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Miscellaneous—State not Liable under Jones Act for Injuries to its Seamen

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established rule of construction is that general words are to have a general operation.¹⁷ It is also a rule, however, that the manifest intent of the legislature shall prevail over a literal interpretation of the words being construed.¹⁸ Applying these rules to the *Toomey* case, it does not seem that the majority has shown any legislative intent that would afford ground for qualifying or restraining the literal meaning of the words used. The majority appeared alarmed by the seemingly radical results that might be reached under a broader interpretation of the section. However, the desirability or undesirability of the effects of legislation would seem to be purely a matter of legislative judgment, not to be substituted by that of the judiciary.¹⁹

MISCELLANEOUS

State Not Liable Under Jones Act For Injuries To Its Seamen

In *Maloney v. State*,¹ the plaintiff brought an action against the state in the Court of Claims for the death of her husband, an employee of the state. She alleged that since her husband was a seaman, such action was permitted by the Jones Act, a federal statute allowing seamen to recover from their employers for personal injuries.² She further alleged that section 8 of the Court of Claims Act waived the state's immunity and gave the Court of Claims the right to determine the state's liability in accordance with the same rules applicable to action against individuals or corporations in the Supreme Court of New York, which has jurisdiction over cases arising under the Jones Act.³ However, all employees of the State of New York are covered by the Workmen's Compensation Law, which provides an exclusive remedy, thus precluding such employees from bringing an action at law against their employer.⁴ Therefore, the instant case presented the question of whether these provisions were applicable to the plaintiff's action.

The Court of Appeals held that the state did not waive its immunity as to the Jones Act because section 8 of the Court of Claims Act specifically states

17. In Re DiBrizzi, 303 N.Y. 206, 214, 101 N.E.2d 464, 467 (1951).

18. City Bank Farmers' Trust Co. v. N.Y.C.R. Co., 253 N.Y. 49, 170 N.E. 489 (1930).

19. Lawrence Const. Corporation v. State, 293 N.Y. 634, 639, 59 N.E.2d 630, 632 (1944).

1. 207 Misc. 894, 141 N.Y.S.2d 207 (Ct. Cl. 1955); 2 A.D.2d 195, 154 N.Y.S.2d 132 (4th Dep't 1956); 3 N.Y.2d 356, 165 N.Y.S.2d 465 (1957).

2. 46 U.S.C.A. §688.

3. Wagner v. Panama Ry., 299 N.Y. 432, 87 N.E.2d 444 (1949); Lynort v. Great Lakes Transit Corp., 234 N.Y. 626, 138 N.E. 473 (1922).

4. N.Y. WORKMEN'S COMPENSATION LAW §11.

that nothing shall be construed to affect, alter or repeal any provision of the Workmen's Compensation Law. The intent of the statute is clearly stated; therefore, the exclusiveness of the remedy under the Workmen's Compensation Law is not altered by the Court of Claims Act.

Substitution Of Attorneys

By virtue of the peculiar relationship existing between attorneys and their clients, the latter are accorded the privilege of discharging the former for any reason whatsoever, in which event any existing agreement of retainer is terminated and the attorney may recover only on a quantum meruit basis, for services rendered,⁵ unless, without objection, the discharged attorney elects to take a percentage of the final judgment or settlement, where a substitution of attorneys takes place.⁶ The substitution of attorneys by a client is generally governed by Rule 56 of the Rules of Civil Practice, and may be done either by stipulation or by order,⁷ an order directing substitution being without prejudice to a charging lien of the first attorney.⁸

The problem most intimately connected with the discharge or substitution of attorneys is that of establishing the compensation due for services rendered by the attorney being discharged. By statute, an attorney's compensation is made subject to agreement "express or implied, which is not restrained by law."⁹ There is no general power on the part of the courts to limit the amount of the fees charged by an attorney¹⁰ in the absence of facts indicating that the charge was "extortionate or excessive, or out of proportion to the value of the services"¹¹ or that the agreement "was induced by fraud, or, in view of the nature of the claim, that the compensation provided for was so excessive as to evince a

5. *Martin v. Camp*, 219 N.Y. 170, 114 N.E. 46 (1916).

6. *Podbielski v. Conrad*, 286 App. Div. 1040, 145 N.Y.S.2d 321 (2d Dep't 1955).

7. N.Y.R. CIV. PRAC. 56:

An attorney of record for an adult party or corporation may be changed by the filing with the clerk of the court in which action or proceeding may be pending of a stipulation in writing for such change of attorney, signed by the attorney and signed and acknowledged by the party. The making and filing of such a stipulation shall have the same effect as an order of substitution. An attorney may also be changed by order.

See also N.Y. CIV. PRAC. ACT §240 which pertains generally when an attorney has been discharged or otherwise incapacitated.

8. *Re Lydig*, 262 N.Y. 408, 187 N.E. 298 (1933). The attorney's charging lien is established under authority of N.Y. JUDICIARY LAW §475.

9. N.Y. JUDICIARY LAW §474.

10. *Murray v. Waring Hat Mfg. Co.*, 142 App. Div. 514, 127 N.Y. Supp. 78 (2d Dep't 1911); *Werner v. Knowlton*, 107 App. Div. 158, 94 N.Y. Supp. 1054 (4th Dep't 1905).

11. *Ward v. Orsini*, 243 N.Y. 123, 127, 152 N.E. 696, 698 (1926).