

## **MACKENSWORTH v. AMERICAN TRADING TRANSPORTATION CO.\***

United States District Court for the Eastern District of Pennsylvania, 1973.  
367 F. Supp. 373.

A seaman, with help of legal sages,  
Sued a shipowner for his wages.  
The defendant, in New York City  
(Where served was process without pity)  
Thought the suit should fade away,  
Since it was started in Pa.  
The District Court there (Eastern District)  
Didn't feel itself restricted  
And in some verse by Edward R. Becker, J.,  
Let the sailor have his day.  
The owner, once to earn freight fare,  
Sent ship to load on Delaware.  
Since it came to reap in port,  
T<sup>h</sup>was turnabout to show in court.  
With process so to profit tied,  
Motion to dismiss denied.

### **1. Process 🔑 62**

Long-arm service is a procedural tool  
Founded upon a "doing business" rule.  
42 Pa. S. § 8309

### **2. Courts 🔑 12(2)**

A New York shipowner which, to its later dismay  
Loaded a ship in Philly, Pa.  
In the year of Our Lord 1972  
Could be served in a suit there by seafarer who  
Claimed that his wages were long overdue.  
Since the loading, in the learned court's ken of it  
Was a single act done for pecuniary benefit  
And thus doing business (for profit to boot)  
Within the state's long-arm statute.  
46 U.S.C.A. § 594; 42 Pa. S. § 8309(a)(3)

### **3. Courts 🔑 12(2)**

Under the Commonwealth statute providing  
That in cases of persons elsewhere residing,  
"The doing of a single act \* \* \* for the purpose of thereby realizing pecuniary benefit  
or otherwise accomplishing an object with the intention of initiating a series of such  
acts."  
No further intention is needed  
When "pecuniary profit" is heeded;  
One acting from profit ambition  
Need not contemplate repetition.  
42 Pa. S. § 8309(a)(3)

### **4. Courts 🔑 12(2)**

Lest the long-arm statute make all nervous  
It was amended to avoid guess

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And to extend long-arm service  
To the full reach of due process.  
42 Pa. S. § 8309

**5. Constitutional Law  305(6)**

A New York shipowner who  
Once sent its vessel over the blue  
For loading in Philly, in '72  
Could be sued there, to its rue  
In accord with process due  
Under *International Shoe*.

EDWARD R. BECKER, District Judge.

The motion now before us  
has stirred up a terrible fuss.  
And what is considerably worse,  
it has spawned some preposterous doggerel verse.

The plaintiff, a man of the sea,  
after paying his lawyer a fee,  
filed a complaint of several pages  
to recover statutory wages.<sup>1</sup>

The pleaded facts remind us of a tale that is endless.  
A seaman whom for centuries the law has called “friendless”  
is discharged from the ship before voyage’s end  
and sues for lost wages, his finances to mend.  
The defendant shipping company’s office is based in New York City,  
and to get right down to the nitty gritty,  
it has been brought to this Court by long arm service,<sup>2</sup>  
which has made it extremely nervous.

Long arm service is a procedural tool  
founded upon a “doing business” rule.  
But defendant has no office here, and says it has no mania  
to do any business in Pennsylvania.  
Plaintiff found defendant had a ship here in June ‘72,  
but defendant says that ship’s business is through.  
Asserting that process is amiss,  
it has filed a motion to dismiss.

Plaintiff’s counsel, whose name is Harry Lore,  
read defendant’s brief and found it a bore.  
Instead of a reply brief, he acted pretty quick  
and responded with a clever limerick:

“Admiralty process is hoary  
With pleadings that tell a sad story  
Of Libels *in Rem*—  
The bane of sea-faring men  
The moral:  
Better personally served than be sorry.”

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<sup>1</sup> In nautical terms, the wage statute is stowed at § 594 of 46 U.S. Code.

<sup>2</sup> Long arm service is effected, not by stealth, but through the Secretary of the Commonwealth.

Not to be outdone, the defense took the time  
to reply with their own clever rhyme.  
The defense counsel team of Mahoney, Roberts, & Smith  
drafted a poem cutting right to the pith:

Admiralty lawyers like Harry  
Both current and those known from lore  
Be they straight types, mixed or fairy  
Must learn how to sidestep our bore.  
For Smith, not known for his mirth  
With his knife out for Mackensworth  
With Writs, papers or Motions to Quash  
Knows that dear Harry's position don't wash.

Overwhelmed by this outburst of pure creativity,  
we determined to show an equal proclivity.  
Hence this opinion in the form of verse,  
even if not of the calibre of Saint-John Perse.

The first question is whether, under the facts,  
defendant has done business here to come under Pennsylvania's long arm acts.<sup>3</sup>  
If we find that it has, we must reach question two,  
whether that act so applied is constitutional under *Washington v. International Shoe*.<sup>4</sup>

Defendant runs a ship known as the SS Washington Trader,  
whose travels plaintiff tracked as GM is said to have followed Nader.  
He found that in June '72 that ship rested its keel  
and took on a load of cargo here which was quite a big business deal.

In order for extraterritorial jurisdiction to obtain,  
it is enough that defendant do a single act in Pa. for pecuniary gain.  
And we hold that the recent visit of defendant's ship to Philadelphia's port  
is doing business enough to bring it before this Court.

We note, however, that the amended act's grammar<sup>5</sup>  
is enough to make any thoughtful lawyer stammer.  
The particular problem which deserves mention  
is whether a single act done for pecuniary gain also requires a future intention.

As our holding suggests, we believe the answer is no,  
and feel that is how the Pa. appellate cases will go.  
Further, concerning § (a)(3)'s "shipping of merchandise"  
the future intention doctrine has already had its demise.<sup>6</sup>

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<sup>3</sup> Designed to relieve the plaintiff's service burdens, Pennsylvania's latest long arm law may be found at § 8309 of 42 Purdon's.

<sup>4</sup> That decision of the Supreme Court of Courts may be found at page 310 of 326 U.S. Reports \* \* \* .

<sup>5</sup> The words of the statute are overly terse, still we will quote them, though not in verse:

(a) General rule.—Any of the following shall constitute "doing business" for the purposes of this chapter:

(2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(3) The shipping of merchandise directly or indirectly into or through this Commonwealth

42 Pa. S. § 8309.

<sup>6</sup> See *Aquarium Pharmaceuticals Inc. v. Industrial Pressing and Packaging* (E.D. Pa. 1973).

We do not yet rest our inquiry, for as is a judge's bent,  
we must look to see if there is precedent.<sup>7</sup>  
And we found one written in '68 by three big wheels  
on the Third Circuit Court of Appeals.

The case, a longshoreman's personal injury suit, is *Kane v. USSR*,  
and it controls the case at bar.  
It's a case with which defendants had not reckoned,  
and may be found at page 131 of 394 F.2d.

In *Kane*, a ship came but once to pick up stores  
and hired as agents to do its chores a firm of local stevedores.  
Since the Court upheld service on the agents, the case is nearly on all fours,  
and to defendant's statutory argument *Kane* closes the doors.

Despite defendant's claim that plaintiff's process is silly,  
there have been three other seamen's actions against defendant, with service in Philly.  
And although they might have tried to get the service corrected,  
the fact of the matter is they've never objected.<sup>8</sup>

We turn then to the constitutional point,  
and lest the issue come out of joint,  
it is important that one thought be first appended:  
the reason the long arm statute was amended.

The amendment's purpose was to eliminate guess  
and to extend long arm service to the full reach of due process.<sup>9</sup>  
And so now we must look to the facts  
to see if due process is met by sufficient "minimum contacts."<sup>10</sup>

The visit of defendant's ship is not yet very old,  
and so we feel constrained to hold  
that under traditional notions of substantial justice and fair play,<sup>11</sup>  
defendant's constitutional argument does not carry the day.

This Opinion has now reached its final border,  
and the time has come to enter an Order,  
which, in a sense, is its ultimate crux,  
but alas, plaintiff claims under a thousand bucks.

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Prospects for suit on a single goods shipment are decidedly greener  
because of the *Aquarium* decision of Judge Charles R. Weiner,  
holding that, in a goods shipment case no future intention is needed;  
the message of *Aquarium* we surely have heeded.  
Anyone who wishes to look *Aquarium* up  
can find it at p. 441 of 358 F. Supp.

<sup>7</sup> We thus reject the contention that one of the judicial vices is too much reliance on *stare decisis*.

<sup>8</sup> *Berrios v. American Trading & Production Co.* (AT & P) (defendant's predecessor), C.A. 68-47; *Gibson v. AT&P*, C.A. 68-1466.

And in *Battles v. AT&P.*, C.A. 73-102, in this very annum,  
service on the Secretary of the Commonwealth  
was authorized by Judge John B. Hannum.

<sup>9</sup> See *Aquarium Pharmaceuticals, Inc. v. Industrial Pressing & Packaging*, *supra*, at 444.

<sup>10</sup> See *International Shoe v. State of Washington*, *supra*, at 316.

<sup>11</sup> See *id.*

So, while trial counsel are doubtless in fine fettle,  
with many fine fish in their trial kettle,  
we urge them not to test their mettle,  
because, for the small sum involved, it makes more sense to settle.

In view of the foregoing Opinion, at this time  
we enter the following Order, also in rhyme.

#### ORDER

Finding that service of process is bona fide,  
the motion to dismiss is hereby denied.  
So that this case can now get about its ways,  
defendants shall file an answer within 21 days.

