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Application of the Merchant Marine Act to Stevedores

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APPLICATION OF THE MERCHANT MARINE ACT TO STEVEDORES. —A recent decision of the New York Court of Appeals holds that the benefits of Section 33 of the Merchant Marine Act of 1920, commonly known as the Jones Act, are denied to a stevedore at work upon a foreign vessel in navigable waters of the United States, even though he is employed by a domestic stevedoring concern.[1]

The foregoing section is part of a statute[2] entitled "An Act To provide for the promotion and maintenance of the American merchant marine * * *." Since an efficient and contented personnel is essential to a well established Merchant Marine, the statute among other aims, seeks to promote the welfare of American seamen.[3] Supplementing the action for personal injury allowed under Admiralty proceedings, Section 33 now enables the injured seaman or his personal representative in case of death, to maintain an action for damages at law. Furthermore in such an action all statutes of the United States regulating the right of action in the case of personal injury to, or the death of a railway employee shall apply.[4] Under the Employers Liability Act the cause of action is freed from the burdens arising, from the contributory negligence, and fellow servant rules of common law.[5] The Jones Act makes the employer liable for the negligence of a fellow servant and contributory negligence can be urged only in mitigation of damages. Consequently it is apparent that Section 33 of the Merchant Marine Act extends many benefits to seamen, heretofore unobtainable. The remedy thus afforded does not abrogate the right to maintain an action in admiralty.[6]

While it is true that for most purposes stevedores, as the word is commonly used, are not seamen, the Supreme Court of the United States has construed the provisions of the statute to include them.[7] The decision is based upon the fact that the service now rendered by stevedores was formerly done by the ship's crew. Furthermore the Court was reluctant to impute to Congress the willingness to permit

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[1] Resigno v. Jarka Co., Inc., 248 N. Y. 225 (1928).

[2] Act of June 5, 1920, C. 250 Sec. 33, 41 Stat. 1007 (46 U. S. C. A., Sec. 688) "* * * Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable."

[3] *Supra,* note 1 at 229.

[4] *Supra,* note 2.

[5] Employers' Liability Act of Congress, 35 Stat. 65 (45 U. S. C. A., Sec. 51–59); Second Employers' Liability Cases, 223 U. S. 1, 49 (1911).

[6] 2 St. Johns Law Review, 236.

[7] International Stevedoring Company v. Haverty, 272 U. S. 50 (1926).

the protection to men engaged in the same maritime duties, to vary with the accident of their employment.

In the instant case the plaintiff's intestate was a stevedore employed by a domestic stevedoring firm, working on a foreign vessel docked in navigable waters of the United States. The New York Court of Appeals concurs in the construction of the statute by the Supreme Court of the United States, but limits its application to those cases wherein the stevedore is at work upon a domestic vessel.[8] Apparently the restriction is determined primarily upon the assumption that an extension of the benefits of the statute to stevedores working upon foreign vessels does nothing to promote the welfare of American seamen nor the American Merchant Marine. Whether such restriction is justifiable is a matter of considerable moment.

The United States District Court, dealing with exactly the same state of facts holds that the stevedore is entitled to bring an action under the statute.[9] As to the contention that a stevedore, working upon a foreign vessel, is beyond the contemplation of the statute, the opinion of Judge Sheppard in the foregoing case is in point.[10] "If the construction of Seamen's Act,[11] although it includes specifically foreign seamen * * * could be upheld * * * it could hardly be said to strain the rule of construction to extend the benefits of the Merchant Marine Act to stevedores on foreign ships." A later decision by Judge Moscowitz states, "It cannot be logically contended from the mere fact that a stevedore hired by an American stevedoring concern, is working * * * on a foreign vessel, that he then lost his rights as an American seaman and that as soon as he stepped aboard the foreign ship he became a foreign seaman." [12]

The Legislative enactment, as has been said, is primarily intended for the advancement of the American Merchant Marine, the particular section under discussion seeking to promote the welfare of American seamen. The statute has been construed to include a class of workers not popularly known as seamen but as stevedores, because their duties are so closely related to those of seamen.[13] The work of stevedores is essential to the carrying on of oceanic transportation, but such work may take place on many boats, that of a seaman most likely on one boat. This fact could not have been ignored when the statute was first construed to include stevedores. Strictly speaking, advancement of our own Merchant Marine is at least questionable when stevedores are working upon foreign ships, but as a practical commercial matter the contracts of stevedoring firms will never be confined to American vessels. Is American legislation to be deemed

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[8] *Supra,* note 1 at 230.

[9] Zarowitch v. Jarka Co., 21 Fed. (2d) 187, (E. D. N. Y. 1927).

[10] *Ibid.*

[11] Act of March 4th, 1915, C. 153, 38 Stat. 1164.

[12] Mahoney v. International Elevating Company, Inc., *et al.,* 23 Fed. (2d) 130 (E. D. N. Y. 1927).

[13] *Supra,* note 7.

so selfish, so narrow as to determine its application by a measuring rod which has as its length the degree of benefit which a commercial institution of this nation is receiving regardless of the hardship imposed on American citizens. To assume such an attitude is not to promote the Merchant Marine, but to adhere to a questionable and un-American viewpoint. The sacrificing of just and reasonable principles of law is not necessary to the promotion and maintenance of the American Merchant Marine.

To deny the benefits of the statute to stevedores, it being judicially determined that the nature of the work justifies such benefits, because they happen to be working upon a foreign vessel, is inequitable and unreasonable. Under such a restriction stevedores would receive very little benefit from the statute. Such construction of the application of the statute must have for its premise the questionable doctrine that Congress intended to permit the place of performance of an occupation to govern as to whether the law prescribed for that occupation shall apply.

To hold that a stevedore employed by a domestic stevedoring firm, changes his nationality every time he works upon a ship flying a foreign flag shocks one's sense of logic. This situation should be distinguished from cases where the worker is employed by the ship as where an American citizen signs articles on a foreign vessel.[14]

Clearly it was not intended to deprive American citizens of the benefits of legislation, deemed desirable for a certain occupation, because the place of performance is upon a foreign ship.[15] To assume such an attitude is to place a premium on the place of work when the selection of that place is not within the power of him for whom the benefits of legislative action were intended. By analogy such a condition would seem to approximate a fraud upon the law.

Conceding that stevedores come within the purview of the statute,[16] its benefits should apply to that class of workers irrespective of the place of performance of the work as between foreign and domestic vessels, where the employer is a domestic concern.

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[14] Clark v. Montezuma Transportation Co., Ltd., 217 A. D. 172, 216 N. Y. S. 295 (2nd Dept. 1926); Rainey v. N. Y. & P. S. S. Co., 216 Fed. 449 (C. C. A. 9th Cir. 1914).

[15] *Supra,* note 12 at 131.

[16] 1 St. John's Law Review 76.