

PALERMO *v.* LUCKENBACH STEAMSHIP CO., INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 350. Decided October 21, 1957.

A jury awarded damages to petitioner, a longshoreman, for personal injuries sustained while working on a ship owned and operated by respondent. The Court of Appeals reversed on the ground that the trial court had erred in refusing to charge the jury that petitioner was not entitled to any recovery if he voluntarily chose to use a passageway known by him to be unsafe and if there was any other passageway known by him to be safe. *Held*: Certiorari is granted, the judgment is reversed and the case is remanded.

(a) The trial court did not commit reversible error in refusing to grant such an instruction.

(b) Petitioner's alleged choice of a more dangerous route did not, under the proofs, operate to bar recovery as a matter of law.

(c) The jury was properly instructed that petitioner's negligence, if any, was to be considered in mitigation of damages under the rule applicable in actions for personal injuries arising from maritime torts.

246 F. 2d 557, reversed and remanded.

*Philip F. Di Costanzo* for petitioner.

*Eugene Underwood* and *William M. Kimball* for respondent.

PER CURIAM.

The petition for certiorari is granted, and the judgment of the Court of Appeals is reversed and the case is remanded.\* We hold that the trial court did not commit reversible error in refusing to charge respondent's request

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\*[Amended, *post*, p. 910, to provide for remand of the case to the Court of Appeals.]

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No. 12. The petitioner's alleged choice of a more dangerous route did not, under the proofs, operate to bar recovery as a matter of law. The jury was properly instructed that the petitioner's negligence, if any, was to be considered in mitigation of damages under the rule applicable in actions for personal injuries arising from maritime torts. *Pope & Talbot, Inc., v. Hawn*, 346 U. S. 406, 408-409; cf. *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424.

For reasons set forth in his opinion in *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500, 524, MR. JUSTICE FRANKFURTER is of the view that the writ of certiorari is improvidently granted.

[For memorandum of MR. JUSTICE HARLAN, joined by MR. JUSTICE BURTON and MR. JUSTICE WHITTAKER, see *ante*, p. 19.]

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### HOBART *v.* HOBART.

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 355. Decided October 21, 1957.

Appeal dismissed and certiorari denied.

Reported below: 166 Ohio St. 112, 141 N. E. 2d 470.

*Baird Broomhall, William M. Harrelson and Richard Wilson* for appellant.

*C. V. Diedel and Frank E. Bazler* for appellee.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.