THE JONES ACT. REMEDIES OF SEAMEN.

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Originally, the maritime law, as it was conceived to be by the Supreme Court of the United States, permitted no recovery by a seaman for injuries incurred as the result of the negligence of a fellow crewman. At the same time a seaman who became ill or suffered injury while in the service of his ship was entitled, without regard to fault, to "maintenance" and "cure", and to wages, at least as long as the voyage continued. Also, if he incurred injury because of the unseaworthiness of the vessel or of its appliances, again without regard to fault, he was entitled to indemnity.[1] The Seamen's Act of 1920, or, as it is usually called, the Jones Act, extended to seamen the benefits already conferred upon railway employees by the Federal Employers' Liability Act.[2] Since the act did not purport to affect in any way the preexisting maritime law, a seaman who is injured or becomes ill during the period of his service to his ship now has three routes over which he may travel in his quest for compensation. If his injury is due to the negligence of a member of his crew, he may recover indemnity under the Jones Act. If it is due to unseaworthiness he may also recover indemnity, but under the traditional maritime law. In any event, unless the seaman has done something which forfeits his claim, he is entitled to maintenance and cure.

MAINTENANCE AND CURE

The underlying principles of maintenance and cure are apparently as old as maritime commerce in the Mediterranean area. Early codes refer to the doctrine, which, of course, has no common-law counterpart.[3]

Mr. Justice Story[4] described its underlying reasons in the following language:

> The protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seamen while in service; the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service.

The duty of the vessel and her owner to provide maintenance and cure for seamen injured or falling ill while in service is said to arise from

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[1] The Osceola, 189 U.S. 158 (1903). The libellant was injured as the result of the negligence of the master. The Supreme Court, reversing the lower federal courts, denied recovery on the ground that recovery for injuries to seamen is limited to maintenance and cure and to unseaworthiness. In 1915 Congress provided that a seaman having command is not a fellow servant. In Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918), the Supreme Court held that this legislation added nothing to the maritime law. The next step was the Jones Act. See note 2.

[2] 41 Stat. 1007 (1902) ,46 U.S.C. §688 (1952).

[3] See Justice Brown in the Osceola, note 1 *supra.*

[4] Harden v. Gordon, Fed. Cas. No. 6,047 (C.C.D.Me. 1823).

the contract of employment.[5] The award is not made as compensation for the disability suffered. The injured party cannot recover a lump sum[6] except when there is a failure to comply with the duty, in which case he may recover consequential damages.[7] In the case of *Calmar S. S. Corp. v. Taylor*[8] Mr. Justice Stone said that "maintenance" is comparable to that to which the seaman is entitled at sea and "cure" is care including nursing and medical attention. The disability need not be service-connected. In *Smith v. United States*,[9] for example, maintenance and cure was allowed a seaman who sprained an ankle at the home of a friend after signing the ship's articles. A similar result was reached where the seaman contracted amoebic dysentery, whether in the service of the ship or not;[10] and in the case of *Warren v. United States*[11] a majority of the Supreme Court allowed a claim where the seaman fell from a window ledge at a dance hall when on shore leave. Claims have been allowed even where the injury was the result of a barroom fist fight.[12] A similar position was taken where the injury was incurred on a bus on which the seaman was going to visit a relative.[13] Contributory negligence does not bar recovery.[14] It has been held, however, that a claim will not be allowed where the injury results from intoxication,[15] and the same result was reached where the seaman had contracted syphilis.[16] While the right to recover wages terminates with the voyage, it has been stated that where the seaman is employed for a designated period of time rather than for a voyage, as is often the case in the intercoastal trade, wages for the fixed period are recoverable.[17] As already stated, "cure" includes medical care and hospitalization; maintenance is usually allowed at the rate of several dollars a day as long as the duty continues.[18] It should be added that the

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[5] See Cardozo, J., in Cortes v. Baltimore Insural Line, 287 U.S. 367 (1932).

[6] Calmar S.S. Corp. v. Taylor, 303 U.S. 525 (1938).

[7] *Cf.* Sims v. United States War Shipping Administration, 186 F. 2d 972, (3rd Cir. 1951) *cert. denied,* 342 U.S. 816.

[8] See Note 6 *supra.*

[9] Smith v. United States, 167 F. 2d 550, (4th Cir. 1948).

[10] Spahn v. United States, 171 F. 2d 980 (4th Cir. 1949).

[11] Warren v. United States, 340 U.S. 523, (1951).

[12] Nowery v. Smith, 69 F. Supp. 755 (E.D. Pa. 1946), *aff'd,* 161 F. 2d 732 (3rd Cir. 1947).

[13] Gaynor v. United States, 90 F. Supp. 751 (E.D.Pa. 1950).

[14] *Cf.* Aguilar v. Standard Oil Co. of N.J., 318 U.S. 724, 731 (1943).

[15] Barlow v. Pan Atlantic S.S.Co., 101 F. 2d 697 (2d Cir. 1939).

[16] Zambrano v. Moore McCormick Lines, 131 F. 2d 537 (2d Cir. 1942).

[17] See McManus v. Marine Transport Lines, Inc., 149 F. 2d 969 (2d Cir. 1945); Enochasson v. Freeport Sulphur Co., 7 F. 2d 674. (S.D.Tex. 1925); Farrell v. United States, 336 U.S. 511 (1949) (dissenting opinion).

[18] In the case of Robinson v. Swayne and Hort, Ltd., 33 F. Supp. 93 (S.D. Cal. 1940), it was held that maintenance as well as cure can only be recovered to the extent that the seaman has been out of pocket. There is no clear cut rule as to maintenance. The amount which may be allowable varies according to circumstances. In the *Robinson* case the respondent was willing to pay two dollars a day. Probably the average would be five or six dollars a day.

obligation continues only so long as cure is practicable.[19] If, for example, a seaman loses a leg, the obligations of the owner cease upon his medical discharge. It should be emphasized that the obligation of the owner is absolute, and breach gives rise to a claim for consequential damages even though the owner or his representatives may have acted in good faith. For example, in the case of *Sims v. United States*[20] recovery of consequential damages was allowed even though the respondent in good faith thought that the plaintiff was "a malingerer or liar."

UNSEAWORTHINESS

The doctrine of liability because of unseaworthiness received fresh impetus in the case of *Mahnich v. Southern S. S. Co.*[21] The seaman was injured at sea by a fall from a staging on which he was standing while painting the bridge. The evidence showed that a piece of defective rope had been used in rigging the staging. There was sound rope on board. The trial court held that suit was brought too late under the Jones Act and denied recovery. The Court of Appeals for the Third Circuit, by a divided court, affirmed. The Supreme Court reversed on the ground that the staging from which the seaman fell was inadequate for the purpose for which it was used and so was unseaworthy. The thesis of the majority was that recovery can be had where the issue of seaworthiness is involved whether failure to observe the defect is due to negligence or is unavoidable. Mr. Justice Roberts, with whom Mr. Justice Frankfurter concurred, dissented on the ground that the injury was not the consequence of unseaworthiness (the defective rope) but of the negligence of the ship's officer in selecting the rope. Responsibility for this negligence was provided for by the Jones Act, but, because of the running of the limitation period, recovery could not be had under it. The further position of the dissent was that application of the doctrine of seaworthiness to a case such as this, one involving the use of improper applicances, would impose an unwarranted burden on shipping.

Responsibility because of unseaworthiness was recently extended so as to include a duty to furnish a proper crew.[22] The plaintiff was attacked

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[19] *Cf.* Calmar S.S. Corp. v. Taylor, 303 U.S. 525 (1938). The seaman developed Buerger's disease. His leg was amputated. He had been paid a total sum of $487.00. He then brought suit alleging negligence. The trial court found there was no negligence but allowed recovery of $7,000 on the ground that his disease was permanent and incurable. This the Supreme Court held to be improper. Mr. Justice Stone took the position that maintenance is not compensable by a lump sum judgment even though the injury or disease may be incurable. Recovery can only be had for the sums due as they accumulate. He did, however, state that other considerations might apply where the injury is service connected. In any event each case is to be determined on its peculiar facts.

[20] Sims v. United States War Shipping Administration, 186 F. 2d 972 (3rd Cir. 1951).

[21] Mahnich v. Southern S.S.Co., 321 U.S. 96 (1944).

[22] Boudoin v. Lykes Bros. S.S.Co., Inc., 348 U.S. 336 (1955).

by another member of the crew and severely beaten. The court below found that the attacker was of a savage disposition, capable of endangering the lives of others. The Supreme Court held that the proper character of the crew is as much a part of seaworthiness as is soundness of hull, machinery and ship's appliances. While an ordinary assault would not give rise to liability because of unseaworthiness, in a case such as this it would, even though there was no negligence in hiring the seaman. Other typical instances of recovery because of unseaworthiness include the following cases: *Carlisle Packing Co. v. Sandanger*,[23] *The H. A. Scandret*[24] and *Krey v. United States*.[25] In the *Carlisle Packing Co.* case the injury was due to an explosion caused by pouring gasoline to start a fire from a can which ordinarily contained coal oil. In the *Scandret* case the seaman, while trying to open a door, pulled off the knob and fell into an open hatch. In the *Krey* case there were no handles on the sides of a shower bath. The seaman slipped and fell.

NEGLIGENCE. THE JONES ACT.

Congressional extension of the Federal Employers' Liability Act to injuries incurred by seamen took place during a period when the Supreme Court was cutting a tortuous trail with respect to the application of state workmen's compensation acts to injuries suffered by harbor workers, principally longshoremen.[26] If the injury occurred on board a vessel in the course of maritime employment, application of state law was held to be unconstitutional on the ground that the application of the state act to such injuries would materially disturb the uniformity of the general maritime law in its interstate and international relations.[27] The Jones Act provides that any seaman who shall suffer personal injury in the course of his employment "may, at his election, maintain (under the Act) an action for damages at law, with the right to trial by jury". It was contended in the case of *Panama R.R. Co. v. Johnson*[28] that the effect of the words just quoted was to withdraw from admiralty jurisdiction suits by seamen when recovery is sought under the Jones Act. Its effect, so it was contended, was such that if suit were brought on the common-law side with trial by jury, the federal act would control; but if suit were brought in admiralty, traditional maritime law would govern. Consequently the act materially impinged upon the general maritime law as administered in admiralty. The position of the Supreme Court, speaking through Mr. Justice Van Devanter, was that although Congress

[23] Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922).

[24] The H. A. Scandret, 87 F. 2d 708 (2d Cir. 1937).

[25] Krey v. United States, 123 F. 2d 1008 (2d Cir. 1941).

[26] See Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917), and cases cited in note 27 *infra*.

[27] *Cf.* Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920); State Industrial Commission v. Nordenkolt Corp., 259 U.S. 263 (1922); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922).

[28] Panama R.R.Co. v. Johnson, 264 U.S. 375 (1924).

may not impair the judicial power of the federal courts over "admiralty and maritime cases," it may enact legislation concerning maritime affairs. The Jones Act did no more than add a new cause of action to the maritime law. The further position was that Congress did not withdraw claims of seamen, when arising out of the newly created right, from admiralty jurisdiction. It merely provided for an election to sue under the act in a commonlaw court, with right to trial by jury, or under the act in admiralty where traditionally there is no jury. As a consequence a seaman injured in the course of his employment may, assuming proper venue, sue under the act in a federal court on the admiralty side, in a federal court on the common-law side, or in a state court. In any event the validity of his claim is determined by the federal statute.

The initial burden of proving negligence under the Jones Act is, of course, on the plaintiff seaman. Under both traditional maritime law and the act, contributory negligence is not a defense. The comparative degree of the negligence of the plaintiff or libellant as a contributing cause operates to reduce the amount of the recovery to which he would have been entitled had he not been negligent. The defendant has here the burden of proof.[30] Because of the more protracted intimacy of a seaman with his ship, the types of situations where recovery may be had on proper proof are more varied than is the case with land employees. For example, in *Hern v. Moran Towing & Transportation Co.*,[31] illness caused by damp quarters was held to be a proper basis for recovery. Again, in *Alpha S. S. Corp. v. Cain*,[32] recovery was permitted where a superior struck the plaintiff; and in *Koehler v. Presque-Isle Transport Co.*,[33] suit was allowed where the plaintiff had been beaten by a fellow seaman, on the ground that the ship's officers knew or should have known the seaman's vicious character. In *De Zon v. American President Lines*,[34] while there was disagreement as to the existence of negligence, the owner was held to be responsible for the negligence of the ship's doctor even though there was no negligence in selecting him. Recovery because of negligent failure to render aid to a deckhand who fell overboard and was drowned was upheld in *Di Nicola v. Penna. R. Co.*[35]

[29] See The Arizona v. Anelich, 298 U.S. 110 (1936); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939). In both cases, the first involving the Jones Act and the second seaworthiness, the matter in question was assumption of risk as contributory or, alternatively, comparative negligence. The Employers Liability Act was amended in 1939 so that now the employee does not assume the risk in any case where the death or injury results from the negligence of officers, agents or employees of the carrier. See 53 STAT. 1404 (1939), 45 U.S.C. §54 (1952).

[30] See Central Vermont Ry. Co. v. White, 238 U.S. 507 (1915).

[31] Hern v. Moran Towing & Transportation Co., 138 F. 2d 900 (2d Cir. 1943).

[32] Alpha S.S.Corp. v. Cain, 281 U.S. 642 (1930).

[33] Koehler v. Presque-Isle Transport Co., 141 F. 2d 490 (2d Cir. 1944).

[34] De Zon v. American President Lines, 318 U.S. 660 (1943).

The obligation to furnish medical care may also arise out of the duty to furnish maintenance and cure. See note 20, *supra*. In the Iroquois, 194 U.S. 240 (1903), the libellant when aloft fell to the deck breaking two ribs and a leg.

Reference has been made to the attack on the Jones Act on grounds of unconstitutionality, and to the resulting interpretation to the effect that suit may be brought, alternatively, in admiralty, or in a state court, or on the common-law side of a federal court, assuming always proper venue.[36] The same alternatives apply when suit is for maintenance and cure or for indemnity for injuries due to unseaworthiness.[37] Maritime law, even when judge-made, is federal law. But beginning with the Judicature Act as enacted by the First Congress there has been "saved" to suitors a common-law remedy.[38] The applicable substantive law is the maritime law, but suit may be brought to enforce a maritime claim in a state court, or on the common-law side of a federal court with trial there under common-law practices as modified by statute.[39] An action in rem is not a common-law remedy and will only lie in admiralty.[40] Although a seaman has a lien on the ship for his traditional maritime claims,[41] this lien can only be enforced through a libel in admiralty. However, the Jones Act does not create a maritime lien, so even if suit is brought on the admiralty side, there is no lien to enforce.

In the absence of some statute to the contrary, a cause of action does not, under the general maritime law, survive death.[42] Consequently

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The master set the leg. When the splints were removed the leg seemed to be in good condition. Upon arrival at the ship's destination it was found that the bones of the leg had not united. Recovery below of a judgment for $3,000 was affirmed on the ground that the ship, a sailing vessel, should have put into the nearest port even though this would have added a week to the voyage. For a case where suit was based on negligence, see Joshua Hendy Corp. v. Clavel, 189 F. 2d 37 (9th Cir. 1951). There had been a failure to equip the vessel with proper medicines, to communicate with other ships, and to put into a port within a day's run away.

[35] DiNicola v. Penna R. Co., 158 F. 2d 856 (2d Cir. 1946).

[37] Prior receipt of maintenance and cure does not preclude recovery under the Jones Act or for unseaworthiness. However, personal injury for which recovery may be had under the Jones Act, or, alternatively, because of unseaworthiness, gives rise to a single cause of action. An independent suit may be brought for maintenance and cure. Pacific S. S. Co. v. Peterson, 278 U.S. 130 (1928). The cumulative nature of maintenance and cure applies whether suit is at common law or in admiralty. For a case where suit was brought in a state court for maintenance and cure as well as for damages under the Jones Act, see Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942). For a case involving suit on the common law side of a federal court for maintenance and cure, see Jordine v. Walling, 185 F. 2d 662 (3rd Cir. 1950).

[38] The Judicature Act of 1789 §9, 1 STAT. 76, 28 U.S.C. §1333 (1952).

[39] See Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953).

[40] The Hine v. Trevor, 4 Wall 555, 18 L.Ed. 451 (1867).

[41] See The Osceola, 189 U.S. 158 (1903). As to Jones Act, see Plamals v. S.S. "Pinar del Rio", 277 U.S. 151 (1928).

[42] The Harrisburg, 119 U.S. 199 (1886). The Death on the High Seas Act of 1920, 46 U.S.C.A. §761 creates a cause of action for a death caused by "wrongful act, neglect or default occurring on the high seas beyond a marine league from the shore of any state . . ." If the cause of action accrues within

if a claim is one for maintenance and cure or one based on unseaworthiness, it comes to an end with the death of the claimant.[43] On the other hand the Federal Employers' Liability Act creates a cause of action for wrongful death. As a result the survivors, for whom suit may be brought by the personal representative, can only recover upon a theory of negligence.

Who Are Seamen

In order for an employee to be a seaman and hence entitled to relief as such, his work must relate to the operation and navigation of a ship or vessel.[44] However, the inclusiveness of the term "seaman" is broader than a landsman might think. As put by Judge Benedict:[45]

> The term mariner includes all persons employed on board ships and vessels, during the voyage, to assist in their navigation and preservation, or to promote the purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, kitchen boys, engineers, pilots, firemen, deck hands, wireless telegraph operators, waiters,—women as well as men,—are mariners.

Whether a particular structure is a ship is a matter which has been before the federal courts on a number of occasions. Obviously the mere fact that it floats on water does not make it one. In *Cope v. Vallette Dry Dock Co.*,[46] for example, a floating drydock was held not to be a ship or vessel since "it was not designed for navigation and could not be practically used therefor." Again, in the early case of *The Hendrick Hudson*,[47] an old steamship, which had been stripped of its boilers, engines and paddles and was used as a floating bar and hotel, was said not to be a ship. While these cases did not involve personal injury claims, presumably employees whose work is in connection with structures of this type are not seamen, nor even maritime workers. On the other hand, dredges,

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the three mile limit of a state, local state law will be given effect in admiralty. The City of Norwalk, 55 Fed. 98 (S.D.N.Y. 1893). Neither the federal statute nor state law applies to the traditional maritime claims of seamen since these statutes give relief for *wrongful* death.

[43] Lindgren v. United States, 281 U.S. 38 (1930); Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932).

[44] In Swanson v. Marra Bros., Inc., 328 U.S., (1946), a longshoreman was denied the right to sue his employer under the Jones Act on the ground that injuries incurred by longshoremen are covered by the Longshoremen's and Harbor Workers' Compensation Act. In an earlier case decided prior to the enactment of the Act a contrary result was reached on the ground that longshoremen perform functions which were originally performed by seamen. International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926).

[45] 1 Benedict, Admiralty 253 (6th ed., Knauth 1940).

[46] Cope v. Vallette Dry Dock Co., 119 U.S. 625 (1887).

[47] The Hendrick Hudson, 11 Fed. Cas. 1085, No. 6,355 (S.D.N.Y. 1869). *Cf.*, accord, Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co., 271 U.S. 19 (1926), a floating wharf.

scows and barges are as much ships as are the *Queen Mary* and the *United States. Maryland Gas. Co. v. Larson*[48] is an excellent illustration. A seagoing dredge was engaged in dredging the entrance to Miami harbor. The dredgings were loaded into scows which were taken several miles from land by another tug, where the dredgings were dumped. One Burrows was employed by the master of the dredge; he was fed and quartered aboard her but signed no articles and was not an experienced sailor. He worked aboard a scow on daily shifts of eight hours doing what was necessary for her navigation and attending to dumping and cleaning her at sea. He was killed, and a claim was made for compensation under the Federal Longshoremen's and Harbor Workers' Compensation Act.[49] Since that act excludes from its scope "a member of the crew of any vessel" his status was decisive as to the allowance of the claim. The position of the Court of Appeals for the Fifth Circuit was that Burrows, though not an articled seaman, was attached to the dredge and her scow as a member of the ship's company. "He was a member of the crew. When the scow was taken in tow by the tug—he may be considered a member of this composite crew" (of the tug and the scow). It might be added here that while the term "seaman" as used in some federal statutes does not include ship's officers, they have been included by judicial decision in the coverage of the Jones Act.[50]

The waters navigated by his craft do not affect the status of an employee as a seaman. Admiralty jurisdiction in England never included inland waters but, although there was considerable hesitancy in earlier cases in the United States to extend the waters included within admiralty jurisdiction above those affected by the ebb and flow of the tide,[51] pre-existing doubts were dispelled by the Supreme Court in the case of *The Hine v. Trevor*[52] in which it was decided that the Mississippi River above St. Louis is within admiralty and maritime jurisdiction. Again, in *Ex Parte Boyer*[53] the Court held an artificial canal connecting Lake Michigan with the Illinois River to be within the maritime jurisdiction of the federal courts. However, land-locked lakes lying wholly within the territorial

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[48] Maryland Gas. Co. v. Lawson, 94 F. 2d 190 (5th Cir. 1938). See also Charles Barnes Co. v. Pine Dredge Boat, 169 Fed. 895 (E.D.Ky. 1909), in which the cases, not always in accord, are reviewed.

[49] 44 STAT. 1424 (1927), 33 U.S.C. §901-950 (1952).

[50] Warner v. Goltra, 293 U.S. 155 (1934).

[51] For a discussion, see The Propeller Genessee Chief v. Fitzhugh, 12 How. 443, (1851). The Court in this case upheld an act of Feb. 26, 1845, extending limited admiralty jurisdiction to the Great Lakes and their connecting waters. The act provided for trial by jury. It has been in effect repealed but for some reason the provision for trial by jury has been retained. However, the right to trial by jury does not apply when suit is in admiralty for maintenance and cure. 52 MICH L. REV. 139 (1953).

[52] The Hine v. Trevor, 4 Wall. 555, (1867).

[53] *Ex Parte* Boyer, 109 U.S. 629 (1884).

limits of a state have been held by some courts not to be maritime.[54] Probably, it can be accurately said that waters, fresh or salt, susceptible of being navigated as highways of interstate or international water-borne commerce, are, from the American point of view, maritime.[55] Consequently all craft navigating such waters are within admiralty jurisdiction, and their employees, when engaged in furthering the purposes of their navigation, are seamen and so are entitled as such to any relief afforded by either the Jones Act or the traditional "law of the sea."

Conclusions

If one considers the nature of the three distinct bases for recovery by seamen for injuries incurred while in the employ of their ship, it is not surprising that seamen's unions have opposed extension of Workmen's Compensation coverage to the members. While "maintenance and cure" is not as extensive as compensation coverage, in that it is more limited as to the time over which compensation payments may be due, the injury or illness need not be service-connected. It suffices that at the time of illness or injury the claimant be in the employ of the ship. The ability to recover indemnity for injuries incurred because of unseaworthiness, as well as for injuries due to the negligence of a fellow member of the crew, gives the seaman an advantage over employees covered by an employers' liability act, since ordinarily the basic requirement for the latter class of employees is that they must show fault, while the seaman need not show negligence when the injury is the result of unseaworthiness. If there is a showing of either fault or unseaworthiness, the seaman recovers a lump sum. This chance at recovery of a large sum counterbalances the comparatively (with respect to compensation) small amount which may be recovered in any event under the doctrine of maintenance and cure. However, there is a serious question as to the ultimate soundness of our legal system as it applies to injuries received by seamen.

Injuries to land employees, except railway employees, are covered by state compensation acts; longshoremen and other harbor workers are covered by either state or federal compensation acts. If the injury is incurred on board ship in the course of maritime employment the Federal Harbor Workers' Act applies;[56] otherwise the state act controls. Other maritime countries, generally, have brought seamen's injuries within the principle of compensation. Apparently, in those countries and in the United States, insofar as land workers who are not railway employees are concerned, it has been thought that the fairest course to follow in allotting

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[54] *Cf.* Stapp v. Steamboat Clyde, 43 Minn. 192, 45 N.W. 430 (1890). See dicta in the dissenting opinion of Brewer, J., in The Robert W. Parsons, 191 U.S. 17 51-52 (1903).

[55] *Cf.* The Daniel Ball, 10 Wall. 557, (1871).

[56] The federal act controls when state law may not be applied. State law is inapplicable where the employee is engaged in maritime work and the injury is incurred on navigable water. See cases cited note 27, *supra.*

the burden of the risks arising out of industrial accidents is through resort to the principles of compensation. A not uncommon argument is that the dangerous nature of the seaman's calling requires special and generous consideration of his injuries or illnesses. However, a seaman on a grain or ore ship on the Great Lakes does not follow a more dangerous calling than a steel worker or an employee of a grain elevator in one of the cities to which the ship may be carrying its cargo. The work of a deck-hand on an Ohio River tug and its coal barges is probably no more dangerous than that of many industrial workers in the Ohio Valley. The same is true with respect to the seaman on a tanker out of a Gulf Coast city when compared with a worker in a refinery in Beaumont, Port Arthur or Baton Rouge. The picture of the poor friendless mariner at the mercy of the owner or ship's officer seems an anachronism in this day of highly organized unions. Indeed, the relationship of seamen and owners has been reversed. If operators do not meet union demands, ships do not sail.