

# Conflict of Laws--Application of Merchant Marine Act to Stevedores Working on Board Foreign Vessels (Uravic v. Jarka Co., 282 U.S. 234 (1931))

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## RECENT DECISIONS

*Editor*—JULIA M. COOK

**BANKS AND BANKING—JOINT SAVINGS ACCOUNTS—STATUTORY PRESUMPTION OF GIFT.**—Defendant's testatrix had opened a savings bank account in the joint names of herself and the plaintiff, "payable to either or survivor." Later she closed the account and deposited the money withdrawn in a new account in her own name. Shortly before her death, desiring to reinstate the joint account, she delivered the passbook for the individual account to plaintiff and directed her to take the necessary steps for the re-establishment of the account in the joint form. Owing to the reluctance of the bank to make the change, the money was still in the individual account when the depositor died. The Appellate Division had sustained a verdict for the plaintiff on the ground that the statute, section 249, subdivision 3 of the Banking Law<sup>1</sup> created a conclusive presumption of gift in her favor on the death of the depositor.<sup>2</sup> On appeal, *Held*, the death of the depositor merely opened the door to competent testimony of the intent with which the account was opened. However, the testimony offered being incompetent the result reached by the lower court must be affirmed. *Marrow v. Moskowitz*, 255 N. Y. 219, 174 N. E. 460 (1931).

The decision is important in that it completes the judicial interpretation of section 249 of the Banking Law so far as it relates to the presumptions created by the making of a joint savings deposit in the statutory form. During the joint lives of the parties there exists a presumption of joint tenancy, rebuttable by proof of a contrary intent. On the death of either one that presumption becomes conclusive as to any money remaining in the account.<sup>3</sup> As to moneys previously withdrawn the presumption of joint tenancy continues rebuttable.

J. V. M.

**CONFLICT OF LAWS—APPLICATION OF MERCHANT MARINE ACT TO STEVEDORES WORKING ON BOARD FOREIGN VESSELS.**—Plaintiff's intestate, an American citizen employed as a stevedore by a Delaware corporation, was killed while unloading a vessel flying the German flag in the harbor of New York. In an action brought to

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<sup>1</sup> Laws of 1914, Ch. 369.

<sup>2</sup> *Marrow v. Moskowitz*, 230 App. Div. 1, 242 N. Y. Supp. 523 (1st Dept. 1930); (1930) 5 St. John's L. Rev. 116.

<sup>3</sup> *Moskowitz v. Marrow*, 251 N. Y. 380, 167 N. E. 506 (1929); (1929) 4 St. John's L. Rev. 120.

recover damages under section 33 of the Merchant Marine Act,<sup>1</sup> the Court of Appeals affirmed a judgment of the trial Court dismissing the complaint on the ground that the Act had no application in a suit for injuries to an employee of an American corporation on a foreign vessel in American waters.<sup>2</sup> On certiorari, *Held*, reversed. The plaintiff is entitled to the benefits of the Act, the foreign registry of the vessel being immaterial. *Uravic v. Jarka Co.*, 282 U. S. 234, 51 Sup. Ct. 111 (1931).

The purpose of this Act is to promote the welfare of American seamen and the maintenance of the American merchant marine. It has been construed to include stevedores when engaged in a maritime service.<sup>3</sup> The authority of Congress to legislate in respect to maritime matters has been sustained by the Supreme Court.<sup>4</sup> A foreign ship within the territorial waters of the United States is subject to its jurisdiction and the Courts will administer justice according to its laws, unless a different law be shown to apply.<sup>5</sup> The rights of a plaintiff in an action *ex delicto* are those given him by the country in whose territorial waters the injury occurred,<sup>6</sup> and crimes committed upon foreign private vessels may be punished by the body politic having territorial jurisdiction.<sup>7</sup> The state Court denied the benefits of the Act of stevedores employed by an American concern merely because the injury occurred on a ship of foreign registry,<sup>8</sup> although the relationship of master and servant existed between the American concern and the harbor worker and there was no contractual relationship between the latter and the foreign ves-

<sup>1</sup> Act of June 5, 1920, Ch. 250, Sec. 33, 41 Stat. at L. 988, 1007, U. S. C. A., Tit. 46, Sec. 688. This section provides for a right of action for damages at law, with trial by jury, by the personal representative of any seaman suffering death from injuries received in the course of his employment. In such action, all statutes of the United States conferring or regulating the right of action for death in the case of railway employees are applicable. Under the Employers Liability Act (U. S. C. A., Tit. 45, Secs. 51-59), recovery is allowed even where the injuries are due to the negligence of a fellow servant. *Second Employers Liability Cases*, 223 U. S. 1, 32 Sup. Ct. 391 (1911); *Panama R. R. Co. v. Johnson*, 264 U. S. 375, 44 Sup. Ct. 391 (1923).

<sup>2</sup> 252 N. Y. 530, 170 N. E. 131 (1929), *aff'd* on authority of *Resigno v. Jarka Co.*, 248 N. Y. 225, 162 N. E. 13 (1928) See Note (1928) 3 St. John's L. Rev. 114.

<sup>3</sup> *International Stevedoring Co. v. Haverty*, 272 U. S. 50, 47 Sup. Ct. 19 (1926); *Buzynski v. Luckenbach S. S. Co.*, 277 U. S. 226, 48 Sup. Ct. 440 (1928).

<sup>4</sup> *Cunard S. S. Co. v. Mellon*, 262 U. S. 100, 43 Sup. Ct. 504 (1923).

<sup>5</sup> *The Exchange v. McFaddon*, 7 Cranch. 116, 136 (U. S. 1812); *The Lottawanna*, 21 Wall. 558, 571 (U. S. 1874); *The Western Maid*, 257 U. S. 419, 42 Sup. Ct. 159 (1922); *Cunard S. S. Co. v. Mellon*, *ibid.*

<sup>6</sup> *Williams v. Oceanic Stevedoring Co.*, 27 F. (2nd) 905 (D. C., S. D. Tex. 1928).

<sup>7</sup> *Wilderhus's Case*, 120 U. S. 1, 7 Sup. Ct. 383 (1887); *Patterson v. The Eudora*, 190 U. S. 169, 177, 23 Sup. Ct. 821 (1903).

<sup>8</sup> *Supra* note 2.

sel or its owner.<sup>9</sup> Thus, in effect, an American seaman became a foreign seaman as soon as he stepped on board a foreign vessel, and if he chanced to work on many ships in the course of a day, his nationality would change in each instance to that of the ship on which he was working.<sup>10</sup> The federal courts, on the other hand, have held that an American seaman so employed is entitled to the benefits of the Act.<sup>11</sup> The purport of the Act being to benefit American seamen, to deny relief merely because the injury occurred on a ship of foreign registry would be a strained and unreasonable application of it.<sup>12</sup>

R. L.

CONSTITUTIONAL LAW—POWER OF CONGRESS TO REGULATE RATES FOR PERSONAL SERVICES IN INTERSTATE COMMERCE.—Plaintiffs were all registered under the Packers and Stockyards Act,<sup>1</sup> and comprised the entire membership of the Omaha Livestock Exchange. In an effort to secure a better return on their respective investments, plaintiffs filed a new schedule of rates with the Secretary of Agriculture. The latter, on his own motion, issued an order suspending the operation of the proposed schedule and held a public hearing on the reasonableness of the proposed rates. The Livestock Exchange then sought an injunction restraining the Secretary of Agriculture on the ground that the Act in question if construed to give the Secretary of Agriculture such power would be in contravention of the Fifth Amendment.<sup>2</sup> *Held*, that Congress has power to authorize the Secretary of Agriculture to fix the rate of compensation for personal services where the services are rendered in a business that is subject to public regulation. *Tagg Bros. and Moorhead et al. v. U. S. et al.*, 280 U. S. 420, 50 Sup. Ct. 220 (1929).

The plaintiff relied upon *Tyson v. Bonton*<sup>3</sup> and *Ribnik v. McBride*,<sup>4</sup> contending that those cases held that the rate of compensation for personal services cannot be regulated. But Justice

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<sup>9</sup> See *Schotis v. North Coast Stevedoring Co.*, 24 F. (2nd) 591 (D. C., Wash., 1927).

<sup>10</sup> *Zarowitch v. F. Jarka Co.*, 21 F. (2nd), 187 (D. C., N. Y., 1927); *Mahoney v. International Elevating Co.*, 23 F. (2nd) 130 (D. C., N. Y. 1927); *aff'd* 26 F. (2nd) 1019 (C. C. A. 2nd, 1928).

<sup>11</sup> *Id.*, *Williams v. Oceanic Stevedoring Co.*, *supra* note 6.

<sup>12</sup> *Williams v. Oceanic Stevedoring Co.*, *ibid.*

<sup>1</sup> U. S. C. A., Tit. 7, Secs. 201-217, 42 Stat. 159, 163-168.

<sup>2</sup> U. S. Constitution, Fifth Amendment.

<sup>3</sup> 273 U. S. 418, 47 Sup. Ct. 426 (1927). For a detailed and authoritative consideration of this subject see Finkelstein, *From Munn v. Illinois to Tyson v. Banton, A Study In the Judicial Process*, (1927) 27 Col. L. Rev. 769.

<sup>4</sup> 277 U. S. 350, 48 Sup. Ct. 545 (1928). See also notes (1928) 3 St. John's L. Rev. 104 and (1929) 3 St. John's L. Rev. 244.