

St. John's Law Review

Volume 11
Number 1 *Volume 11, November 1936, Number*
1

Article 2

May 2014

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Recommended Citation

Springer, Adele I. (1936) "Amendments to the Federal Law Limiting the Liability of Shipowners," *St. John's Law Review*. Vol. 11 : No. 1 , Article 2.

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AMENDMENTS TO THE FEDERAL LAW LIMITING THE LIABILITY OF SHIPOWNERS

THE law limiting the liability of shipowners was amended materially in the past two sessions of Congress¹ for the first time since its passage in 1851.² The fire of the Steamboat Lexington in 1848³ was responsible for its enactment; the fire of the Morro Castle on September 8, 1934, occasioned its revision.⁴

The uneasiness among shipowners caused by the decision of the court in the Lexington case⁵ holding the Company liable for the gross negligence of officers and crew, prompted Congress to enact the Limited Liability Act of 1851⁶ "for the purpose of putting American shipping upon an equality with that of other nations"⁷ and "to encourage investments in ships and their employment in commerce".⁸ It was in consequence of an aroused public opinion against the hardship and injustice to victims of the Morro Castle⁹ that Congress passed the Sirovich Laws¹⁰ amending the statute

¹ Act of Aug. 29, 1935, Public Act No. 391, 74th Cong.; Act of June 5, 1936, Public Act No. 662, 74th Cong.; 46 U. S. C. A. §§ 183, 183A, 183B, 185 and 189.

² 9 STAT. 635 (1851), 46 U. S. C. A. § 183, *etc.*

³ The Steamboat Lexington burned in 1848 with a shipment of gold and silver coin on board, amounting to \$18,000. The shipowner was held liable for its full value.

⁴ The Tel. Morro Castle burned on Sept. 8, 1934, off the Jersey coast with a loss of 135 lives. The owners petitioned the court to limit liability to \$20,000 for all loss of life, personal injuries and property damage. The petition is still pending in the Federal Court, Southern District of New York.

⁵ *New Jersey Steam Navigation Co. v. Merchants' Bank*, 6 How. 344 (U. S. 1848).

⁶ *Walker v. Western Transportation Co.*, 70 U. S. 150, 18 L. ed. 172 (1865).

⁷ *The Main v. Williams*, 152 U. S. 122, 14 Sup. Ct. 486 (1894). See also *Liverpool Navigation Co. v. Brooklyn Terminal*, 251 U. S. 48, 40 Sup. Ct. 66 (1919).

⁸ *American Car & Foundry Co. v. Brassert*, 289 U. S. 261, 53 Sup. Ct. 618 (1933).

⁹ Public opinion was reflected in the editorials and prolonged series of articles by James Edmund Duffy, Marine Editor of the New York World-Telegram, in support of the Sirovich Bills.

¹⁰ Representative William I. Sirovich of New York, Ranking Member of the Committee on Merchant Marine and Fisheries of the House of Representatives, introduced the bills and sponsored for enactment the amendments to the Limited Liability Law.

“for the purpose of protecting the interests of passengers over those of the shipowners”.¹¹

A review of the historical background to which may be traced the origin of this statute, and the court decisions which have construed and applied the law, leave one wondering that its revision was not undertaken long before the Morro Castle added one hundred and thirty-five victims to the toll of sea disasters.

The old law limits the liability of shipowners, if the negligence occurs without their “privity or knowledge”, to the value of the owners’ remaining interest in the vessel after the disaster and the freight then pending.¹² The word “freight” is used to denote, not the thing carried, but the compensation for the carriage of the cargo and passengers.¹³ If the vessel is wrecked, no value remains for recovery by the claimants. The insurance collected by the owners on the loss of the vessel is not part of the remaining value.¹⁴

The recent amendments place the owners’ liability upon an alternative tonnage basis, fixing a minimum liability for loss of life and personal injuries to a sum equal to \$60 for each ton of the vessel’s tonnage.¹⁵ The amended statute, with its increased liability and the added proviso making owners liable for the knowledge of the Captain at or prior to the commencement of the voyage,¹⁶ exceeds in progressiveness the laws of other maritime nations. The amendments not only compensate more equitably victims of sea disasters but promote safety of life at sea. The increased liability for negligence and the added responsibility for the acts of the Master, should encourage shipowners to use greater care in selecting their officers and crew and in equipping their vessels with safety devices.

Limitation of Liability was not recognized by common law or civil law. It has its origin in the general maritime

¹¹ See *Hearings before House Merchant Marine Committee on H. R. 4550 and H. R. 9969*, 74th Cong., 1st Sess. (1935); also 79 Cong. Rec. 14625 (1935).

¹² Act of March 3, 1851, c. 43, § 3, 9 STAT. 635, 46 U. S. C. A. § 183.

¹³ *Main v. Williams*, 152 U. S. 122, 14 Sup. Ct. 486 (1894).

¹⁴ *Place v. Norwich Transportation Co.*, 118 U. S. 468, 6 Sup. Ct. 1150 (1886).

¹⁵ 46 U. S. C. A. § 183, (b).

¹⁶ 46 U. S. C. A. § 183, (e).

law.¹⁷ In England the earliest legislation on this subject was in 1734. The first federal statute in this country was that of 1851, amended in minor respects in 1871, 1875, 1877, 1884 and 1886.

The earliest American legislation upon the subject is found in a statute of Massachusetts passed in 1819¹⁸ and revised in 1836. This was taken substantially from the English statute of Geo. II. It was followed by an act of the Legislature of Maine in 1821¹⁹ copied from the statute of Massachusetts. "It was in the light of all this previous legislation that the Act of Congress was passed in 1851."²⁰

Mr. Justice Bradley in the case of *Norwich Co. v. Wright*²¹ stated that "the act of Congress seems to have been drawn with direct reference to the English statutes and to the statutes of Maine and Massachusetts".

In the debate on the bill in 1851 in the Senate,²² it was repeatedly declared by proponents of the measure, that the bill was predicated on what was then the English law and that it was designed merely to place the American Merchant Marine on an equal footing with that of Great Britain.²³

Notwithstanding this declared intent of Congress to conform the American law with that of Great Britain, and the fact that the British statute was amended in 1862 placing liability on a tonnage basis "to establish a more uniform and equitable method of limiting liability of owners",²⁴ the American Limited Law of 1851 remained unchanged at the time of the Morro Castle disaster.

The history of the statutory law was reviewed by Mr. Justice Brown in the leading case of *Main v. Williams*,²⁵ as follows:

¹⁷ *Main v. Williams*, 152 U. S. 122, 14 Sup. Ct. 486 (1894).

¹⁸ Act of Feb. 20, 1819, Gen. Laws c. 122.

¹⁹ 1 Laws of Me., c. 14, § 8.

²⁰ *Norwich v. Wright*, 80 U. S. 104, 20 L. ed. 585 (1871).

²¹ *Ibid.*

²² 23 Cong. Globe, 332, 713 *et seq.*

²³ *Norwich v. Wright*, 80 U. S. 104, 20 L. ed. 585 (1871). Senator Hamlin of Maine, Chairman of the Committee on Commerce, introduced and sponsored the bill in 1851.

²⁴ *Main v. Williams*, 152 U. S. 122, 14 Sup. Ct. 486 (1894).

²⁵ *Ibid.* See also *Liverpool Navigation Co. v. Brooklyn Terminal*, 251 U. S. 48, 40 Sup. Ct. 66 (1919).

“By the common law, as administered both in England and America, the personal liability of the owner of a vessel for damages by collision is the same as in other cases of negligence, and is limited only by the amount of the loss and by his ability to respond. *Wilson v. Dickson*, 2 B & Ald 2; *The Dundee*, 1 Hagg. 109, 120; *The Aline*, 1 W. Rob. 111; *The Mellona*, 3 W. Rob. 16, 20; *The Wild Ranger*, *Lush*, 553, 564; *Cope v. Doherty*, 4 K. & J. 367, 378. The civil law, too, as well as the general law maritime, made no distinction in this particular in favor of shipowners. (Emerigon, *Contrats a la grosse*, c. 4, par. 11.) Nor did the ancient laws of Oleron or Wisby or the Hanse Towns suggest any restriction upon such liability. Indeed, it is difficult, if not impossible, to say when and where the restrictions of the modern law originated. * * * But, however, the practice originated, it appears, by the end of the seventeenth century, to have become firmly established among the leading maritime nations of Europe, since the French Ordinance of 1681, which has served as a model for most of the modern maritime codes, declares that the owners of the ship shall be answerable for the acts of the master, but shall be discharged therefrom upon relinquishing the ship and freight. (Book II, Tit. VIII, Art. 2.) * * *

“The earliest legislation in England upon the subject is found in the act of 7 Geo. 2, c. 15, passed in 1734, which enacted that no shipowner should be responsible for loss or damage to goods on board the ship by embezzlement of the master or marines, or for any damage occasioned by them without the privity or knowledge of such owner, further than the value of the ship and her appurtenances, and the freight due or to grow due for the voyage, and if greater damage occurred it should be averaged among those who sustained it. By subsequent acts this limitation of liability was extended to losses in which the master and mariners had no part, to losses by their negligence, and to damage done by collision, while there was an entire exemption of liability for loss or damage by

fire or for loss of gold and jewelry, unless its nature and value were disclosed. In all these statutes the liability of the owner was limited to his interest in the ship and freight for the voyage.

"By section 505 of the Merchants' Shipping Act of 1854, 16 and 17 Vict. c. 131, freight was deemed to include the value of the carriage of goods, and passage money. Owing probably to some difficulties encountered in determining at what point of time the value of the ship should be taken, and to establish a more uniform and equitable method of limiting the liability of the owner, the Merchant Shipping Act Amendment Act of 1862, extended the provisions of the prior acts to foreign as well as damage or loss to the cargo, and provided that the owners should not be liable in damages in respect of loss of life or personal injury, 'to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage', nor in respect of loss or damage to ships or their cargoes to an amount exceeding eight pounds per ton."²⁶

The British law remains unaltered since 1862.²⁷

The first three amendments to the American Limited Liability Law of 1851 were unimportant changes in phraseology.²⁸ In 1884 the statute was extended to all debts and liabilities, *ex contractu* as well as *ex delicto*, except seamen's wages, and provided that the individual shipowner's liability should be limited to the proportion of the debts and liabilities that his individual share of the vessel bears to the whole.²⁹ By the amendment of 1886, the Limitation Statutes were extended to all vessels on lakes, rivers and inland navigation.³⁰

The Statute of 1851, although modeled after the British, was construed differently by the American courts as to the time of valuing the owner's interest in the vessel. The English courts estimated the value of the ship and freight at the

²⁶ 25 & 26 Vict. c. 63, § 54 (1862).

²⁷ 18 Halsbury's Statutes of England 355.

²⁸ Amendments of 1871, 1875 and 1877.

²⁹ Act of June 26, 1884, c. 121, § 18, 23 STAT. 57, 46 U. S. C. A. § 189.

³⁰ Act of June 19, 1886, c. 421, § 4, 24 STAT. 80, 46 U. S. C. A. § 188.

time immediately prior to the accident.³¹ The American courts, to the contrary, determined the remaining value immediately after the disaster, in the vessel's stranded or sunken condition.³² This interpretation relieved the owner from all liability in cases of total loss.³³ Under French law the freight abandoned is the freight with respect to the voyage preceding the abandonment, although this may be several voyages after that on which liability accrued.

It is significant that both the American and English statutes were declared to have been enacted "for the purpose of encouraging shipping".

The decision of the United States Supreme Court in *Moore v. American Transportation Company*³⁴ stated the benefits which the statute granted as tantamount to a ship subsidy:

"The act was designed to promote the building of ships and to encourage persons engaged in the business of navigation and to place that of this country on a footing with England and on the continent of Europe."

The courts, with few exceptions,³⁵ have construed the statute liberally in favor of the shipowners.³⁶

³¹ *Brown v. Wilkerson*, 15 M&W 391, 153 Eng. Rep. R. 902 (1846); *Wilson v. Dickson*, 2 B. & Ald. 2. The difficulty of determining the value of the ship immediately prior to the disaster, gave rise to the amendment in 1862 placing the limitation upon a tonnage basis.

³² *The Great Western*, 118 U. S. 520, 6 Sup. Ct. 1172 (1886); *Norwich Co. v. Wright*, 80 U. S. 104, 20 L. ed. 585 (1871). See also *Place v. Norwich Transportation Co.*, 118 U. S. 468, 6 Sup. Ct. 1150 (1886).

³³ *The Scotland*, 105 U. S. 24, 6 Sup. Ct. 1174 (1881); *Dyer v. National Steam Navigation Co.*, 118 U. S. 507, 6 Sup. Ct. 1174 (1886).

³⁴ 24 How. 1 (U. S. 1860); see *Liverpool Navigation Co. v. Brooklyn Terminal*, 251 U. S. 48, 53, 40 Sup. Ct. 66 (1919). See also *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U. S. 19, 46 Sup. Ct. 379 (1926).

³⁵ *Gale v. Laurie*, 5 B. & C. 156; *The Andalusian*, 3 P. D. 182; *The Northumbria*, L. R. 3 Adm. 6; *The Passaic*, 204 Fed. 266 (C. C. A. 2d, 1913).

³⁶ *Monongahela River Consolidated Coal & Coke Co.*, 200 Fed. 711 (C. C. A. 6th, 1912); *Norwich Co. v. Wright*, 80 U. S. 104, 20 L. ed. 585 (1871); *Butler v. Boston & Savannah Steamship Co.*, 130 U. S. 527, 9 Sup. Ct. 612 (1889); *The Florida*, 212 Fed. 334 (S. D. N. Y. 1910); *La Bourgoyne*, 210 U. S. 95, 28 Sup. Ct. 664 (1903); *The Marie Palmer*, 191 Fed. 79 (E. D. Ga. 1911); *Providence & N. Y. S. S. Co. v. Hill Manufacturing Co.*, 109 U. S. 578, 3 Sup. Ct. 379 (1883); *Flink v. Paladini*, 279 U. S. 59, 49 Sup. Ct. 255 (1929); *Larsen v. Northland Transportation Co.*, 292 U. S. 20, 54 Sup. Ct. 584 (1934).

In *The Scotland*, the Court remarked: ³⁷

“As Grotius says, in reference to this matter of ship-owners, ‘men would be deterred from owning and operating ships if they were subject to the fear of an individual liability for the acts of the master’.”

It should not be overlooked that Grotius made these statements, however, centuries ago, when shipping was far more hazardous than today.

Mr. Justice Bradley in *Butler v. Boston S. S. Co.*³⁸ stated:

“The statutes limiting the liability of shipowners were enacted to encourage ship building and the employment of ships in commerce.”

But he added:

“In *The Lottawana* (21 Wall. 538) we said: ‘It cannot be supposed that the framers of the constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed.’”

In *Main v. Williams*,³⁹ Mr. Justice Brown pointed out that the statute was in derogation of the common law⁴⁰ and must be interpreted strictly so that the right of recovery should not be unduly restricted.

In *Chapman v. Royal Netherlands Steam Navigation Co.*,⁴¹ Lord Justice Brett very aptly commented:

³⁷ See note 31.

³⁸ 24 How. 1 (U. S. 1860); see *Liverpool Navigation Co. v. Brooklyn Terminal*, 251 U. S. 48, 53, 40 Sup. Ct. 66 (1919). See also *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U. S. 19, 46 Sup. Ct. 379 (1926).

³⁹ *Main v. Williams*, 152 U. S. 122, 14 Sup. Ct. 486 (1894). See also *Liverpool Navigation Co. v. Brooklyn Terminal*, 251 U. S. 48, 40 Sup. Ct. 66 (1919).

⁴⁰ See also *The Pelotas*, 21 F. (2d) 236 (E. D. La. 1927).

⁴¹ L. R. 4 P. D. 157.

“A statute for the purposes of public policy, derogating to the extent of injustice from the legal rights of the individual parties, should be so construed as to do the least possible injustice.”

Circuit Judge Hutcheson, in *Re Jacobson*,⁴² scored shipowners for taking advantage of the statute:

“The purpose of the Act to encourage shipowners to send good, first class ships to sea, is defeated if it is allowed to furnish protection to owners from the consequences of an illy advised and illy considered venture.”

The Court in the case of the *Santa Rosa*,⁴³ gave a still more enlightened opinion:

“The statutes are to be enforced in such spirit and with such liberality as will effect their purpose—the encouragement of shipbuilding and the employment of ships in commerce. But such liberality of enforcement should not be carried to an extent that will deprive cargo owners and passengers of that degree of care on the part of those owning and operating ships which their safety demands and to which they are entitled.”

It is regrettable that “such liberality of enforcement” was carried to an extent which not only “deprived passengers of that degree of care” but made it far more profitable to shipowners if the entire vessel was destroyed. The greater the damage, the greater was the amount of insurance collectible by the owners and less was the remaining value for recovery by the claimants. Not only was the statute conducive to criminal negligence but it actually behooved shipowners to have little to do with the vessel so that it was impossible to prove their “privity and knowledge”.

The United States Supreme Court, in *Place v. Norwich Transportation Company*,⁴⁴ held in a five to four decision by

⁴² 52 F. (2d) 179 (S. D. Tex. 1931).

⁴³ 249 Fed. 160 (N. D. Cal. 1918).

⁴⁴ *Place v. Norwich Transportation Co.*, 118 U. S. 468, 6 Sup. Ct. 1150 (1886).

Mr. Justice Bradley, that insurance collected by shipowners on the vessel is not part of the remaining value for which they are liable. Mr. Justice Matthews declared in the more just dissenting opinion :

“The statute as it has been construed, puts a premium on the destruction of property by taking away from the shipowners a principal motive for regarding either their own and the interests of others.”

The logic and conclusions of the majority opinion were criticized in later decisions and followed reluctantly.⁴⁵

The statute limiting the liability of shipowners, prior to its amendment by the Acts of August 29, 1935⁴⁶ and June 6, 1936,⁴⁷ reads as follows: ⁴⁸

“Section 183. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.”

The amendment of August 29, 1935, added a proviso to Section 183 which was clarified by the Act of June 6, 1936, as follows: ⁴⁹

“(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection

⁴⁵ *The Princess Sophia*, 61 F. (2d) 339, 354 (C. C. A. 9th, 1932), cert. denied, 288 U. S. 604, 53 Sup. Ct. 396 (1933); *St. Louis & Tenn. River Packet Co.*, 266 Fed. 919 (E. D. Mo. 1920); *Phillips v. Clyde Steamship Co.*, 17 F. (2d) 250 (C. C. A. 4th, 1927). See also *Craig v. Continental Ins. Co.*, 141 U. S. 638, 12 Sup. Ct. 97 (1891).

⁴⁶ Act of Aug. 29, 1935, Public Act No. 391, 74th Cong.; Act of June 5, 1936, Public Act No. 662, 74th Cong.; 46 U. S. C. A. §§ 183, 183A, 183B, 185 and 189.

⁴⁷ *Ibid.*

⁴⁸ 46 U. S. C. A. § 183, (a).

⁴⁹ 46 U. S. C. A. § 183, (b).

(2) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than \$60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to \$60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts."

Under this amendment, limitation of liability would operate as declared by the Chairman of the Committee on Merchant Marine and Fisheries in his report on the bill to the House of Representatives: ⁵⁰

"If under the old law the sum available for the payment of all claims should be \$20,000, (such sum being the amount paid into court by the owner, or in case the owner has elected to surrender his vessel to a trustee, the proceeds of the sale of the vessel by the trustee,) the cargo claimants and the claimants for loss of life and bodily injury would be entitled to share *pro rata* in such sum. Hence it would be determined at some stage of the limitation of liability proceedings from the number and amounts of loss of life, bodily injury, and cargo claims, what portion of the \$20,000 would be applicable to the payment of claims for loss of life and bodily injury. When that portion is determined, if it is found that it is less than an amount equal to \$60 for each ton of the vessel, such portion must be increased to an amount equal to \$60 per ton, and as so increased would be available only for the payment of loss of life and bodily injury claims. The portion of the \$20,000 found applicable to the payment of cargo claims would remain just as it was under the old law. Hence, if the tonnage of the vessel were 1,000 tons, and the amount available

⁵⁰ H. R. REP. NO. 2517, 74th Cong., 2d Sess. (1936).

for distribution under the old law were \$20,000, and the amount of approved loss of life and bodily injury claims were \$60,000, and the amount of approved cargo claims were \$20,000, three-fourths of the \$20,000 available for distribution, *i. e.*, \$15,000, would be applicable to the payment of loss of life and bodily injury claims, and one-fourth of the \$20,000 available for distribution, *i. e.*, \$5,000, would be applicable to the payment of cargo claims. The cargo claimants would receive \$5,000, the amount they would have received under the old law, but the loss of life and bodily injury claimants would be paid in full, *i. e.*, \$60,000, because the \$15,000 applicable to the payment of their claims is less than \$60 per ton of the vessel's tonnage, and under subsection (b) must be increased to that amount. If it should be determined under the old law that the portion of the amount available for distribution applicable to the payment of claims for loss of life and bodily injury is more than an amount equal to \$60 per ton, subsection (b) will not operate. In other words, in cases where the owner is permitted to limit his liability, subsection (b) guarantees to loss of life and bodily injury claimants at least \$60 per ton."

The correct interpretation of the new law therefore requires the claimants for loss of life and personal injuries to share *pro rata* with the property claimants in the remaining value of the vessel, and, should the total share of the claimants for loss of life and personal injuries not aggregate a sum equal to \$60 for each ton of the vessel's tonnage, the owners are required to make up the difference out of their other assets. The share of property claimants remains unchanged.⁵¹

Section (c) of the amended statute⁵² provides the method for computing the tonnage of a vessel for the purpose

⁵¹ In the *Morro Castle* case, the liability, if limited, under the new law would have been about \$700,000 instead of the \$20,000 for which the owners petitioned; and in the *Mohawk*, the liability, if limited, would have been about \$350,000 instead of the \$10,000 deposited.

⁵² 46 U. S. C. A. § 183, (c).

of the \$60 per ton minimum liability; the gross tonnage of steam vessels, without deduction for engine room space, and the registered tonnage of sailing vessels with deduction of any space occupied by seamen and appropriated to their use.

Section (d) ⁵³ provides that the owner of a seagoing vessel shall be liable in respect of loss of life and bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

The statute is made applicable to foreign in addition to American vessels, although this change is merely a codification of existing law. The courts have held the limitation of liability provisions applicable to foreign vessels as far back as 1881 in the case of *The Scotland* ⁵⁴ and in the more recent cases of *The Titanic*,⁵⁵ *Vestris*,⁵⁶ and *The Princess Sophia*.⁵⁷

The laws of all countries recognize the principle of limitation of shipowners' liability. The minimum liability provided by the amended statute makes the liability under American law greater than that of all other nations. While the British place liability entirely on a tonnage basis, the American statute still allows the remaining value of the vessel to claimants if worth more than \$60 per ton. Under the French law, the owner's personal responsibility is limited by abandonment of the ship and the freight to claimants. Under German law, the shipowner has no personal responsibility. The laws of Italy, Japan, Greece, Roumania and many South American countries appear to be derived from the French. Belgium, Denmark, Finland, the Netherlands, Norway, Portugal, Spain, and some other countries have adopted the Brussels Convention of 1922 which limits liability in any event to eight pounds per ton with respect to claims other than those for personal injury and loss of life, and an additional eight pounds per ton with respect to the

⁵³ 46 U. S. C. A. § 183, (d).

⁵⁴ *The Scotland*, 105 U. S. 24, 6 Sup. Ct. 1174 (1881); *Dyer v. National Steam Navigation Co.*, 118 U. S. 507, 6 Sup. Ct. 1174 (1886).

⁵⁵ 209 Fed. 501 (S. D. N. Y. 1913).

⁵⁶ 60 F. (2d) 273 (S. D. N. Y. 1932).

⁵⁷ *The Princess Sophia*, 61 F. (2d) 339, 354 (C. C. A. 9th, 1932), *cert. denied*, 288 U. S. 604, 53 Sup. Ct. 396 (1933); *St. Louis & Tenn. River Packet Co.*, 266 Fed. 919 (E. D. Mo. 1920); *Phillips v. Clyde Steamship Co.*, 17 F. (2d) 250 (C. C. A. 4th, 1927). See also *Craig v. Continental Ins. Co.*, 141 U. S. 638, 12 Sup. Ct. 97 (1891).

latter class of claims. In other words, the American minimum is almost the maximum under many of the foreign laws.

It cannot be said that the increased liability under American law places American shipowners at a disadvantage with foreign competitors, since the American statute is equally applicable to any foreign vessel within the American admiralty jurisdiction.

The United States is now the only country making shipowners liable for the acts of their masters. The acts of the captain, heretofore, even when criminally negligent, were not chargeable to the owners.

Subsection (e)⁵⁸ of the amended statute provides:

"In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel."

The glaring need for this reform was emphasized by the conviction of the acting captain of the Morro Castle for criminal negligence; yet, under the old law, a master's knowledge of the vessel's unseaworthiness was not chargeable to his owners. Unless "privity and knowledge" of the owners themselves could be proved under the old law, liability could be limited notwithstanding the captain's criminal negligence.⁵⁹ The privity of superintendents and managing agents has already been held by numerous decisions to be the privity or knowledge of the owner,⁶⁰ while other Judges have held to the contrary on the ground that the mere designation

⁵⁸ 46 U. S. C. A. § 183, (e).

⁵⁹ The *Geo. W. Pratt*, 76 F. (2d) 902 (C. C. A. 2d, 1935); The *Princess Sophia*, 61 F. (2d) 339 (C. C. A. 9th, 1932), *cert. denied*, 288 U. S. 604, 53 Sup. Ct. 396 (1933); *American Hawaiian S. S. Co. v. Pacific S. S. Co.*, 41 F. (2d) 718 (C. C. A. 9th, 1930); *Old Dominion Steamship Co.*, 115 Fed. 845 (E. D. N. C. 1902); *The Pontin Brothers*, 42 F. (2d) 556 (E. D. N. Y. 1930), *decree modified*, 47 F. (2d) 595 (C. C. A. 2d, 1931).

⁶⁰ *Craig v. Continental Ins. Co.*, 141 U. S. 638, 12 Sup. Ct. 97 (1891); *The James Horan*, 78 F. (2d) 870 (C. C. A. 3d, 1935); *The Vestris*, 60 F. (2d) 273 (S. D. N. Y. 1932).

of "superintendent" is not enough.⁶¹ The amended statute is declaratory of the affirmative rule.

When the shipowner is a corporation, the privity or knowledge must be that of the managing agents of the corporation, or superintendent.⁶² A managing officer is "not necessarily one of the head executive officers, but is anyone to whom the corporation has committed the general management or general superintendence of the whole or a particular part of its business".⁶³ The test "is not as to their being officers in the strict sense but as to the largeness of their authority".⁶⁴

The following have been held to be managing agents or superintendents for whose privity and knowledge the owners were liable prior to the recent amendment: the "president";⁶⁵ "works manager";⁶⁶ "assistant manager" who "had the managing of the entire fleet";⁶⁷ "one who managed the business of the line at one end";⁶⁸ "sole manager" of an only vessel;⁶⁹ "superintendent managing entire fleet in remote waters";⁷⁰ "general superintendent";⁷¹ "night superintendent";⁷² "plant superintendent";⁷³ "superintendent of a depart-

⁶¹ Pocomoke Guano Co. v. Eastern Transportation Co., 285 Fed. 7 (C. C. A. 4th, 1922); The Erie Lighter, 250 Fed. 490 (D. N. J. 1918).

⁶² The South Coast, 71 F. (2d) 891, *cert. denied*, 293 U. S. 627, 55 Sup. Ct. 66 (1935); The Princess Sophia, 61 F. (2d) 339 (C. C. A. 9th, 1932), *cert. denied*, 288 U. S. 604, 53 Sup. Ct. 396 (1933); Craig v. Continental Ins. Co., 141 U. S. 638, 12 Sup. Ct. 97 (1891); The Colima, 82 Fed. 665 (S. D. N. Y. 1897); Wessel, Duval & Co. v. Charleston Lighterage & Transfer Co., 25 F. (2d) 126 (E. D. S. C. 1928).

⁶³ The Erie Lighter, 250 Fed. 490 (D. N. J. 1918).

⁶⁴ *Re P. Sanford Ross*, 204 Fed. 248 (C. C. A. 2d, 1913).

⁶⁵ *Weisshaar v. Kimball S. S. Co.*, 128 Fed. 397 (C. C. A. 9th, 1904), *cert. denied*, 194 U. S. 638, 24 Sup. Ct. 859 (1904); *The Republic*, 61 Fed. 109 (C. C. A. 2d, 1894).

⁶⁶ *Spencer Kellogg & Sons v. Hicks (Linseed King)*, 285 U. S. 502, 52 Sup. Ct. 450 (1932).

⁶⁷ *Boston Towboat Co. v. Darrow-Mann Co.*, 276 Fed. 778 (C. C. A. 1st, 1921), *cert. denied*, 258 U. S. 620, 42 Sup. Ct. 272 (1922).

⁶⁸ *Re Jeremiah Smith & Sons*, 193 Fed. 395 (C. C. A. 2d, 1911).

⁶⁹ *The Benjamin Noble*, 244 Fed. 95 (C. C. A. 6th, 1917), *aff'd*, 249 U. S. 334, 39 Sup. Ct. 292 (1919).

⁷⁰ *Parsons v. Empire Transp.*, 111 Fed. 202 (C. C. A. 9th, 1901), *cert. denied*, 183 U. S. 699, 22 Sup. Ct. 946 (1901).

⁷¹ *Sanbern v. Wright & Cobb Lighterage Co.*, 171 Fed. 449 (S. D. N. Y. 1909), *aff'd*, 179 Fed. 1021 (C. C. A. 2d, 1910); *Eastern S. S. Corp. v. Great Lakes Dredge & D. Co.*, 256 Fed. 497 (C. C. A. 1st, 1919).

⁷² *The James Horan*, 78 F. (2d) 870 (C. C. A. 3d, 1935).

⁷³ *Spencer Kellogg Co. v. Hicks*, 285 U. S. 502, 52 Sup. Ct. 450 (1932).

ment";⁷⁴ "marine superintendent";⁷⁵ "manager and superintendent".⁷⁶

The following have been held not to be persons whose privity or knowledge was that of an incorporated shipowner: "marine inspector in charge of salvage operations";⁷⁷ "marine engineer and inspector" who was a foreman in charge of river boats;⁷⁸ "supervising engineer of repairs";⁷⁹ "local freight and passenger agent";⁸⁰ "shore captain" referred to as "superintendent";⁸¹ "one in sole charge of a tender";⁸² "superintendent of dredging and assistant to the secretary and treasurer";⁸³ "superintending engineer"; "port engineer".⁸⁴

The shipowner's right to limit liability under the present law is contingent upon his liability having been incurred without his own privity or knowledge and without the privity or knowledge of the Master, superintendent or managing agent. The use of the word "agent" instead of "officer" in the statute was intended to enlarge the scope of persons whose knowledge may be chargeable to the owners. The shipowner has the burden of proving lack of privity or knowledge although the claimant has the affirmative issue of proving negligence and consequent liability.⁸⁵ Under the

⁷⁴ *Re* P. Sanford Ross, 204 Fed. 248 (C. C. A. 2d, 1913).

⁷⁵ *Re* Pennsylvania R. R., 48 F. (2d) 559 (C. C. A. 2d, 1931), *cert. denied*, 284 U. S. 640 (1931); *The Erie Lighter*, 250 Fed. 490 (D. N. J. 1918); *The Vestris*, 60 F. (2d) 273 (S. D. N. Y. 1932).

⁷⁶ *Oregon Round Lumber Co. v. Portland & Asiatic S. S. Co.*, 162 Fed. 912 (D. Ore. 1908); *Fred E. Hasler*, 65 F. (2d) 589 (C. C. A. 2d, 1933).

⁷⁷ *Craig v. Continental Ins. Co.*, 141 U. S. 638, 12 Sup. Ct. 97 (1891).

⁷⁸ *The Annie Faxon*, 75 Fed. 312 (C. C. A. 9th, 1896).

⁷⁹ *The Columbia*, 25 F. (2d) 516 (E. D. N. Y. 1927), *aff'd*, 25 F. (2d) 518 (C. C. A. 2d, 1928).

⁸⁰ *The Princess Sophia*, 278 Fed. 180 (W. D. Wash. 1921), *aff'd*, 61 F. (2d) 339 (C. C. A. 9th, 1932), *cert. denied*, 288 U. S. 604, 53 Sup. Ct. 396 (1933); *Brace v. Canadian Pacific Ry.*, 288 U. S. 604, 53 Sup. Ct. 396 (1933).

⁸¹ *Pocomoke Guano Co. v. Eastern Transportation Co.*, 285 Fed. 7 (C. C. A. 4th, 1922).

⁸² *California Yacht Club v. Johnson*, 65 F. (2d) 245 (C. C. A. 9th, 1933).

⁸³ *Re* Eastern Dredging Co., 159 Fed. 541 (D. Mass. 1906).

⁸⁴ *M'Gill v. Michigan S. S. Co.*, 144 Fed. 788 (C. C. A. 9th, 1906), *cert. denied*, 203 U. S. 593, 27 Sup. Ct. 782 (1906).

⁸⁵ *United States v. Eastern Transportation Co.*, 59 F. (2d) 984 (C. C. A. 2d, 1932); *The Santa Rosa*, 249 Fed. 160 (N. D. Cal. 1918); *The Cabo Hatteras*, 5 F. Supp. 725 (S. D. N. Y. 1933); *The 84-H*, 296 Fed. 427 (C. C. A. 2d, 1923); *The Vestris*, 60 F. (2d) 273 (S. D. N. Y. 1932); *The Reichert Towing Line*, 251 Fed. 214, 217 (C. C. A. 2d, 1918), *cert. denied*, 248 U. S. 565, 39 Sup. Ct. 9 (1918).

British statute the condition for limiting liability is still that the negligence be without the "actual fault or privity" of the owners.⁸⁶

The amended statute does not specify what circumstances will warrant a finding of privity or knowledge, nor is it possible to give an all-inclusive definition of the words.⁸⁷ The question as to the existence of privity or knowledge is primarily a question of fact.⁸⁸ The amendment, however, establishes more clearly than before that the finding of knowledge may be "constructive" as well as "actual".⁸⁹

The words "privity and knowledge", although often held to mean "actual knowledge and not merely constructive", were imputed to shipowners in many cases even prior to the amendment, upon proof of such a remissness of duty that the law implied privity or knowledge.

Judge Sawyer, in the early case of *Lord v. Goodall, Nelson & Perkins Steamship Co.*,⁹⁰ defined the words as follows:

"As used in the statute, the meaning of the words 'privity or knowledge', evidently, is a personal participation of the owner in some fault, or act of negligence, causing or contributing to the loss, or some personal knowledge or means of knowledge, of which he is bound to avail himself, of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting appropriate means to prevent it. There must be some personal concurrence, or some fault or negligence on the part of the owner himself, or in which he personally par-

⁸⁶ 18 Halsbury's Statutes of England 355.

⁸⁷ See *La Bourgoyne*, 210 U. S. 95, 28 Sup. Ct. 664 (1908); *Re Eastern Transportation Co.*, 37 F. (2d) 355 (D. M. 1929), *aff'd without reference to this point*, 51 F. (2d) 494 (C. C. A. 4th, 1931) (the court defined the word "privity" as "some fault or neglect in which the owner personally participates", and "knowledge" as "personal cognizance or means of knowledge of which the owner is bound to avail himself, of contemplated loss or condition likely to produce or contribute to loss, without adopting appropriate means to prevent it"). See also *Hockley v. Eastern Steamship Transportation Co.*, 10 F. Supp. 908 (D. M. 1935).

⁸⁸ *Boston Towboat Co. v. Darrow-Mann Co.*, 276 Fed. 778 (C. C. A. 1st, 1921), *cert. denied*, 258 U. S. 620, 42 Sup. Ct. 272 (1922).

⁸⁹ Acts of Aug. 29, 1935 and June 5, 1936, *supra* note 1.

⁹⁰ Fed. Cas. No. 8506, *aff'd*, 102 U. S. 541 (1880).

ticipates, to constitute such privity, within the meaning of the act, as will exclude him from the benefit of its provisions”.

That the owner's “privity or knowledge” must be “actual” and not merely “constructive” was held by Judge Rogers in *The S4-H*.⁹¹ In *The Colima*,⁹² Judge Brown thus defined the phrase:

“The knowledge or privity that excludes the operation of the statute must therefore be in a measure actual, and not merely constructive; that is, actual through the owner's knowledge, or authorization, or immediate control of the wrongful acts, or conditions, or through some kind of personal participation in them.”⁹³

The Circuit Court of Appeals held to the contrary in *The Republic*,⁹⁴ that privity or knowledge may be imputed without proof of actual knowledge where a remissness of duty implies privity or knowledge. Judge Wallace stated:

“A loss is not occasioned without the knowledge or privity of the shipowner when it arises from his personal neglect to inform himself of the defective condition of the vessel, the vessel being under his immediate personal supervision.”⁹⁵

In *Quinlan v. Pew*,⁹⁶ the Court stated that privity or knowledge may be imputed “where the owners give an order for the doing of a particular thing in a particular way and assume that it is done or do not inquire whether or not it is afterwards accomplished”, and also “to those who are guilty of perverseness or of such crass negligence as amounts to it”.

⁹¹ 296 Fed. 427 (C. C. A. 2d, 1923).

⁹² 82 Fed. 665 (S. D. N. Y. 1897).

⁹³ See also *The Oneida*, 282 Fed. 238 (C. C. A. 2d, 1922).

⁹⁴ 61 Fed. 109 (C. C. A. 2d, 1894).

⁹⁵ See also the case of *Van Eyken v. Erie R. R.*, 117 Fed. 712 (E. D. N. Y. 1902), where the court said, “It may be, however, that the neglect to know might be so gross as to deprive the owner of the privileges of the act.”

⁹⁶ 56 Fed. 111 (C. C. A. 1st, 1893).

A still more enlightened opinion is given by the Court in the case of *Jacobson*:⁹⁷

“It is my opinion that those decisions are illogical which hold that where an owner delegates the job of furnishing a seaworthy vessel to another he may have limitation, but that where he tries to make it seaworthy himself he may not.”

And Judge Hutchinson quoted therein with approval from the opinion in *Christopher v. Grueby*:⁹⁸

“The duty of shipowners to their seamen to see that their ship is seaworthy and her equipment in safe condition for use when she starts on a voyage is a personal one, responsibility for which they cannot escape by delegating its performance to another.”

It is now, however, clearly the intent of Congress to make the owners responsible not merely for “actual” knowledge but also for “constructive” knowledge of the owners, captain, superintendent or managing agents. This intent was declared by the proponents of the measure at the public hearings before the House Merchant Marine Committee⁹⁹ which resulted in the enactment of the Act of June 5, 1936, removing the word “actual” from the law passed by the Act of August 29, 1935. The word “actual” had been inserted in the bill, unknown to the proponents, immediately preceding its enactment at the close of the first session of Congress,¹⁰⁰ as a result of the shipowners’ vigorous opposition to any provisions subjecting them to liability.¹⁰¹ The amendment in the second session removing the word “actual” was accomplished notwithstanding the continued pressure exerted by the powerful shipping lobby.¹⁰²

⁹⁷ 52 F. (2d) 179 (S. D. Tex. 1931).

⁹⁸ 40 F. (2d) 8 (C. C. A. 1st, 1930).

⁹⁹ See *Hearings before House Merchant Marine Committee on H. R. 9969*, 74th Cong., 1st Sess. (1935).

¹⁰⁰ Act of Aug. 29, 1935, *supra* note 1.

¹⁰¹ See Editorial, *New York World-Telegram*, Aug. 26, 1935; also articles by James Edmund Duffy, *Marine Editor*.

¹⁰² Act of June 5, 1936, *supra* note 1.

In view of the declared purpose of the amendments and the expressed intent of Congress,¹⁰³ the courts henceforth should construe the Limited Liability Statutes more liberally in favor of the claimants in finding privity and knowledge of the owners.

The above provisions of the amendments are applicable to sea-going vessels only. Section (f)¹⁰⁴ specifically excludes even from sea-going vessels all "pleasure yachts, tugs, tow-boats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels". All vessels and such ships on the Great Lakes and rivers used in inland navigation, still operate under the archaic Limited Liability Law of 1851.¹⁰⁵

The questionable wisdom of excluding all vessels in inland navigation did not arise in the minds of the legislators but rather as a result of the pressure brought to bear by shipowners who, for almost a century, have opposed strenuously any legislation increasing their liability.

The statute fails to define what is a "sea-going" vessel; whether the word "sea-going" refers only to a registered vessel plying sea waters or sea-going vessels entering inland waters. Recently, the Steamship Iowa sank off the West Coast with a loss of thirty-two lives. The accident occurred at the mouth of the Columbia River. The vessel was heading for the open seas on its way to China. Was the vessel sea-going when the accident happened at the mouth of the river before reaching the open seas? It is reasonable to assume, in view of the liberal tendency of the amendment, that it was the intent of Congress to include all sea-going vessels, whether so registered or whether plying actually such waters.

The omission from the new law of all vessels on the Great Lakes and inland navigation, is made all the more illogical when one considers the development of the statute.

¹⁰³ See *Hearings before House Merchant Marine Committee on H. R. 4550 and H. R. 9969*, 74th Cong., 1st Sess. (1935); also 79 Cong. Rec. 14625 (1935).

¹⁰⁴ 46 U. S. C. A. § 183, (f).

¹⁰⁵ 46 U. S. C. A. § 189.

The original limited liability law, by express provision, excluded all vessels in inland navigation. They were liable for the full measure of damages and could not limit liability to any extent. It was not until 1886 that the statute was extended to include not only all manner of vessels on the lakes, rivers, and inland navigation, but also canal boats, barges and lighters. There is no consistency for such vessels to get a preference now by being made an exception to the provisions of the new law increasing liability when for thirty years Congress refused to grant them any limitation at all. Inland navigation, as used in the original statute, referred to navigation within the body of the country as distinguished from navigation on the coastal waters or open ocean.¹⁰⁶ Inland navigation would, therefore, include the Great Lakes, the Hudson, Mississippi and other such rivers. The exclusion of all vessels on these waters creates what appears to be a very unjust discrimination in favor of the particular classes of vessels. A repetition of the Slocum disaster on one of the inland excursion steamers would result in the owners collecting insurance for the loss of the vessel and the thousands killed or injured receiving nothing whatever on the vessel's remaining value. Why the increased liability should be applied to sea-going vessels and denied to the victims of vessels plying on inland waters, is impossible to conceive. A comparison may be made with the case of the *Passaic*,¹⁰⁷ where Judge Ward stated:

“What shocks the mind (in holding that the railroad company had the right to limit to the value of one of its ferry-boats its liability for damages for the death of an employee) is that whereas full compensation could be had in the case of employees of such railroad company killed or injured on shore, often only a partial compensation or none at all can be had in the case of employees killed or injured on a vessel of the railroad company.”

Similarly, if there is a collision between two boats belonging to the same company and if one boat is registered

¹⁰⁶ The Garden City, 26 Fed. 766 (S. D. N. Y. 1886).

¹⁰⁷ 204 Fed. 266 (C. C. A. 2d, 1913).

as a sea-going vessel and the other plies the inland waters, the employees of the company on the sea-going vessel may recover damages under the new law of increased liability; while the employees of the same company working on the other vessel in inland waters, may not recover anything whatever if the vessel sinks, even if the captain is convicted of criminal negligence; since the first vessel comes under the new law while the latter is still governed by the antiquated statute of 1851. *A fortiori*, it indeed "shocks the mind".

The amendment of June 5, 1936, to the Limited Liability Law changed the procedural provisions of the statute to conform with the new law.¹⁰⁸ The petitioner for limited liability must deposit with the court for the benefit of claimants a sum, not only equal to the amount or value of the interest of such owner in the vessel and freight or approved security, as heretofore, but also such additional sums or approved security as the court may from time to time fix as necessary to carry out the provisions of increased liability. If the shipowner at his option transfers to a trustee for the benefit of claimants his interest in the vessel and freight, additional sums or security must similarly be fixed by the court.

This same section adds a new proviso requiring the filing of the petition for limitation of liability within six months after a claimant shall have filed with such owner written notice of claim. This removes the harsh injustice to claimants who, after awaiting trial of an action for several years, had to await calendar delay again while the owners commenced proceedings for limitation of liability.¹⁰⁹

This was not the only instance of hardship suffered by claimants owing to the matter of time. It was a common practice among shipowners to incorporate on the back of steamship tickets, in small print, limitations of time within which written notice of claim had to be given after accident to the shipowners. Such periods ranged from fifteen days to six months and for commencement of suit from three

¹⁰⁸ 46 U. S. C. A. § 185.

¹⁰⁹ See *Re Moran Bros. Contracting Co.*, 1 F. Supp. 932 (E. D. N. Y. 1932) on the question of laches. The shipowners were not required to claim limitation of liability until their liability was established.

months to one year. Passengers, unaware of such time limitations, invariably failed to give written notice of claim and were precluded from recovery, even where the owners had actual knowledge of the accident and serious injuries. The passage ticket generally has been held a valid contract between the passenger and steamship company. This practice was characterized by Mr. Justice Clark of the United States Supreme Court in his dissenting opinion in the case of *Gooch v. Oregon Short Line*,¹¹⁰ in which concurred Chief Justice Taft and Mr. Justice McKenna, in the following language:

“In practice the rule is gravely unjust and discriminatory, and therefore unreasonable. This astutely worded rule is a cunning device to defeat the normal liability of carriers and should not be made a favorite of the courts.”

All such limitations of time are now declared unlawful by the amendment to the statute known by section number 183A:¹¹¹

“(a) It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life, or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be

¹¹⁰ 285 U. S. 22, 42 Sup. Ct. 192 (1921) (In this case a passenger was in the hospital for thirty days suffering from serious personal injuries. The Company had actual knowledge of the accident but due to the passenger's failure to give the written notice within thirty days, all recovery was barred. The glaring injustice is emphasized by the fact that in the same case there was recovery for the loss of a cargo of hogs but not for the passenger's personal injuries. Such limitations had previously been declared invalid as to cargo by the Cummins Amendment).

¹¹¹ 46 U. S. C. A. § 183A.

computed from the day when the death or injury occurred."

For exceptions to the rule, see Subdivisions (b) and (c) of this section.¹¹²

There should be no question about the validity of this statute, since Congress had previously declared a similar public policy by enactment of the Cummins amendment which provided that in no cargo case should notice be required within a period of less than three months. Its application to personal injuries and loss of life claims would seem to be *a fortiori*.

A still more important prohibition against ticket stipulations is declared by Section 183B of the Act of August, 1936,¹¹³ which makes it unlawful for shipowners to limit liability for negligence:

"It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement, any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of

¹¹² 46 U. S. C. A. § 183A, (b): "Failure to give such notice, where lawfully prescribed in such contract, shall not bar any claim—(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor (2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor (3) Unless objection to such failure is raised by the owner"; (c): "If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative, provided, however, that such appointment be made within three years after the date of such death or injury."

¹¹³ 46 U. S. C. A. § 183B.

competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect."

This provision stops the practice of shipowners who provided on the reverse side of steamship tickets that in event of damage or injury caused by the negligence or fault of the owner or his servants, the liability of the owner shall be limited to a stipulated amount; in some cases, \$2,500 for first class passengers and \$1,250 for other classes of passengers; in other cases \$5,000 at most, and in others substantially lower amounts, in one instance as little as \$100. Subdivision 2 of this section which prevents the shipowners from depriving passengers of their constitutional right to a trial on the questions of negligence and damages, was designed especially to stop the practice of certain shipowners who compelled claimants to submit involuntarily to arbitration.¹¹⁴

A clause was contained on the back of a steamship ticket not only limiting liability to a nominal amount, but forcing the passengers to submit all claims to arbitration, with an added stipulation that the arbitrators were not empowered to award more than the limited amount designated on the ticket. Thus, neither the court nor the arbitrators were enabled to consider even the question whether such limitations were valid or illegal and the claimant was prevented from proving the full measure of damage. The arbitration provision was held a binding contract by Judge Knox of the Federal Court, Southern District of New York, in the recent case of *Elicofon v. Compagnie Generale Transatlantique*, in construing the passenger ticket. Judge Coxe in the same court shortly thereafter refused to follow this precedent in the case of *Baron v. Compagnie Generale Transatlantique* arising out of a similar ticket provision. Before the question

¹¹⁴ See *Report of Chairman of Merchant Marine Committee to the House of Representatives, No. 2517, 74th Cong., 2d Sess. (1936)*; also *Hearings before House Merchant Marine Committee on H. R. 9969, 74th Cong., 1st Sess. (1935)*.

was adjudicated on the merits Congress enacted the statute invalidating all such ticket limitations.

A review of the decisions in justification of this statute and its validity, would require a special article.

The recent amendments to the Laws Fixing the Liability of Shipowners, while the most progressive in Merchant Marine history, do not go far enough.

The reasons for the limitation of shipowners' liability no longer prevail. The means of communication with vessels at sea and the duration of voyages in addition to the modern, scientific devices, are far different. The captain and crew can no longer embezzle the cargo, which was the original reason for limiting shipowners' liability against the acts of their employees. The old sailing vessels of one hundred years ago have been replaced by up-to-date steamships; yet, shipping continues to function under the century-old laws. Sea captains are clothed with far greater authority than any agent on shore; yet, the common law doctrine making employers responsible for the tortious acts of their agents is not applied to shipowners who are not responsible for the acts of the captain or crew after the vessel leaves port and are not even chargeable with the knowledge of any of the officers or crew while the ship is in port with the exception of the captain, superintendent or managing agent.

It has been pointed out by various government officials after each investigation of sea disasters, that the old shipping laws were contributing causes to the loss of life. United States Commissioner Francis A. O'Neill, after his investigation of the *Vestris* disaster, reported:

"A full investigation should be made of the ancient rules of admiralty law as to salvage and limitation of liability on the part of the owners. These rules came into being before the construction of modern, rapidly moving ships, and before the wireless enabled vessels at sea to communicate instantly with each other and with the owners on shore. The ancient fiction of law whereby the ship itself is treated as solely responsible for any disaster which overtakes it is, under modern conditions of travel, grossly unjust to passengers and

their dependents, and it puts a premium on slackness and penuriousness on the part of owners in keeping vessels in seaworthy condition and equipped with all modern scientific devices for insuring stability, buoyancy, and safety.”

Dickerson N. Hoover, Assistant Director of the Bureau of Navigation and Steamboat Inspection, after his investigation of the *Vestris* and *Morro Castle* disasters, made the same recommendation :

“Attention should be given to the entire revision of the laws relating to the limitation of liability and salvage. The law relating to limitation of liability grew up in an age profoundly different from our own and there is no reason why today under modern conditions the owner should be other than liable to the full extent. This would result in a constant urge and drive upon the owners of ships to comply with every requirement of safety both as to material and personnel.”

Total repeal of all limitation of liability may appear too drastic a measure, but the statute should rightfully be amended further to conform with the trend of modern shipping. The provisions for increased liability and privity and knowledge should at least be extended to all vessels on lakes, rivers and inland navigation which are still functioning under the obsolete Limited Liability Law of 1851. The responsibility of shipowners should not even be restricted to the knowledge of their masters but enlarged to include all the crew prior to a vessel's departure. All employees, while the vessel is in port, should be in the same category. The owners should be made liable for the acts of all officers and crew before the vessel leaves port.

The Liability Statutes are not the only maritime laws in need of revision. No other branch of the law is so antiquated as the Shipping Act nor as urgently in need of reform to promote safety of life at sea and to build up the American Merchant Marine.

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