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CASES NOTED

ADMIRALTY: STATE STANDARD OF CARE IN MARITIME DEATH SITUATIONS

An employee of an independent contractor, which had undertaken to repair a United States dam, was drowned during the course of his employment in that portion of the Columbia River lying within the territorial limits of the state of Oregon. The administrator of the estate brought an action against the United States under the Federal Tort Claims Act,¹ asserting liability under Oregon statutory law.² Because the death occurred on navigable waters the federal district court decided the case under maritime law. The trial court ruled that the state's Employers' Liability Law³ could not be constitutionally applied because apparently the standard of care required under that act was higher than the standard of the general maritime

1. 60 Stat. 843, 28 U.S.C. §§ 13-46(b), 2674 (1952).

2. The plaintiff invoked both the state's general wrongful death statute, ORE. REV. STAT. § 30.020 (1957), and the state's Employer's Liability Law, ORE. REV. STAT. § 654.305 (1957). The district court applied the former and concluded that the United States was not liable under it because the decedent's death was "not caused by the negligence of the United States or its employees." The text of ORE. REV. STAT. § 30.020 (1957) is as follows: "*Action by personal representative for wrongful death.* When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the decedent, for the benefit of the surviving spouse and dependents and in case there is no surviving spouse or dependents, then for the benefit of the estate of the decedent, may maintain an action against the wrongdoer, if the decedent might have maintained an action, had he lived, against the wrongdoer for an injury done by the same act or omission. Such action shall be commenced within two years after the death, and damages therein shall not exceed \$20,000, which may include a recovery for all reasonable expenses paid or incurred for funeral, burial, doctor, hospital or nursing services for the deceased.

3. ORE. REV. STAT. § 654.305 (1957). "*Protection and safety of persons in hazardous employment generally.* Generally, all owners, contractors or subcontractors and other persons having charge of, or responsible for, any work involving a risk or danger to the employees or the public, shall use *every device, care and precaution which it is practicable to use for the protection and safety of life and limb*, limited only by the necessity for preserving the efficiency of the structure, machine or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices." (Emphasis added.)

ORE. REV. STAT. § 654.325 (1957). "*Who may prosecute damage action for death; damages unlimited.* If there is any loss of life by reason of violations of ORS 654.305 to 654.335 by any owner, contractor or subcontractor or any person liable under ORS 654.305 to 654.335, the surviving spouse and children and adopted children of the person so killed and, if none, then his or her lineal heirs and, if none, then the mother or father, as the case may be, shall have a right of action *without any limit as to the amount of damages* which may be awarded. If none of the persons entitled to maintain such action reside within the state, the executor or administrator of the deceased person may maintain such action for their respective benefits and in the order above named." (Emphasis added.)

ORE. REV. STAT. § 654.335 (1957). "*Contributory negligence.* The contributory negligence of the person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of the damage."

law. The court of appeals affirmed, agreeing with the ruling on constitutionality. On certiorari, *held*, judgment set aside and case remanded to the court of appeals: the right of action for wrongful death created by the Oregon Employers' Liability Law may be invoked to recover for a maritime death in that state without constitutional inhibition. *Hess v. United States*, 361 U.S. 314 (1960).

"The state-federal conflict in admiralty is one of the sub-problems of federalism."⁴ The Constitution granted admiralty and maritime jurisdiction to the federal courts,⁵ and the authority of Congress to legislate on the subject has been implied.⁶ These federal powers, though carefully guarded,⁷ have not completely precluded state jurisdiction and legislation.⁸ But, the application of state legislation has been held invalid when it conflicts with a federal statute⁹ or threatens the uniformity of the general maritime law.¹⁰ Further, state substantive rules may not be applied in

4. GILMORE & BLACK, ADMIRALTY §§ 1-17 (1957). See *The M/V Tungus v. Skovgaard*, 358 U.S. 588 (1959); *Caldarola v. Eckert*, 332 U.S. 155 (1947), where Mr. Justice Rutledge's dissent criticized the Court for skirting the question of whether the source of the plaintiff's right was New York law or federal law; *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 216 (1917), in which the Court recognized 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" but that "this may be done to some extent."

5. U.S. CONST. art. III, § 2. "The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction. . . ."

6. *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 215 (1917); *The Hamilton*, 207 U.S. 398 (1907); *Echavarria v. Atlantic & Caribbean Steam Nav. Co.*, 10 F. Supp. 677 (E.D.N.Y. 1935). "Although the Commerce Clause appears to be an adequate basis for federal legislation relating to admiralty matters, it appears to be accepted that the grant of admiralty jurisdiction to the federal courts implies a legislative authority of Congress to deal with the subject matter." KAUPER, CONSTITUTIONAL LAW 264 (3d ed. 1960).

7. *State of Washington v. Dawson & Co.*, 264 U.S. 219 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920), where an amendment to the Judiciary Act of 1789, 1 Stat. 77 to save "to claimants the rights and remedies under the workmen's compensation law of any State" was held to be an unconstitutional delegation to the states of the power of Congress to legislate concerning rights and liabilities within the maritime jurisdiction. Accepting this doctrine, Congress subsequently passed the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. §§ 901-950 (1927), which was to apply only where state legislation did not have a valid application.

8. *Cooley v. Board of Wardens of Port of Philadelphia*, 53 U.S. (12 How.) 299 (1851) held that state pilotage laws, where they did not conflict with national policy or legislation, were consistent with the federal admiralty power. See also *Morgan's S.S. Co. v. Louisiana Bd. of Health*, 118 U.S. 455 (1886), upholding a state's power to subject vessels to inspection and quarantine laws.

9. *Lindgren v. United States*, 281 U.S. 38 (1930) (federal statute providing for an action for wrongful death was held to be exclusive); *Echavarria v. Atlantic & Caribbean Steam Nav. Co.*, 10 F. Supp. 677 (E.D.N.Y. 1935) (same federal act superseded state death statutes so far as they had therefore applied to death on high seas). GILMORE & BLACK, *op. cit. supra*, note 4 at 43.

10. *Southern Pac. Co. v. Jensen*, 244 U.S. 205 (1917) fathered the uniformity doctrine. A stevedore was killed while loading a vessel in the port of New York. Relying on the saving clause, his survivor obtained an award under the New York Workmen's Compensation Law, sustained by the state courts. The Supreme Court reversed. Mr. Justice McReynolds declared 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 and uniformity of that law in its international and interstate relations." *Id.* at 216.

derogation of the general maritime law,¹¹ even when actions for maritime torts are brought in state courts¹² under the "saving to suitors clause" of the Judiciary Act of 1789,¹³ or on the law side of the federal courts because of diversity of citizenship.¹⁴

In this area of federal supremacy, state wrongful death statutes occupy a unique position. For over fifty years admiralty has permitted their use to supplement its own law.¹⁵ The "common" law of the sea, like that of the land, afforded no relief to the surviving dependents of a person killed by the wrongful act of another.¹⁶ With the enactment of three pieces of legislation, Congress provided some statutory remedies. The Jones Act¹⁷ created a right of action for the death of a seaman in the course of employment resulting from the negligence of the owner, master, or fellow crew members. The Longshoremen's and Harbor Workers' Compensation Act¹⁸

11. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953) held that in the presence of the maritime rule that the effect of contributory negligence is to diminish but not defeat recovery, the differing state rule could not be applied.

12. "The general rules of the maritime law apply whether the proceedings be instituted in an admiralty or common-law court." *Carlisle Packing Co. v. Sandanger*, 259 U.S. 255, 259 (1922); "The rights and liabilities of the parties arose out of and depended upon the general maritime law and could not be enlarged or impaired by the state statute." *Robins Dry Dock & Repair Co. v. Dahl*, 266 U.S. 449, 457 (1925). In *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918) plaintiff could not elect, though in a state court, to have defendant's liability measured under common-law standards rather than those of maritime law. The court, Mr. Justice McReynolds speaking, said: "Under the doctrine approved in *Southern Pac. Co. v. Jensen*, no state has power to abolish the well-recognized maritime rule concerning measure of recovery and substitute therefore the full indemnity rule of the common law. Such a substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the 'uniformity and consistency at which the Constitution aimed. . . .'" *Id.* at 382.

13. 1 Stat. 77 (1789). By this clause the District Courts of the United States were given "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." (Emphasis added.) The clause has been interpreted as granting litigants the right to elect a state forum in all maritime actions except those that are in rem, even when the right is created by federal statute. Nevertheless, one federal statute, The Death on the High Seas Act, has, according to the majority view, granted jurisdiction to the admiralty court exclusively, denying the plaintiff who invokes it a non-admiralty forum. 55 COLUM. L. REV. 907, 910 (1955).

14. *Kermarec v. Compagnie Generale*, 358 U.S. 625 (1959). The question presented was the scope of a shipowner's duty of care to a guest of a member of the crew. The district court was held in error in ruling that New York law governed. The Court said: "If this action had been brought in a state court, reference to admiralty law would have been necessary to determine the rights and liabilities of the parties. . . . Where the plaintiff exercises the right conferred by diversity of citizenship to choose a federal forum, the result is no different, even though he exercises the further right to a jury trial. . . ." *Id.* at 628.

15. See *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921); *La Bourgogne*, 210 U.S. 95 (1908); *The Hamilton*, 207 U.S. 398 (1907) (Mr. Justice Holmes expressed his view that admiralty might apply the state statute to give a proceeding *in personam*.)

16. *The Harrisburg*, 119 U.S. 199 (1886). See also *The M/V Tungus v. Skovgaard*, 358 U.S. 588 (1959); *Levinson v. Deupree*, 345 U.S. 648 (1953); *Butler v. Boston & Savannah S.S. Co.*, 130 U.S. 527 (1889).

17. 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1952).

18. 44 Stat. 1424, 33 U.S.C. §§ 901-950 (1927).

provided an award for accidental death of most maritime employees other than seamen. The Death on the High Seas Act¹⁹ gave an action for any wrongful death "beyond a marine league from the shore of any state." However, where death resulting from a maritime tort occurs on navigable waters within a state's territorial limits, and the victim's representative finds himself in one of the many interstices of the federal laws,²⁰ the only recourse is to state law.²¹ When a state-created right of action is available admiralty enforces it,²² subject to all the limiting provisions of the state statute which is its source.²³

The possible effect of this piece-meal procedure on uniformity was noted in relatively early court opinions, but with little concern.²⁴ With

19. 41 Stat. 537 (1920), 46 U.S.C. § 761 (1952).

20. The most obvious gap appears in those instances where the victim was not a maritime employee, or, if he was, where death occurred outside the scope of his employment. Even when the decedent was a seaman, a Jones Act right is not available if death resulted from the act of a third party (one other than the owner, master, or a fellow crew member), and it is improbable that a Jones Act death claim will lie when the theory of liability is unseaworthiness apart from negligence. GILMORE & BLACK, ADMIRALTY, §§ 6-29 (1957). The Longshoremen's and Harbor Workers' Compensation Act does not apply to seamen, and it left unprotected by federal law a sizable group of maritime employees, namely stevedores and repairmen on small vessels (i.e. under eighteen tons net). To gain a concept of other more complicated exclusions, see the discussion of the "crazy-quilt pattern" of the compensation act's coverage in GILMORE & BLACK, ADMIRALTY §§ 6-46 (1957).

21. The most often quoted expression of the rule appeared in *Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921): "[W]here death . . . results from a maritime tort committed on navigable waters within a state whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel *in personam* for the damages sustained by those to whom such right is given."

22. *Levinson v. Deupree*, 345 U.S. 648, 651 (1953), where the Court said: "In the absence of congressional action, the court [district] adopted and enforced the *obligatio* created by Kentucky as it would one originating in any foreign jurisdiction. . . . And it was bound to enforce it as it found it, but not bound beyond that to strive for uniformity of results in procedural niceties with the courts of the jurisdiction which originated the *obligatio*."

23. "[I]f the admiralty adopts the statute as a rule of right to be administered within its own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence. . . . The liability and the remedy are created by the same statutes, and the limitations of the remedy are therefore to be treated as limitations of the right." *The Harrisburg*, 119 U.S. 199, 214 (1886); cf. *Caldarola v. Eckert*, 332 U.S. 155 (1947): The power of a state to create such a right includes of necessity the power to determine when recovery shall be permitted and when it shall not; *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239, 245 (1942), in which the Court said: "[A]dmiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State."

24. Mr. Justice Holmes in *The Hamilton*, 207 U.S. 398, 406 (1907): "[A]dmiralty might apply the state statute to give a proceeding *in personam* . . . the result would not be, as suggested, to create different laws for different districts. The liability would be recognized in all. Nor would there be produced any lamentable lack of uniformity." Mr. Justice McReynolds in *Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921) stated that the innovation "will not work material prejudice in the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations." (Emphasis added.) Judge Addison Brown in *The City of Norwalk, D. C.*, 55 Fed. 98, 108 (S.D.N.Y. 1893), gave the following as one of several reasons for permitting a state death statute to apply to a maritime tort: "[I]t is local in its scope and interferes in no way with any needful uniformity in the general law of the seas, or with international or interstate interests."

the more recent decision of *The M/V Tungus v. Skovgaard*²⁵ the alarm was sounded. The facts in the case presented a clear breach of the uniquely maritime duty to provide a seaworthy ship,²⁶ but the Supreme Court held that the right to recover depended upon whether the New Jersey Wrongful Death Statute²⁷ included an action of this nature.²⁸ Those who dissented in part took the view that when the cause of death is the breach of a federally-imposed duty, the applicability of the remedy should not be treated as a question of state law.²⁹

The *Hess* case presented the converse of the disparity question which had troubled the Court in *Tungus*. The Oregon statute invoked imposed a standard of duty apparently higher than that of the general maritime law.³⁰ Mindful of the federal supremacy principle, both lower courts ruled that the application of the state statute "would work material prejudice to the characteristic features of the general maritime law. . . ."³¹ The United States Supreme Court, in reversing the decision,³² relied on the

25. 358 U.S. 588 (1959).

26. An employee of an independent contractor hired to unload cargo from a ship in territorial waters of New Jersey was killed when called aboard in order to repair a pump being used to discharge the cargo. Compare with the facts of *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953).

27. N.J. REV. STAT. § 2A: 31-1 (1952): "When the death of a person is caused by a wrongful act, neglect or default such as would, if death had not ensued, have entitled the person injured to maintain an action for damages resulting from the injury, the person who would have been liable in damages for the injury if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to a crime."

28. The Court of Appeals had interpreted the statute to be broad enough to encompass an action for death caused by unseaworthiness. 252 F.2d 14 (3d Cir. 1957). The Supreme Court stated that the holding was not clearly wrong, and that in spite of the uncertainties involved, it would not disturb the federal court's interpretation of New Jersey law, since the case had not presented an occasion for a full exploration of competing jurisdictional considerations.

29. Chief Justice Warren and Justices Brennan, Black, and Douglas thought that maritime law should be applied in actions to recover for death in the same manner that it applies in actions to recover for injury; that state law should be consulted for the single purpose of seeing whether a right of action had been provided. They criticized the 5-4 decision as follows: "The Court's anomalous result that different systems of law govern in determining the tortious character of conduct, depending on whether it kills or merely injures its victim, is a conscious choice of a nonuniform solution on an essential matter, and as such contrary to one of the basic principles of admiralty law." *The M/V Tungus v. Skovgaard*, *supra*, at 609.

30. Oregon courts have recognized the high standard. In *Hoffman v. Broadway Hazelwood*, 139 Ore. 519, 524, 10 P.2d 349, 351, 11 P.2d 814 (1932) it was said: "[T]he act imposes upon the employer a much higher degree of care than that which it would be obligated to exercise under the common law." See *Froome v. Lang & Co.*, 131 Ore. 501, 281 Pac. 120 (1929). An earlier opinion expressed the following view: "It may be that the rights of the parties are to be determined by the maritime law. . . . If so, the provision of the Employers' Liability Law . . . are certainly not applicable." *Hawkins v. Anderson & Crowe*, 84 Ore. 94, 164 Pac. 556, 558 (1917).

31. This phrase from *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 216 (1917) is often used as the test for constitutionality.

32. The case was remanded to the court of appeals for determination of the other issues: whether the statute by its terms would extend to the present case, and whether, if the statute is applicable, the United States violated the standard of care which it prescribes.

rule of measuring conduct which gives rise to action for wrongful death in state territorial waters not under admiralty's standards of duty, but under the substantive standards of the state law.³³ It pointed to the language of the *Tungus* as controlling.³⁴

Four members of the Court concurred in the interest of even-handed application of the *Tungus* rule that state law is the measure of recovery, reserving their position as to whether *Tungus* should be overruled.³⁵ The dissent in *Hess* took the position that the substantive content of the state statute should make the difference; that when the duty it imposes is no greater than that existing under maritime law, it should be applicable; that when the duty it imposes is stricter, as in the Oregon Employers' Liability Law, it should not be applicable.³⁶

By placing the seal of constitutional approval upon a state statute which enlarges substantive rights and liabilities, the *Hess* decision reflects, on its face at least, the Supreme Court's determination to adhere to the policy of applying state standards³⁷ for maritime death based on state statutes. Taken in connection with the Court's handling of the *Tungus* case, the *Hess* case marks an attempt to put an end to uncertainties in this area of overlapping laws. Whether that purpose has been accomplished remains to be seen. The dissenting opinions and the reluctant

33. *United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki*, 358 U.S. 613, 615 (1959). See, in the lower courts: *Holley v. The Manfred Stansfield*, 269 F.2d 317 (4th Cir. 1959); *Curtis v. A. Garcia y Cia*, 241 F.2d 30 (3d Cir. 1957); *Lee v. Pure Oil Co.*, 218 F.2d 711 (6th Cir. 1955); *Graham v. A. Lusi, Ltd.*, 206 F.2d 223 (5th Cir. 1953); *Klingseisen v. Costanzo Transp. Co.*, 101 F.2d 902 (3d Cir. 1939); *Feige v. Hurley*, 89 F.2d 575 (6th Cir. 1937); *The H.S. Inc., No. 72*, 130 F.2d 341 (3d Cir. 1942); *Truelson v. Whitney & Bodden Shipping Co.*, 10 F.2d 412 (5th Cir. 1926).

34. "The policy expressed by a State Legislature in enacting a wrongful death statute is not merely that death shall give rise to a right of recovery, nor even that tortious conduct resulting in death shall be actionable, but that damages shall be recoverable when conduct of a particular kind results in death. It is incumbent upon a court enforcing that policy to enforce it all; it may not pick or choose." *The Tungus v. Skovgaard* 358 U.S. 588, 593 (1959).

35. See note 29 *supra*. It is interesting to note the pointed words used: "[We] reserve [our] position as to whether it should be overruled, particularly in the light of the controversy application of it [*Tungus*] has engendered among its original subscribers." The controversy referred to is reflected in three separate dissenting opinions written in a companion case, *Goett v. Union Carbide Corp.*, 361 U.S. 340 (1960) and two separate dissents in *Hess* by members of the Court who had held with the majority in *Tungus*. Warren, Black, Douglas, and Brennan joined the majority in the *Goett* case with an opinion identical to the one written in the *Hess* case, thereby maintaining a most consistent position.

36. The majority opinion did not disregard federal supremacy altogether. It stated: "We leave open the question whether a state wrongful death action might contain provisions so offensive to traditional principles of maritime law that the admiralty would decline to enforce them. The Oregon statute here in issue presents no such problem." 361 U.S. 314, — (1960).

37. Ironically, applying state law may sometimes mean that admiralty's standards will be used, as illustrated by *Tungus*, but when this is so it is because the applicable wrongful death statute has been interpreted as incorporating them. Through such an interpretation of the Virginia statute, the court in *Holley v. The Manfred Stansfield*, 269 F.2d 317 (4th Cir. 1959) was able to find that the decedent's contributory negligence did not bar recovery.

concurring opinion are signs that federal supremacy, though dormant, is not yet dead.

JEAN T. ROTH

NEGLIGENCE: LIABILITY OF PUBLIC OFFICERS — ARREST WARRANTS

Plaintiff, in a negligence action, sought to recover damages from a State Beverage Department employee for careless performance of duty and failure to make due inquiry before charging the plaintiff with a crime by causing the issuance of an arrest warrant. The trial court found the defendant guilty of negligence. *Held*, reversed: there is no legally recognized cause of action in *negligence* for improperly causing the issuance of an arrest warrant. *Wilson v. O'Neal*, 118 So.2d 101 (Fla. App.), *cert. denied*, 122 So.2d 403 (Fla. 1960).

Inasmuch as the instant case appears to be one of first impression in Anglo-American jurisdictions, it is necessary to discuss analogous concepts in order to develop properly the dichotomy existing between intentional and unintentional tort liability for improperly causing an arrest warrant to be issued.

The action of malicious prosecution is the remedy available to protect persons from unjustifiable litigation.¹ This remedy exists against a person who causes an arrest by maliciously bringing a suit upon false charges, or who maliciously makes out a false affidavit.² Two distinct elements, malice and want of probable cause, are the gist of this action.³ Malice may exist as a matter of fact (actual malice) which requires an *intent* to inflict

1. 34 AM. JUR. *Malicious Prosecution* §§ 1, 2 (1941); 54 C.J.S. *Malicious Prosecution* § 4 (1948); PROSSER, *TORTS* § 98 (2d ed. 1955).

2. *Delk v. Killen*, 201 Md. 381, 93 A.2d 545 (1953); *Everett v. Henderson*, 146 Mass. 89, 14 N.E. 932 (1888); *Hunter v. Karchmer*, 285 S.W.2d 918 (Mo. App. 1955); *Brusco v. Morry*, 54 R.I. 108, 170 Atl. 84 (1934); 4 AM. JUR. *Arrest* § 132 (1936); *Waite, Torts—Malicious use of legal process—Pleading*, 15 GA. B.J. 81 (1952).

3. *McClinton v. Rice*, 76 Ariz. 358, 265 P.2d 425 (1953); *Singleton v. Perry*, 45 Cal.2d 489, 289 P.2d 794 (1955); *Louder v. Jacobs*, 119 Colo. 511, 205 P.2d 236 (1949); *Glass v. Parrish*, 51 So.2d 717 (Fla. 1951); *Auld v. Colonial Stores*, 76 Ga. App. 329, 45 S.E.2d 827 (1947); *Dauphine v. Herbert*, 37 So.2d 829 (La. App. 1948); *Muniz v. Mehlman*, 327 Mass. 353, 99 N.E.2d 37 (1951); *Kennedy v. Crouch*, 191 Md. 495, 62 A.2d 582 (1948); *Merriam v. Continental Motors Corp.*, 339 Mich. 546, 64 N.W.2d 691 (1954); *Ripley v. Bank of Skidmore*, 355 Mo. 897, 198 S.W.2d 861 (1947); *Rainier's Dairies v. Raritan Valley Farms*, 19 N.J. 552, 117 A.2d 889 (1955); *Hugee v. Penn. R.R. Co.*, 376 Pa. 286, 101 A.2d 740 (1954); *Peters v. Hall*, 263 Wis. 450, 57 N.W.2d 723 (1953); 54 C.J.S. *Malicious Prosecution* § 18 (1948).