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ADMIRALTY-UNSEAWORTHINESS OF VESSEL IN HAVING VICIOUS CREW MEMBER ABOARD

Richard B. Barnett S.Ed.
University of Michigan Law School

RECENT DECISIONS

ADMIRALTY—UNSEAWORTHINESS OF VESSEL IN HAVING VICIOUS CREW MEMBER ABOARD—Plaintiff, a seaman on board defendant's ship, went ashore on leave with the second cook. After returning to the ship, the two quarrelled and plaintiff knocked the cook down. The cook went to the galley and obtained a meat cleaver with which he struck plaintiff on the head, causing serious injury. Plaintiff brought suit against the ship owner for damages on the theory that in allowing a man of the cook's vicious proclivities to become a member of the crew, defendant failed to provide a "seaworthy" ship and that plaintiff had suffered injury as a result. Plaintiff appealed a verdict for the defendant on the grounds that the trial judge had erred in instructing the jury that defendant was under no duty to inquire or examine into the physical or mental condition of a prospective employee, that there could be no recovery unless the facts of the cook's temperament were known or should have been known to the defendant, and that the shipowner was not an insurer of the cook's disposition. On appeal, *held,* judgment reversed and new trial ordered. The warranty of seaworthiness to the crew of a ship includes a warranty in favor of each that the other crew members are equal in disposition and seamanship to the ordinary men in the calling and that the owner will be liable where a seaman is injured because of the unfitness of a fellow crewman. *Keen v. Overseas Tankship Corp.*, (2d Cir. 1952) 194 F. (2d) 515.

This case marks an extension of the traditional admiralty doctrine[1] providing a remedy to seamen injured because of a breach of the shipowner's duty to provide the crew with a seaworthy vessel.[2] The shipowner's liability for failure to furnish a seaworthy vessel is a liability without fault and is not limited by concepts of negligence.[3] While ordinarily seaworthiness might be thought of as applying primarily to the physical condition of the vessel, its appliances and machinery, there is ample authority supporting the proposition that the ship is not seaworthy if the crew is not competent to perform its duties.[4] Thus, *In re Pacific Mail S.S. Co.*[5] held the shipowner liable for loss of life resulting from the sinking of its ship where it appeared lifeboats would have been lowered

[1] "Upon a full review, however, of English and American authorities upon these questions, we think the law may be considered as settled upon the following propositions: . . .

"(2) That the vessel and the owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship." The Osceola, 189 U.S. 158, 175, 23 S.Ct. 483 (1903).

[2] This duty is not an express contractual or statutory duty but instead has evolved historically as one of the incidents of the relationship between owner and seaman which comes into existence on the signing of the shipping articles. ROBINSON, ADMIRALTY 284 (1939); 2 NORRIS, LAW OF SEAMEN 242 (1952).

[3] 2 NORRIS, LAW OF SEAMEN 244 (1952).

[4] Tait v. Levi, 14 East. 481, 104 Eng. Rep. 686 (1811); The Gentleman, 10 Fed. Cas. 190 (1845), 10 Fed. Cas. 188 (1846); In re Pacific Mail S.S. Co., (9th Cir. 1904) 130 F. 76; The Rolph, (9th Cir. 1924) 299 F. 52; ROBINSON, ADMIRALTY 305 (1939).

[5] (9th Cir. 1904) 130 F. 76.

in time to save the passengers and crew members had not the crew members been Chinese and unable to understand the orders given to them in English by the officers as to how to lower the boats. However, there is much less authority for the proposition that the shipowner makes a warranty to each member of the crew as to the disposition of his fellow crew members.[6] The closest case in point is *The Rolph*[7] in which the unseaworthiness doctrine was used to allow recovery to a seaman who had been assaulted by a particularly brutal and vicious mate who was known to be of this disposition before he was hired. Again, however, the court found unseaworthiness in the inability of the mate to perform the duties for which he was hired, saying, "such a man may be ever so skilled and competent in navigation and seamanship, nevertheless, he is wholly incompetent to fill a place of authority which calls for the exercise of a sense of natural fairness to men under him."[8] Thus, incompetency of a crew member to perform his duties has been the means in the past by which courts have found vessels unseaworthy where one seaman is injured because of conduct of another. These cases lend little support to the decision reached in the principal case; a man may be able to perform the duties of cook competently despite an ugly disposition toward his fellow seamen. Thus, it would seem to be not the inability of the man to perform his duties which makes the ship unseaworthy here, but the inherently dangerous personal quality of the man which poses a continuous threat to the safety of his fellow crewmen who must remain in close contact with him throughout the voyage. Judge Hand's position is: "We can see no reason for saying that, although the owner is liable if the ship's plates are started without his knowledge, he is not liable if he signs on a homicidal paranoiac, whose appearance does not betray his disposition."[9] His conclusion is that the individual seaman should not have to bear such a risk. He points out that nearly all maritime risks are insured, and that if placing this risk on shipowners causes insurance premiums to rise, it will eventually be reflected in higher freight rates causing the risk to be spread among those who use the ships. If the shipowner is to be held liable only in the cases where the seaman suffers injury at the hands of a fellow seaman who is a "homicidal paranoiac" or at least habitually vicious and brutal, the result reached here seems reasonable;[10] however, the shipowner should not be required

[6] "It must be owned that we have not found any decision which deliberately decided that an owner is responsible for the seaworthiness of his ship in respect of personnel in the same sense that he is in respect of hull and gear; and, strictly, the point is res integra. Yet that seems to us to be a consequence of those decisions which have spoken of the crew's fitness as a condition of the ship's seaworthiness." Principal case at 517-518.

[7] (9th Cir. 1924) 299 F. 52.

[8] The Rolph, (9th Cir. 1924) 299 F. 52, 55.

[9] Principal case at 518.

[10] "Since it found that Svedman was not a person of vicious, pugnacious, or dangerous disposition, there can be no liability for unseaworthiness. . . . For in those cases [finding liability] the evidence convincingly established that the person committing the assault for which the shipowner was ultimately held liable had known vicious propensities." Kable v. United States, (2d Cir. 1948) 169 F. (2d) 90 at 92.

to bear the risks of injury which may result from the seaman's propensity towards engaging in occasional fights and brawls.[11]

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[11] "The infinite possibilities of injury which exist aboard a ship render precedent of negligible assistance in determining what contents the courts will pour into the flask labelled 'unseaworthiness.' Few would have thought that the presence on board of a brutal mate or a greenhorn untrained sailor would render a ship 'unseaworthy'; or that a seaman would be able to convince a court that he fell in the shower of a docked ship because the soapy floor rendered it 'unseaworthy.' To the courts has been handed a simple instrument for the imposition of absolute liability with no limitation but judicial conscience." Note, The Tangled Seine: A Survey of Maritime Personal Injury Remedies, 57 YALE L.J. 243 at 254 (1947).