Counsel for Parties.

MURRAY *v.* JOE GERRICK & CO. ET AL.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON.

No. 308. Argued January 19, 1934.—Decided February 5, 1934.

1. Where a tract within a State has been acquired by the United States for a Navy Yard, with the consent of the state legislature, and the legislature has ceded to the United States the State's jurisdiction over it saving only the right to serve process, a state law subsequently passed to regulate rights and remedies for death by negligence can have no operation over the tract save as it may be adopted by Congress. P. 318.
2. The Act of February 1, 1928, provides that in case of death of one person by neglect or wrongful act of another within a place subject to the exclusive jurisdiction of the United States within the exterior boundaries of a State, "such right of action shall exist as though the place were under the jurisdiction of the State"; and that "in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be." *Held:*

   (1) That the Act does not adopt a state Workmen's Compensation Law by which claims are settled without recourse to actions and paid from a state insurance fund collected from employers; nor does it adopt, separately, a provision of such a law allowing actions to be brought against employers who fail to contribute to such fund. P. 318.

   (2) By force of the federal Act, a death statute of the State of Washington confining the right of action to the personal representative, became applicable in the Puget Sound Navy Yard, superseding an early state statute, in force when that reservation was established, by which either heir or personal representative might sue. P. 319.

172 Wash. 365; 20 P. (2d) 591, affirmed.

CERTIORARI, 290 U.S. 615, to review the affirmance of a judgment sustaining a demurrer to a declaration in an action for death by wrongful act.

Mr. M. M. Doyle argued the cause, and *Mr. Wm. Martin* filed a brief, for petitioner.

Messrs. Roszel C. Thomsen and *Walter L. Clark* argued the cause, and *Messrs. Stephen V. Carey, J. Speed Smith,* and *Henry Elliott, Jr.,* filed a brief, for respondents.

Mr. Justice Roberts delivered the opinion of the Court.

Louis H. Murray, a steel erector, died as the result of a fall from a crane which was being erected by his employers, the respondents, in the Puget Sound Navy Yard at Bremerton, Washington. The petitioner, his widow, brought action, on her own and her minor child's behalf, alleging the decedent's death was caused by the respondents' negligence. The trial court sustained a demurrer to the declaration, holding the action was not maintainable by the widow and daughter as beneficiaries under the Washington Workmen's Compensation Act, since that act was not in force in the Navy Yard; and if it were considered a suit for death by wrongful act, the applicable state statute required that it be instituted by the personal representative of the decedent. The petitioner, although she was also administratrix, refused to amend and claim in virtue of her status as such, and stood upon the declaration. A judgment in favor of respondents was affirmed by the Supreme Court.[1]

In the petition for certiorari it is asserted that the state courts misconstrued the Act of Congress of February 1, 1928. This court consequently has jurisdiction. The question of the bearing of the federal Act upon the right to maintain the action requires the statement of additional facts.

By a statute passed in 1891 [2] the State consented to the acquisition of a tract of land by the United States for a navy yard or other specified uses, and ceded jurisdiction

[1] 172 Wash. 365; 20 P. (2d) 591.

[2] Laws of 1891, p. 31; Remington's Revised Statutes, § 8108.

over the same to the federal government, retaining only concurrent jurisdiction for the service of civil and criminal process issued under the authority of the State. Pursuant to this consent, the United States acquired what is now known as Puget Sound Navy Yard. At that time a state statute was in force permitting the heirs or personal representatives of one dying as a result of negligence to maintain suit against the wrongdoer.[3]

In 1911 Washington adopted an industrial insurance law or workmen's compensation act which required every employer engaged in extrahazardous occupation to report the work undertaken by him and to pay to a state insurance fund certain sums measured by the payroll for the work. The act abolished all actions by employees against employers for injury in extrahazardous occupations, and, in lieu thereof, conferred upon the injured workman the right to be paid from the fund; gave a similar right to named beneficiaries in case of an employee's death, and further provided that if an employer should fail to report or to pay to the state fund, the employee, or his beneficiaries in case of death, might sue the employer for negligence.[4]

In 1917 the prior statute relating to suits for death by wrongful act was superseded by an act vesting the right to sue in the personal representative of the decedent.[5]

February 1, 1928, an Act of Congress [6] became effective entitled "An Act Concerning actions on account of death or personal injury within places under the exclusive jurisdiction of the United States." It enacts: "That in the case of the death of any person by the neglect or wrongful act of another within a national park or other place

[3] § 8, Code of 1881; Remington & Ballinger's Ann. Code, § 183.

[4] Remington's Revised Statutes, §§ 7673, 7674, 7676, 7679.

[5] Remington's Revised Statutes, §§ 183, 183–1.

[6] Act of February 1, 1928, c. 15, 45 Stat. 54; U.S. Code Title 16, § 457.

subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State . . .; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be."

The petitioner, believing this Act of Congress made the state compensation law applicable to the Navy Yard, sued on behalf of her child and herself as beneficiaries, alleging the respondents had failed to report the work and make the payments required by the compensation act.

The state Supreme Court held that the compensation act does not apply to territory beyond the authority of the state legislature. But it also held that act could not have any force in the Navy Yard, since it was adopted many years after the cession of jurisdiction by the State and the consequent acquisition of the tract by the United States. In this the court was clearly right. After the effective date of the State's cession the jurisdiction of the federal government was exclusive (*Fort Leavenworth R. Co.* v. *Lowe*, 114 U.S. 525, 537; *United States* v. *Unzeuta*, 281 U.S. 138), and laws subsequently enacted by the state were ineffective in the Navy Yard. *Arlington Hotel Co.* v. *Fant*, 278 U.S. 439. Congress may, however, adopt such later state legislation as respects territory under its jurisdiction, and the petitioner claims it did so adopt the compensation act by the Act of February 1, 1928. This argument overlooks the fact that the federal statute referred only to actions at law, whereas the state act abolished all actions at law for negligence and substituted a system by which employers contribute to a fund to which injured workmen must look for compensation. The right of action given upon default of the employer in respect of his obligation to contribute to the fund is conferred as

a part of the scheme of state insurance and not otherwise. The Act of Congress vested in Murray no right to sue the respondents, had he survived his injury. Nor did it authorize the State of Washington to collect assessments for its state fund from an employer conducting work in the Navy Yard. If it were held that beneficiaries may sue, pursuant to the compensation law, we should have the incongruous situation that this law is in part effective and in part ineffective within the area under the jurisdiction of the federal government. Congress did not intend such a result. On the contrary, the purpose was only to authorize suits under a state statute abolishing the common law rule that the death of the injured person abates the action for negligence.

The petitioner urges that if the Act of Congress failed to extend the workmen's compensation law to the Navy Yard, she is, nevertheless, entitled to maintain her action in behalf of herself and her child as heirs of the decedent, because the Code of 1881 (*supra*) was in effect at the date of cession and remained applicable until Congress altered it. She relies upon the principle that when political jurisdiction and legislative power over territory are transferred from one sovereign to another, the municipal law of the place continues in force until abrogated by the new sovereign. *Chicago, Rock Island & Pacific Ry. Co.* v. *McGlinn,* 114 U.S. 542; *Vilas* v. *Manila,* 220 U.S. 345, 357. But the weakness of her position is that by the Act of February 1, 1928, Congress did abrogate the Code provision as respects the Navy Yard by enacting that " such right of action shall exist as though the place were under the jurisdiction of the State," and " in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be." This plainly means the existing law, as declared from time to time by the state; and Washington,

by the Act of 1917, has substituted for the action, given in the alternative to heirs or personal representatives by the Code of 1881, one vested exclusively in the personal representative. It results that the petitioner could sue only under the Act of 1917.

The judgment is

Affirmed.

MANHATTAN PROPERTIES, INC. *v.* IRVING TRUST CO., TRUSTEE IN BANKRUPTCY.*

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 505. Argued January 10, 1934.—Decided February 5, 1934.

1. The claim of a landlord for future rents based on a covenant to pay rent in a lease terminated by reëntry on the bankruptcy of the tenant, is not a provable debt under § 63 (a) of the Bankruptcy Act. P. 332.

   So *held* in view of the great weight of judicial authority construing that section and similar provisions of earlier Acts, and in view of the legislative history of the subject.
2. The fact that a provision of a statute which has received a settled construction from federal courts has remained unaltered notwithstanding that Congress has repeatedly amended the statute in other respects, is persuasive that the construction accords with the legislative intention. P. 336.
3. Sections 73–76, added to the Bankruptcy Act by the Act of March 3, 1933, were enacted to permit extensions and compositions not theretofore possible, for individuals only; and the clause of § 74 (a) providing that "A claim for future rent shall constitute a provable debt and shall be liquidated under § 63 (b) of this Act," is to be related to this novel procedure and not taken as an amendment of § 63 (a) or as declaratory of its meaning. P. 336.
4. A covenant by a tenant to indemnify the landlord for loss of rent he may suffer during the residue of the term after reëntry by the

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* Together with No. 506, *Brown et al.* v. *Irving Trust Co., Trustee in Bankruptcy*, certiorari to the Circuit Court of Appeals for the Second Circuit.