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Admiralty- Shipowner's Right to Indemnification for Loss Caused by Latently Defective Gear Supplied by Nonnegligent Stevedoring-Compnay

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RECENT DECISIONS

ADMIRALTY—SHIPOWNER'S RIGHT TO INDEMNIFICATION FOR LOSS CAUSED BY LATENTLY DEFECTIVE GEAR SUPPLIED BY NONNEGLIGENT STEVEDORING COMPANY—Defendant stevedoring company contracted to perform stevedoring services for plaintiff shipowner. Pursuant to its agreement to supply gear for the job, the stevedoring company supplied a latently defective rope, the breaking of which caused injury to a longshoreman, an employee of the stevedoring company. The longshoreman obtained a judgment against the shipowner under the doctrine of unseaworthiness, and in a separate action the shipowner sought indemnification from the stevedoring company. The district court, finding the stevedoring company not negligent, denied recovery.¹ The Court of Appeals for the Ninth Circuit affirmed, one judge dissenting.² On certiorari to the United States Supreme Court, *held*, reversed and remanded, three Justices dissenting. A stevedoring company, even though not negligent, breaches its implied warranty of workmanlike service when it supplies latently defective gear. *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 84 Sup. Ct. 748 (1964).³

It is well settled in maritime law that a shipowner is absolutely liable to seamen for injuries resulting from the unseaworthiness of the vessel,⁴ including unseaworthiness attributable to defective gear brought aboard by a stevedoring company.⁵ This unique doctrine is the result of long-standing judicial solicitude for seamen,⁶ and it has been extended to cover longshoremen and other workmen when they perform duties traditionally done by members of the ship's crew.⁷ This judicial concern for seamen's welfare was the determinative factor in the principal case. The objective of the Court was to reduce the hazards encountered by seamen,⁸ and it therefore

¹ The district court's opinion is unreported.

² *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 310 F.2d 481 (9th Cir. 1962).

³ The stevedoring company had agreed in its contract with appellant to be liable for negligence. The district court held that this express assumption of negligence liability negated any liability for nonnegligent conduct which might arise under the implied warranty of workmanlike service. Since the court of appeals found that the warranty did not extend to nonnegligent conduct, it was unnecessary for it to pass upon the effect of the contractual liability provision. The Supreme Court remanded the case to the court of appeals to decide the effect of the contractual liability provision, for that issue became pertinent in light of the Supreme Court's decision. Principal case at 754.

⁴ *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944). For a thorough judicial analysis of the unseaworthiness doctrine, see *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960). See generally GILMORE & BLACK, ADMIRALTY §§ 6-38 to -44 (1957).

⁵ *Alaska S.S. Co. v. Petterson*, 347 U.S. 396 (1954) (shipowner's right to indemnification not involved).

⁶ See *Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 103-04 (1944); White, *A New Look at the Shipowner's Right—Over for Shipboard Injuries*, 12 STAN. L. REV. 717 (1960).

⁷ *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946).

⁸ Principal case at 754. The Court also implied that another objective furthered by its decision was "to compensate seamen for the accidents that inevitably occur." *Ibid.* However, the seaman (longshoreman) had already recovered, and resolution of the issue of indemnity between shipowner and stevedoring company should have no bearing on the seaman's right to receive compensation from either.

rested its decision principally on the ground that "liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury."⁹ In the principal case that party was the stevedoring company. The leading case in the area is *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*,¹⁰ the case in which the Supreme Court first recognized the existence of an implied warranty of workmanlike service in maritime contracts. Although in that case the Court's opinion was ambiguous as to the scope of the warranty,¹¹ the stevedoring company had in fact been negligent, and the case therefore decided no more than that negligent conduct breached the warranty. The principal case is a clear extension of *Ryan* into the area of liability without fault.

The precise question in the principal case—whether a nonnegligent stevedoring company is liable for indemnification when its gear causes injury—has arisen only once before, in *Booth S.S. Co. v. Meier & Oelhaf Co.*¹² In that case the Court of Appeals for the Second Circuit regarded the company as a bailor of chattels for hire and applied bailment law. This approach is logically appealing. Under its contract, a stevedoring company is obligated to supply gear,¹³ and thus at least a part of the contract fee is arguably given solely for this promise to supply gear. Indeed, if the stevedoring company refused to supply gear, the shipowner would have to lease it from an independent supplier, and that clearly would be a bailment for hire. In allowing indemnity the court in the *Booth* case cited no case law on point, but agreed with the position taken by leading text-writers¹⁴ that the strict liability warranties of the law of sales should extend to the law of bailments. However, this position flies in the face of the overwhelming weight of authority, which holds that while a bailor of chattels for hire impliedly warrants that they are fit for their intended purpose, this warranty imposes only an obligation to use ordinary and reasonable care to discover defects.¹⁵ In the principal case the Court specifically declined to adopt the

⁹ *Ibid.*

¹⁰ 350 U.S. 124 (1956) (five-to-four decision). In this case the Court allowed a shipowner, from whom an injured longshoreman had recovered, to recover indemnity from the stevedoring company whose negligence had caused the injury.

¹¹ See notes 26-28 *infra* and accompanying text.

¹² 262 F.2d 310 (2d Cir. 1958). This case involved a vessel repair company rather than a stevedoring company, but the fact situation and sole issue were essentially identical to those of the principal case.

¹³ In the principal case there was an express contract provision whereby the stevedoring company agreed to supply the gear necessary to do the job. Principal case at 749. Although it is not clear, apparently a similar promise was made in the *Booth* case. *Booth S.S. Co. v. Meier & Oelhaf Co.*, *supra* note 12.

¹⁴ See 2 HARPER & JAMES, TORTS § 28.19, at 1576-77 (1956); PROSSER, TORTS § 83, at 496 (2d ed. 1955); 4 WILLISTON, CONTRACTS § 1041, at 2907 (rev. ed. 1936).

¹⁵ See 8 C.J.S. *Bailments* § 25(a) (1962) and cases cited therein; Annot., 131 A.L.R. 845 (1941) and cases cited therein. Only one case has been found which flatly stated that a bailor of chattels is liable for latent defects regardless of the degree of care exercised. *Eastern Motors Express, Inc. v. A. Maschmeijer, Jr., Inc.*, 247 F.2d 826 (2d Cir. 1957). However, that case had a number of distinguishing features which would take it out of the ordinary bailment situation; and the court cited no authority in point. A close

bailment approach, and carefully limited its decision to maritime contracts which are governed by the federal law of admiralty, "an area where rather special rules governing the obligations and liability of shipowners prevail."¹⁶ The Court noted, however, that the considerations which motivated its decision were the same as those which "underlie a manufacturer's or seller's obligation to supply products free of defects"¹⁷—namely, that imposition of strict liability would force the supplier of chattels to take preventive measures above and beyond the duty of due care, thereby ultimately reducing the number of injuries caused by defective chattels.¹⁸ The Court had in mind two specific preventive measures which it felt its decision would compel stevedoring companies to take in the future: testing of the equipment and establishment of retirement schedules for equipment.¹⁹ Although imposition of strict liability may effectively increase safety testing in the manufacturing industry, it must be remembered that a manufacturer will have to conduct these tests only *once*. In the stevedoring industry it would be impossible to know exactly what stresses and strains the equipment had been subjected to, and thus impossible to detect latent defects which had developed, unless extensive tests were conducted after *every* stevedoring job. Thus the burden on a manufacturer to conduct more tests than due care requires—a burden imposed with reluctance by the courts—would be greatly compounded if imposed on a stevedoring company.²⁰ As a practical matter, extensive testing after each use would probably be economically infeasible, and the stevedoring company would most likely choose either to run the risk of occasional nonnegligent injuries, insure against them, or insist on the insertion of a contractual disclaimer of liability for other than negligence losses.²¹ In any case, the Court's objective

reading of other cases which have occasionally been cited as imposing strict liability in bailments (see Note, 2 VAND. L. REV. 675, 677-79 (1949); 17 MINN. L. REV. 210 (1933)) reveals that they either were instances of actual negligence or else they involved a first leasing of a machine specifically manufactured for the bailee (e.g., Hartford Battery Sales Corp. v. Price, 119 Pa. Super. 165, 181 Atl. 95 (1935)). Also, a bailment for hire would seem to be analogous to a sale of second-hand goods—a situation in which no strict liability is imposed. See UNIFORM COMMERCIAL CODE § 2-314, comments 3, 4; 1 WILLISTON, SALES § 232, at 594 (rev. ed. 1948).

¹⁶ Principal case at 754.

¹⁷ Principal case at 753.

¹⁸ Aside from prevention, there are two other considerations which often underlie the imposition of strict liability on a manufacturer or seller: (1) inequality of bargaining position, and (2) distribution of the loss throughout the enterprise. However, since the principal case involved two commercial enterprises of relatively equal bargaining power, both of which were equally able to distribute the loss by raising prices or acquiring insurance, these considerations could have no bearing on the outcome of the case.

¹⁹ Principal case at 753.

²⁰ This is probably one of the main reasons why the courts have refused to impose strict liability on bailors of chattels for hire. See note 15 *supra* and accompanying text.

²¹ Although there is considerable doubt as to the validity of disclaimers of negligence liability, disclaimers of strict liability warranties have been universally upheld except where there has been a gross inequality of bargaining position. There was no such inequality in the principal case. See 109 U. PA. L. REV. 453, 455-58 (1961).

of preventing injuries through judicially-coerced testing will be defeated. The other objective—establishment of retirement schedules—could probably be accomplished as effectively under a negligence standard as under one imposing strict liability, for omission of adequate retirement schedules could justifiably be regarded as negligence.²² The Court's sole reason for its decision—prevention of injuries—seems to be a somewhat tenuous justification for shifting the onerous burden of strict liability for unseaworthiness from one innocent party to another.

A further ramification of ruling in favor of indemnification evoked dissent not only in the principal case, but also in the earlier *Ryan* case. In neither case was there an express indemnity agreement covering the type of loss involved. The sole objection of the four dissenters in *Ryan* was that to allow indemnity amounted to judicial circumvention of the congressional mandate embodied in the Longshoremen's and Harbor Worker's Compensation Act that a longshoreman's recovery of a statutory compensation award is to be his "exclusive remedy" against his employer.²³ The act does not preclude a longshoreman from suing a third party,²⁴ but when his employer must indemnify the third party for a large jury verdict, the longshoreman is in essence recovering from his employer an amount in excess of the statutory limit.²⁵ While all nine Justices agreed in *Ryan* that the statutory purpose would not be circumvented if indemnity were based on "contract," the four dissenters insisted that it must be an *express* agreement, whereas the majority felt that recovery on an *implied* warranty would constitute recovery on the "contract." Unfortunately, the majority was ambiguous as to just what kind of an implied warranty it was dealing with. The Court stated that the implied warranty of workmanlike service is a "purely consensual obligation"²⁶ and *not* "implied in law,"²⁷ but a few sentences later the Court said that the warranty is "comparable to a manufacturer's warranty of the soundness of its manufactured product."²⁸ The ordinary manufacturer's implied warranty is, of course, implied in law and exists regardless of the intent of the parties.²⁹ Nevertheless, *Ryan* involved negligence; and since it is a fair inference that a service contractor

²² At present, the omission of such retirement schedules apparently does not amount to negligence, and the stevedoring company can avoid liability for such omission by means of a disclaimer. If such an omission *were* deemed to constitute negligence, however, the company could probably not escape liability with a disclaimer. See note 21 *supra*.

²³ Section 905, 44 Stat. 1426 (1927), 33 U.S.C. § 905 (1958).

²⁴ Section 933, 44 Stat. 1440 (1927), as amended, 33 U.S.C. §§ 933(a), (b) (Supp. IV, 1963).

²⁵ For a criticism of *Ryan's* so-called "circumstances" of the statute, see Comment, 6 N.Y.L.F. 168 (1960). This chance interaction of the seaworthiness doctrine with the Compensation Act creates a highly unusual and complicated situation as far as indemnity liabilities are concerned. See Stover, *Longshoreman-Shipowner-Stevedore: The Circle of Liability*, 61 MICH. L. REV. 539 (1963); White, *supra* note 6, at 729-30.

²⁶ *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 131-32 (1956).

²⁷ *Id.* at 133.

²⁸ *Id.* at 133-34.

²⁹ See PROSSER, *op. cit. supra* note 14, § 83 at 494; 4 WILLISTON, CONTRACTS § 991, at 2730-32 (rev. ed. 1936).

impliedly agrees in *fact* to be liable for his own negligence, that case could be read as merely holding that the statute was not circumvented because the Court was simply holding the contractor to what he had agreed to in fact. Although the majority in the principal case considered the statutory circumvention issue to have been fully settled in *Ryan*,³⁰ its decision actually extends *Ryan* by making it clear that allowing indemnity will not circumvent the statute even where the employer has not expressly or impliedly agreed in fact to be liable. It was this extension to which the dissenters in the principal case objected.³¹ The majority's position is consistent with the weight of authority under state compensation statutes with similar "exclusive remedy" provisions.³² Nevertheless, it would seem that the statute is indeed being circumvented. As pointed out above, the Court's objective was prevention of injury. The injury was caused solely by the employer. As far as prevention of injuries caused solely by the employer is concerned, it would appear that Congress has already made a policy decision that strict liability with maximum recovery limitations is the most efficient and equitable solution to the problem.

The decision in the principal case could have far-reaching effects, even in the area of maritime law to which it was confined. Although the warranty involved was associated with a service contract, the liability arose from the supplying of a defective chattel. There appears to be no obstacle to extending such strict liability to anyone who supplies chattels to a shipowner, whether by bailment or sale.³³ Indeed, the Court in *Ryan*, in speaking of liability under the warranty, stated that "a like result occurs where a shipowner sues, for breach of warranty, a supplier of defective ship's gear that has caused injury or death to a longshoreman using it in the course of his employment on shipboard."³⁴ And even though the decision in the principal case was confined to maritime law, it will undoubtedly have

³⁰ The majority mentioned this issue only in a footnote. Principal case at 752, n.6.

³¹ Mr. Chief Justice Warren and Justices Black and Douglas dissented in the principal case. Mr. Justice Clark, who had joined them in the *Ryan* dissent, was in the majority. Aside from the statutory circumvention issue, the dissenters in the principal case also felt that the decision was an unwarranted expansion of the general law of warranty which "will cause us regret in future cases in other areas of the law as well as in admiralty." Principal case at 755.

³² See 2 LARSON, WORKMEN'S COMPENSATION LAW § 76.00 (1961).

³³ Of course the bailment or sale contract would have to be a "maritime contract" in order for the maritime law of the principal case to be applicable. Such contracts have in the past been held to be maritime contracts and probably will continue to be so held in the future. See Cunningham, *Warranties Go to Sea*, 15 SYRACUSE L. REV. 19, 21-25 (1963).

³⁴ *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 130 (1956). Note also the following language in *Booth S.S. Co. v. Meier & Oelhaf Co.*, 262 F.2d 310, 314 (2d Cir. 1958):

"In *Shamrock Towing Co. v. Fitcher Steel Corp.*, 2 Cir., 1946, 155 F.2d 69, we stated in dictum that the warranty of a supplier of marine equipment was as absolute as the maritime warranty of seaworthiness, . . . that it therefore made no difference whether a defect was discoverable; that as a result both warranties would be breached in the event that the chattel supplied proved inadequate to the purpose for which it was supplied under normal conditions of use. We see no reason to alter that opinion."

an influence on the development of both general warranty law and the law of workmen's compensation.

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