Application of the Merchant Marine Act to Stevedores

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

This Note is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.
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

²Act 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."
³Supra, note 1 at 229.
⁴Supra, note 2.
⁶2 St. Johns Law Review, 236.
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 em-
dloyed 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.\textsuperscript{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 Ameri-
can 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.\textsuperscript{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.\textsuperscript{10} “If
the construction of Seamen’s Act,\textsuperscript{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.”\textsuperscript{12}

The Legislative enactment, as has been said, is primarily intended
for the advancement of the American Merchant Marine, the par-
ticular 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.\textsuperscript{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

\textsuperscript{8} Supra, note 1 at 230.
\textsuperscript{10} Ibid.
\textsuperscript{12} Mahoney v. International Elevating Company, Inc., \textit{et al.}, 23 Fed. (2d)
130 (E. D. N. Y. 1927).
\textsuperscript{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 construc-
tion 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. 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. 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, 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.

E. P. W.

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.