

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

States,⁹⁴⁷ a suit under the Federal Tort Claims Act for recovery for a death by drowning in a navigable Oregon river of an employee of a contractor engaged in repairing the federally owned Bonneville Dam, a divided Court held that liability was to be measured by the standard of care expressed in state law, notwithstanding that the standard was higher than that required by maritime law. One area existed, however, in which beneficiaries of a deceased seaman were denied recovery.

The Jones Act provided a remedy for wrongful death resulting from negligence, but not for one caused by unseaworthiness alone; in *Gillespie v. United States Steel Corp.*,⁹⁴⁸ the Court held that the survivors of a seaman drowned while working on a ship docked in an Ohio port could not recover under the state wrongful death statute even though the act recognized unseaworthiness as a basis for recovery, the Jones Act having superseded state laws.

Thus did matters stand until 1970, when the Court, in a unanimous opinion in *Moragne v. States Marine Lines*,⁹⁴⁹ overruled its earlier cases and held that a right of recovery for wrongful death is sanctioned by general maritime law and that no statute is needed to bring the right into being. The Court was careful to note that the cause of action created in *Moragne* would not, like the state wrongful death statutes in *Gillespie*, be held precluded by the Jones Act, so that the survivor of a seaman killed in navigable waters within a state would have a cause of action for negligence under the Jones Act or for unseaworthiness under the general maritime law.⁹⁵⁰

Cases to Which the United States Is a Party

Right of the United States to Sue.—In the first edition of his *Treatise*, Justice Story noted that while “an express power is no where

⁹⁴⁷ 361 U.S. 314 (1960). The four *Tungus* dissenters joined two of the *Tungus* majority solely “under compulsion” of the *Tungus* ruling; the other three majority Justices dissented on the ground that application of the state statute unacceptably disrupted the uniformity of maritime law.

⁹⁴⁸ 379 U.S. 148 (1964). The decision was based on dictum in *Lindgren v. United States*, 281 U.S. 38 (1930), to the effect that the Jones Act remedy was exclusive.

⁹⁴⁹ 398 U.S. 375 (1970).

⁹⁵⁰ 398 U.S. at 396 n.12. For development of the law under *Moragne*, see *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974); *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990); and *Norfolk Shipbuilding and Drydock Co. v. Garriss*, 532 U.S. 811 (2001) (maritime cause of action for death caused by violation of the duty of seaworthiness is equally applicable to death resulting from negligence). But, in *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996), a case involving a death in territorial waters from a jet ski accident, the Court held that *Moragne* does not provide the exclusive remedy in cases involving the death in territorial waters of a “nonseafarer”—a person who is neither a seaman covered by the Jones Act nor a longshore worker covered by the LHWCA.