Michigan Law Review

Volume 32 | Issue 1

1933

ADMIRALTY- LOSS OF GOODS - STATUTORY EXEMPTION OF OWNER OF VESSEL FROM LIABILITY

RECENT DECISIONS

ADMIRALTY — LOSS OF GOODS — STATUTORY EXEMPTION OF OWNER OF VESSEL FROM LIABILITY — Through the negligence of the chief engineer in putting new coal on top of old coal in a temporary bunker the steamship Galileo was rendered unseaworthy at the time the voyage commenced, catching fire and sinking. The cargo was lost. The plaintiff, cargo owner, sued the owner-operator of the ship in the federal District Court for southern New York for breach of contract to deliver at destination. On certiorari to the Circuit Court of Appeals the Supreme Court *held*, in affirming the decree dismissing the libel, that the defendant was relieved from liability under the federal fire statute[1] which provides that the owner of any vessel shall be exempt from liability for loss or damage to merchandise caused by fire "unless such fire is caused by the design or neglect of such owner." *Earle & Stoddart v. Ellerman's Wilson Line, Ltd.*, 287 U. S. 420, 53 Sup. Ct. 200.

It has long been settled that the shipowner is entitled to immunity under the fire statute unless he personally is negligent, or, in the case of a corporate owner, unless the managing officers or agents are negligent.[2] And since the statute provides that the owner shall be liable only in the two cases where loss or damage occurs through design or neglect, it has never been seriously contended that there are any other exceptions to the owner's immunity.[3] However, the plaintiff in the instant case contended that the vessel-owner should not be entitled to the protection of the statute because he was under a duty to make the vessel seaworthy at the start of her voyage and that this duty was non-delegable, and since the vessel's unseaworthiness could have been discovered by due diligence, the owner was negligent within the meaning of the statute.[4] The Court pointed out

[1] 9 Stat. 635 (1851), U. S. C., tit. 46 § 182 (1926).

[2] Walker v. Western Transportation Co., 3 Wall. (70 U. S.) 150, 18 L. ed. 172 (1866); Craig v. Continental Ins. Co., 141 U. S. 638, 12 Sup. Ct. 97, 35 L. ed. 886 (1891); HUGHES, HANDBOOK OF ADMIRALTY LAW, 2d ed., sec. 161 (1920); 1 BENEDICT, AMERICAN ADMIRALTY, 5th ed., sec. 474 (1925).

[3] In England, however, until recently there seemed to be some doubt as to whether their statute exempted the owner from liability where the fire was caused by the unseaworthiness of the vessel. The English statute (57 & 58 Vict., c. 60, 1894) is similar to the federal fire statute except that it relieves the shipowner from liability where the loss occurred "without his actual fault or privity." It was argued that there is an implied warranty of seaworthiness in every contract of affreightment and hence the owner is liable nothwithstanding the Act. This idea was definitely rejected in Louis Dreyfus & Co. v. Tempus Shipping Co., [1931] A. C. 726, which approved two lower court decisions — Virginia Carolina Chemical Co. v. Norfolk & North American Steam Shipping Co., [1912] 1 K. B. 229, and Ingram & Royle, Ltd. v. Services Maritimes du Tréport, Ltd., [1914] 1 K. B. 541, and decided that the language of the Act was to be interpreted literally. It does not appear that such a position has ever been argued in the United States courts.

[4] The District Court of Texas upheld such a contention in The Etna Maru, (D. C. S. D. Tex. 1927) 20 F. (2d) 143. The case was affirmed, apparently on other grounds, by the Circuit Court of Appeals in Kokusai Kisen Kabushiki Kaisha v. Texas Gulf Sulphur Co., (C. C. A. 5th, 1929) 33 F. (2d) 232.

that the plaintiff was confusing sec. 3 of the Harter Act,[5] which provides that the vessel-owner shall not be liable in certain cases if he was diligent in making the vessel seaworthy. Under this provision negligence of servants will be imputed to the owner.[6] But the two Acts are separate and distinct: in the one the owner's negligence must be personal, while in the other it need not be. However, the parties may waive the benefit of the fire statute by providing for such a contingency in the bill of lading.[7] Though the plaintiff claimed the benefit of a waiver in this case, the fact that the fire statute was expressly incorporated in the bill of lading precluded him. Since the policy of the fire statute is well established, the Court wisely refused to countenance an argument which, though rather plausible, would inevitably have led to further avoidance of the terms of the statute.

W. I. R.

[5] "If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service." 27 Stat. 445 (1893), U. S. C., tit. 46 § 192 (1926).

[6] International Nav. Co. v. Farr & Bailey Mfg. Co., 181 U. S. 218, 21 Sup. Ct. 591, 45 L. ed. 830 (1901); The Niagara, (C. C. A. 2d, 1898) 84 Fed. 902; Nord-Deutscher Lloyd v. President, etc. of Ins. Co. of North America, (C. C. A. 4th, 1901) 110 Fed. 420; Switzerland Marine Ins. Co. v. The Flamborough, (D. C. S. D. N. Y. 1895) 69 Fed. 470; The Ninfa, (D. C. Or. 1907) 156 Fed. 512; The Oneida, (D. C. S. D. N. Y. 1901) 108 Fed. 886.

[7] Bank Line, Ltd. v. Porter, (C. C. A. 4th, 1928) 25 F. (2d) 843; Ingram & Royle, Ltd. v. Services Maritimes du Tréport, Ltd., [1914] 1 K. B. 541; Southern Cotton Oil Co. v. Merchants' & Miners' Transp. Co., (D. C. S. D. N. Y. 1910) 179 Fed. 133; D'Utassy v. Mallory S. S. Co., 162 App. Div. 410, 147 N. Y. S. 313 (1914).