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Admiralty - Assumption of Risk Under the Jones Act

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Notes

ADMIRALTY—ASSUMPTION OF RISK UNDER THE JONES ACT—The plaintiff, a seaman, brought an action under the Jones Act[1] for injuries sustained in the course of his duty. The accident occurred as the result of his knowingly using a defective appliance when he could have used a safe one. A judgment for the plaintiff was affirmed by the Circuit Court of Appeals[2] and by the Supreme Court. It was *held*, that assumption of risk is no bar to the plaintiff's recovery under the Jones Act, but that in conformity with the admiralty rule of comparative negligence his choice of a defective appliance may be considered in mitigation of damages. *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424, 59 S.Ct. 262, 83 L.Ed. 261 (1939).[3]

Prior to the Jones Act, the defense of assumption of risk was not entertained in admiralty.[4] The inapplicability of this defense was occasioned by the hazardous characteristics peculiar to the seaman's calling, "the rigid discipline to which he is subject, and the practical difficulties of his avoiding exposure to risks of unseaworthiness and defective appliances."[5] Such considerations were largely the basis for the traditional policy of regarding seamen as the wards of admiralty.[6]

By the Jones Act, it is provided that a seaman injured 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 case of personal injury to railway employees shall apply. . . ."[7] The declared purpose of this legislation was to enlarge, rather than to narrow, the protection accorded seamen by the traditional doctrines of the mari-

1. 38 Stat. 1185, § 20 (1915), as amended by 41 Stat. 1007, § 33 (1920), 46 U.S.C.A. § 688 (1926).

2. Smith v. Socony-Vacuum Oil Co., 96 F. (2d) 98 (C.C.A. 2nd, 1938).

3. For a brief discussion of the case, see Robinson, Admiralty (1939) 315, § 39.

4. Olson v. Flavel, 34 Fed. 477 (D.C. Ore. 1888); The Julia Fowler, 49 Fed. 277 (S.D. N.Y. 1892).

5. See The Arizona v. Anelich, 298 U.S. 110, 122-123, 56 S.Ct. 707, 80 L.Ed. 1075 (1936).

6. Idem.

7. 38 Stat. 1185, § 20 (1915), as amended by 41 Stat. 1007, § 33 (1920), 46 U.S.C.A. § 688 (1926).

time law.[8] Despite the fact that assumption of risk is a defense under the Federal Employers' Liability Act,[9] under the Jones Act the courts have continued to apply the prior admiralty rule with respect to this defense in those cases in which the injury to the seaman resulted from the unseaworthiness of the vessel,[10] a defective appliance,[11] an unsafe place to work,[12] obedience to orders of a superior,[13] or the negligence of a fellow servant.[14] Where the defense has been allowed, "the employee was thought to have the status of a stevedore or shore worker and not that of a seaman."[15] The principal case is novel in that, for the first time since the Jones Act, the Court passed upon the question as to whether assumption of risk bars recovery where there existed alternative available means by which the seaman could easily have avoided the use of the defective appliance.

While both assumption of risk and contributory negligence are defenses at common law, in admiralty the comparative negligence rule is maintained without modification.[16] Consequently,

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8. See The Arizona v. Anelich, 298 U.S. 110, 123, 56 S.Ct. 707, 80 L.Ed. 1075 (1936).

9. "In applying the Federal Employers' Liability Act . . . it has been settled by numerous decisions of this court that assumption of risk is a defense in a suit brought to recover for injuries resulting from defective appliances, the use of which is not required by the Federal Safety Appliance Act. . . ." The Arizona v. Anelich, 298 U.S. 110, 119-120, 56 S.Ct. 707, 80 L.Ed. 1075 (1936).

10. ". . . the rule is well settled that a seaman does not assume the risk arising from the unseaworthy condition of the vessel on which he serves even if such condition be known to him when he embarks." The New Berne, 80 F. (2d) 244, 247 (C.C.A. 4th, 1935), and cases cited therein.

11. The Arizona v. Anelich, 298 U.S. 110, 56 S.Ct. 707, 80 L.Ed. 1075 (1936); Howarth v. United States Shipping Board Emergency Fleet Corp., 24 F. (2d) 374 (C.C.A. 2nd, 1928); Pittsburgh S.S. Co. v. Palo, 64 F. (2d) 198 (C.C.A. 6th, 1933); American Pacific Whaling Co. v. Kristensen, 93 F. (2d) 17 (C.C.A. 9th, 1937); Cleveland-Cliffs Iron Co. v. Martini, 96 F. (2d) 632 (C.C.A. 6th, 1938), cert. denied 305 U.S. 605, 59 S.Ct. 65, 83 L.Ed. 13 (1938). Cf. McGeorge v. Charles Nelson Co., 107 Cal. App. 148, 290 Pac. 75 (1930), affirmed 136 Cal. App. 638, 29 P. (2d) 426 (1934), cert. denied 293 U.S. 554, 55 S.Ct. 97, 79 L.Ed. 656 (1934); Smith v. United States, 96 F. (2d) 976 (C.C.A. 5th, 1938).

12. Beadle v. Spencer, 298 U.S. 124, 56 S.Ct. 712, 80 L.Ed. 1082 (1936); McCall v. Inter Harbor Navigation Co., 154 Ore. 252, 59 P. (2d) 697 (1936).

13. South Atlantic S. S. Co. of Delaware v. Munkacsy, 7 W. W. Harr. 580, 187 Atl. 600 (Del. 1936), cert. denied 299 U.S. 607, 57 S.Ct. 233, 81 L.Ed. 448 (1936); Masjulis v. United States Shipping Board Emergency Fleet Corp., 31 F. (2d) 284 (C.C.A. 2nd, 1929); United States v. Boykin, 49 F. (2d) 762 (C.C.A. 5th, 1931); Hanson v. Luckenbach S. S. Co., 65 F. (2d) 457 (C.C.A. 2nd, 1933).

14. Reed v. Director General of Railroads, 258 U.S. 92, 42 S.Ct. 191, 66 L.Ed. 480 (1922); Anderson v. Matson Nav. Co., 125 Cal. App. 447, 13 P. (2d) 1041 (1932); Paulsen v. McDuffie, 47 P. (2d) 709 (Cal. 1935).

15. Socony-Vacuum Co. v. Smith, 305 U. S. 424, 429, 59 S.Ct. 262, 83 L.Ed. 261 (1939), and cases cited therein.

16. Olson v. Flavel, 34 Fed. 477 (D.C. Ore. 1888); The Julia Fowler, 49 Fed. 277 (S.D. N.Y. 1892).

for negligence to bar recovery in one case and merely to reduce damages in the other would be inconsistent. It is necessary to have a harmonious application of the admiralty doctrines of assumption of risk and comparative negligence.

As a practical solution, the Court suggested that "any rule of assumption of risk in admiralty, whatever its scope, must be applied in conjunction with the established admiralty doctrine of comparative negligence and in harmony with it."[17] Assumption of risk may well serve to mitigate damages but must not be used to completely bar recovery. Consequently, the Court applied the rule of comparative negligence and the decision seems to be correct.

J. D. M.

BANKS AND BANKING—DUTIES OF A DEPOSITOR TO HIS BANK—STATUTES LIMITING TIME WITHIN WHICH SUITS MAY BE INSTITUTED TO ENFORCE DRAWEE'S LIABILITY ON FORGED OR ALTERED CHECKS—An employee of the plaintiff, who had full charge of his employer's check book, forged the latter's signature as drawer and forged the indorsements of certain of plaintiff's employees as payees to a number of checks in a skillfully executed series of forgeries extending over a period of three years. Although the plaintiff had not given notice of the forgeries in accordance with the terms of Act 163 of 1934,[1] he brought suit against the drawee bank to recover the amount of the forged checks, which had been paid by the drawee and charged to his account. The trial court held Act 163 of 1934 to be unconstitutional on the ground that the object of its provisions was not sufficiently indicated by its title, but maintained the plea of prescription as to all checks returned more than one year prior to the institution of the suit. On appeal it was *held* that (1) the statute is constitutional, (2) it is applicable to those checks on which both the payee's indorsement and the drawer's signature were forged, and (3) the plaintiff's suit was barred by failure to comply with the

17. Socony-Vacuum Co. v. Smith, 305 U.S. 424, 431, 59 S.Ct. 262, 83 L.Ed. 261 (1939).

1. La. Act 163 of 1934, § 1 [Dart's Stats. (Supp. 1938) § 675.1] limits the time within which the depositor must notify the bank of forged or raised checks and checks payable to fictitious persons, to one year after the return of the paid vouchers or notice that they are ready for delivery, if the bank is to be held liable to the depositor for payment thereof.