bill to extend the admiralty laws of the United States to the Virgin Islands.

Section 2 of the act of March 3, 1917 (29 Stat. 1132; U. S. C., title 48, sec. 1392), is the provision of the organic act relating to the Virgin Islands and provides:

"Until Congress shall otherwise provide, in so far as compatible with the changed sovereignty and not in conflict with the provisions of this chapter, the laws regulating elections and the electoral franchise as set forth in the code of law published at Amalienborg, the 6th day of April, 1906, and the other local laws in force and effect in said islands on the 17th day of January, 1917, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizens thereof may be a party. In all cases arising in the said West Indian Islands and reviewable by the courts of Denmark prior to March 3, 1917, writs of error and appeals shall be to the circuit court of appeals for the third circuit, and, except as provided in sections 346 and 347 of title 28, Judicial Code and Judiciary, the judgments, orders, and decrees of such court shall be final in all such cases."

The practice in maritime matters is in some measure discussed in the case of *Sugar Products Co. v. St. Thomas Ship Brokers Association*. (C. C. A. 3, 280 Fed. 822.) The proceeding there was peculiar to Danish law. The facts in that case did not require the court to pass upon the question what the rights were under the Danish law, but the record presented upon appeal issues of fact as to proper allowances on items of the claim. The court, adopting the practice on appeal in admiralty cases, held that it was to be tried de novo and disallowed some of the items. The same question previously had been before that circuit court of appeals in the case of the *Edgewood*. (279 Fed. 348.) That decision seemed to recognize that the local laws of the Virgin Islands were in force, to be administered by the local tribunals. The act conferring upon the circuit court of appeals for the third circuit appellate jurisdiction was interpreted by the court to mean that incidental procedure should conform in a measure to that of the appellate court of Denmark.

The effect of section 2, above quoted, is also considered in the case of *Clen v. Jorgensen*. (265 Fed. 120, 122, 123.) In that case the circuit court of appeals stated that—

"Having this in mind it is plain that Congress intended, for a time at least, to preserve the local laws of the islands and to provide for their enforcement through the local judicial tribunals as then established."

It then pointed out that as the courts of Denmark, under the changed sovereignty, were no longer open to appeals from the insular courts, appellate jurisdiction in the manner which the section created was necessary.

Our examination of the statutes shows that section 2 (*supra*) has not been amended. The propriety therefore of Congress by the present bill extending the admiralty laws of the United States to the Virgin Islands would seem to be

without question. The desirability of uniformity in both the United States and its insular possessions is apparent.

It would appear desirable not only to extend the admiralty laws of the United States to the Virgin Islands, but to require the procedure to follow the procedure of the district courts of the United States as provided by the Supreme Court rules in admiralty. The provisions with respect to other insular possessions may be thus summarized:

HAWAII

After providing for a district court in Hawaii, the jurisdiction of the court was established in these words:

"The said court shall have the jurisdiction of district courts of the United States and shall proceed therein in the same manner as a district court; and the said judges, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of the district courts of the United States." (U. S. C., title 48, sec. 642.)

Section 645 provided:

"Writs of error and appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner as writs of error and appeals are allowed from district courts to circuit courts of appeal as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

The amendment of April 12, 1930 (46 Stat. 160), provided:

"The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere within the United States."

The right of proceeding in admiralty, arising prior to the above acts rested solely with the Territorial courts of Hawaii. The effect of the above legislation was to place jurisdiction in the district court created by the act, with right of appeal to the ninth circuit. (See *Ex Parte Wilder Steamship Co.*, 183 U. S. 545.)

PORTO RICO

The act of April 30, 1900, as amended (U. S. C., title 48, sec. 863), provided for the establishment of a district court in Porto Rico. The jurisdiction created was—

"Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States and shall proceed in the same manner."

Other provisions related to naturalization and suits between nonresidents. Appeal from the decisions of that court was provided to the circuit court of appeals for the first circuit.

In the case of *Lastra v. N. Y. & P. R. S. S. Co.* (2 Fed. (2d) 812 (C. C. A. 1)), in speaking of the jurisdiction conferred by the act, the court said:

"We think that if Congress had intended, by the organic act, to extend the admiralty provisions of the Federal Constitution to Porto Rico, language apt and explicitly expressive of that purpose would have been used; and that the language of section 41, granting in general terms the same jurisdiction to the district court of the United States in Porto Rico as have the district courts of the United States does not import an extension of the substantive rights and obligations of our admiralty law to Porto Rico.

"We might, if necessary, as we think it is not, find further support for our conclusions as to the sound interpretation of the applicable provisions of the organic act, supra, by reference to the two attempts by Congress to limit, within the United States, the doctrine of the *Jensen* case. That case was decided on May 21, 1917. It held the New York compensation act inapplicable to maritime laborers. On October 6, 1917, Congress, by 40 Stat. 395, amended Judicial Code, section 24 (3), being Comp. St. 1918, Comp. St. Ann. Supp. 1919, section 991 (3), by adding to the saving clause as to common-law remedies the following: "And to claimants the rights and remedies under the workmen's compensation law of any State." An analogous amendment was also made to section 256 (3) of the Judicial Code (sec. 1233). This attempt of Congress to permit the application of compensation acts to maritime laborers was held unconstitutional in *Knickerbocker Ice Co. v. Stewart*, supra, in 1920. Thereafter, on June 10, 1922, 42 Stat. 634

(Comp. St. Ann. Supp. 1923, sec. 991 (3)), a further attempt was made to permit the application of workmen's compensation acts to certain classes of maritime employees by extending the saving clause with relation to the jurisdiction of the district court so as to read:

"* * * Saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize: *Provided*, That the jurisdiction of the district courts shall not extend to causes arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, District, Territory, or possession of the United States."

"This act also was, in *Washington v. Dawson*, supra, held unconstitutional by the Supreme Court.

"The organic (Jones) act was passed in 1917, the same year in which Congress undertook to provide that compensation acts should, in the States, apply to such maritime laborers as those whose rights are now in question. It is not reasonable to suppose that the same Congress intended to take away from Porto Rico rights in the admiralty field which it sought to extend to the different States of the United States. Emphasis is lent to this conclusion by the fact that in 1922 it indicated in the most explicit language its purpose to allow such acts full scope, not only in the States of the United States, but in any 'District, Territory, or possession of the United States.' We do not regard either the act of 1917 or that of 1922 as a grant of new power to the Porto Rican Legislature; they merely show what otherwise in our view plainly appears, that Congress never intended, by the organic act or otherwise, to deprive the Porto Rican Legislature of power to extend workmen's compensation acts to maritime laborers.

"Only the plainly expressed will of the United States is to prevail against the presumption of local control over matters of local concern. Compare *Diaz v. Gonzalez*, 261 U. S. 102, 43 S. Ct. 286, 67 L. Ed. 550; *Balzac v. Porto Rico*, 258 U. S. 298, 310, 42 S. Ct. 343, 66 L. Ed. 627; *Fernandez v. Ayllon*, 45 S. Ct. 52 69 L. Ed.—, November 17, 1924, No. 82 October term, 1924.

"The result is that the decree below must be reversed and the bill dismissed with costs."

CANAL ZONE

The act of September 21, 1922, section 2 (42 Stat. 1005; U. S. C., title 48, secs. 1344, 1345), creates a district court for the Canal Zone and confers general jurisdiction in all cases of admiralty. It specifically provides with respect to admiralty practice and procedure as follows:

"The jurisdiction in admiralty herein conferred upon the district judge and the district court shall be the same as is exercised by the United States district judges and the United States district courts, and the practice and procedure shall be the same as in the United States district courts."

We do not consider reference to other insular possessions necessary.

May we suggest for your consideration whether or not the proposed bill should be modified to meet the scope of the act regulating the Canal Zone? This could be accomplished by amending the bill to read:

"*Be it enacted, etc.*, That all cases coming within the admiralty jurisdiction of the courts of the Virgin Islands shall be determined in accordance with the general admiralty law of the United States of America, and the practice and procedure shall be the same as in the United States district courts."

Respectfully,

ROY ST. LEWIS,
Assistant Attorney General.

P. S.—Since dictating the above, we have considered it proper to suggest another form of bill, which is:

"*Be it enacted, etc.*, That there be, and is hereby, conferred upon the judicial tribunals of the Virgin Islands jurisdiction in admiralty which shall be the same as is exercised by the United States district courts and the practice and procedure shall be the same as in the United States district courts."