

ALPHA STEAMSHIP CORPORATION ET AL. v. CAIN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 457. Argued April 29, 30, 1930.—Decided May 26, 1930.

An assault on a seaman by a superior authorized to direct his work and who committed the assault for the purpose of reprimanding him for tardiness and compelling him to work, *held*, negligence of the employer within the meaning of the Federal Employers' Liability Act, and actionable against the employer under that Act as made applicable by the Merchant Marine Act. *Jamison v. Encarnacion*, *ante*, p. 635.

35 F. (2d) 717, affirmed.

CERTIORARI, 280 U. S. 549, to review a judgment of the Circuit Court of Appeals affirming a recovery by a seaman for injuries resulting from an assault committed upon him by a superior aboard ship.

Mr. Carver W. Wolfe for petitioners.

Mr. Vine H. Smith, with whom *Messrs. Thomas J. Cuff*, *Milton Pinkus*, and *Dix W. Noel* were on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Respondent was a seaman employed as a fireman on the American steamship Alpha navigating the high seas. The corporation petitioner owned and operated the vessel and the other petitioners were in possession of her. Respondent sued petitioners in the federal court for the Southern District of New York to recover damages for personal injuries caused by an assault upon him by his superior, one Jackson, an assistant engineer in charge of the engine room. The complaint charged and the evidence was sufficient to warrant a finding that Jackson was authorized by defendants to direct plaintiff about his

work and that, for the purpose of reprimanding him for tardiness and compelling him to work, Jackson struck plaintiff with a wrench and seriously injured him. That was the basis of fact upon which the jury under the charge of the court was authorized to find for plaintiff. The jury returned a verdict in favor of plaintiff for \$12,000 and the judgment thereon was affirmed in the Circuit Court of Appeals.

That court expressed the opinion, 35 F. (2d) 717, 721, that § 33 of the Merchant Marine Act, 46 U. S. C., § 688, and the Federal Employers' Liability Act, 45 U. S. C., §§ 51-59, did not apply and held defendants liable under the general maritime law without regard to these Acts. But in *Jamison v. Encarnacion*, decided this day, *ante*, p. 635, we hold that such an assault is negligence within the meaning of § 1 of the Federal Employers' Liability Act which is made available to seamen by § 33 of the Merchant Marine Act. The ruling in that case controls in this. We need not examine the grounds upon which the Circuit Court of Appeals put its decision.

Judgment affirmed.

TOOMBS v. CITIZENS BANK OF WAYNESBORO.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 485. Submitted April 28, 1930.—Decided May 26, 1930.

1. A Georgia statute provides that, upon being required by the Superintendent of Banks to make good an impairment of capital by an assessment upon stockholders, the officers and directors of a bank shall call a special meeting of the stockholders for the purpose of making such assessment. In a case from the state court in which a stockholder challenged an assessment, under the due process clause of the Fourteenth Amendment, *held* that, in the absence of a controlling decision by the state court, it can not be assumed either that notice of the stockholders' meeting at which