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Admiralty - Warranty of Seaworthiness - Longshoreman's Choice of Remedies

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ADMIRALTY—WARRANTY OF SEAWORTHINESS—LONGSHOREMAN'S CHOICE OF REMEDIES—Plaintiff, employee of a stevedoring company hired to unload defendant's ship, was injured while operating a defective chisel truck[1] in the ship's hold. The truck belonged to and was operated, maintained and brought aboard by the stevedoring company, the ship having no similar equipment. Furthermore, the stevedoring company was assumed to be aware of the defect prior to the accident. Plaintiff brought suit for damages against the shipowner alleging unseaworthiness, and the shipowner impleaded the stevedoring company as a third-party defendant. On motion by the defendants for summary judgment, *held,* motion denied. The shipowner is liable on an absolute warranty of seaworthiness. *Considine v. Black Diamond Steamship Corp.,* (D.C. Mass. 1958) 163 F. Supp. 107.[2]

The plaintiff in the principal case had two main avenues of recovery open to him. First, he could recover against his employer, the stevedoring company, under the Longshoremen's and Harbor Workers' Compensation Act.[3] Originally the longshoreman could recover against his employer only as an ordinary employee. A 1926 Supreme Court ruling[4] eliminated some of the harsh defenses available to the employer by placing the longshoreman under the Jones Act.[5] A year later Congress enacted the Longshoremen's Act which set forth the employee's exclusive remedy against his employer, and gave the injured worker automatic recovery while limiting the liability of the employer in a manner similar to workmen's compensation. But the act preserved to the longshoreman his right to recover against third parties.[6] The injured longshoreman was thus free to sue the shipowner under the doctrine of seaworthiness, as he did. This doctrine, as originally construed by our courts,[7] was based upon the shipowner-seaman employment contract[8] in which the shipowner impliedly warranted to the seaman that the ship would be "in a fit state, as to repair, equipment, crew, and in all other respects to encounter the ordinary perils of the contemplated

1 A chisel truck is a hydraulically-operated-platformed, wheeled device for handling heavy bales and other cargo.

2 In third-party-defendant suit, defendant-shipowner recovered in his own right for loss caused by the stevedoring company's negligence. Considine v. Black Diamond Steamship Corp., (D.C. Mass. 1958) 163 F. Supp. 109.

3 44 Stat. 1424 (1927), as amended, 33 U.S.C. (1952; Supp. V, 1958) §§901-950.

4 International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926).

5 41 Stat. 1007 (1920), 46 U.S.C. (1952) §688, which gave to the seaman a remedy against his employer for negligence.

6 44 Stat. 1424 (1927), as amended, 33 U.S.C. (1952) §933. See generally Weinstock, "The Employer's Duty To Indemnify Shipowners for Damages Recovered by Harbor Workers," 103 UNIV. PA. L. REV. 321 (1954).

7 For the history and development of the early unseaworthiness doctrine and other rights of seamen, see generally GILMORE AND BLACK, THE LAW OF ADMIRALTY, c. VI (1957).

8 See The Lizzie Frank, (S.D. Ala. 1887) 31 F. 477; Dixon v. The Cyrus, (D.C. Pa. 1789) 7 Fed. Cas. 755, No. 3,930.

voyage."[9] The shipowner was not an insurer, however, but was liable only for a lack of due diligence in providing such a vessel.[10] The seaworthiness doctrine, through recent judicial interpretation, has been greatly extended.[11] The shipowner's duty to provide his seamen with a seaworthy vessel has become absolute,[12] and extends to mistakes made by ship personnel as well as to defects in equipment.[13] "Seaman" now generally includes any person aboard ship doing a seaman's work.[14] Also, the original notion that seaworthiness should be limited to the ship and its appurtenant appliances has been broadened to cover equipment not even belonging to the ship.[15] The injured party in the principal case, to use this doctrine, had merely to establish the relationship which qualified him as a "seaman" and an unseaworthy device which caused his injury. It was of no import that the equipment was brought on the ship by the stevedoring company itself. Through systematic rejection of the many attempted limitations to the seaworthiness doctrine,[16] courts have carried this doctrine far beyond the basic proposition that the seaman should be adequately protected because of his complete dependence during a voyage on the seaworthiness of the vessel and its equipment.[17] Plaintiff was thus able to sue the shipowner on an absolute liability basis and not have his recovery limited by the Longshoremen's Act.

While application of the seaworthiness doctrine in the principal case is severe, the defendant shipowner was allowed to escape its harshness by recovering over from the stevedoring company.[18] In permitting a recovery

[9] See The Lizzie Frank, note 8 supra, at 480.

[10] See The Lizzie Frank, note 8 supra; The City of Alexandria, (S.D. N.Y. 1883) 17 F. 390; Halverson v. Nisen, (D.C. Cal. 1876) 11 Fed. Cas. 310, No. 5,970.

[11] See generally Tetreault, "Seamen, Seaworthiness, and the Rights of Harbor Workers," 39 CORN. L. Q. 381 (1954); comment, 67 YALE L. J. 1205 (1958).

[12] Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944); The H. A. Scandrett, (2d Cir. 1937) 87 F. (2d) 708.

[13] See Mahnich v. Southern S.S. Co., note 12 supra.

[14] Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953); Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946). It should be pointed out that there is apparently some confusion regarding what constitutes a "seaman's work." See Tetreault, "Seamen, Seaworthiness, and the Rights of Harbor Workers," 39 CORN. L. Q. 381 at 414-415 (1954).

[15] Petterson v. Alaska S.S. Co., (9th Cir. 1953) 205 F. (2d) 478, affd. per curiam 347 U.S. 396 (1954), note, 53 MICH. L. REV. 126 (1954); Rogers v. United States Lines, (3d Cir. 1953) 205 F. (2d) 57, revd. per curiam 347 U.S. 984 (1954).

[16] See note, 32 N.Y. UNIV. L. REV. 173 (1957); GILMORE AND BLACK, THE LAW OF ADMIRALTY, c. VI, p. 315 et seq. (1957).

[17] The court in the principal case indicated its concern with the question whether there is a rational stopping place for further possible extensions of the unseaworthiness doctrine. "What is going to happen when the stevedore, who customarily carries his own personal tools, such as a bailing hook, brings aboard a defective one, and injures himself? Suppose he has an incompetent (as distinguished from merely negligent) fellow-employee? . . . And if incompetent help makes a ship unseaworthy, what if a stevedore is injured by his own incompetence?" Principal case at 108, n. 1.

[18] See note 2 supra. See Crumady v. The Joachim Hendrik Fisser, 27 U.S. LAW WEEK

over, however, the courts in effect are nullifying the provisions of the Longshoremen's Act which seek to limit the stevedoring company-employer's liability. If it is assumed that Congress has set a fair and adequate compensation for the injured longshoreman it is difficult to justify allowing his unlimited recovery, with resulting unlimited liability on the stevedoring company, simply by virtue of his bringing an action against a defendant who has contributed only slightly, if at all, to his injuries. Perhaps it has become necessary for Congress to clarify its intention regarding the rights and remedies of injured longshoremen.

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4158 (1959), for recent Supreme Court approval of a shipowner being allowed to recover over from a negligent stevedoring company.