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Admiralty--Stevedores--Act of June 5, 1920, c. 250, Sec. 20, (Jones Act) 41 Stat. 988, 1007--Fellow Servant Rule (International Stevedoring Company v. Haverty, ____ U.S. ____ (1926))

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RECENT DECISIONS

ADMIRALTY—STEVEDORES—ACT OF JUNE 5, 1920, c. 250, Sec. 20; (JONES ACT) 41 Stat. 988, 1007—FELLOW SERVANT RULE—This is an action brought in a State Court seeking a common law remedy for personal injuries sustained by the plaintiff (Haverty) upon a vessel at dock in the harbor of Seattle. The plaintiff was a longshoreman engaged in stowing freight in the hold. Through the negligence of the hatch tender no warning was given that a load of freight was about to be lowered, and when the load came down, the plaintiff was badly hurt. The plaintiff and hatch tender both were employed by the defendant stevedore and the defendant asked for a ruling that they were fellow servants and that therefore the plaintiff could not recover. The court ruled that if the failure of the hatch tender to give the signal was the proximate cause of the injury, the verdict must be for the plaintiff. Verdict found for the plaintiff. Affirmed by the Supreme Court of the State. *Held,* for plaintiff, by the Act of June 5, 1920, c. 250, Sec. 20 (Jones Act), 41 Stat. 988, 1007, Congress meant by the use of the word "seaman" to include stevedores engaged as the plaintiff was, whatever it might mean in laws of a different kind, and that in such actions all statutes of the United States modifying or extending the common law remedy in case of personal injuries to railway employees shall apply. The statutes referred to do away with the fellow servant rule in the case of personal injuries to railway employees and therefore it can be no defense in the present action. International Stevedoring Company *v.* Haverty, U. S. Sup. Ct. Oct. T. 1926, No. 236.

The courts have been quite liberal in deciding who is a "seaman" in the modern sense. In Saylor *v.* Taylor, 77 Fed. 476, 479, (C. C. A. 4th, 1896), it was stated, "Hence it is that in all times and in all countries those who are employed upon a vessel in any capacity, however humble, and whose labor contributes in any degree, however slight, to the accomplishment of the main object in which the vessel is engaged, are clothed by the law with the legal rights of mariners, 'no matter what may be their sex, character, station or profession. Ben. Adm. s. 241.'" So it has been held that, as a dredge has been considered a ship, so the men who operate it are held to be seamen. Saylor *v.* Taylor, supra; Ellis *v.* U. S., 206 U. S. 246 (11 Ann. Cas. 589, 1907). Fishermen and sealers, who go for that purpose are held to be seamen, though they may do other incidental work. The Minna, 11 Fed. 759 (E. D. Mich. 1882); Alaska Packers' Ass'n *v.* Domenico, 117 Fed. 99, (C. C. A. 9th, 1902); North Alaska Salmon Co. *v.* Larsen, 220 Fed. 93, (C. C. A. 9th, 1915). The wife of a ship's cook who has been engaged as a second cook by the master, is a mariner in this sense. James H. Shirgley, 50 Fed. 287 (N. D. N. Y. 1892). So too, a clerk of a steamboat. Sultana, 1 Brown, Adm. 13, Fed. Cas. No. 13602 (1857). So too, a bartender, J. S. Warden, 175 Fed. 315 (S. D. N. Y. 1910). So too, the ship's steward. Pacific Mail S. S. Co. *v.* Schmidt, 214 Fed. 513, (C. C. A. 9th, 1914). And the wireless operator. Buena Ventura, 243 Fed. 797, (S. D. N. Y. 1916). But it never has been held prior to the principal

case that an independent contractor or his employees were seamen. The Hoquiam, 253 Fed. 627 (C. C. A. 9th 1918); Johnson *v.* American Hawaiian S. S. Co. 14 Fed. (2nd) 534 (1926).

This decision brings about a drastic change in the law regarding maritime torts. The former rule was that by the general maritime law the vessel owner was liable only for the maintenance, cure and wages of a seaman injured by the negligence of a fellow servant. Southern Pacific Co. *v.* Jensen, 244 U. S. 205 (1917); Chelentis *v.* Luckenbach Steamship Co., Inc., 247 U. S. 372 (1918).

The Jones Act of June 5, 1920, changed the rule so far as seamen were concerned and allowed them to recover compensatory damages. Panama Railroad Co. *v.* Johnson, 264 U. S. 375 (1924); The Osceola, 189 U. S. 158 (1903); The Iroquois, 194 U. S. 240 (1904); Chelentis *v.* Luchenbach Steamship Co., supra.

Stevedores or longshoremen could not, before the principal case, hold their employers responsible if the negligent act which caused his injuries was that of a fellow servant. Cassil *v.* United States Emergency Fleet Corporation, 289 Fed. 774 (C. C. A. 9th 1923); The Hoquiam, supra; The Daisy, 282 Fed. 261 (C. C. A. 9th 1922); Western Fuel Co. *v.* Garcia, 257 U. S. 233 (1921); Carstensen *v.* Hammond Lumber Co., 11 Fed. (2nd) 142 (C. C. A. 9th 1926).

In The Hoquiam, supra, in a very able opinion by Hunt, C.J., it was said, "when we consider that the only class of persons mentioned in the section (Sec. 20—Act of June 5, 1920) are seamen, it is proper to read and understand the whole section by its ordinary grammatical sense. The great purpose, the special need for protection of seamen, was carried out by the statute; but we find no safe ground for extension of its provisions to others not seamen." This seems to express the true intent of the statute, even in view of what the Supreme Court has laid down in the principal case. It is manifestly unsound to construe the "Jones Act" as applying to stevedores and longshoremen. The whole tenor of the Act is for the protection of seamen and has no reference in any of its provisions to other maritime employments. It is submitted that if Congress intended to include other employments, it would not have restricted its language to "seamen."

COVENANTS—BREACH OF WARRANTY AS TO INCUMBRANCES—DAMAGES.—This is an action by the plaintiffs to recover substantial damages for a breach of the defendant's covenant against incumbrances. The plaintiffs allege that the land in question was sold to them by the defendant with a full covenant and warranty deed, but that in fact, at the time of conveyance, there was an outstanding mortgage on the premises. It appears that the mortgage was thereafter satisfied of record by the defendant. Plaintiffs appeal from a judgment awarding them nominal damages. *Held,* judgment of nominal damages affirmed by a unanimous opinion on the ground that in a breach of a covenant against incumbrances the plaintiff may recover nominal damages only, unless he alleges and proves same special damage. McShane *v.* Kilpatrick, 110 So. 281 (Sup. Ct. Ala., 1926).