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Supreme Court, U. S.

OCT 28 1971

In the

Supreme Court of the United States

CHEVRON OIL COMPANY,

Petitioner,

vs.

GAINES TED HUDSON,

Respondent.

No. 70-11

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CHEVRON OIL COMPANY, :
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 Petitioner, :
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 v. : No. 70-11
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 GAINES TED HUSON, :
 :
 Respondent. :
 :
----- X

Washington, D. C.,

Wednesday, October 20, 1971.

The above-entitled matter came on for argument at
2:25 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

LLOYD CYRIL MELANCON, ESQ., 720 Hibernia Bank Bldg.,
New Orleans, Louisiana 70112, for Petitioner.

SAMUEL C. GAINSBURGH, ESQ., 1718 Nat. Bank of Comm.
Bldg., New Orleans, Louisiana 70112, for
Respondent.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments in No. 11, Chevron Oil Company against Huson.

Mr. Melancon, will you proceed as soon as your friend is fully ready -- yes, I guess he is.

ORAL ARGUMENT OF LLOYD C. MELANCON, ESQ.,

ON BEHALF OF THE PETITIONER

MR. MELANCON: Mr. Chief Justice, may it please the Court:

The matter comes before you today on a writ of certiorari directed to the Fifth Circuit in connection with its having reversed a summary judgment granted to petitioner who was the defendant in the district court below.

The summary judgment came about as a result of a petition being filed by plaintiff wherein he alleged himself to be a special service employee of an independent contractor, Otis Engineering Company, doing work on, as he alleged, a fixed and immobile drilling rig off the coast of Louisiana.

He alleged in his complaint that the accident occurred December the 17th, 1965, and the complaint in connection with that alleged accident was filed with the clerk on January the 4th, 1968.

In the complaint, the plaintiff sought relief in the basic tort action alleging recovery under the Longshoremen and Harbor Workers' Compensation Act, the Outer Continental

Shelf Lands Act, and otherwise.

Routine discovery transpired, and ultimately it was conclusively shown that this was a fixed and immobile structure, an artificial island, on which this alleged accident was supposed to have occurred. And as a result of that, Petitioner filed its motion for summary judgment.

It was argued before the court, and the district judge, in furtherance of the recent opinion by this Court, in Rodrigue, held as a matter of law that Chevron was entitled to its judgment because the application of the laws of Louisiana to this tort action were that the plaintiff was compelled to file his suit within a one-year period of time and, not having done so, the matter had prescribed, or time-barred, -- as in the other States, we use the term of prescription.

An appeal was sought by respondent to the Fifth Circuit, and the Fifth Circuit, in deciding the case, notwithstanding the very positive position taken by this Court in Rodrigue, that the admiralty and maritime law did not apply to fixed and immobile structures.

The Fifth Circuit went on to follow its earlier decision in the Pure Oil vs. Snipes case, and held that, yes, admiralty and maritime law did apply, and since it did apply, then the admiralty and maritime doctrine of laches was applicable and summarily reversed the district court.

At least --

Q May I ask at that point, did you or did you not argue laches in the Fifth Circuit?

MR. MELANCON: We did not, Your Honor. The question of laches was never presented to the district court. The sole question presented to the district court below was the application of the strict civil law doctrine of prescription; that is, the application of the Louisiana law to the plaintiff's alleged accident.

There was no --

Q That was the two-year --

MR. MELANCON: One-year, if it please the Court.

Q One-year restriction.

MR. MELANCON: It was the same as the Longshoremen, Harbor Workers' Compensation Act, which is one year; the State of Louisiana Compensation Act, regular State Act, is one year. And of course the historical tort limitation of Louisiana has been one year, going back to the Civil Code.

So that we don't have anything here that was new or different. All that Rodrigue said was that this Court was satisfied that Congress, in having passed the Outer Continental Shelf Lands Act, was paramountly interested in the minerals themselves being closely connected to the States, the adjacent States from which they were working; and this Court recognized that Congress held the admiralty and maritime law doctrine of laches otherwise would not apply to fixed and artificial island

such as this.

Q Well, that means since it wasn't an admiralty action?

MR. MELANCON: That's right. This is a pure action brought by plaintiff where we have a diversity situation, where, if the accident happened -- for argument now; we contend of course that this accident happened in the territorial waters of Louisiana, which is an area under dispute at this present time, where the court has appointed a Master to make recommendations with respect to that coastline of Louisiana.

But --

Q Well, is this a -- is the district court's jurisdiction invoked as a -- a what -- a federal question?

MR. MELANCON: Yes, Your Honor.

Q It isn't a diversity case?

MR. MELANCON: Well, there is diversity between the parties --

Q There is, but it's really a federal question under the --

MR. MELANCON: Yes, because they sued under the Outer Continental Shelf Lands Act.

Q Yes. Yes.

MR. MELANCON: And the application --

Q The federal cause of action, governed by federal law --

MR. MELANCON: Tried in a Louisiana court, in the federal court in Louisiana.

Q And even if you borrow State law, as Rodrigue or the statute says, it's still federal law?

MR. MELANCON: That's right.

Q And the --

MR. MELANCON: And the Fifth Circuit went on, in its decision in Huson below, to take a distinction between substantive and procedural law. And of course with the background of the Pure Oil vs. Snipes case, where, of course, it was a very contrary holding to this Court's holding in Rodrigue, justified the exception here and you had a real hiatus, so to speak, because here in Huson we have a personal injury. The man was not killed. In Rodrigue, Dore, the companion cases, you had death cases.

Now, this Court says, in a death situation the laws of Louisiana apply, therefore the survivors have one year within which to file their claim.

Look at the situation you have now if the Fifth Circuit is to be maintained in its contrary opinion. If a man is injured offshore, and he lingers more than 12 months, and then subsequently dies without having filed a claim, or his survivors, he is barred under Rodrigue. Yet, in a personal-injury action, if this Court maintains the Fifth Circuit, the individual who lives may file his lawsuit at any time in

the distant future as long as he can show that there is excusable neglect on his part, and that the defendant was not prejudiced by his delays.

It's a totally inconsistent position, Your Honor, and the bar in Louisiana, where the greater number of these cases are pending and have been tried, have been looking to this Court for some resolution of this problem that has arisen in the Outer Continental Shelf.

We thought that that had been reached in Rodrigue, where this Court specifically stated, under no unequivocal terms; otherwise, it said, admiralty law does not apply. The laws of Louisiana shall apply, and those laws are as follows.

Now, I might mention to the Court in this connection that since the decision of Rodrigue and the Huson decision, the district court in Baton Rouge, which is also in the Eastern District of Louisiana, in the Guillory case, wrote a very scholarly opinion, holding quite squarely on this question of prescription, that the one year applied because this is what the Supreme Court said in Rodrigue.

And just last month, in fact within the last three weeks, another panel of the Fifth Circuit, headed by Justices Tuttle, Wisdom and Ingram, in the Dickerson case, have specifically held, following this Court in Rodrigue, that the laws of Louisiana shall apply to these accidents occurring on such structures. And they not only went on to apply the law,

but they held multiple phases of the Louisiana law to apply, such as the question of proximate cause, the calculation of damages, the application of contributory negligence. All of these phases that the Fifth Circuit seemed to be so concerned about, as to having equality and uniformity of decision; yet, here is another panel of the Fifth Circuit saying specifically Rodrigue is the law, we recognize it as the law.

And in connection -- the question of prescription was not raised therein, but the court did go on, Judge Tuttle went on -- who is the augur of the court in this opinion -- to observe that while he was not taking issue with the other panel, which raised this fine distinction of substantive procedural law, he recognized that this matter was up before the Supreme Court on writ for ultimate decision.

Q There seems to be some verbal controversy in the briefs that you and your brother have filed, as to whether or not this Louisiana period of solicitation is a period of "peremption" or whether it's a "prescriptive" right; is that --

MR. MELANCON: We would confess there, Your Honor, that --

Q -- does that go to any of the basics of the issue?

MR. MELANCON: No, it does not. Simply this: In Louisiana, the tort article of 2315 is the article under which an offense can be asserted in court and recovery sought in a

tort action.

In 2315 the Legislature went on to state that where a death occurs -- and this is with respect to the survival of heirs -- that these survivors must, within one year, bring their action under 2315.

However, in a pure personal-injury case, the Code article, Civil Code article of 3536 is applicable thereto; and that is specifically one year.

Now, what happened in the court below, that is in the Court of Appeals, the Fifth Circuit went on to take, as I said before, a distinction between the substantive law of 2315, which it said was absolutely preemptive, et cetera, with respect to a death action, but then went on to say, well, now, 3536 is procedural and therefore, being procedural, we're not going to apply the admiralty and maritime law doctrine of laches, which was of course inconsistent with what had happened in Rodrigue.

Now, going back to this question of the application of laws: Certainly under Erie vs. Tompkins, where we have a forum applying the federal law, the law outside of the United States, assuming that -- outside of the State of Louisiana -- assuming this to be outside of Louisiana, it must of course apply the federal law, but the law of the forum, with respect to prescription, the procedural aspect would be applied. And here it is, there's no dispute that 3536 limits a personal-

injury action to one year. And that is precisely what we have here.

Now, there is nothing unique or new about the fact that a tort action must be brought in one year in Louisiana. This goes back for a hundred years to the old Code. Anyone practicing in Louisiana is well aware of this. This is nothing new or different or something brought along.

I mentioned before our State Compensation statute specifically limits the right of recovery under compensation to one year. The Longshoremen and Harbor Workers' Act, the very Act that the plaintiff has alleged in this lawsuit as being applicable, which was denied but he still alleged it being applicable, limits the right of recovery to one year.

So, therefore, I think that it is quite obvious and clear from the record that plaintiff, having filed his suit in excess of one year from the date that this occurred, that he has lost his rights. And these are rights, if he had them, that he failed to assert. And they are time-barred, they're prescribed, perempted, whatever other terminology we want to use in connection with this.

Going back to the Fifth Circuit's decision, we say it's wrong because it was unsoundly brought about. Where it held that the district court was an admiralty court; the district court was not an admiralty court. The district court was not applying admiralty and maritime law.

The court, the district court was applying the law of Louisiana, as defined by this very Court in the Rodrigue decision.

It was thoroughly recognized by Congress and this very Court that the adjacent States to these tidelands of the coastal waters have a vital interest in the men who work off-shore, who they must of course take care of in instances that arise; and this was thoroughly recognized by Congress in all of the hearings that were held and the discussions of the different Congressmen that were involved.

We then say that if that is true, little more can be said in this case, because everything has been said in Rodrigue, which is applicable to our situation here.

The only basic distinction that you can find, if that be a distinction, is the simple fact that in Rodrigue there was death, and in Huson it was a personal injury. Otherwise the factual situation is identical: the fixed structures and the relationships of the parties.

And because of that, unless the Court has some questions that they would ask of counsel, I would just like to keep a short time for rebuttal to answer my brother in this instance. But I think this is as clear as any case can be. If Rodrigue is not the law, then we're going to have to go back all over this situation and find out what it is, because you've got a lot of litigants, you've got a lot of lawyers in

Louisiana who don't know what the law is.

Thank Your Honor.

MR. CHIEF JUSTICE BURGER: If you undertake to be as brief as your friend, you can finish up today, counsel. But we don't press the point on you.

ORAL ARGUMENT OF SAMUEL C. GAINSBURGH, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. GAINSBURGH: Mr. Chief Justice, may it please the Court:

I think the reason, or one of the reasons that my friend was able to be so brief is that he has the prima facie case on his side, namely the Rodrigue decision. And I think it would be less than realistic, as an advocate, if we did not acknowledge that this is so.

Q Well, in addition to Rodrigue, I suppose he also has the statutory language, doesn't he?

MR. GAINSBURGH: He has the statutory language, --

Q And that's what puts the civil and criminal laws of each adjacent State as of the effective date of this statute as declared to be the law of the United States.

MR. GAINSBURGH: This is explicit language, to be sure, Your Honor.

Q Judge Brown said don't let's let literalisms prevent -- or promote unsound results.

MR. GAINSBURGH: I think that there perhaps is more

than a little merit to Judge Brown's observation in this particular case.

If, for instance, we subscribed to the statement in Rodrigue -- statements, I should say, as I read the decision -- that Congress was concerned with the welfare of the offshore oil worker, the amphibious oil worker who undoubtedly is subjected to a rather hazardous environment, in which, albeit on a fixed platform called poetically an artificial island, he is subjected to the vagaries of the sea, of wind, wave and weather; to a large extent the equipment with which he works is affected by all of these things.

In this particular instance it would be difficult, if one took a reasonable view of these circumstances, not to conclude that the sea played a part in Mr. Huson's injury, albeit it happened on an artificial island.

If, as the Court suggests in Rodrigue, Congress was concerned with the protection of these people who undoubtedly need protection, it struck Judge Brown, apparently, as it should be apparent, I would think, to anyone who compares the two systems of the law, that under the maritime law -- which, incidentally, for almost a decade prior to Rodrigue, in a number of cases, several of which certiorari had been denied in -- men such as Mr. Huson were allowed to have the benefits of the general maritime law when injured in this identical situation.

And a brief comparison, I think, will do no violence

to the Court's schedule. I would simply suggest that under Louisiana law, for instance, if a man -- and under the laws of most States which have adopted the common law that, unfortunately, in our civil jurisdiction in Louisiana we have adopted in this area. Assumption of risk is a complete bar to recovery. Under the maritime law, such would not be the case.

Contributory negligence, a complete bar to recovery under Louisiana law. Anomalous as it may be, a civil law jurisdiction, contributory negligence, a complete bar.

Contributory negligence, not a complete bar under maritime law.

Inflexible statutes of limitation, as Judge Brown points out in this opinion, as opposed to the more equitable and humane consideration of laches, the doctrine which Judge Brown allowed Mr. Huson to avail himself of in this case.

The degree of legal duties to persons on the premises is a rather tricky thing at common law, and to some degree in Louisiana, where persons are classified as: business, visitors, invitees, licensees. These are the problems now if Rodrigue is to be followed of the offshore oil worker.

This honorable Court declared [?] in cameris that it was not going to run afoul of that under admiralty law, all persons aboard maritime premises would be entitled to the duty of reasonable care from the operator and owner of those premises.

Particularly is this important in the tidelands,

where much of the work that goes on on these high-seas platforms is special service contracted. And I think that these are some of the considerations that were going through Judge Brown's mind when he declared that he ought not to let literalisms, any more than he had to -- he certainly cannot overrule this honorable Court -- any more than he had to let literalisms bring about results which he considered unsound.

Q May I ask there --

MR. GAINSBURGH: Surely.

Q -- it's not particularly relevant -- was there any special reason why so much time elapsed before this action was brought?

MR. GAINSBURGH: I think that under -- the record, Your Honor, will disclose that the plaintiff -- the "much time" is slightly over two years. Whether this is "much time"; we'll assume that it is. The record will disclose that this man was initially injured in one year and then he was off for several months, receiving treatment, then allowed to go back to work. He went back to work, he had a much more sedentary job, but it was a more convenient job, instead of working offshore as he had been doing, he was a dispatcher. And he got along very well at this job, with no problems, apparently, until he attempted to return to his heavy type of employment.

By which time another year had elapsed. When he went back, tried to continue, he had a recurrence, as the record

will reflect, and references are made in our brief to this situation. So that actually this suit was filed within a year of the time that this man's injuries apparently became permanently disabling to him.

Q Well, it's the atypical disc syndrome, isn't it?

MR. GAINSBURGH: Right.

Now, this is the view of the maritime law, that a person who can show these things and who has shown these things is entitled to have his day in court, and to have the defendant's legal liability tested for it. But not under Louisiana law.

Q Well, this all suggests that Rodrigue should be considered --

MR. GAINSBURGH: Yes, it does; literally.

Q -- and do you also claim that Rodrigue is inconsistent with the Lands Act?

MR. GAINSBURGH: Your Honor, our position is that the Rodrigue decision places an interpretation on the Lands Act which is inconsistent with the general admiralty and maritime jurisdiction of this honorable Court. And an interpretation which is not necessary to bring about the results that Congress apparently intended.

We feel, for instance, that the inferences drawn by the Court in Rodrigue --

Q Well, you would say though, I suppose -- what

you're really saying is that the admiralty law -- you should really treat the drilling platforms as vessels, and people working on them as seamen, and which is -- and at least have the admiralty law available to them?

MR. GAINSBURGH: Yes, Your Honor, but I would not -- I would particularly seize upon the opportunity to suggest that it is not necessary to treat these high-seas structures as vessels, in order --

Q Oh, I understand that.

MR. GAINSBURGH: -- in order to make the men aboard them seamen. Having them seamen is not the problem.

Q Well, I know; I understand. But you say the admiralty law should apply and not the law of the State?

MR. GAINSBURGH: The general maritime law in the tort area --

Q Yes?

MR. GAINSBURGH: -- would serve, I respectfully submit to this Court, would serve to achieve the ends that Your Honors attributed to Congress in Rodrigue, namely, the maximum protection of the offshore worker, much better --

Q Well, what do you do with the language -- I know this is a reargument of Rodrigue --

MR. GAINSBURGH: It certainly is, sir.

Q -- and you either win that or you lose, I take it?

MR. GAINSBURGH: That is correct, sir.

Q And so what do you do? So, accepting it on that basis, what do you do with the language of the Act and the legislative history of the Congress, which clearly says that they didn't intend these accidents to be governed by maritime law?

MR. GAINSBURGH: I would respectfully suggest to Your Honor again that the Congress said they did not intend to treat them as vessels; and we submit, and have attempted to support our submission in our brief, that it is not necessary, that the presence of a vessel is not indispensable to maritime jurisdiction.

Q I agree, I agree with you.

MR. GAINSBURGH: And therefore we believe that this situation is no different, if I may pose this hypothetical proposition: if you had a national park totally within a State, an area of exclusive federal jurisdiction, totally within a State, through which ran a navigable stream, I think that you could accommodate certainly the contracts, the other business activities that went on in the park and apply State law with no problems.

But let's get something into the stream, let's get something in the water, let's put something at sea. And a tort occurs there, which, traditionally, by locality, would be within the jurisdiction of the admiralty.

It seems to me that it does no violence to Rodrigue, it does no violence to the Lands Act, particularly, to apply maritime tort principles to what we feel by their very nature and service are maritime and admiralty premises.

And this is the -- really the brunt of our brief; we realize it's a difficult burden to carry, if we have to get that far. We have urged to this Court, as we did in the court below, that even if Your Honors determine not to re-examine the Rodrigue decision, that is it inequitable in this situation, although the record will not support overt reliance on Snipes and Oursley and the pre-Rodrigue decisions; but it is manifestly unfair to apply this Rodrigue decision retroactively in this particular case.

At the time this action was filed, the law under which we operated and had been operating for almost a decade in the Fifth Circuit was that laches applied, not prescription. There was no compulsion of law, either statutory or case law. It was all to the contrary.

No compulsion --

Q Except the statutory language.

MR. GAINSBURGH: Except the statutory language, which the Fifth Circuit had interpreted as intending to apply maritime law to these platforms.

Of course, as Your Honor knows, the Fifth Circuit, in the Snipes case, interpreted the same statute which was

later interpreted by this honorable Court in Rodrigue. They just came to different conclusions.

But the litigants in the Fifth Circuit, and I assume elsewhere, certainly would have a right or should have a right to rely upon the pronouncements of that court, not once but in at least four different cases; three of which, I think, were denied, sir, by this honorable Court.

We feel that this is not the only matter of its kind in the Fifth Circuit. My brother Mr. Melancon referred to some before coming here. I have ascertained that there are actually three matters pending in the Fifth Circuit in which the decision is being withheld, dealing solely with cases filed before Rodrigue, after the State prescription, dismissed by the district court after Rodrigue was decided, and now on appeal to the Fifth Circuit.

Perhaps there are others in the district court which have not yet reached that level, but I am unable to canvass without a great deal of research. But those three do exist, and along with Mr. Huson, these people will retroactively lose their causes of action. It may be said by my brother that they never had it in the beginning, so they can't lose what they never had.

But this is a retroactive application of a time limitation, of which there was no fair warning or reason given, in view of Snipes and Oursley and the other cases that were

decided.

We feel that the -- in summary and in conclusion -- that the language, the literal verbiage of the Lands Act does not compel this Court to hold that Congress intended to take out of maritime jurisdiction what we contend was a part of the general maritime law of the United States, tort occurring on the high seas, 80-some, 80, 90, 125 miles at sea, it seems to us are certainly fitting subjects for admiralty and maritime jurisdiction, traditionally.

And if not traditionally, certainly modernly and contemporaneously, as our aircraft disasters which seem to have the blessing of admiralty law.

Thank you, sir.

MR. CHIEF JUSTICE BURGER: Mr. Melancon.

REBUTTAL ARGUMENT OF LLOYD C. MELANCON, ESQ.,
ON BEHALF OF THE RESPONDENT

MR. MELANCON: Very briefly, Your Honor.

There is a serious issue, Mr. Justice Brennan, in connection with the plaintiff's accident and the delays that are involved, that have not been presented, but simply to touch on it very briefly:

The record does establish and show, in the Appendix, that there is a serious dispute as to whether this man ever had an accident on the date alleged, because his superior contends that they were working in Longview, Texas, on this day, and he

knows of no accident happening. That's in the record.

But --

Q That doesn't help us when we get to deciding the issue.

MR. MELANCON: No, that's right. That was just to clarify that point that Mr. Justice Brennan raised.

But, secondly, if we are to have equality and uniformity, as this Court recognized in Rodrigue, this is the function of Congress. Congress can pass the laws and make these men seamen, if they wish; make submersible rigs vessels, make fixed structures vessels, and otherwise, and clearly define the prescriptive periods which, even under Huson, the theory that was advanced by the Court of Appeals, you have no uniformity.

You have Mississippi, you have Texas, you have Louisiana; each have different prescriptive periods.

Now, what do you apply?

So the function here is the function of Congress. I do not believe, in fairness, that it is the function of this Court, once it has fairly and clearly recognized Congress' intent in Rodrigue, to now come and say: But wait, death actions, yes; Rodrigue applies. Barred. Personal injuries, no; that's procedural, and therefore admiralty and maritime law applies. Totally unrestrictive.

Thank Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 3:00 p.m., the case was
submitted.]

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