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Workmen's Compensation - Federal Employers' Liability Act - Basis of Liability Not Common Law Negligence

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WORKMEN'S COMPENSATION—FEDERAL EMPLOYERS' LIABILITY ACT—BASIS OF LIABILITY NOT COMMON LAW NEGLIGENCE—Petitioner, a laborer in a railroad section gang, was assigned to burn weeds near a railroad track. He was injured when he fell into a culvert as he was trying to escape from smoke and flames which had been fanned by a passing train. A jury in the Circuit Court of St. Louis awarded damages under the Federal Employers' Liability Act (FELA).[1] The Supreme Court of Missouri reversed[2] upon the ground that the evidence was not sufficient to support a finding of the railroad's liability, and the case should not have been allowed to go to a jury. On certiorari to the Supreme Court of the United States, *held,* reversed. Statutory negligence under the FELA is significantly different from common law negligence. Under FELA it is enough to prove that the negligence of the employer played some part, however small, in the injury or death of the petitioner. *Rogers v. Missouri P. R. Co.,* 353 U.S. 500 (1957).[3]

The FELA has been a constant source of litigation since it was enacted in 1908.[4] The question under the FELA most frequently before the Court has been the sufficiency of the evidence needed to allow a jury to determine

1 35 Stat. 65 (1908), as amended, 45 U.S.C. (1952) §§51 to 60.

2 Rogers v. Thompson, (Mo. 1955) 284 S.W. (2d) 467 (1955).

3 Companion cases with the principal case are Webb v. Illinois Cent. R. Co., 352 U.S. 512 (1957); Herdman v. Pennsylvania R. Co., 352 U.S. 518 (1957); Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521 (1957). Justices Harlan and Frankfurter dissented separately in the four cases.

4 There are over a thousand pages of annotations to this act in 45 U.S.C.A. (1954) §§51 to 60. In addition, the Jones Act expressly provided that FELA standards of liability are to apply to seamen, 41 Stat. 1007 (1920), 46 U.S.C. (1952) §688. See also Tables I-IV in 69 HARV. L. REV. 1441 (1956) on FELA cases.

liability.[5] In deciding this question the Court has been willing to examine particular facts in a manner in which it refuses to do in almost any other field of litigation.[6] Since the FELA is a federal statute the Court has never felt bound by the views of individual state courts, but has attempted to apply a federal standard.[7] The FELA is a negligence statute and liability is based upon fault of the employer. However, the statute imposes liability if the injury or death is caused "in whole or in part" by the negligence of the employer.[8] In addition the common law defenses of contributory negligence,[9] and assumption of risk[10] have both been denied to the employer. The cases show a definite swing on the part of the Court from an early attitude of sympathy for the employer to a more recent trend of sympathy for the injured employee. However, throughout the whole period since the existence of the FELA the Court has never indicated that the liability of the employer is not based on common law standards of negligence.[11] In recent years the Court has emphasized particularly the role of the jury in cases under the act,[12] but as in the past it has failed to depart expressly from common law standards. Much criticism has been directed at the Court for continuing to hear these cases, and for substituting its view of the facts for that of a lower court.[13] The majority of the Court had apparently been trying to provide examples to state

[5] See tables of cases listed by Justice Douglas in his concurring opinion in Wilkerson v. McCarthy, 336 U.S. 53 at 71 (1949). See also Appendices A and B attached by Justice Frankfurter in his dissent in the principal case at 548 and 549.

[6] Rule 19 of the Revised Rules of the Supreme Court of the United States, 28 U.S.C. (Supp. IV, 1957) §2071, states the grounds on which certiorari will usually be given. See STERN AND GRESSMAN, SUPREME COURT PRACTICE, 2d ed., 125 (1954): "The Supreme Court will usually deny certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved. . . ." See also Justice Frankfurter's views in the principal case at 527.

[7] Bailey v. Central Vermont Ry., 319 U.S. 350 at 352 (1943): "The rights which the Act creates are federal rights protected by federal rather than local rules of law."

[8] 35 Stat. 65 (1908), as amended, 45 U.S.C. (1952) §§51, 54.

[9] 35 Stat. 66 (1908), as amended, 45 U.S.C. (1952) §53.

[10] 35 Stat. 66 (1908), as amended, 45 U.S.C. (1952) §54.

[11] Note particularly the majority opinion in Bailey v. Central Vermont Ry. Co., note 7 supra, at 352; Wilkerson v. McCarthy, note 5 supra, at 61; and dissent by Justice Frankfurter in Stone v. New York, C. & St. L. R. Co., 344 U.S. 407 at 410 (1953).

[12] From the sources cited in note 5 supra, see particularly the majority opinion in the following cases: Schulz v. Pennsylvania R. Co., 350 U.S. 523 (1956); Stone v. New York C. & St. L. R. Co., note 11 supra; Carter v. Atlanta & St. Andrews Bay R. Co., 338 U.S. 430 (1949); Wilkerson v. McCarthy, note 5 supra; Ellis v. Union Pacific R. Co., 329 U.S. 649 (1947); Jesionowski v. Boston & M. R. Co., 329 U.S. 452 (1947); Lavender v. Kurn, 327 U.S. 645 (1946); Blair v. B. & O. R. Co., 323 U.S. 600 (1945); Tiller v. Atlantic Coast Line R. Co., 318 U.S. 54 (1943), 323 U.S. 574 (1945); Bailey v. Central Vermont R. Co., note 7 supra; Jenkins v. Kurn, 313 U.S. 256 (1941).

[13] For criticism from members of the Court see the dissenting opinions of Justice Roberts and Chief Justice Stone in Bailey v. Central Vermont R. Co., note 7 supra, at 354 and 358; Justice Jackson's dissenting opinion in Affolder v. New York C. & St. L. R. Co., 339 U.S. 96 at 102 (1950); Justice Harlan's dissenting opinion in the principal case at 562; and Justice Frankfurter's dissenting opinion in the principal case at 524, and in Carter v. Atlantic & St. Andrews Bay R. Co., note 12 supra, at 437 and his concurring opinion in Wilkerson v. McCarthy, note 5 supra, at 64. See also 69 HARV. L. REV. 1441 (1956).

and circuit courts as to the proper standards to be followed. The failure of this teaching process is exemplified by the principal case, as it represents the fourth time since 1941 that the Supreme Court of Missouri has been reversed on this same issue of sufficiency of evidence.[14]

It is in light of the above history that the principal case becomes important, for it is the first time the Supreme Court has admitted that it is not applying common law standards. Justice Brennan stated that much of the misconception of the Missouri Supreme Court is derived from its failure to take into account that the basis of FELA liability is significantly different from common law negligence.[15] The 1939 amendments to the FELA are cited as giving evidence of congressional intent to apply new standards, and all cases decided prior to 1939 would have little value as authority.[16] The court below in the principal case had reversed the jury primarily because it was unable to find any proximate cause between the fault of the employer and the injury to petitioner.[17] The Supreme Court makes clear that the common law doctrine of proximate cause has no bearing in FELA actions. If the fault of the employer played any part, however small, in the injury, liability is established. This determination must be made by a jury unless it is not possible that reasonable men would have any doubt on the subject. Contrary to prior cases, it would seem that a mere scintilla of evidence as to causation would be enough to allow a case to go to the jury.[18] The effect of this case is to admit expressly what has been true in fact, that the FELA is not just a negligence statute but is in a position between a negligence act and a workmen's compensation act. The Court has done much to clarify the situation by this decision, but it is desirable that the Court in the future continue to express this statutory basis for FELA liability, and overrule prior cases inconsistent with this position.[19] Because of the confusion which has been built up over the years by the various opinions of the Court it will probably be necessary for the Court to continue hearing cases of this nature. If the Court, however, will consistently follow the views of the principal case, making clear how statutory negligence differs from that at common law, it may be hoped that the confusion will gradually dissipate, and that the Court can cease to deal with these evidentiary matters which are best dealt with at a lower level.

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[14] The three prior Missouri cases are Lavender v. Kurn, note 12 supra; Seago v. New York Cent. R. Co., note 11 supra; and Jenkins v. Kurn, note 12 supra.

[15] Principal case at 509.

[16] Principal case at 508 and 509. See note 8 supra.

[17] Rogers v. Thompson, (Mo. 1955) 284 S.W. (2d) 467 at 471.

[18] See Justice Harlan's dissent, principal case at 559. Note that the specific question involved is that of the causal relationship between fault and the injury. The burden is still on the petitioner to show negligence of some nature on the part of the employer. See Herdman v. Pennsylvania R. Co., note 3 supra.

[19] For the Court to be consistent it is definitely necessary to overrule Brady v. Southern Ry. Co., 320 U.S. 476 (1943). In addition Moore v. Chesapeake & Ohio R. Co., 340 U.S. 573 (1951), if not overruled, should be clearly distinguished as not dealing with causation.