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Admiralty - Unseaworthiness - Recovery for Injuries Resulting from Condition Arising After Commencement of the Voyage

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ADMIRALTY—UNSEAWORTHINESS—RECOVERY FOR INJURIES RESULTING FROM CONDITION ARISING AFTER COMMENCEMENT OF THE VOYAGE — Plaintiff, a member of the crew of a fishing vessel, sustained injuries while disembarking when he slipped on a slimy substance on the ship railing. In an action brought against the shipowner, the seaman sought recovery on three alternative grounds: first, under the Jones Act[1] based upon negligence; second, under general maritime law based upon the obligation of the shipowner to furnish a seaworthy vessel; third, under general maritime law for maintenance and cure.[2] Judgment was entered pursuant to a verdict limiting the seaman to recovery for maintenance and cure.[3] On the seaman's appeal from the adverse verdict on the unseaworthiness count, *held,* affirmed. A shipowner is not liable for injuries to a seaman caused by a condition of unseaworthiness arising after commencement of the voyage where in the exercise of due care there would be no opportunity for the shipowner or

1 38 Stat. 1185 (1915), 41 Stat. 1007 (1920), 46 U.S.C. (1952) §688. With respect to the relative importance of the Jones Act remedy, see note 5 infra.

2 Maintenance and cure is not a general compensatory remedy. Generally, it is limited to medical care, living expenses during the period of recuperation, and wages during the duration of the voyage, if employed on ocean-going vessels, or the remainder of the contract term for employment in coastal trade. See GILMORE AND BLACK, ADMIRALTY 265-271 (1957). The obligation of maintenance and cure apparently does not extend to a lump-sum or installment payment for partial or total disability. See Farrell v. United States, 336 U.S. 511 (1949), where maintenance and cure was terminated on the ground that a maximum cure had been realized (i.e., the patient was declared incurable). See GILMORE AND BLACK, ADMIRALTY 264 (1957).

3 Mitchell v. Trawler Racer, Inc., (D.C. Mass. 1958) 167 F. Supp. 434.

employees to observe and remove the condition. *Mitchell v. Trawler Racer, Inc.*, (1st Cir. 1959) 265 F. (2d) 426, cert. granted 80 S.Ct. 70 (1959).

While the right of a seaman under American law to recover for unseaworthiness can be traced to *The Osceola*,[4] the earliest authoritative recognition that the exercise of due care did not relieve a shipowner of liability for unseaworthiness appears to be *Mahnich v. Southern Steamship Co.*[5] Although the suggestion has been considered dictum because of the presence of negligence in the latter case,[6] the Supreme Court was squarely confronted with the issue in *Seas Shipping Co. v. Sieracki*[7] where the inability to detect a defective condition by visual inspection[8] or other reasonable means available to a shipowner was held no bar to a worker's recovery for unseaworthiness. In *Sieracki*, the Court was influenced by the consideration that it would be too harsh to require the individual seaman to bear the entire cost of the injury where the shipowner could either absorb the loss or with relative ease spread the cost among customers.[9] The further development of the trend established in *Mahnich* and *Sieracki* continued[10] until *Boudoin v. Lykes Bros. Steamship Co.*, where the Court permitted a seaman who was injured in an assault by another crewman to recover for unseaworthiness although there was no showing that the shipowner had prior notice of the crewman's vicious disposition.[11] This result seems to follow as a logical development from *Sieracki*, for if the latent nature of the defect does not preclude recovery for unseaworthiness, the lack of notice as to the dangerous tendencies of a crewman should not bar recovery. Thus, within eleven years, the *Mahnich* suggestion apparently materialized into a well-settled doctrine that the shipowner constituted an insurer for seaman's injuries resulting from an unseaworthy condition. Strict liability has been defended on the traditional ground that the seaman is a "ward of

[4] 189 U.S. 158 (1903). See, generally, GILMORE AND BLACK, ADMIRALTY 315 (1957); Tetreault, "Seamen, Seaworthiness, and the Rights of Harbor Workers," 39 CORN. L. Q. 381 at 386 (1954).

[5] 321 U.S. 96 (1944). Because proof of negligence is required to sustain recovery under the Jones Act, the developments from Mahnich have caused such a rapid decline in the usefulness of the Jones Act remedy that one writing team was prompted to predict that it would soon become a "faint and ghostly echo." GILMORE AND BLACK, ADMIRALTY 316 (1957).

[6] The mate negligently selected a rope to hang a staging, the collapse of which caused the seaman's injuries.

[7] 328 U.S. 85 (1946).

[8] The injury resulted from a boom and tackle which fell because of a shackle which broke due to a defect in forging.

[9] See also Keen v. Overseas Tankship Corp., (2d Cir. 1952) 194 F. (2d) 515. Cf. Justice Holmes' concurring opinion in The Arizona Employer Liability Cases, 250 U.S. 400 at 431 (1919).

[10] Petterson v. Alaska S.S. Co., (9th Cir. 1953) 205 F. (2d) 478, affd. per curiam 347 U.S. 396 (1954).

[11] 348 U.S. 336 (1955). See also Keen v. Overseas Tankship Corp., note 9 supra; Jones v. Lykes Bros. S.S. Co., (2d Cir. 1953) 204 F. (2d) 815.

the admiralty."[12] This attitude, which has been manifested by legislatures as well as the judiciary, is supported by several considerations.[13] The rigors of maritime service include the performance of hard labor under hazardous conditions and isolation from friends and home life for extended periods of time which often results in boredom and dissatisfaction. Also, like most industrial workers in an age of increasing technology, seamen are frequently unable to evaluate critically the safety of their working conditions. Even if deficiencies are discovered by the seaman, effective protests may be limited by the possibility of harsh treatment from the mate and the physical restriction of sea duty which prevents a seaman from leaving his job. Recognizing the public interest in the full development of the national maritime industry, courts and legislatures have generally tried to encourage the entrance of qualified men into the vocation. In view of these considerations and the absorption-of-loss factor noted in *Sieracki,* the imposition of strict liability on shipowners for unseaworthiness appears desirable.[14] Indeed, reliance on these considerations suggests a parallel with the development of absolute liability in the field of workmen's compensation. Nevertheless, in the principal case the First Circuit[15] challenges the general development of strict liability for unseaworthiness, pointing out that none of the prior cases have involved a temporary condition of unseaworthiness arising after commencement of the voyage.[16] The court complains that it would be a hard doctrine which holds a shipowner liable for injuries resulting from the presence of a transitory substance before the owner or his employees have an opportunity to discover and remove the substance.[17] But this reluctance on the part of the court is questionable since there appears to be no significant difference between cases involving an absence of opportunity to detect and remove a transitory substance and those involving an absence of notice as to dangerous propensities of a crewman or other defects which can not be

[12] Mahnich v. Southern S.S. Co., note 5 supra, at 103; Seas Shipping Co. v. Sieracki, note 7 supra.

[13] See, generally, Norris, "The Seaman as Ward of the Admiralty," 52 MICH. L. REV. 479 (1954).

[14] The policy considerations enumerated in this note are premised on limitation of the use of unseaworthiness to seamen and closely related classes of workers. In general, the Supreme Court has limited the remedy to seamen and those classes of workers who perform tasks traditionally assigned to seamen. Recovery for unseaworthiness was permitted in Seas Shipping Co. v. Sieracki, note 7 supra (longshoreman), and Pope & Talbot v. Hawn, 346 U.S. 406 (1953) (carpenter repairing unloading facilities). Recovery was denied in United New York and New Jersey Sandy Hook Pilots Assn. v. Halecki, 358 U.S. 613 (1959) (subcontractor employee overhauling the vessel's generator), and Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959) (social visitor).

[15] In Doucette v. Vincent, (1st Cir. 1952) 194 F. (2d) 834, the First Circuit cited with apparent satisfaction the line of authority developing from Mahnich.

[16] Principal case at 432.

[17] Ibid.

detected by the exercise of due care.[18] Moreover, acceptance of the transitory unseaworthiness distinction, which is little more than factual in nature, seems to be inconsistent with the sound policy which dictates that the unseaworthiness concept be equated with strict liability.

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[18] See Poignant v. United States, (2d Cir. 1955) 225 F. (2d) 595; GILMORE AND BLACK, ADMIRALTY 332 (1957). But see Dixon v. United States, (2d Cir. 1955) 219 F. (2d) 10; Cookingham v. United States, (3d Cir. 1950) 184 F. (2d) 213, cert. den. 340 U.S. 935 (1951).