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Admiralty--Right of Shoreside Worker to the Doctrine of Seaworthiness

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Erratum

Page 609, line 20. The line should read: "mission of the owner to do work traditionally done by seamen."

Recent Decisions

ADMIRALTY — RIGHT OF SHORESIDE WORKER TO THE DOCTRINE OF SEAWORTHINESS

Halecki was an employee of an independent contractor employed to clean the generators of the defendant's ship. The generators were cleaned by spraying them with carbon tetrachloride, which emits toxic fumes and consequently must be dispersed quickly. Halecki received an overexposure and died several weeks later, as a result of the failure of the ship's ventilating system to adequately remove the fumes. Libellant, as administratrix, brought her action in the New Jersey federal court under New Jersey's Wrongful Death Act, alleging that the death was caused by the unseaworthiness of defendant's ship and by defendant's negligence in failing to provide Halecki, a business guest, with a safe place to work. The case went to the jury on both issues and a verdict for libellant was returned. The court of appeals affirmed, but the Supreme Court, in a five to four decision, vacated and remanded the case holding that Halecki was not entitled to the benefits of the seaworthiness doctrine.[1]

Spawned by dictum in the *Osceola* case,[2] nurtured by the *H. A. Scandrett* case,[3] matured and extended by the *Mahnich*,[4] *Sieracki*,[5] and *Hawn* cases,[6] the doctrine of seaworthiness has evolved as a non-delegable, continuous, absolute duty of the shipowner to provide a safe ship for crewmen and shore-based personnel who come aboard the ship with the per-

not entitled to the benefits of the seaworthiness doctrine.[1]

In the instant case the Court held that the work performed by Halecki was not that type traditionally done by seamen because of its specialized character requiring highly skilled personnel. The Court further added that, because of the work's dangerous nature, it could only be accomplished while the ship was practically devoid of crew members and could only be done while the ship was "dead," *i.e.*, generators dismantled and not ready for sea.

The dissenting justices claimed the majority refused to recognize clear analogies between the work done by Halecki and that traditionally done by seamen. They pointed out that because the majority opinion ostensibly adheres to the doctrines of *Sieracki* and *Hawn*, which had extended the

1. United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki, 358 U.S. 613 (1959).
2. The Osceola, 189 U.S. 158, 175 (1903).
3. The H. A. Scandrett, 87 F.2d 708 (2d Cir. 1937).
4. Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944).
5. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).
6. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953).

seaworthiness doctrine to shoreside workers, and because of the result in the instant case, no guide has been given which the lower courts can use in applying this seaworthiness doctrine to harbor workers.

To understand the division of the Court it is necessary to trace briefly the *Sieracki* and *Hawn* cases and their impact in this area. The *Sieracki* case extended the doctrine of seaworthiness from crew members to longshoremen. The results of cases following this decision were mixed, some courts extended the doctrine to include virtually all shoreside workers,[7] while others, chiefly under the leadership of Judge Learned Hand, refused to extend the doctrine beyond longshoremen.[8] The Supreme Court then resolved the conflict in the *Hawn* case, wherein they stated that the name given the worker was immaterial and the true criterion is whether or not the worker is doing a seaman's job and is subject to shipboard hazards. Since this decision the trend seemed to be in the direction of the expansion of the seaworthiness doctrine,[9] with the main issue being whether the work done was traditionally done by seamen. The lower courts, however, have not been in accord as to what is traditional seamen's work. For example, reconstruction of a ship,[10] structural repairs,[11] repairing the propulsion system while the ship was in dry dock,[12] and repairing a badly damaged ship,[13] have been held *not* to be seamen's work. However, converting a liberty ship to a transport was held to be seamen's work,[14] as was cleaning deep tanks,[15] and making substantial repairs.[16] Even the watchman of an independent contractor has been held to be entitled to the doctrine.[17]

The Court in the instant case, while adhering to the principles of the *Sieracki* and *Hawn* cases, has held that an employee of an independent

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7. Stirka v. Netherlands Ministry of Traffic, 185 F.2d 555 (2d Cir. 1950) *cert. denied*, 341 U.S. 904 (1951); Bechantin v. Inland Waterways Corp., 96 F. Supp. 234 (E.D. Mo. 1951); Sulowitz v. United States, 64 F. Supp. 637 (E.D. Pa. 1945).

8. Guerrini v. United States, 167 F.2d 352 (2d Cir. 1948); Lundberg v. Prudential Steamship Corp., 102 F. Supp. 115 (S.D. N.Y. 1951); Laffon v. United States, 101 F. Supp. 823 (S.D. N.Y. 1951); Muratore v. United States, 100 F. Supp. 276 (S.D. N.Y. 1951).

9. Torres v. Kastor, 227 F.2d 664 (2d Cir. 1955); Feinman v. A.H. Bull Steamship Co., 216 F.2d 393 (3d Cir. 1954).

10. Berge v. National Bulk Carriers, 148 F. Supp. 608 (S.D. N.Y. 1957).

11. West v. United States, 143 F. Supp. 473 (E.D. Pa. 1956).

12. Berryhill v. Pacific Far East Line, Inc., 238 F.2d 385 (9th Cir. 1956).

13. Gill v. S.S. Tancred, 1958 Am. Mar. Cas. 670 (N.D. Cal. 1957).

14. Read v. United States, 201 F.2d 758 (3d Cir. 1953).

15. Crawford v. Pope & Talbot, Inc., 206 F.2d 784 (3d Cir. 1953).

16. Pioneer S.S. Co. v. Hill, 227 F.2d 262 (6th Cir. 1955) (dictum).

17. Ross v. Steamship Zeeland, 240 F.2d 820 (4th Cir. 1957).