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ADMIRALTY-INJURY TO LONGSHOREMAN WORKING ASHORE BY UNSEAWORTHINESS OF THE VESSEL

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ADMIRALTY—INJURY TO LONGSHOREMAN WORKING ASHORE BY UNSEAWORTHINESS OF THE VESSEL—Plaintiff, employed by an independent contractor to lade defendant's ship, was injured by a "pontoon" hatch cover which fell on his foot while he was working on the dock beside the ship. The court below found that defendant was not negligent, but that the ship was unseaworthy and that its unseaworthiness caused plaintiff's injury. *Held*, judgment for plaintiff affirmed. Breach of the warranty of seaworthiness is a tort arising out of a mari-

time status or relation and is therefore cognizable by maritime law whether occurring at sea or on land; a longshoreman employed by an independent contractor to lade a vessel has the status requisite to the creation of the obligation. *Strika v. Netherlands Ministry of Traffic*, (2d Cir. 1950) 185 F. (2d) 555, 50 A.M.C. 1354.¹

Since the Supreme Court's decision in *The Osceola*² in 1903, the general rule that "the vessel and her owner are . . . liable [in admiralty] to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship"³ has been accepted in the United States,⁴ and litigation in this area has centered on the problems of defining and qualifying the terms "unseaworthiness"⁵ and "seamen."⁶ The principal case falls into the latter category and represents an extension of the doctrine of the recent controversial Supreme Court decision, *Seas Shipping Co. v. Sieracki*,⁷ in which liability without fault was imposed on a shipowner for injuries suffered by an independently employed longshoreman working on board as a result of the unseaworthiness of the ship, to similar injuries suffered on land. As companion pieces, the two cases are symmetric and complementary;⁸ the inconsistencies and anomalies inherent in the principal decision were created by *Sieracki* and are apparent only when these cases are viewed in the context of prior decisions and general admiralty law in this area.⁹ Up to the time of the *Sieracki* case it had been assumed that the doctrine of unseaworthiness applied only to "seamen" in the literal sea-going sense¹⁰ and that land workers employed, either directly or by contract with an intermediary in the service of the ship, were invitees to whom the duty owed was that of due care under the generally accepted doctrines of tort law.¹¹ The first inkling of

¹ Majority opinion by L. Hand, C.J.; dissent by Swan, J., on the basis that extension of the novel doctrine of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872 (1946), should come only from the Supreme Court.

² 189 U.S. 158, 23 S.Ct. 483 (1903).

³ *Id.* at 175.

⁴ *Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 64 S.Ct. 455 (1944); *Rainey v. New York and P.S.S. Co.*, (9th Cir. 1914) 216 F. 449, cert. den. 235 U.S. 704, 35 S.Ct. 209 (1914).

⁵ See *Mahnich v. Southern S.S. Co.*, *supra* note 4; ROBINSON, ADMIRALTY 303-307 (1939).

⁶ See ROBINSON, ADMIRALTY 279-282 (1939).

⁷ 328 U.S. 85, 66 S.Ct. 872 (1946).

⁸ The result of the principal case has been favored on the basis of the *Sieracki* case by writers otherwise opposed to the existence and extension of that decision; 57 YALE L.J. 243 (1947); 34 CALIF. L. REV. 601 (1946); see also, 19 TEMPLE L.Q. 336 (1946). Nevertheless, it is anomalous that the decision in the principal case came before any case extending the unseaworthiness remedy to a "bona fide seaman" injured on land; see principal case at p. 558.

⁹ For criticism of *Sieracki*, see 59 HARV. L. REV. 127 (1945); 45 COL. L. REV. 957 (1945); 19 TEMPLE L.Q. 339 (1945); 34 CALIF. L. REV. 601 (1946); 57 YALE L. REV. 243 (1947); Dickinson and Andrews, "A Decade of Admiralty in the Supreme Court of the United States," 36 CALIF. L. REV. 169 (1948); 18 GEO. WASH. L. REV. 110 (1949).

¹⁰ See note 23 *infra*.

¹¹ *Panama Mail Steamship Co. v. Davis*, (3d Cir. 1935) 79 F. (2d) 430; *Bryant v. Vestland*, (5th Cir. 1931) 52 F. (2d) 1078; *The Howell*, (2d Cir. 1921) 273 F. 513; *The Student*, (4th Cir. 1917) 243 F. 807; see citations collected in 34 CALIF. L. REV. 601 at 602, n. 6 (1946).

the possibility that longshoremen could be considered seamen for some purposes was contained in *International Stevedoring Co. v. Haverty*,¹² which extended the benefits of the Jones Act¹³ to longshoremen injured on shipboard,¹⁴ a decision twice affirmed by the Court after the passage of the Longshoreman's and Harbor Worker's Act.¹⁵ Nevertheless the doctrine fell into disuse and it was assumed that that act, providing an exclusive remedy to maritime workers other than the officers and crew of a vessel, had effectively overruled *Haverty*.¹⁶ *Swanson v. Marra Brothers*,¹⁷ decided on the same day as *Sieracki*, refused to extend Jones Act benefits to a longshoreman injured on land, though recognizing that the act applied to "seamen" so injured,¹⁸ and seems to assume that the *Haverty* result had been disapproved and avoided by the passage of the Longshoreman's Act.¹⁹ But the act provides an exclusive remedy only against employers, for the rights of maritime workers as against third parties are expressly reserved. This reservation left the court free to grant recovery in *Sieracki* when the plaintiff could have recovered only under the Longshoreman's Act had he been employed by the defendant shipowner.²⁰ The duty to seamen imposed by

¹² 272 U.S. 50, 47 S.Ct. 19 (1926).

¹³ 41 Stat. 1007 (1920), 46 U.S.C. 688. The act gives "seamen" injured "in the course of . . . employment" a cause of action based on negligence and enforceable at law and with a jury trial.

¹⁴ The decision represented a substantial benefit to longshoremen, since no other federally-created statutory remedy existed at that time, and maritime workers injured on navigable waters were precluded from compensation under state acts by the doctrine of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1917).

¹⁵ *Jamison v. Encarnacion*, 281 U.S. 635, 50 S.Ct. 440 (1930); *Urvic v. F. Jarka Co.*, 282 U.S. 234, 51 S.Ct. 111 (1931).

¹⁶ *Nogueira v. New York, N.H. and H. R. Co.*, 281 U.S. 128, 50 S.Ct. 303 (1930); *ROBINSON, ADMIRALTY* 322-324 (1939).

¹⁷ 328 U.S. 1, 66 S.Ct. 869 (1946).

¹⁸ *O'Donnell v. Great Lakes Dredge and Dock Co.*, 318 U.S. 36, 66 S.Ct. 488 (1943); 2 *NACCA L.J.* 152 (1948).

¹⁹ "The effect of . . . the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right to recovery recognized by the *Haverty* case only such rights to compensation as are given by the Longshoremen's Act." *Swanson v. Marra Brothers*, supra note 17 at 7. It has been assumed that the *Haverty* result would not be obtained in a case of injury on navigable waters under the authority of the *Swanson* case and the principal case seems to concur on this point. See 45 *COL. L. REV.* 957 (1945); 34 *CALIF. L. REV.* 605 (1946); *Allen v. Maryland Drydock Co.*, (Superior Ct. of Baltimore 1949) 1949 *A.M.C.* 527, noted 18 *GEO. WASH. L. REV.* 110 (1949), note 28 *infra*. However, many of the cases assume that the *Swanson* case drew a distinction between on land and on water [see *Connor v. United States*, (D.C. Pa. 1949) 87 *F. Supp.* 847; 57 *YALE L.J.* 243 (1947)], although the principal case, while not dealing expressly with this problem, indicates that the effect of the Longshoremen's Act on the *Haverty* result was more in the nature of estoppel than of repeal. It should be noted that the definition of the term "seamen" as used in the Jones Act is a matter of congressional intent and is not necessarily controlling when considering the meaning of "seamen" under general admiralty law, especially in view of the fact that Jones Act remedies are available only when the relation of employer and employee exists: *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 69 S.Ct. 1317 (1949); *Lorraine v. Coastwise Lines*, (D.C. Cal. 1949) 86 *F. Supp.* 336.

²⁰ The extension of the doctrine of unseaworthiness is of pecuniary value to the longshoreman; although a jury trial is not available, recovery under the admiralty action will almost always be greater than the fixed compensation provided by statute. Bean, "Choice of Remedies by Injured Maritime Workers," 1 *NACCA L.J.* 74 (1948).

the unseaworthiness doctrine had long been supposed to exist by virtue of status rather than contract;²¹ that it applied to men not directly employed by the ship was not in itself novel or unexpected. The incongruity of the decision, as was forcefully indicated in the dissenting opinion of the court's only admiralty expert, the late Chief Justice Stone, is found in its application of the unseaworthiness doctrine to a class of workers for whom the reason of the rule does not exist.²² The peculiar remedies available to a seaman under admiralty law were developed as compensation for the hazards to which the seaman was exposed by the nature and locus of his work, his complete dependence on the ship for his safety at sea, and his removal for long periods from the norm of human living.²³ The liberality of the courts in allowing these remedies in virtually every case in which these risks are shared is laudable;²⁴ the extension of the term to include anyone doing a seaman's work without considering the rule's *raison d'être* has produced a precedent the effects of which are unpredictable because not circumscribed by logic or necessity.²⁵ The rationale of Hand's analysis

²¹ On this point the reasoning of the *Sieracki* case is persuasive. Cases actually extending the indemnity to seamen not directly employed by the vessel owner are nonexistent because it is not customary for seamen who go to sea to be employed by a third party, but it cannot be supposed that the doctrine would not have developed had it been the custom for seamen to be employed by a shore organization in the business of manning ships.

²² See 16 GEO. WASH. L. REV. 523 (1948) in which it is suggested that the reason for giving any special remedies to seamen no longer exists.

²³ Seamen are traditionally regarded as "wards of the admiralty." *Robertson v. Baldwin*, 165 U.S. 275, 17 S.Ct. 326 (1897); *Bainbridge v. Merchant and Miners Transportation Co.*, 287 U.S. 278, 53 S.Ct. 159 (1932); *The Arizona v. Anelich*, 298 U.S. 110, 56 S.Ct. 707 (1936); *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424, 59 S.Ct. 262 (1939); *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 63 S.Ct. 930 (1943).

²⁴ Examples are listed by ROBINSON, *ADMIRALTY* 279-282 (1939).

²⁵ The result of the principal case was expected by writers because of the relational nature of the unseaworthiness concept, which would exclude any distinction based on the locality of the injury (see note 7 *supra*) although two federal cases decided since the *Sieracki* case have reached a result contrary to the principal case. The first, *Anderson v. Lorentzen*, (2d Cir. 1947) 160 F. (2d) 173, involved a suit by fourteen longshoremen, all of whom were injured because of the unseaworthiness of the vessel. Recovery was denied to eight of the plaintiffs who were on land at the time of injury, but extended to the remaining six who were on the vessel. In a concurring opinion Judge Chase explained the apparent inconsistency on the basis that "their [the unsuccessful plaintiffs'] relationship to the defendants was not legally the same"; damages awarded the remaining six were sustained merely by citing *Sieracki*. The second case, *Connor v. United States*, (D.C. Pa. 1949) 87 F. Supp. 847, was decided on the basis that no "maritime tort" was involved when the injury took place on land. Courts have been wary of extending the doctrine to workers other than stevedores or longshoremen engaged in loading a vessel. In *Lynch v. United States*, (2d Cir. 1947) 163 F. (2d) 97, Hand states that "*Seas Shipping Co. v. Sieracki*, covers stevedores, but the employees of a contractor still remain [business guests] . . . and are not entitled to a seaworthy ship. . . ." And again in *Guerrini v. United States*, (2d Cir. 1948) 157 F. (2d) 352, in denying recovery to an employee of an independent contractor engaged in cleaning the ship's tanks and boilers, he explained, "It is impossible to be sure how far the new doctrine may go, for everything done on board a ship contributes to her 'service,' if it helps to make and keep her ready for her work. . . . Yet we should hesitate to read the decision as intended to extend the protection of what amounts to a warranty of seaworthiness to all workmen upon a ship, however casual their presence there,

in the principal case is found in three propositions: (1) the result of the *Swanson* case was dictated by Congress in the Longshoreman's Act but does not apply to the principal case because of the reservation of suits against third parties found in that act; (2) the application of the unseaworthiness liability to a shipowner who is not the employer of the injured person implies that seaworthiness is a warranty the breach of which is a tort,²⁶ not a consensual liability imposed "in invitum as a consequence of making the contract regardless of the warrantor's intent";²⁷ (3) the nature of the liability being found in a maritime status, it is applicable to a seaman injured on land and therefore, by authority of the *Sieracki* decision, to a longshoreman in the same position.²⁸ As it stands, the reasoning of the case is logical; its fault is one of omission; the opinion ignores policy considerations almost completely.²⁹ In so doing it has provided further influential authority for allowing longshoremen greater remedies than are available to simi-

and however much their relation to the employer is unlike the early paternalistic status of master and crew, many of whose features have vestigially persisted to the present time." *Accord*: *Fine v. United States*, (D.C. N.Y. 1946) 66 F. Supp. 768; *Armento v. United States*, (D.C. N.Y. 1947) 74 F. Supp. 198; *Peterson v. United States*, (D.C. N.Y. 1947) 80 F. Supp. 84; *Meyers v. Pittsburgh S.S. Co.*, (6th Cir. 1948) 165 F. (2d) 642; *Cioffi v. New Zealand Shipping Co.*, (D.C. N.Y. 1948) 80 F. Supp. 98; *O'Connell v. Naess*, (2d Cir. 1949) 176 F. (2d) 138. But see *Bow v. Pilato*, (D.C. Cal. 1949) 82 F. Supp. 399, and *Sulovitz v. United States*, (D.C. Pa. 1945) 64 F. Supp. 637, which suggest the development of a contrary body of authority outside of the second circuit. The *Sieracki* decision itself has been favorably accepted in the lower federal courts, *Landgraf v. United States*, (D.C. Pa. 1947) 75 F. Supp. 58; *Lauro v. United States*, (2d Cir. 1947) 162 F. (2d) 32; *Bruszewski v. Isthmian S.S. Co.*, (3d Cir. 1947) 163 F. (2d) 720; *Lo Bue v. United States*, (D.C. N.Y. 1947) 75 F. Supp. 154; *Shelton v. Seas Shipping Co.*, (D.C. Pa. 1947) 75 F. Supp. 195; *Moragnel v. Moore-McCormack Lines, Inc.*, (D.C. Md. 1948) 75 F. Supp. 969; *Eagle Indemnity Co. v. United States Lines Co.*, (D.C. Md. 1949) 86 F. Supp. 949; controversy has arisen on the problem of assessing the liability as between owner and charterer, *Vitozi v. Balboa Shipping Co.*, (2d Cir. 1947) 163 F. (2d) 286; *Cannella v. Lykes Bros. S.S. Co.*, (2d Cir. 1949) 174 F. (2d) 794, noted 63 *HARV. L. REV.* 345 (1949); 26 *TEX. L. REV.* 517 (1948).

²⁶ The conclusion that the unseaworthiness doctrine was a tort action prevented recovery for an injury suffered by a longshoreman on land in *Connor v. United States*. Before the passage of the Shipping Act of 1948, 62 Stat. L. 496, 46 U.S.C. (Supp. III, 1950) §740, the admiralty jurisdiction did not extend to torts consummated on land. Hand deals with this problem in the principal case and concludes that the "relational" nature of the unseaworthiness makes it independent of the locality of the injury, thereby effectively vitiating his tort analysis.

²⁷ Principal case at 558.

²⁸ This reasoning, if consistent, must assume that *Swanson v. Marra Brothers*, *supra* note 16, applies to injuries on water as well as on land.

²⁹ See Stone's dissenting opinion in the *Sieracki* case. The court ignores the fact that both in admiralty and at common law liability without fault has been imposed only in situations of great danger or risk; in ordinary situations liability is determined on the basis of fault. The modern approach is to impose limited liability without fault on the employer in personal injury cases on the theory that it should be treated as an operating cost, and Congress has expressed its intention of dealing with the problems of longshoremen in this manner; workman's compensation was not conceived as a substitute for actions against third parties based on negligence, but to allow two distinct imputations of absolute liability is to duplicate remedies. See 45 *COL. L. REV.* 957 (1945).

larly situated seamen (in the traditional sense),³⁰ has added to the weight of a regrettable decision by giving it the sanction of a great judge, and has given to lesser courts a broad rationale with which to justify further extensions of the unseaworthiness doctrine from the miasmatic premise of the *Sieracki* case.³¹

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³⁰ "Seamen" must elect between an action under the Jones Act and an action for unseaworthiness, *Plamals v. The Penar del Rio*, 277 U.S. 151, 48 S.Ct. 457 (1928); a longshoreman can collect compensation and then proceed against the ship owner for unseaworthiness: *Bretsky v. Lehigh Valley R.R.*, (2d Cir. 1946) 156 F. (2d) 594; *Gahagan Construction Co. v. Armao*, (1st Cir. 1948) 165 F. (2d) 301; Bean, "Choice of Remedies by Injured Maritime Workers," 1 *NACCA L.J.* 74 (1948).

³¹ Another problem is the possible, though unlikely, extension of the doctrine to the admiralty remedy of maintenance and cure: 34 *CALIF. L. REV.* 601 (1946); 26 *TEX. L. REV.* 517 (1948); 29 *TEX. L. REV.* 367 (1950). See the easy derivation of the formula, "Unseaworthiness—Liability" in 57 *YALE L. REV.* 243 (1947). The tort analysis, even more than the test of doing a seaman's work promulgated in *Sieracki*, indicates the possibility that the doctrine will be extended to include all those formerly classed as invitees.