

## Comment on Recent Decisions

ADMIRALTY—APPLICABILITY OF FEDERAL LAW—DOCKOWNER'S LIABILITY FOR DEATH OF LONGSHOREMAN.—The plaintiff while employed in unloading coal from a vessel docked at Superior Way, Wisconsin, was struck by a clam-shell and killed. *Held*, recovery for wrongful death is controlled by Federal statutes and not the State compensation act, because the unloading of a ship is not a matter of local concern, but of direct relation to commerce and navigation. *Northern Coal & Dock Company v. Strand* (1928), 49 S. Ct. 88, 73 L. Ed. 99.

The questions involved in the case have had a curious history. In 1917 the famous case of *Southern Pacific Co. v. Jensen*, 244 U. S. 202, was decided by a divided court. A stevedore was killed in the performance of his work, and the court held that the death statute of the state was not applicable. The employment was declared to be maritime in its nature and the maritime law applicable. This gave the Federal courts exclusive jurisdiction to apply Federal maritime law. Mr. Justice Holmes dissented; he questioned the existence of a Federal maritime law, denying that there was such "a brooding omnipresence in the sky" which could be applied in preference to the articulate voice of legislation.

Originally maritime law offered no remedy for wrongful death, and then the Supreme Court permitted recovery under state death statutes in order to supplement the maritime law. *Western Fuel Co. v. Garcia* (1921), 257 U. S. 233. Where the matter was purely local, the court has permitted the state compensation statutes to be treated as modifying and complementing the maritime law, distinguishing the situation from that of the *Jensen* case, *supra*. *Grant-Smith Porter Co. v. Rhode* (1921), 257 U. S. 469; *Miller's Indemnity Underwriters v. Brand* (1925), 270 U. S. 59.

The final steps in the maritime law giving a right of action for wrongful death were the Jones Act (1920), 41 Stat. 1007, 46 U. S. C. sec. 688, the ruling in *Panama R. Co. v. Johnson* (1924), 264 U. S. 375, which amended the act to incorporate the Federal Employer's Liability Act into the maritime law of the United States. See *Panama R. Co. v. Johnson, supra*.

The work of longshoremen has previously been held to be within the jurisdiction of the maritime law. *International Stevedoring Co. v. Haverty* (1926), 272 U. S. 50. But the court distinguishes unloading a ship from building one (*Grant-Smith Porter Co. v. Rhodes, supra*) and from sea diving (*Miller's Indemnity Underwriters v. Brand, supra*) where it has held those occupations to be local matters. Precisely how the court reaches the conclusion in this case that the work is not of a local nature is not explained. Where the court will draw the line in subsequent cases is a matter for speculation.

M. E. C., '29.