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Admiralty -- Maintenance and Cure

abandon facilities at will and without regard to prior approval of the Commission.[23] Thus the consuming public is left a prey to exploitation at the hands of the interstate distributors of natural gas in spite of the expressed intention of Congress to prevent that exploitation, and the designated administrative agency is rendered powerless to perform its assigned duties.

The power to cure the defect thus made apparent seems to rest with Congress.

ADMIRALTY—MAINTENANCE AND CURE

Libelant, a member of the Merchant Marine, was injured while overleave and returning to his ship. After being treated in various hospitals he was discharged as completely disabled. He was totally and permanently blind, and from time to time would require some medical care to ease attacks of headaches and epileptic convulsions. Petitioner contended that he was entitled to maintenance and cure as long as he was disabled, which in this case would be for life. The Court of Appeals awarded him maintenance and cure for a six month period after he was discharged from the hospital. *Held,* on certiorari, he was not entitled to a lump sum payment, but the court intimated that he could recover in future suits for any disbursements for further medical treatments found necessary. *Farrell v. United States,* 69 Sup. Ct. 707 (1949) (four Justices dissenting).

The duty of the owner of a vessel to provide maintenance [1] and cure [2] for seamen injured or becoming ill while in the service of the ship has been recognized by most maritime nations as an implied part of the contract of employment.[3] To saddle the owner with the expense of maintenance and cure the seaman need only show that the injury or illness was incurred while in the service of the ship,[4] even though the effects thereof do not become evident

contracted to, sell its production for fifteen years through an intrastate distributor which would be outside the jurisdiction of the Commission. Under this decision there remains nothing to prevent defendant from doing the same thing with any or all of its reserves which lie entirely within any given state.

23. If defendant can dispose of its reserves of gas at will as permitted under this decision it can render itself void of any natural gas to send through its pipeline facilities. If it has no gas, and cannot buy gas for its interstate distributing system at a rate approved by the Commission, then its pipe lines are abandoned in fact without the Commission's approval.

1. "Maintenance is food and lodging at the expense of the ship." The Bouker No. 2, 241 Fed. 831, 835 (2d Cir. 1917).

2. "Cure is used in its original meaning of taking charge of, or care of the disabled seaman, and not in that of a positive cure which may be impossible." The Atlantic, 2 Fed. Cas. No. 620, at 131 (C.C.S.D.N.Y. 1849).

3. The Atlantic, *supra* at 130; THE LAWS OF OLERON Art. VI, VII, 30 Fed. Cas. 1174; THE LAWS OF WISBURY, Art. XVIII, XIX, 30 Fed. Cas. 1191; THE LAWS OF THE HANSE TOWNS, Art. XXXIX, XLV, 30 Fed. Cas. 1200; THE MARINE ORDINANCES OF LOUIS XIV, Title Fourth, Art. XI, 30 Fed. Cas. 1209.

4. Aguilar v. Standard Oil Co., 318 U.S. 724 (1943); Harden v. Gordon, 11 Fed. Cas. 480, No. 6,047 (C.D.D. Me. 1823); Cordes v. Weyerhaeuer S.S. Co., 75 F. Supp. 537 (N.D. Cal. 1946).

until long after the termination of the voyage.[5] It has been held that this liability, once incurred, extends for a reasonable time after the voyage,[6] or until the physical condition of the seaman is such that further medical aid cannot improve his condition.[7] The owner's only defense against the imposition of such liability appears to be a showing that the injury was caused by the intemperance [8] or moral turpitude [9] of the seaman.

The doctrine as first promulgated sought to give the seaman a liberal remedy not bounded by the obstacles which he would encounter by recourse to the common-law courts such as contributory negligence, [10] assumption of risk,[11] or the fellow servant rule.[12] Recovery was permitted for medical expenses received for the treatment of accidents or illnesses which clearly were not proximately caused by his service.[13] However, a few of the lower federal courts limited the right of recovery by requiring the claimant to show he received the injury while performing labor in discharge of his employment,[14] or in "line of duty." [15]

In recent years the Supreme Court has harmonized the conflicting decisions of the lower federal courts [16] and in so doing has gradually increased the scope of maintenance and cure to compensate seamen irrespective of the causal relation between their duty and the injury.[17] However, it was intimated in *Calmar Steamship Corp. v. Taylor* [18] that the fact that the injury was not in the service of the ship, while not defeating recovery, might affect the mode thereof.[19] In that case, a seaman was denied a lump sum payment for an incurable disease not caused by the employment, but because of the progressive nature of the disease was allowed to bring supplemental suits for any money expended for necessary medical aid. The Court further said that, had the

5. Loverich v. Warner Co., 118 F.2d 690 (3d Cir. 1941), *cert. denied*, 313 U.S. 577 (1941).

6. The Ipswich, 46 F.2d 136 (D.C. Md. 1930); The Bunker Hill, 198 Fed. 587 (C.C.S.D.N.Y. 1912). *But cf.* The J. F. Card, 43 Fed. 92 (E.D. Mich. 1890); The Atlantic, *supra*.

7. Reed v Canfield, 20 Fed. Cas. 426, No. 11,641 (C.C. Mass. 1832); The Kenilworth, 144 Fed. 376 (3d Cir. 1906); The Mars, 149 Fed. 729 (3d Cir. 1907).

8. Barlow v. Pan American S.S. Co., 101 F.2d 697 (2d Cir. 1939); The Panama City, 23 F. Supp. 577 (E.D.N.Y. 1938) *But cf.* The Anna Howard Shaw, 75 F. Supp. 210 (S.D.N.Y. 1947). *Contra*, The Quaker City, 1 F. Supp. 840 (E.D. Pa. 1931).

9. The Alector, 263 Fed. 1007 (E.D. Va. 1920) (venereal disease). *But cf.* Koistenen v. American Export Lines, 83 N.Y.S.2d 297 (N.Y. City Ct. 1948).

10. Storgard v. France and Canada S.S. Corp., 263 Fed. 545 (2d Cir. 1920), *cert. denied*, 252 U.S. 585 (1920).

11. Hanson v. Luckenbach S.S. Co., 65 F.2d 457 (2d Cir. 1933).

12. See The Osceola, 189 U.S. 158, 175 (1903).

13. Ringgold v. Crocker, 20 Fed. Cas. 813, No. 11,843 (1848); Koistenen v. American Export Lines, 83 N.Y.S.2d 297 (N.Y. City Ct. 1948).

14. Smith v. American South African Lines, Inc., 37 F. Supp. 262 (S.D.N.Y. 1941); The President Coolidge, 23 F. Supp. 575 (N.D. Wash. 1938).

15. Meyer v. Dollar S.S. Line, 49 F.2d 1002 (9th Cir. 1931); Collins v. Dollar S.S. Line, 23 F. Supp. 395 (S.D.N.Y. 1938).

16. See notes 13, 14, 15 *supra*

17. Aguilar v. Standard Oil Co., *supra*.

18. 303 U.S. 525 (1938).

19. Calmar Steamship Corp. v. Taylor, *supra* at 530.

injury arisen out of, or been due to the employment, recovery of a lump sum payment might be warranted. The court in the instant case by refusing to allow recovery in a lump sum payment where the injury arose out of the employment refutes that possible distinction, and decides that the measure of recovery should be the same whether or not the injury or illness results from the employment.

In deciding the principal case the court was cognizant of the impossibility of ascertaining the future expenses of the seaman; the indefiniteness of the mortality table would make its use impracticable as a basis for a lump sum award, and the sliding scale between injuries and illness, thus bringing about lack of uniformity and difficulty of application. Giving the seaman a sum for future medical treatment, where such treatment may be ascertained, has been allowed by admiralty courts,[20] but a lump sum payment making the shipowner an insurer would be contrary to the spirit of the doctrine. The improvident nature of the seaman underlies the policy of the court in limiting recovery to the amount that the sailor has paid out for medical aid.[21] If a lump sum was allowed and the money was dissipated, the sailor would be left to his own resources and would undoubtedly become a charge of the state, which the doctrine, as formulated, sought to prevent.

CONSTITUTIONAL LAW—SIXTH AMENDMENT—FAIR TRIAL BY IMPARTIAL JURY

Defendant, a communist, was convicted of contempt for wilful failure to respond to a subpoena issued by the House Committee on Un-American Activities. The trial court refused defendant's motion to exclude from jury service those jurors who were employees of the Federal Government. *Held,* on appeal, that denial of petitioner's motion to exclude all government employees from the jury panel did not deprive defendant of a fair trial by an impartial jury. *Dennis v. United States,* 171 F.2d 986 (D.C. Cir. 1948), cert. granted, 18 U.S.L. Week (U.S. July 5, 1949).

The Sixth Amendment of the Federal Constitution provides for the right to a fair trial by an impartial jury.[1] At common law, Crown employees were absolutely disqualified from serving as jurors in criminal cases;[2] but Congress removed such disqualification regarding criminal trials in the District

20. Barnes v. American Hawaiian S.S. Co., 79 F. Supp. 699 (N.D. Cal. 1948); United States v. Robinson, 170 F.2d 578 (5th Cir. 1948) (by implication).
21. See Hardin v. Gordin, 11 Fed. Cas. No. 6,047, at 483 (C.C.D. Me. 1823).

1. U.S. CONST. AMEND. VI.
2. Crawford v. United States, 212 U.S. 183 (1908) (common-law grounds).