

SHARPE *v.* BUCHANAN, WARDEN.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT  
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 525. Decided December 14, 1942.

Where a judgment of the Circuit Court of Appeals affirming the District Court's refusal of habeas corpus was upon the sole ground that the applicant, who was confined in a state penitentiary, had not applied for habeas corpus to the state courts, this Court vacated the judgment because, after the filing of the petition for certiorari here, habeas corpus had been expressly refused by the State's highest court. P. 238.

121 F. 2d 448, vacated.

PETITION for writ of certiorari to review the affirmance of a judgment denying habeas corpus, 36 F. Supp. 386.

*Howard M. Sharpe, pro se.*

PER CURIAM.

The motion for leave to proceed *in forma pauperis* is granted and the petition for certiorari is also granted. It appears from the record that, after hearing, the District Court denied an application for habeas corpus filed by petitioner, who is confined in a state penitentiary pursuant to a judgment of conviction of a state court. The Circuit Court of Appeals affirmed the District Court's order, 121 F. 2d 448, on the sole ground that petitioner had not exhausted his state remedies by applying to the state courts for habeas corpus, although an application for a writ of error coram nobis had previously been denied by the Kentucky Court of Appeals. *Sharpe v. Commonwealth*, 284 Ky. 88, 143 S. W. 2d 857. The Circuit Court of Appeals denied a petition for rehearing, when it appeared that an application for habeas corpus, filed in a state court after the Circuit Court of Appeals had rendered its judgment, was still pending on appeal in the

Kentucky Court of Appeals. After the petition for certiorari was filed here, the Kentucky Court of Appeals affirmed the state court's order denying habeas corpus. *Sharpe v. Commonwealth*, 292 Ky. 86, 165 S. W. 2d 993. It thus appears that this obstacle to a consideration of the merits of petitioner's application, which the Circuit Court of Appeals encountered, has now been removed. The judgment is therefore vacated, without costs, and the cause remanded to the Circuit Court of Appeals for such further proceedings as it may deem appropriate.

*So ordered.*

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GARRETT v. MOORE-McCORMACK CO., INC. ET AL.

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

No. 67. Argued November 12, 1942.—Decided December 14, 1942.

1. In a suit by a seaman in a state court for damages under § 33 of the Merchant Marine Act and for maintenance and cure, the rights of the parties are measured by the federal statute and admiralty principles. P. 243.
2. The question whether a state court, in an action for damages under § 33 of the Merchant Marine Act and for maintenance and cure, protected all the substantial rights of the parties under controlling federal law is a federal question reviewable under § 237 (b) of the Judicial Code. P. 245.
3. A shipowner, who, in defense of an action by a seaman for personal injuries, sets up the seaman's release, is under the burden of proving that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding. P. 246.
4. This general admiralty rule applies not only to actions for maintenance and cure but also to actions for damages under § 33 of the Merchant Marine Act. P. 248.
5. Section 33 of the Merchant Marine Act is to be liberally construed for the seaman's protection; it is an integral part of the maritime law, and rights fashioned by it are to be implemented by admiralty rules not inconsistent with the Act. P. 248.