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Admiralty- Conflict of Laws - Application of the Jones Act

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COMMENTS

ADMIRALTY—CONFLICT OF LAWS—APPLICATION OF THE JONES ACT—Admiralty traditionally did not give a seaman a right of action for negligence unless it could be attributed to the unseaworthiness of the vessel. An injured seaman was limited to two remedies: an action for maintenance and cure, or an action based on unseaworthiness.[1] To remedy this situation, Congress in 1920 passed the Jones Act.[2] This act was framed in terms of "any seaman who shall suffer personal injury in the course of his employment," and gave to such seamen all the rights granted by statutes modifying or extending the common law right or remedy in cases of personal injury to railway employees.[3] Although this act accomplished its purpose of giving injured seamen an action for negligence, it did not specify who was included within the term "any seaman," but left this to judicial interpretation. Through the years, there has been a gradual movement away from the pre-Jones Act conception that maritime torts should be governed by the law of the flag,[4] and an extension of the statute on the basis of other factors. A recent decision by the United States Supreme Court has given some indication as to which of these factors should bear the most weight in the choice of law applicable to a maritime tort and has indicated a retreat from the more recent extensions.[5]

I. *Application of the Jones Act, 1920-1953*

That the Jones Act applies to all seamen on American vessels was never seriously questioned[6] and this was a fortiori the case where the seaman was either an American citizen or was domiciled in this country. In these situations, the courts invariably followed the traditional view that the law to be applied is the law of the flag, and this was done

[1] The Osceola, 189 U.S. 158, 23 S.Ct. 483 (1903); ROBINSON, ADMIRALTY 309 (1939).

[2] 41 Stat. L. 1007 (1920), 46 U.S.C. (1952) §688. The statute is also known as the Merchant Marine Act of 1920.

[3] The most important of these is the Federal Employers' Liability Act, 35 Stat. L. 65 (1908), 45 U.S.C. (1952) §§51-58. The incorporation of this act abolished the fellow-servant rule, allowed an action for negligence with a jury trial, and abolished contributory negligence as a complete defense. See 46 U.S.C.A. p. 240 et seq. (1944).

[4] The law of the flag governed all maritime torts on the high seas and those in the territorial waters of another nation that pertained to the internal economy of the vessel. CONFLICTS RESTATEMENT §§405, 406 (1934). See also The "Scotland," 105 U.S. 24, 26 L. ed. 1001 (1881); The Belgenland, 114 U.S. 355, 5 S.Ct. 860 (1885); The Hanna Nielsen, (2d Cir. 1921) 273 F. 171.

[5] Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921 (1953).

[6] 2 NORRIS, LAW OF SEAMEN §681 (1952).

regardless of where the tort occurred.[7] Where the ship was not of American registry, however, the courts tended to look for other factors, or some "pressing reason of domestic policy,"[8] that would justify an application of the Jones Act beyond seamen on American ships.

One of the first examples of this was the case of *Uravic v. F. Jarka Co.*,[9] which allowed a recovery under the Jones Act to an American stevedore who was negligently injured while working on board a German ship in New York harbor. The basis of this decision was (a) that the language of the statute is inclusive and not exclusive,[10] and (b) that all persons working on ships in our harbors should be afforded the same protection regardless of what ship they happened to be working on at the time of the injury.[11] Another logical exception is illustrated by the case of *Gerradin v. United Fruit Co.*,[12] which applied the Jones Act to an American seaman injured on an American-owned ship which had been registered in Honduras. The court ignored the Honduran flag as an "illusory shield" and refused to sanction foreign registry as a device for American owners to evade the more stringent American shipping laws.[13] The mere fact that an injured seaman was an American citizen or domiciled in this country was not, by itself, considered sufficient to justify recovery under the act,[14] and indeed it was felt bad policy

[7] Wenzler v. Robin Line, (D.C. Wash. 1921) 277 F. 812 (injury occurred in Havana); Panama R. Co. v. Johnson, 264 U.S. 375, 44 S.Ct. 391 (1924) (injury occurred on a river in Ecuador); Alpha S.S. Co. v. Cain, 281 U.S. 642, 50 S.Ct. 443 (1930) (injury occurred in Venezuelan port).

[8] Judge Learned Hand in Kyriakos v. Goulandris, (2d Cir. 1945) 151 F. (2d) 132.

[9] 282 U.S. 234, 51 S.Ct. 111 (1931). See also Shorter v. Bermuda and West Indies S.S. Co., (D.C. N.Y. 1932) 57 F. (2d) 313.

[10] "But the question is not whether they were thought of for the purpose of inclusion, but whether they were intentionally excluded from a description that on its face includes them." Uravic v. F. Jarka Co., 282 U.S. 234 at 239, 51 S.Ct. 111 (1931).

[11] Although it has been contended that this decision did not rest upon the fact that the injured stevedore was an American citizen [see Morrison, "The Foreign Seaman and the Jones Act," 8 MIAMI L.Q. 16 (1953)], Justice Holmes did base his decision at least partially upon this point. "It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York." Id. at 240.

[12] (2d Cir. 1932) 60 F. (2d) 927.

[13] Under Honduran law the injured seaman was limited to maintenance and cure. See also Carroll v. United States, (2d Cir. 1943) 133 F. (2d) 690; Torgesen v. Hutton, 267 N.Y. 535, 196 N.E. 566 (1935) (divided ½ interest in ship between American defendant and German corporation).

[14] O'Neill v. Cunard White Star, Ltd., (2d Cir. 1947) 160 F. (2d) 446. A British sailor with 20 years domicile in the United States was washed overboard during a voyage between foreign ports, in one of which he had signed articles. The court said that the wrong could lie either in tort or in contract; if in tort, the law of the flag would be applied, and if in contract, either the place of the contract, or the place of the breach. Any one of these called for the application of British law and thus Jones Act recovery was denied. See also Hogan v. Hamburg American Line, 152 Misc. 405, 272 N.Y.S. 690 (1934) (articles signed in U.S.); Clark v. Montezuma Transport Co., 217 App. Div. 172, 216 N.Y.S. 295 (1926) (injury in U.S.). The Clark case is probably overruled by Uravic v.

to give American seamen a preferred position on foreign ships.[15] But at least where the injury was also in this country,[16] or in American waters during a voyage mainly to be performed within the territorial waters of the United States,[17] the combination of factors outweighed the law of the flag.

It was the foreign seaman on a foreign ship that created the greatest problems in applying the Jones Act.[18] Likewise, it was in this class of cases that the greatest extensions of the statute were eventually effected. Recovery under American law could be claimed on the basis of either (a) the place of contract (articles signed in U.S.), or the place of the tort (injury in U.S.). Where the basis of recovery was injury in the United States, the Jones Act was inapplicable. This was decided by the district courts[19] and the Court of Appeals for the Second Circuit in the case of *The Paula*[20] after the Supreme Court had left the issue open.[21] In *The Paula*, a German seaman signed on a Danish ship in Chile and was injured in Florida. The court disregarded dictum from the Court of Appeals for the Fifth Circuit to the effect that ". . . the right of action is given to all seamen regardless of nationality,"[22] and refused to apply the Jones Act. Adopting a conservative viewpoint, the court concluded by saying, "We think the intention to legislate for alien seamen who have signed

Jarka, 282 U.S. 234, 51 S.Ct. 111 (1931). Judge Learned Hand, in Gambera v. Bergoty, (2d Cir. 1942) 132 F. (2d) 414, felt that the Uravic case had overruled the Hogan case as well. The latter point is questionable because the facts of the two cases are distinguishable and because the Hogan case was decided three years after the Uravic decision.

[15] O'Neill v. Cunard White Star, Ltd., (2d Cir. 1947) 160 F. (2d) 446 at 448.

[16] Uravic v. F. Jarka Co., 282 U.S. 234, 51 S.Ct. 111 (1931).

[17] Gambera v. Bergoty, (2d Cir. 1942) 132 F. (2d) 414. An Italian seaman with 20 years domicile in the United States was injured in American waters on a voyage to be performed almost entirely within these waters. The court allowed recovery under the Jones Act and based this on the combination of the American residence and the nature of the voyage.

[18] Although statements are often found that admiralty may exercise its discretion in taking jurisdiction of suits between aliens, there is authority to the effect that this is not so where a right under the Jones Act is involved. See Tsitsinakis v. Simpson, Spence and Young, (D.C. N.Y. 1950) 90 F. Supp. 578; 2 NORRIS, LAW OF SEAMEN 353 (1952). But see O'Neill v. Cunard White Star, Ltd., (2d Cir. 1947) 160 F. (2d) 446; 1 BENEDICT, ADMIRALTY, 6th ed., 252 (1940).

[19] See The Magdapur, in which the court refused to apply the statute to a foreign seaman who signed articles aboard a foreign ship and was injured in the United States. The court said, "The Jones Act was passed for the welfare of *American* seamen." (D.C. N.Y. 1933) 3 F. Supp. 971 at 973. Italics supplied.

[20] (2d Cir. 1937) 91 F. (2d) 1001.

[21] Plamals v. Pinar del Rio, 277 U.S. 151, 48 S.Ct. 457 (1928).

[22] Arthur v. Compagnie Generale Transatlantique, (5th Cir. 1934) 72 F. (2d) 662. One need only compare this statement with that of the court in The Magdapur, note 19 supra, to realize the confusion created by the general terminology of this act.

articles abroad on a foreign ship ought to be clearly expressed before the courts extend the statute to them."[23]

After World War II,[24] however, in *Kyriakos v. Goulandris,*[25] the statute was extended to a Greek seaman on a Greek ship who had signed articles in New York for a voyage beginning and ending in the United States and who was injured when assaulted by a crew member while ashore in Jacksonville, Florida. The court applied a rule of construction similar to that of Justice Holmes in the *Uravic* case, pointing out that when Congress used the word "seaman," it adopted a word ". . . of general application, embracing men of any nation who sail the seas. Had it wished to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislators did not see fit to use them."[26] The court distinguished *The Paula* on the fact that the libellant had both signed articles and been injured in an American port. This was felt to be ". . . sufficient both on reason and on authority."[27] Judge Learned Hand, in dissenting maintained the traditional view that in all that governs the internal economy of the ship the law of the flag prevails, and stressed the hardship to foreign owners of having their legal relations depend on the varying laws of different ports.[28]

After this case, it appeared that if the articles were signed in a foreign port, the mere injury in this country would not sustain an application of the Jones Act, but if both the injury and the signing of the articles occurred in the United States, recovery would be allowed. If the place of the tort alone were not enough to create a Jones Act remedy, it would seem that the signing of the articles in the United States should not have been enough either. Such a po-

[23] The Paula, (2d Cir. 1937) 91 F. (2d) 1001 at 1004.

[24] As to the effect of World War II and its creation of a new "judicial psychology" toward foreign shipowners, see Morrison, "The Foreign Seaman and the Jones Act," 8 MIAMI L.Q. 16 (1953).

[25] (2d Cir. 1945) 151 F. (2d) 132.

[26] Id. at 136.

[27] Id. at 137. The signing of the articles was felt to distinguish the closing words in The Paula, quoted above. The court further felt that not to allow recovery here would operate as a detriment to American seamen, ". . . since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while American seamen would." Ibid.

[28] He felt the policy argument expressed by the majority was unsound since (a) the actual number of injuries in American ports is too minimal to sustain the majority argument, and (b) carried to its logical extreme it would allow recovery for foreign seamen injured anywhere. It is interesting to note that at that time Judge Hand felt this could not be done, and yet five years later he was to apply the statute to a foreign seaman injured on the high seas and cite the majority opinion in this case as his authority. See note 30 infra.

sition was taken in 1948 by the New York Court of Appeals, which refused to apply the statute to a Danish seaman who had signed on a Panamanian ship in New York and who suffered an aggravated illness on the high seas, even though it appeared that the ship was operated by a wholly-owned subsidiary of an American corporation.[29] But in 1950, in *Taylor v. Atlantic Maritime Co.*,[30] the Court of Appeals for the Second Circuit allowed recovery on almost identical facts. The opinion, written by Judge Learned Hand, clearly indicates that the court interpreted the rationale of the *Kyriakos* case as imposing the Jones Act upon all owners signing on crews in American ports.[31] This was done despite the fact that the court felt that ". . . before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose."[32] The application of the statute was expressly based on the signing of the articles in this country.[33]

With the holding in the *Taylor* case giving a right of action under the Jones Act when the United States was the place of contract, the next step would have been to overrule *The Paula* and hold that an injury in this country would alone suffice to invoke the operation of the statute. This opportunity was presented in 1951 when a British seaman who had signed on the *Queen Elizabeth* in London was injured in New York harbor, but *The Paula* stood firm, and the Jones Act was not applied.[34]

Thus it appeared that a foreign seaman on a foreign ship could get Jones Act relief if he had signed articles in this country for a

[29] Sonnesen v. Panama Transport Co., 298 N.Y. 262, 82 N.E. (2d) 569 (1948).

[30] (2d Cir. 1950) 179 F. (2d) 597.

[31] This conception may be questioned in light of the specific statements of the majority in the Kyriakos case that rested the decision to a large extent on the fact that the libellant had *both* signed articles and been injured in this country. See especially the quotation included in note 27 supra. It is interesting to note that Judge Hand was the only judge who sat on both the Taylor and Kyriakos cases.

[32] Taylor v. Atlantic Maritime Co., (2d Cir. 1950) 179 F. (2d) 597 at 600. One may wonder why, if Judge Hand was so unwilling to allow recovery here, he did not distinguish the Kyriakos case on the basis suggested in note 31 supra.

[33] ". . . if the libellant, a nonresident alien, had not signed the articles in Norfolk, he could not have invoked the Act; and, if he was entitled to recover at all, it must have been by virtue of that fact." Id. at 598. The court considered the place of the contract, rather than the place of the tort, of paramount importance and found as an implied term of the contract that the libellant was entitled to recovery under the Jones Act.

[34] Catherall v. Cunard S.S. Co., (D.C. N.Y. 1951) 101 F. Supp. 230. The court also rejected an attempt by the libellant to distinguish The Paula on the basis that the regular contracts of The Queen Elizabeth with this country resulted in her spending an equal time in both countries, whereas The Paula was "transient." The court found this argument ". . . novel but unconvincing." Id. at 232. For criticism of this decision see 9 NACCA L.J. 163 (1952).

voyage beginning and ending in the United States, or if he had both signed articles and been injured here, but not if his sole contact with the United States was that the tort had occurred here. It was at this point that the case of *Lauritzen v. Larsen*[35] came before the courts.

II. *Lauritzen v. Larsen (1953)*

Larsen, a Danish seaman, signed articles in New York for a voyage on board a Danish ship and was negligently injured in Havana, Cuba. He brought suit under the Jones Act in the law side of the district court for the southern district of New York. The court allowed recovery and the Court of Appeals for the Second Circuit affirmed on the basis of the *Taylor* and *Kyriakos* cases,[36] even though an express term of the contract was that the parties would be governed by Danish law. Upon certiorari to the United States Supreme Court, this was reversed in a 7-1 decision.[37] On its facts, the decision is on solid ground. The Court reviewed the various factors that have at various times influenced the choice of law in maritime torts,[38] and all of these indicated that Danish law should be applied, with the exception of the fact that the articles were signed in this country, and that was balanced by the fact that the articles specifically stipulated that the parties should be bound by Danish law.[39] Furthermore, it appeared that Larsen had already recovered everything to which he was entitled under Danish law,[40] and to have allowed further recovery under the Jones Act would have conflicted with Danish law. The case is significant beyond its particular facts, however, as the first word of the Supreme Court on this subject since the *Uravic* case in 1931, and its real importance lies in the extent to which it can

[35] 345 U.S. 571, 73 S.Ct. 921 (1953), referred to hereinafter as principal case.

[36] (2d Cir. 1952) 196 F. (2d) 220.

[37] The opinion was written by Justice Jackson, with Justice Black dissenting without opinion, and Justice Clark abstaining.

[38] Specifically these included: (1) the place of the wrongful act, (2) the law of the flag, (3) allegiance or domicile of the injured, (4) allegiance of the defending shipowner, (5) place of contract, (6) inaccessibility of the foreign forum, and (7) the law of the forum. In connection with this last item the Court refused to accept the contention that, once having perfected jurisdiction, the Court should apply American law. It was pointed out that the whole purpose of a conflict of laws doctrine is to assure that the appropriate law will be applied regardless of the fortuities of the place of the forum.

[39] However, the Court made it clear that while in general the courts tend to apply the law intended by the parties, "We think quite a different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship." Principal case at 589.

[40] This may be a basis for distinguishing this case from the Taylor and Kyriakos cases where the libellants' only hope for recovery was under American law. Such was the argument of the petitioner.

serve as a guide to the future. It may be somewhat regretted that, with an opportunity to bring clarity to a confused area of the law, Justice Jackson did not to a greater extent distinguish between the various factors which called for the application of Danish law in this case and formulate some significant dictum that could serve as a clear postulate for the future. However, his opinion does include a comprehensive discussion of many factors, and some inferences may be drawn as to future applications of the statute.

III. *Future Applications of the Jones Act*

In considering future applications of the statute, an important consideration is the general philosophy of the Court indicated by the *Larsen* case, which imports a policy of reaction from the recent extensions of the act. The Court stressed the international character of maritime law and favored a doctrine of comity, with self-restraint in applying American law to foreign transactions.[41] The Court felt that in this age of commercial intercourse, any other course would eventually result in the creation of multiple and conflicting burdens upon the commerce of nations whose ships were in contact with several countries. Thus Justice Jackson emphasized ". . . the necessity for mutual forbearance if retaliations are to be avoided,"[42] and followed this with the admonition that, ". . . any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."[43]

Although it is difficult to say how far this policy will be carried, it does signify an attitude inconsistent with some of the more recent extensions of the statute to foreign transaction, and indicates that the courts in the future may be more reluctant to allow recovery under American law in those situations. With this general philosophy as background, discussion of the application of the statute to various situations is more meaningful.

A. *Seamen on American Ships.* There is nothing in the Court's opinion to suggest any change in the application of the statute to

[41] The Court adopted a principle of construction consistent with that of the Second Circuit in The Paula and the personal beliefs of Judge Learned Hand as expressed in the Taylor case. Quoting from The Queen v. Jameson, 2 Q.B. 425 at 430 (1896), the Court said, ". . . if any construction . . . be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting." Principal case at 578.

[42] Id. at 582.

[43] Ibid.

seamen on American ships, and indeed, if the Jones Act did not cover this situation, it would be of little significance. In short, there can be little doubt but that seamen on American ships will continue to be protected under American law.

B. *Foreign Seamen on Foreign Ships.* It seems clear that the *Larsen* decision overruled the *Taylor* case application of the Jones Act to a foreign seaman injured outside the territorial waters of the United States,[44] and negated the mere signing of the articles in this country as a basis on which the act can be applied.[45] The more significant question involves the foreign seaman on a foreign ship who both signs articles and is injured in this country. The tenor of the opinion indicates that his recovery is unlikely. Consistent with the above "hands-off" principle, Justice Jackson emphasized that the factor to be given most weight in these cases is the law of the flag, saying, "It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law."[46] With the place of the contract reduced to nominal significance, the only contact which could serve as a counterweight is the place of the tort, and this was not felt to be of much consequence by the Court. It was pointed out that while the United States has occasionally arbitrarily asserted territorial rights over foreign ships in American waters,[47] use of the place of the tort as a factor exposes a ship to too many varying legal authorities and therefore, ". . . the territorial standard . . . usually is modified by the more constant law of the flag."[48] A possible exception to this would be a case involving a breach of the peace or an interference with the tranquility of the port,[49] and on this basis the particular facts of the *Kyriakos* case might still fall within the scope of the act.[50] But the *Larsen* case does seem

[44] ". . . we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters." Id. at 593.

[45] "We do not think the place of contract is a substantial influence in the choice between competing laws to govern a maritime tort." Id. at 589.

[46] Id. at 585.

[47] See Cunard S.S. Co. v. Mellon, 262 U.S. 100, 43 S.Ct. 504 (1923) (American prohibition laws enforced against ship of foreign flag in U.S. waters).

[48] Principal case at 584. This factor of constancy, with its resulting uniformity of liability for the shipowner, and the doctrine of comity seem to be the major policy reasons favoring the use of the law of the flag.

[49] See Wildenhus's Case, 120 U.S. 1, 7 S.Ct. 385 (1887).

[50] The question of when a wrongful act committed on shore becomes a breach of the peace sufficient to justify application of the law of the place of the wrongful act has been a major problem for the courts in the past. See Wildenhus's case, 120 U.S. 1, 7 S.Ct. 385 (1887); Morrison, "Foreign Seamen and the Jones Act," note 24 supra.

to overrule the general theory of the *Kyriakos* case, especially since, in doing away with the place of contract as a factor, it destroyed the main basis upon which that case was distinguished from *The Paula*.[51]

If the combination of contract and injury in this country is not sufficient to establish an action under the Jones Act, a fortiori where the only contact with the United States is the place of the tort, the Jones Act will not be applied.

C. *American Seamen on Foreign Ships.* The future application of the statute to seamen of American citizenship or residence is less certain. The Court here took a neutral position[52] and went no farther than to cite several cases where the injury was to an American citizen or resident and where the act was applied. Although the Court expressly refused to weigh the seaman's nationality against the law of the flag, the absence of any comment on the cited cases may indicate that these cases will be left where they stand, and at least where the injury is in this country,[53] the combination of factors may outweigh the law of the flag.

Where the injury is not in the United States or in American waters but is on the high seas or in foreign waters, it is unlikely that the statute will be applied. Nothing in the Court's opinion indicates any disapproval of the *O'Neill* case,[54] and indeed the remarks concerning the principle of comity and the law of the flag would seem to cement the *O'Neill* case even more strongly. This is further borne out by the aforementioned principle of construction that ". . . if any other construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting."[55]

[51] See note 27 supra.

[52] "Surely during service under a foreign flag some duty of allegiance is due. But, also, each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support." Principal case at 586.

[53] Uravic v. F. Jarka Co., 282 U.S. 234, 51 S.Ct. 111 (1931); Gambera v. Bergoty, (2d Cir. 1942) 132 F. (2d) 414.

[54] See note 14 supra.

[55] Principal case at 578. In view of the general terminology of the act and the weight to be given to the law of the flag, such "other construction" would seem highly possible. It is also significant that in New York Central R. Co. v. Chisholm, 268 U.S. 29, 45 S.Ct. 402 (1925), the Federal Employers' Liability Act, on which the Jones Act rights are based, was construed so as to limit recovery under it to injuries from acts within the United States. But cf. the effect on this decision of the later case of Cortes v. Baltimore Insular Line, where in determining the standard of care owed under the Jones Act the Court said, "We do not read the act for the relief of seamen as expressing the will of Congress that only the same defaults imposing liability upon carriers by rail shall impose liability upon carriers by water." 287 U.S. 367 at 377, 53 S.Ct. 173 (1932).

D. *Seamen on Foreign-Registered, but American-Owned Ships.* Although the law of the flag is stressed as the dominant factor to be considered in determining applicable law, there is no indication that an exception to this rule will not continue to be made in the future when American shipowners attempt to evade the more rigorous shipping restrictions imposed by the Jones Act. The Court cited the *Gerradin* case[56] as an example of the past operation of this doctrine, and nothing was said to indicate that liability will not continue to be imposed in this situation. The major problem in this area today is that of the foreign corporation subsidiary. So far, the Jones Act has not been extended to this arrangement.[57] It would seem, however, that if the courts are not going to allow American shipowners to escape the application of the Jones Act directly, a good argument can be made that they should not allow them to do so indirectly.

IV. *Conclusion*

The major effect of the *Larsen* case thus seems to be a retraction from the post-World War II extensions of the Court of Appeals for the Second Circuit to a position consonant with that taken in the case of *The Paula.* Foreign seamen on foreign ships will in all probability be left to recourse under foreign law, whereas American seamen and those of American residence will continue to recover if injured within the territorial waters of the United States, but not if injured outside them. There is no problem in the case of seamen on American ships, except that raised by the foreign corporation subsidiary, and it is this problem that remains to be answered by the Supreme Court.[58]

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[56] (2d Cir. 1932) 60 F. (2d) 927.

[57] See Sonnesen v. Panama Transport Co., 298 N.Y. 262, 82 N.E. (2d) 569 (1948). But cf. 5 NACCA L.J. 175 (1950) as to the possible effect of the foreign corporation subsidiary in the Taylor case.

[58] The major obstacle to applying the Jones Act to the foreign corporation subsidiary is the concept of "corporate entity." See BALLANTINE, CORPORATIONS, rev. ed., §136 (1946). It has been suggested that the problem may be resolved by looking to the purpose for which the corporation was formed in light of the following: (1) principal place of business, (2) nationality of the management, (3) nationality of the controlling stockholders, (4) identity of directors, and incorporators, and (5) capitalization of the subsidiary. See 17 GEO. WASH. L. REV. 549 (1949).