reached generally by the lower federal courts, although not with entire unanimity.[3]

Affirmed.

BEADLE *v.* SPENCER.

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

No. 676. Argued March 31, 1936.—Decided April 27, 1936.

1. The provisions of the Employers' Liability Act specifically imposing liability for injuries caused by negligence of officers and fellow employees, or by defects in equipment due to negligence, were adopted for the maritime law by the Jones Act, 46 U. S. C. 388. P. 128.
2. Assumption of risk is not a defense to a suit brought under the Jones Act by one who is a seaman according to the maritime law, for personal injuries resulting from negligent failure of the master to provide safe appliances or a safe place in which to work. *The Arizona, ante,* p. 110, followed. P. 129.
3. This rule applies although the injured seaman was employed on a coasting vessel which was in port at the time of his accident. P. 129.
4. It is unnecessary to decide in this case whether employees on a vessel who are not seamen according to the maritime law, but who have been given the status of seamen for the purpose of enabling them to bring suit under the Jones Act, see *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50, are entitled to the immunity from the defense of assumption of risk accorded by the maritime law to seamen. P. 130.

---

[3] Denying the defense: *Grimberg* v. *Admiral Oriental S. S. Line,* 300 Fed. 619; *U. S. Shipping Board E. F. Corp.* v. *O'Shea,* 55 App. D. C. 300; 5 F. (2d) 123; *Coast S. S. Co.* v. *Brady,* 8 F. (2d) 16; *Zinnel* v. *U. S. Shipping Board E. F. Corp.,* 10 F. (2d) 47; *Howarth* v. *U. S. Shipping Board E. F. Corp.,* 24 F. (2d) 374; *Masjulis* v. *U. S. Shipping Board E. F. Corp.,* 31 F. (2d) 284; *States S. S. Co.* v. *Berglann,* 41 F. (2d) 456; *United States* v. *Boykin,* 49 F. (2d) 762; *Ives* v. *United States,* 58 F. (2d) 201; *Pittsburgh S. S. Co.* v. *Palo,* 64 F. (2d) 198; *Hanson* v. *Luckenbach S. S. Co.,* 65 F. (2d) 457; *The New Berne,* 80 F. (2d) 244. Contra: *The Ipswich,* 46 F. (2d) 136; *Stevens* v. *R. O'Brien & Co.,* 62 F. (2d) 632.

5. Contributory negligence is not a defense to a suit brought either under the Jones Act or under the maritime law for injuries attributable to negligently defective equipment. It is ground only for apportionment of the damages. P. 130.

4 Cal. (2d) 313; 48 P. (2d) 678, affirmed.

Certiorari, 297 U. S. 701, to review the affirmance of a judgment for damages in an action by a seaman who was injured by falling into a hatch.

Mr. Harold M. Sawyer for petitioner.

Upon the authority of *Pryor* v. *Williams,* 245 U. S. 43; *Southern Ry. Co.* v. *Hermans,* 44 F. (2d) 366; and *Holy Cross Gold Mining Co.* v. *O'Sullivan,* 27 Colo. 237, the District Court of Appeal held that in the instant case, under the pleadings and the evidence, the jury should have been instructed with regard to the defense of assumption of ordinary risks and hazards of the employment and the legal effect thereof, and because of the failure so to instruct, reversed the judgment of the trial court.

It has been repeatedly urged throughout this litigation that the above authorities involve injuries sustained in the operation of railroads, and that consequently these authorities furnish no rule whatever for the application of the doctrine of assumption of the risk of the ordinary and obvious hazards in the case of seamen suing under the Jones Act.

Long before the Jones Act was passed, this Court said, in the case of *The Iroquois,* 194 U. S. 240: "A seafaring life is a dangerous one. Accidents of this kind are peculiarly liable to occur and the general principle of law that a person entering a dangerous employment is regarded as assuming the ordinary risks of such employment is peculiarly applicable to the case of seamen."

There can be no doubt that the defense of assumption of the risk in suits brought by seamen prior to the passage of the Jones Act was available to their employers.

It is true that some of the inferior federal and state courts have held that the entire doctrine of assumption of the risk is not applicable to seamen because of the peculiarities of their occupation which distinguish it from land occupation. The chief distinction between the two occupations is that the seaman at sea is acting under orders, disobedience to which may imperil the safety of vessel, persons on board, and the cargo. But in this case the respondent occupied no such position. He was on a vessel moored at a dock discharging cargo. He was injured early on Monday morning, having been ashore since the preceding Saturday afternoon. He had not signed articles and could have quit his job at any time he liked without penalty or forfeiture. Under these circumstances there is no occasion for relaxing the rule of assumption of the risk because the reason upon which such relaxation is based does not exist. Other courts have found no difficulty in applying the rule of assumption of the risk in cases under the Jones Act where, as here, the seaman was not acting under compulsion. *Skolar* v. *Lehigh Valley Ry. Co.*, 60 F. (2d) 893; *Scheffler* v. *Moran Towing Co.*, 1934 A. M. C. 441.

It is therefore submitted that when Congress saw fit to enlarge the privileges of seamen by conferring upon them the same rights and remedies as were conferred upon employees in interstate commerce by the Federal Employers' Liability Act, it fully intended to reserve to the maritime employer the same defense of assumption of risk that had been reserved to the land employer.

Mr. John L. McNab submitted for respondent.

MR. JUSTICE STONE delivered the opinion of the Court.

In this case certiorari was granted to review a ruling of the Supreme Court of California, 4 Cal. (2d) 313; 48 P. (2d) 678, that assumption of risk is not a defense to a suit

brought by a seaman under the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688, to recover for personal injuries due to the negligent failure of the officers of the vessel to provide him with a safe place in which to work.

Respondent was employed by petitioner as a seaman on a coasting vessel. While engaged in unloading lumber from the deck he was injured by a fall into an open hatch. On the trial there was evidence from which the jury could have found that the deck of the vessel, from the bulwarks to within about forty inches of either side of the hatch coamings, was loaded with heavy timbers, and that the remaining deck space, at the sides of the hatch, was loaded with loose lumber, consisting of pieces 2″ x 3″ and 1″ x 12″, to a height five or six feet above the deck; that this lighter lumber, or a substantial part of it, had been loaded in sling loads, without re-piling, in such negligent fashion as to render it unstable; that the pile of lumber, with the open hatch alongside, constituted an unsafe place to work for those required to go upon it, as the master knew; and that the upper part of the pile of lumber, on which respondent was standing in order to adjust a sling about some of the lumber to be unloaded, toppled over because of its instability, throwing him through the open hatch into the hold and causing the injuries complained of. The trial court refused requests to charge that assumption of the risk by respondent was a defense, but left it to the jury to say whether there was negligent failure of the master to provide a safe place for the respondent to work, and whether the failure was the proximate cause of the injury. It reduced the jury's verdict for respondent and gave judgment accordingly, which the state supreme court sustained.

Numerous grounds for reversal are urged here, of which only two require our notice. One is petitioner's contention that even though assumption of risk is not generally a defense to a suit brought under the Jones Act, it must

be deemed available where, as in the present case, the injured seaman is employed on a coasting vessel which was in port at the time of the accident. It is argued that as he was not required to sign articles, 18 Stat. 64, 46 U. S. C. § 544, compare 46 U. S. C. § 563, and consequently was not subject to the punishment for desertion prescribed by 46 U. S. C. §§ 701–713, he was free to avoid the risk by leaving the vessel and his employment. The other objection is that the trial court erred in refusing petitioner's request to charge that if the jury should find that respondent, in placing the sling underneath the lumber, "chose to perform the act in a dangerous manner such as stepping too near the edge of the deck load when there was a safe method of doing the work involving no risk of the edge of the deck load giving away, then the plaintiff cannot recover."

1. The effect of the Jones Act in bringing into the maritime law new rules of liability prescribed by the Federal Employers' Liability Act, has been considered in *The Arizona,* decided this day, *ante,* p. 110, and does not require extended discussion here. The injury resulting to the employee from the negligently piled lumber, in proximity to the open hatch, is made actionable by the Jones Act, by its adoption for the maritime law of the provisions of the Employers' Liability Act, which specifically imposes liability for negligence of officers and fellow employees, and for defects in equipment due to negligence. See *Zinnel* v. *U. S. Shipping Board E. F. Corp.,* 10 F. (2d) 47; *The Valdarno,* 11 F. (2d) 35; *Howarth* v. *U. S. Shipping Board E. F. Corp.,* 24 F. (2d) 374; *Hanson* v. *Luckenbach S. S. Co.,* 65 F. (2d) 457. Before the enactment of the Jones Act it was recognized that a "failure to supply and keep in order the proper appliances appurtenant to the ship" is equivalent to unseaworthiness, and that it was likewise actionable under the maritime law, if it caused injury to a seaman. See *The Osceola,* 189 U. S. 158, 175. Judge

Addison Brown, sitting in admiralty, had allowed recovery to a seaman for injuries received in unloading lumber in circumstances substantially like the present, in *The Frank and Willie,* 45 Fed. 494, cited with approval in *The Osceola, supra,* 174. See also *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255; *Olson* v. *Flavel,* 34 Fed. 477.

2. It is unnecessary to repeat here the reasons given in the opinion in *The Arizona, supra,* for our conclusion that assumption of risk is not a defense to a suit brought by a seaman under the Jones Act for negligent failure of the master to provide safe appliances or a safe place in which to work. Those reasons neither require nor admit of a different rule because of the circumstances of respondent's employment on which the petitioner relies. The rules, peculiar to admiralty, of liability for injuries to seamen or others, are as applicable when the injury occurs upon a vessel in port as when at sea, although the common law may apply a different rule to an injury similarly inflicted on the wharf to which the vessel is moored. *The Frank and Willie, supra;* and see *Northern Coal & Dock Co.* v. *Strand,* 278 U. S. 142; *Nogueira* v. *New York, N. H. & H. R. Co.,* 281 U. S. 128; *Baizley Iron Works* v. *Span,* 281 U. S. 222; *Employers' Liability Assurance Corp.* v. *Cook,* 281 U. S. 233; *Uravic* v. *Jarka Co.,* 282 U. S. 234.

Nor do we perceive any adequate ground for judicial relaxation of the admiralty rule, applicable under the Jones Act, that assumption of risk is not a defense to a suit to recover for injury to a seaman resulting from unseaworthiness or defective equipment, because he chances to be in some measure less amenable to the iron discipline of the sea than others who go upon foreign voyages. Even so his freedom to avoid the risk is far from comparable to that of the employee on land where the defense of assumption of risk originated and has been maintained.

65773°—36——9

No such distinction appears to have been recognized in the maritime law. And we discern nothing in the purpose or in the language of the Jones Act or in the rules of liability which it prescribes to suggest that Congress undertook to introduce such a distinction into the maritime law.

It is unnecessary to decide whether employees on a vessel who are not seamen according to the maritime law, but who have been given the status of seamen for the purpose of enabling them to bring suit under the Jones Act, see *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50, are entitled to the immunity from the defense of assumption of risk accorded by the maritime law to seamen. Cf. *Scheffler* v. *Moran Towing & Transportation Co.,* 68 F. (2d) 11; *Skolar* v. *Lehigh Valley R. Co.,* 60 F. (2d) 893.

3. We find no prejudicial error in the refusal to give the requested charge as to the respondent's use of the sling. The trial judge did charge the jury that there could be no recovery unless it found that negligence of petitioner was the cause of the injury. Respondent was using the defectively piled lumber as a platform on which to stand when adjusting the sling under some of the lumber about to be unloaded. There is no suggestion in the evidence or by petitioner's requests that he could have stood elsewhere when performing that operation, or that he had any choice but to do his work there or leave the vessel. It may be that he was negligent in standing at one point rather than at another upon the unsafe pile of lumber, see *Seaboard Air Line Ry. Co.* v. *Horton,* 233 U. S. 492; cf. *The Frank and Willie, supra,* and that an instruction as to the effect of his negligence would have been appropriate. But we think the charge in the form requested, so far as applicable to the evidence, and in view of that actually given, amounted to

no more than a request to charge that his negligence was a defense. Contributory negligence is not a defense to a suit brought either under the Jones Act or under the maritime law for injuries attributable to negligently defective equipment. Under both it is ground only for apportionment of the damage, see *The Frank and Willie, supra;* 35 Stat. 66, 45 U. S. C. § 53. So far as the record discloses petitioner made no request for an instruction as to apportionment of the damage.

Affirmed.

INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 758. Argued April 8, 1936.—Decided April 27, 1936.

Section 3 of the Clayton Act declares it unlawful for any person engaged in commerce to lease machinery "whether patented or unpatented" on the condition that the lessee shall not use supplies or other commodities of the lessor's competitor, where the effect of the condition "may be" to lessen competition substantially or tend to create a monopoly. *Held:*

1. The prohibition is violated by a condition requiring a lessee to operate the leased machine only with supplies from the lessor, since this, in effect, precludes the use of supplies of a competitor. P. 134.

2. While the section does not purport to curtail the patent monopoly of the lessor, the prohibition of tying clauses is not limited to unpatented supplies but includes also supplies which have been patented to the lessor either separately or in combination with the patented machine. P. 136.

3. Assuming that, by implied exception, a tying clause would not violate the provision, though it tended to create a monopoly, if its purpose and effect were to protect the good will of the lessor in the leased machines, there is no basis for the exception where the substantial benefit of the clause to the lessor is in the elimina-