cases in which the actions were noticeable.[913] In *Southern Pacific Co. v. Jensen*,[914] a sharply divided Court held that New York could not constitutionally apply its workmen's compensation system to employees injured or killed on navigable waters. For the Court, Justice McReynolds reasoned "that the general maritime law, as accepted by the federal courts, constituted part of our national law, applicable to matters within the admiralty and maritime jurisdiction."[915] Recognizing that "it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified or affected by state legislation," still it was certain that "no such legislation is valid if it works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony or uniformity of that law in its international and interstate relations."[916] The "savings to suitors" clause was unavailing because the workmen's compensation statute created a remedy "of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court and is not saved to suitors from the grant of exclusive jurisdiction."[917]

Congress required three opportunities to legislate to meet the problem created by the decision, the lack of remedy for maritime workers to recover for injuries resulting from the negligence of their employers. First, Congress enacted a statute saving to claimants their rights and remedies under state workmen's compensation laws.[918] The Court invalidated it as an unconstitutional delegation of legislative power to the states. "The Constitution itself adopted and established, as part of the laws of the United States, approved rules

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[913] *E.g.*, Hazard's Administrator v. New England Marine Ins. Co., 33 U.S. (8 Pet.) 557 (1834); *The Belfast*, 74 U.S. (7 Wall.) 624 (1869); American Steamboat Co. v. Chase, 83 U.S. (16 Wall.) 522 (1872); Quebec Steamship Co. v. Merchant, 133 U.S. 375 (1890); Belden v. Chase, 150 U.S. 674 (1893); Homer Ramsdell Transp. Co. v. La Compagnie Gen. Transatlantique, 182 U.S. 406 (1901).

[914] 244 U.S. 205 (1917). The worker here had been killed, but the same result was reached in a case of nonfatal injury. Clyde S.S. Co. v. Walker, 244 U.S. 255 (1917). In Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918), the *Jensen* holding was applied to preclude recovery in a negligence action against the injured party's employer under state law. Under *The Osceola*, 189 U.S. 158 (1903), the employee had a maritime right to wages, maintenance, and cure.

[915] Southern Pacific Co. v. Jensen, 244 U.S. 205, 215 (1917).

[916] 244 U.S. at 216.

[917] 244 U.S. at 218. There were four dissenters: Justices Holmes, Pitney, Brandeis, and Clarke. The *Jensen* dissent featured such Holmesian epigrams as: "[J]udges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions," id. at 221, and the famous statement supporting the assertion that supplementation of maritime law had to come from state law because "[t]he common law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified. . . . It always is the law of some State. . . ." Id. at 222.

[918] 40 Stat. 395 (1917).