

## Chapter 783

### Liabilities and Offenses Connected with Shipping and Navigation

783.010

#### NOTES OF DECISIONS

1. In general
2. Constitutionality generally
3. State jurisdiction generally
4. Admiralty jurisdiction generally
5. Definition of "vessel"
6. Allowance of interest
7. Subsection (1)
8. Subsection (2)
  - (1) Construction
  - (2) State jurisdiction
  - (3) Admiralty jurisdiction
  - (4) Lien for labor, materials, or supplies
    - (a) When lien attaches
    - (b) Determining jurisdictional nature of lien claim
    - (c) Validity of lien claim
    - (d) Lien as affected collaterally
9. Subsection (3)
10. Subsection (4)
  - (1) Scope
  - (2) Constitutionality
  - (3) Jurisdiction of admiralty and state courts
    - (a) Nonmaritime tort
    - (b) Maritime tort

See also cases under ORS 783.020 to 783.170.

#### 1. In general

A state legislature has power to create maritime liens, but not to provide for their enforcement. *The Willapa*, (1893) 25 Or 71, 34 P 689.

OL 10281 to 10297 [ORS 783.010 to 783.170] were not intended to apply only to vessels exclusively engaged in intrastate commerce on waters of the state. *Spitzer v. Annette Rolph*, (1924) 110 Or 461, 218 P 748, 223 P 253.

#### 2. Constitutionality generally

This section is not affected by the unconstitutionality of LOL 7507 [ORS 783.040] purporting to invest the state courts with exclusive jurisdiction of suits to enforce liens for maritime torts. *Aurora Shipping Co. v. Boyce*, (1911) 112 CCA 372, 191 Fed 960.

The state can provide a remedy for a tort happening within its jurisdiction and apply a lien against a foreign vessel through whose fault it occurred. *Cordrey v. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

#### 3. State jurisdiction generally

No state law can confer admiralty jurisdiction upon a state court. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

#### 4. Admiralty jurisdiction generally

The lien given by the statute is enforceable in admiralty only when the matter out of which the lien arises is maritime in its nature. *McMaster v. One Dredge*, (1899) 95 Fed 832.

Application of OL 10281 to 10297 [ORS 783.010 to 783.170] to an ocean-going vessel navigating the waters of the state is not invalid as interfering with admiralty jurisdiction of the United States courts. *Spitzer v. Annette Rolph*, (1924) 110 Or 461, 218 P 748, 223 P 253.

#### 5. Definition of "vessel"

A boat or vessel, within the meaning of this Act, is one that is complete and capable of being used to carry freight or passengers. *Northrup v. The Pilot*, (1877) 6 Or 297.

A dredge is a vessel, if it is capable of being moved from place to place on navigable waters, and of transporting machinery, sand, gravel, etc. *McMaster v. One Dredge*, (1899) 95 Fed 832.

#### 6. Allowance of interest

Interest is properly allowed on the amount of a boat lien from the time action is commenced to enforce it. *The Victorian No. 2*, (1894) 26 Or 194, 41 P 1103, 46 Am St Rep 616.

#### 7. Subsection (1)

The lien given masters of vessels for their services will be enforced in admiralty in all proper cases. *The William M. Hoag*, (1895) 69 Fed 742.

The master is entitled to a lien under this section, when his duties are confined to navigating the vessel. *Id.*

A wage claim may be assigned, and the assignee may enforce the lien. *Id.*

The fact that the vessel is being operated by a receiver does not preclude the attachment of a wage claim. *Id.*

#### 8. Subsection (2)

(1) **Construction.** The words "any person having them employed" must be construed to mean any person having them so employed by authority of the owner. *The City of Salem*, (1882) 7 Sawy 477, 10 Fed 843.

(2) **State jurisdiction.** There is nothing invalid about this section in so far as it gives the state courts jurisdiction to enforce by a proceeding in rem the lien given by the state law for materials used in constructing domestic vessels. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838.

Proceedings in rem to enforce liens for supplies furnished to a vessel in her home port are not within the jurisdiction of the state courts. *The Willapa*, (1893) 25 Or 71, 34 P 689.

The jurisdiction of a state court to enforce a lien for labor and material depends on whether they were used in its construction, as distinguished from its repair while in use. *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

(3) **Admiralty jurisdiction.** A lien on a vessel for supplies, etc., arising out of a maritime contract must be enforced in the federal courts. *The Willapa*, (1893) 25 Or 71, 34 P 689.

A lien for furnishing work and material for a domestic vessel in her home port after being launched and floated in navigable waters is enforceable in admiralty. *The Eliza Ladd*, (1875) 3 Sawy 519, Fed Cas No. 4,364; *The Revenue Cutter*, (1877) 4 Sawy 143, Fed Cas No. 11,714.

**(4) Lien for labor, materials, or supplies**

(a) **When lien attaches.** The lien attaches as soon as the labor or material is furnished, and it is not dependent on any subsequent condition, express or implied. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838; *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

(b) **Determining jurisdictional nature of lien claim.** A contract for furnishing materials for the construction of a domestic vessel is not a maritime contract. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838.

Vessels used exclusively in navigation between points in this state and foreign ports are not within this statute, and no lien exists for repairs or supplies furnished such vessel in her home port. *The Haytian Republic*, (1894) 65 Fed 120.

Mere towing of a partially completed hull from one place to another for the purpose of completing the work there is not such a launching which prevents a lien for subsequent work on the vessel. *Benbow v. The James John*, (1912) 61 Or 153, 121 P 899.

(c) **Validity of lien claim.** For materials furnished to a person whose contract was limited to construction of a hull no lien attaches. *Northrup v. The Pilot*, (1877) 6 Or 297.

A bank is not entitled to a lien on a vessel for a balance due from the owner for sums paid out on his account in making repairs. *The City of Salem*, (1887) 12 Sawy 469, 31 Fed 616, 2 LRA 380.

(d) **Lien as affected collaterally.** The right to a lien for the furnishing of construction material is in no wise affected by the terms of the contract between the owner and contractor, or by the fact that the contractor may have been fully paid. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838.

The lien given a subcontractor by this section is not extinguished by the taking of a judgment against the contractor, if there has been no satisfaction of the judgment. *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

The fact that a boat is to be used for a public ferry under a contract with a municipal corporation does not preclude enforcement of a lien for labor and materials furnished for its construction. *Id.*

**9. Subsection (3)**

A lien for furnishing dockage in a dry dock at the request of the owner to a domestic vessel navigating waters of the United States can be enforced in admiralty. *The George W. Elder*, (1908) 159 Fed 1005, *aff'd* (1913) 125 CCA 332, 206 Fed 268.

**10. Subsection (4)**

(1) **Scope.** This section creates a lien on vessels navigating state waters for damages done by them to persons or property. *The Oregon*, (1890) 42 Fed 78; *The Oregon*, (1891) 45 Fed 62; *The Oregon*, (1896) 73 Fed 846, *rev'd* on other grounds sub nom. *Laidlaw v. Ore. R. & N. Co.*, (1897) 26 CCA 665, 81 Fed 876.

The lien is limited to injuries caused by the vessel; a person injured by a wrongful act of the master is not entitled to it. *The Westmoor*, (1928) 27 F2d 886.

(2) **Constitutionality.** Grant of the lien accorded herein for injuries done persons and property is not unconstitutional as usurping a federal function in the regulation of interstate commerce. *Cordrey v. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

**(3) Jurisdiction of admiralty and state courts**

(a) **Nonmaritime tort.** Giving the state courts jurisdiction of proceedings to recover compensation for a nonmaritime tort is not a usurpation of a federal function, even though the vessel proceeded against is carrying goods to Oregon from another state. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

A proceeding to enforce a lien for personal injuries suf-

fered in a mishap that was not of a maritime nature, is within the exclusive jurisdiction of the state courts. *Id.*

An injury to a longshoreman, arising out of the furnishing of a defective sling by a vessel discharging its cargo, may give rise to a lien against the vessel. *Id.*

(b) **Maritime tort.** Enforcement of the lien for injuries and deaths growing out of maritime mishaps of a tortious character is within the exclusive jurisdiction of the admiralty courts. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079; *The Oregon*, (1890) 42 Fed 78; *The Oregon*, (1891) 45 Fed 62; *The Oregon*, (1896) 73 Fed 846, *rev'd* on other grounds sub nom. *Laidlaw v. Ore. R. & N. Co.*, (1897) 26 CCA 665, 81 Fed 876; *The Aurora*, (1908) 163 Fed 633; *The General Foy*, (1910) 175 Fed 590; *Aurora Shipping Co. v. Boyce*, (1911) 112 CCA 372, 191 Fed 960; *The City of Vancouver*, (1932) 60 F2d 793, *aff'd* sub nom. *Vancouver Steamship Co. v. Rice*, (1933) 288 US 445, 53 S Ct 420, 77 L Ed 885.

Vessels are subject to liens for maritime torts occurring within the state, including those torts causing death, under this statute. *Aurora Shipping Co. v. Boyce*, (1911) 112 CCA 372, 191 Fed 960.

A proceeding initiated by a longshoreman for the recovery of compensation for an injury suffered while on a dock is not within the jurisdiction of admiralty courts. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

Action in rem may be brought in admiralty by personal representative of deceased person who was wrongfully injured while upon a boat but afterwards died ashore from the injury. *The City of Vancouver*, (1932) 60 F2d 793, *aff'd* sub nom. *Vancouver Steamship Co. v. Rice*, (1933) 288 US 445, 53 S Ct 420, 77 L Ed 885.

**FURTHER CITATIONS:** *The Ranier*, (1868) Deady 438, Fed Cas No. 11,565; *Osaka Shosen Kaisha v. Pac. Export Lbr. Co.*, (1922) 260 US 490, 43 S Ct 172, 67 L Ed 364; *Emerson v. Holloway Concrete Prod. Co.*, (1960) 282 F2d 271.

**LAW REVIEW CITATIONS:** 21 OLR 108.

783.020

**NOTES OF DECISIONS**

A general admiralty lien for supplies furnished a vessel not at her home port is preferred to the lien given materialmen by a local law. *The Favorite*, (1875) Fed Cas No. 4699.

783.030

**NOTES OF DECISIONS****1. In general**

A boat lien is assignable and the assignee can enforce it in his own name. *The Victorian No. 2*, (1894) 26 Or 194, 41 P 1103, 46 Am St Rep 616.

A subcontractor may proceed against the vessel, though he has previously recovered a judgment against the contractor, since the latter is not an owner, master, agent or consignee. *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

A claimant may pursue his remedies against the vessel and against the owner, contractor or subcontractor separately. *Id.*

**2. Nature of proceedings**

The proceeding against the vessel is to be prosecuted as a suit in equity. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079; *McCauley v. S.S. Willamette*, (1923) 109 Or 131, 215 P 892.

**3. Application**

A stevedore, injured by the negligent operation of hoisting appliances, while aboard ship has a right to proceed

against the vessel, under this section. *The Bee*, (1914) 216 Fed 709.

#### 4. Joinder of proceedings

The right of action against a vessel and the right of action against the owner, contractor, or subcontractor, for labor and materials furnished, are not joint, but several, for that against the vessel is in rem, and that against the owner, contractor or subcontractor is in personam. *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

A suit against the vessel may not be joined with an action at law against an alleged tort-feasor and tried as a single action. *McCauley v. S.S. Willamette*, (1923) 109 Or 131, 215 P 892.

FURTHER CITATIONS: *Steamer Gazelle v. Lake*, (1855) 1 Or 119.

783.040

#### NOTES OF DECISIONS

The assignee of a number of claims may include all of them in a single complaint. *The Victorian No. 2*, (1894) 26 Or 194, 41 P 1103, 46 Am St Rep 616.

One seeking to enforce in a state court a lien for labor and material must allege and prove that they were used in the construction of the vessel at the time the lien attached. *Benbow v. The James Johns*, (1910) 56 Or 554, 108 P 634.

This section is unconstitutional in so far as it purports to limit jurisdiction of suits in rem to enforce liens for maritime torts to state courts. *Aurora Shipping Co. v. Boyce*, (1911) 112 CCA 372, 191 Fed 960.

783.050

#### NOTES OF DECISIONS

Seizure of the boat or vessel constitutes sufficient notice to the owner to warrant rendition of a judgment against him. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

783.060

#### NOTES OF DECISIONS

Determination of the liability of the parties is governed by the same rules as prevail in actions in personam. *The Bee*, (1914) 216 Fed 709.

783.070

#### NOTES OF DECISIONS

OL 10281 to 10297 [ORS 783.010 to 783.170] give the privilege of answering, but say nothing about notice. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

783.080

#### NOTES OF DECISIONS

The trial of a proceeding for enforcing the lien given by LOL 7504 to 7520 [ORS 783.010 to 783.170] is by the same rule as if the action were in personam against the owner. *The Bee*, (1914) 216 Fed 709.

783.090

#### NOTES OF DECISIONS

The sheriff should retain the undertaking, even though judgment goes for the defendant, until the time for appeal has expired. *Benbow v. The James John*, (1912) 61 Or 153, 121 P 899.

The surety need not be given notice of an appeal by the

ship owner if he did not appear in the suit. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838; *Spitzer v. Annette Rolph*, (1924) 110 Or 461, 218 P 748, 223 P 253.

783.110

#### NOTES OF DECISIONS

##### 1. Judgment

A personal judgment against the owner of the vessel is unwarranted and erroneous in a proceeding of the kind authorized by OL 10281 to 10297 [ORS 783.010 to 783.170]. *Cordrey v. S.S. Bee*, (1922) 102 Or 636, 201 P 202, 20 ALR 1079.

##### 2. Execution

Execution will not issue against the property of a surety on a judgment against the vessel after the owner has appealed and filed a supersedeas bond. *State v. Beveridge*, (1923) 109 Or 69, 218 P 1112.

##### 3. Review

The surety need not be given notice of an appeal by the ship owner if he did not appear in the suit. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838; *Spitzer v. Annette Rolph*, (1924) 110 Or 461, 218 P 748, 223 P 253.

783.120

#### NOTES OF DECISIONS

Execution will not issue against the property of a surety on a judgment against the vessel after the owner has appealed and filed a supersedeas bond. *State v. Beveridge*, (1923) 109 Or 69, 218 P 1112.

783.150

#### NOTES OF DECISIONS

A distribution made in accordance with the provisions of this section will not be re-examined. *In re Moore*, (1855) 1 Or 179.

783.170

#### NOTES OF DECISIONS

Courts of admiralty will give effect to the requirements of this section. *The City of Salem*, (1887) 12 Sawy 469, 31 Fed 616, 2 LRA 380.

There is a single continuous account where materials are furnished as they are needed, and payments are made from time to time, so that the limitation of one year begins to run only from the date of the last item. *The Victorian*, (1893) 24 Or 121, 32 P 1040, 41 Am St Rep 838.

This statute, as applied to proceedings in the federal courts, is ineffectual and void. *The William M. Hoag*, (1895) 69 Fed 742.

The time in which to commence an action to enforce the lien begins to run from the date when the material or labor is to be paid for, and not from the date of furnishing the material. *The Aurelia*, (1904) 45 Or 285, 288, 77 P 835.

783.310

#### NOTES OF DECISIONS

A person cannot be held liable under this section for an injury done by another unless there is a relationship of agency or employment between them. *Oregon Fisheries Co. v. Elmore Packing Co.*, (1914) 69 Or 340, 138 P 862.

A packing company cannot be regarded as responsible for injuries occasioned by a fisherman using a boat belonging to the company, if no wage or salary was paid him and its only undertaking was to buy the fish he might catch. *Id.*

An injured person is not obliged to proceed against the offending vessel, but may proceed in personam against the owner or operator, allowing the lien to remain. *Horst v. Columbia Contract Co.*, (1918) 89 Or 344, 174 P 161.

A court of law has jurisdiction of an action for damages brought under this section. Id.

#### 783.320

##### NOTES OF DECISIONS

The owner of a trestle constructed upon piles driven into the bed of a navigable stream is entitled to invoke the benefits of this section in order to recover for an injury to the structure. *Astoria R. Co. v. Kern*, (1904) 44 Or 538, 76 P 14.

All persons participating in a voyage that would not be undertaken by men of ordinary prudence are jointly and severally liable for the damages arising therefrom. *Multnomah County v. Willamette Towing Co.*, (1907) 49 Or 204, 89 P 389.

A charter under a charter in the nature of a contract of affreightment is not liable for injuries arising out of the negligence of the crew. Id.

A change of venue to a neighboring county may be proper when the property injured is a bridge in which all taxpayers have an interest. Id.

#### 783.510

##### NOTES OF DECISIONS

Persuasion of sailors to desert, harboring them after desertion and arresting them for small debts are all acts that are injurious to commerce. In re *Oberg*, (1891) 21 Or 406, 28 P 130, 14 LRA 577.

This Act is a rightful exercise of the state's police power. *Ex parte Young*, (1900) 36 Or 247, 59 P 707, 78 Am St Rep 772, 47 LRA 153.

The fact that there may be a federal statute having a similar objective does not preclude enforcement of this section. Id.

#### 783.560

##### NOTES OF DECISIONS

The legislative purpose in enacting this measure was to aid foreign commerce by preventing the laying of such burdens and exactions upon shipping as would discourage movements to Oregon ports. In re *Oberg*, (1891) 21 Or 406, 28 P 130, 14 LRA 577.

The objection that this section constitutes class legislation is untenable, since anyone can entitle himself to its benefits by becoming a sailor. Id.

