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Admiralty - Warranty of Seaworthiness - Extension to Injury Caused by Appliance Not in Control of Shipowner

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RECENT DECISIONS

ADMIRALTY — WARRANTY OF SEAWORTHINESS — EXTENSION TO INJURY CAUSED BY APPLIANCE NOT IN CONTROL OF SHIPOWNER—Libellant, a longshore foreman for a stevedoring company loading petitioner's ship, was injured when a snatch block broke, causing some loading gear to fall upon his leg. Conflicting evidence in the lower court was resolved by the trial judge, who found that the snatch block was supplied by the stevedoring company. On the basis of this finding, the trial court held that neither the ship nor its appliances were unseaworthy, and that libellant could not recover against the shipowner. The court of appeals reversed[1] and remanded the cause for determination of damages. On certiorari to the Supreme Court, *held*, affirmed per curiam without opinion. *Alaska Steamship Company v. Petterson*, 347 U.S. 396, 74 S.Ct. 601 (1954). The Court considered the case governed by *Seas Shipping Co. v. Sieracki*[2] and *Pope and Talbot v. Hawn*.[3] Three justices dissented.

The warranty of seaworthiness is an American exotic in the general maritime law.[4] The English courts gave no right of action on grounds of unseaworthiness in the absence of statute.[5] Although defects in ship or appliances were early recognized as grounds for desertion or for compelling a survey,[6] a right of action on such grounds was first recognized by the United States Supreme Court in a questionable dictum in 1903.[7] The absolute nature of the

[1] Alaska Steamship Co. v. Petterson, (9th Cir. 1953) 205 F. (2d) 478.

[2] 328 U.S. 85, 66 S.Ct. 872 (1946).

[3] 346 U.S. 406, 74 S.Ct. 202 (1953).

[4] None of the ancient sea codes gave such a right of action. See Laws of Oleron, Wisbuy, and Hanse Towns, reprinted at 30 Fed. Cas. 1171.

[5] "There being no allegation of scienter, if we held the defendant liable on this count, we must hold a shipowner liable to an action from every seaman, if, from any accident, a butt having started or the like, the ship was not seaworthy. No such action has ever been brought: this is a case of first impression, in support of which neither a decision nor even a dictum has been brought to our notice; nor has any legal principle been urged in its support." Couch v. Steel, 3 El. & Bl. 402 at 407, 118 Eng. Rep. 1193 (1854). But see MOLLOY, DE JURE MARITIMO ET NAVALI, 4th ed., 220 (1690): "If it happens that the Master commands his Boat to be manned out, and it so happens that the same is out of order, or unfit to take the Sea, the Tews, or other accoutrements being impotent, if the Mariners happen to be drowned, the Master is to repay by the Law Marine one whole years hire to the Heirs of the drowned: Therefore Masters ought carefully to view and see that the Boat be fit for men to trust their lives upon his command." See also JUSTICE, OF THE LAWS OF THE SEA, ANCIENT AND MODERN, 3d ed., 456 (1710).

Although the right of action was thought to have been secured by statute, 39 & 40 Vict., c. 80, §5 (1876), its provisions have been given a restrictive interpretation by the House of Lords. Hedley v. Pinkney & Sons Steamship Co., [1894] 19 A.C. 222.

[6] Dixon v. The Cyrus, (D.C. Pa. 1879) 7 Fed. Cas. 755. Cf. CURTIS, THE RIGHTS AND DUTIES OF MERCHANT SEAMEN 19, 20 (1841).

[7] The Osceola, 189 U.S. 158, 23 S.Ct. 483 (1903). The American decisions cited by Justice Brown, with one possible exception, turned on negligence. The City of Alexandria, (D.C. N.Y. 1883) 17 F. 390 (no recovery because no negligence); The Edith Godden, (D.C. N.Y. 1885) 23 F. 43 (high duty of care; analogized to recovery at common law); The Frank and Willie, (D.C. N.Y. 1891) 45 F. 494 (negligence of mate was ground for recovery against owners); The Julia Fowler, (D.C. N.Y. 1892) 49 F. 277 ("deliberate use of rigging or methods plainly unsafe"); Olson v. Flavel, (D.C. Ore. 1888) 34 F. 477

liability was not a certainty for several years after that decision,[8] but was confirmed in *Mahnich v. Southern S.S. Co.*,[9] and was extended to cover stevedores[10] and other harbor workers[11] in subsequent decisions. Although the longshoreman is covered by a federal compensation statute which provides the only remedy against his employer,[12] recovery is not precluded on the warranty of seaworthiness against third parties.[13] The principal case apparently vitiates a doctrine of the Second and Third Circuits whereby the ship's owner was not liable for injury occurring while control of the particular area was relinquished to an independent contractor.[14] While this "relinquishment of control" doctrine might properly be criticized where the instrumentality causing injury belongs to the vessel, the decision in the principal case goes beyond the mere elimination of that criticism by expanding the definition of unseaworthiness. The two cases cited by the majority as demanding affirmance do not turn on the definition of seaworthiness, but rather upon the classes of persons within the scope of the warranty.[15] Since the position of libellant was the same essentially as in the *Sieracki* case, the real issue was whether a vessel is made unseaworthy by the acts of an independent contractor in bringing aboard a defective appliance. By an affirmative determination of that issue, the Court has made the owner a virtual insurer of injuries to maritime workers which occur on board his vessel. The common law analogies of liability without fault, it should be noted, are limited to situations where the defendant has some control over the instrumentality causing injury.[16] The shipowner, on the other hand, is now responsible directly for the *event* of the injury rather than for its *cause*. If seaworthiness is henceforth to be so loosely defined, it might more properly be done by the

(negligence of master); The A. Heaton, (C.C. Mass. 1890) 43 F. 592 (negligence of master). The exception is The Noddleburn, (D.C. Ore. 1886) 28 F. 855 (knowledge of the unseaworthy condition) but the language of the court is contrary to that in Couch v. Steel, note 5 supra). It is plausible to argue that the Court propounded the warranty of seaworthiness as an escape valve to the harsh operation of the fellow-servant rule, also imported into the admiralty in The Osceola.

[8] See Fitz-Henry Smith, "Liability for Injuries to Seamen," 19 HARV. L. REV. 418 at 425 (1906).

[9] 321 U.S. 96, 64 S.Ct. 455 (1944).

[10] Seas Shipping Co. v. Sieracki, note 2 supra.

[11] Pope & Talbot v. Hawn, note 3 supra; 2 NORRIS, LAW OF SEAMEN §622, p. 259 (1952); Robinson, "Seamen in American Admiralty Law," 16 BOST. UNIV. L. REV. 284 (1936).

[12] Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. L. 1424 (1927), 33 U.S.C. (1952) §901 et seq.

[13] Seas Shipping Co. v. Sieracki, note 2 supra. But see dissent in the same case.

[14] Lauro v. United States, (2d Cir. 1947) 162 F. (2d) 32 (dictum); Lynch v. United States, (2d Cir. 1947) 163 F. (2d) 97; Grasso v. Lorentzen, (2d Cir. 1945) 149 F. (2d) 127; Lopez v. Hawaiian-American Steamship Co., (3d Cir. 1953) 201 F. (2d) 418; Mollica v. Compania Sud-Americana De Vapores, (2d Cir. 1953) 202 F. (2d) 25, cert. den. 345 U.S. 965, 73 S.Ct. 952 (1953) (dictum).

[15] In neither the Sieracki case nor the Pope and Talbot case was there any question as to whether the defective appliance belonged to the vessel.

[16] See PROSSER, SELECTED TOPICS ON THE LAW OF TORTS 135, 186-189 (1953); Holmes, "The Theory of Torts," 7 AM. L. REV. 652 (1873).

legislative branch of the government, since the economic and social effect ultimately is to increase shipping costs and thus costs to consumers.[17] In addition to its effect on the "relinquishment of control" doctrine, the decision may well resolve the question whether demise of a vessel on bareboat charter limits maritime workers to action against the owner *pro hac vice* on the warranty.[18] It is hoped, however, that the principal case will be limited to its facts, as suggested in the dissenting opinion.[19]

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[17] The serious effect of constant expansion of the right of recovery can best be realized through reading the statistics relating to incidence of maritime injuries during a given year. See, e.g., 2 NORRIS, LAW OF SEAMEN 240 (1952).

[18] Recovery was allowed against the charterer in Cannella v. Lykes Bros. Steamship Co., (2d Cir. 1949) 174 F. (2d) 794, principally on the basis of avoiding circuity of action. *Contra:* Vitozi v. Balboa Shipping Co., (1st Cir. 1947) 163 F. (2d) 286; Muscelli v. Frederick Starr Contracting Co., 296 N.Y. 330, 73 N.E. (2d) 536 (1947).

[19] Principal case at 402.