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Admiralty - Limitation of Liability - Right of Vendor of Chattel to Limit Liability

Bruce L. Bower S.Ed.
University of Michigan Law School

RECENT DECISIONS

ADMIRALTY—LIMITATION OF LIABILITY—RIGHT OF VENDOR OF CHATTEL TO LIMIT LIABILITY—The United States sold a steam tanker to *S* corporation and *S* delivered the vessel to *T* corporation for repairs. While it was moored at *T*'s pier there was an explosion on board which caused extensive damage to the vessel and killed or injured fifty-two persons. *T* filed a libel against the United States alleging that at the time of the sale to *S* the United States also had sold, by a separate contract, a quantity of oil located in the vessel. The libelant further alleged that the United States, having represented the oil to be of one type whereas in fact it was of a different and more dangerous nature, was liable for the injury suffered by *T* on a theory of breach of vendor's warranty. On motion by *T* to dismiss the government's petition for limitation of liability, *held,* motion denied. The United States is an "owner" within the meaning of the Limited Liability Act[1] and may limit its liability notwithstanding the theory of *T*'s claim. *In re The Trojan,* (D.C. Cal. 1958) 167 F. Supp. 576.

The owner of a vessel is liable for the acts of his master and crew on the doctrine of respondeat superior.[2] By statute[3] the owner[4] may limit his liability, absent privity or knowledge of the conduct which gave rise to it, to the value of the vessel and pending freight. In the principal case the United States was allowed to limit its possible liability even though the claim arose after it no longer owned the vessel. This was justified on the ground that the wrongful conduct which was the proximate cause of the accident occurred when the United States was clearly entitled to limitation of liability. It is clear that a person may limit his liability where the claim arose prior to his divestment of ownership,[5] and it is not uncommon in admiralty law to attach legal significance to the distinction between wrong-

1 49 Stat. 1479 (1936), 46 U.S.C. (1952) §183 (a).

2 Absent any applicable statute lessening his liability a shipowner is also liable for loss or damage to cargo as a common carrier, and in general is liable as an insurer for losses caused other than by acts of God and public enemy. ROBINSON, ADMIRALTY 489 (1939); 1 CONKLING, U. S. ADMIRALTY, 2d ed., 197 (1857). This liability has been considerably modified by the Harter Act, 27 Stat. 445 (1893), 46 U.S.C. (1952) §§190, 191, and the Carriage of Goods by Sea Act, 49 Stat. 1207 (1936), 46 U.S.C. (1952) §§1300-1315. The liability of an owner for the acts of the master and crew arises from the legal relationship of master and servant and absent statute the owner is liable in full. See 1 CONKLING, U.S. ADMIRALTY, 2d ed., 370-372 (1857).

3 49 Stat. 1479 (1936), 46 U.S.C. (1952) §183 (a).

4 To limit liability a person must either be an "owner" or a "charterer" as defined in 9 Stat. 636 (1851), 46 U.S.C. (1952) §186. A person may limit his liability as an "owner" if there is a possibility that he will be liable as an owner. Petition of the Colonial Trust Co., (D.C. Conn. 1954) 124 F. Supp. 73. See 3 BENEDICT, ADMIRALTY, 6th ed., §496 (1940).

5 E.g., Petition of Union Ferry Co. of New York & Brooklyn, (D.C. N.Y. 1927) 25 F. (2d) 516, affd. (2d Cir. 1928) 25 F. (2d) 518.

ful conduct and the resulting injury in a tort claim.[6] Hence it is reasonable to hold, as the principal case does, that limitation of liability is possible where there has been a cessation of ownership between the wrongful conduct and the resulting injury that gives rise to the claim.

In general, limitation of liability is available against both tort and contract claims, though an owner may not limit liability on his "personal contract."[7] There is, however, a split among the circuits as to what constitutes a personal contract. Some hold that where the contract is made personally by the owner he may not limit his liability,[8] whereas others hold that the nature of the breach determines this question.[9] In allowing the United States to limit its possible liability for breach of its warranty as to the nature of the oil, the court indicates a reluctance to extend the personal contract doctrine[10] since the contract could have been deemed personal under either of the above theories.[11] The personal contract doctrine, which has been criticized,[12] is based upon the apparently well-founded belief that

[6] Admiralty jurisdiction over tort claims is predicated upon the situs of the injury. Hence if the injury occurs upon the water admiralty has jurisdiction even though the wrongful conduct occurs upon the land. On the other hand admiralty traditionally has had no jurisdiction where the injury occurs upon the land even though the wrongful conduct takes place upon the water. See ROBINSON, ADMIRALTY, c. 3 (1939). The traditional rule with regard to injuries occurring upon land has been modified by the Extension of Admiralty and Maritime Jurisdiction Act, 62 Stat. 496 (1948), 46 U.S.C. (1952) §740.

[7] Cullen Fuel Co. v. W. E. Hedger, 290 U.S. 82 (1933); Capitol Transportation Co. v. Cambria Steel Co., 249 U.S. 334 (1919).

[8] E.g., W. R. Grace v. Charleston Lighterage and Transfer Co., (4th Cir. 1952) 193 F. (2d) 539; Great Lakes Towing Co. v. Mill Transport Co., (6th Cir. 1907) 155 F. 11; The Fred Smartly, Jr., (4th Cir. 1940) 108 F. (2d) 603.

[9] A personal contract is said by these courts to exist where the obligation is to be performed by the owner personally, such as where he agrees to indemnify, and not where the promise is to be performed of necessity by the servants of the owner without his privity or knowledge. The No. 34, (2d Cir. 1928) 25 F. (2d) 602, cert. den. 278 U.S. 606 (1928); The Eastland, (7th Cir. 1935) 78 F. (2d) 984; The City of Camden, (3d Cir. 1923) 292 F. 93; The E. S. Atwood, (2d Cir. 1923) 289 F. 737; The Soerstad, (D.C. N.Y. 1919) 257 F. 130.

[10] The personal contract doctrine has most frequently been applied to charter party contracts. However, it has also been applied to other kinds of contracts, including those for salvage, supplies and repairs, and to insure. See 3 BENEDICT, ADMIRALTY, 6th ed., §448 (1940). In American Car and Foundry Co. v. Brassert, 289 U.S. 261 (1933), the action was for breach of warranty covering construction of a vessel. The court held that the vendor could not limit liability because its possible liability was not that of an owner but that of a manufacturer. This case is thus distinguishable from the principal case in that the petitioner was the manufacturer rather than the vendor only. To the effect that the contract was "personal," see 3 BENEDICT, ADMIRALTY, 6th ed., 415 (1940).

[11] There is no mention in the principal case of who made the contract for the United States but it is likely that any person with sufficient authority to sell the vessel would bear such a relationship to the United States as to make it a privy to the contract and therefore make it personal. If the warranty of the United States implies an obligation to indemnify should the oil be other than described, then the right to limit would be denied on the basis of the other doctrine. See notes 8 and 9 supra.

[12] Castles, "The Personal Contract Doctrine: An Anomaly in American Maritime Law," 62 YALE L.J. 1031 (1953).

the statutes were intended to limit only that liability which arises by virtue of ownership.[13] The United States was not attempting to limit that liability which it incurred by virtue of owning the vessel but that liability which arose from the breach of warranty.[14] It was sued not as owner of the tanker but as vendor of a defective chattel. Thus it is difficult to reconcile the holding of the principal case with the theory of the right to limitation.[15]

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[13] "The liability which the statute limits is an imputed one, and the imputation is raised because of his ownership and the relationship which exists between himself and those in charge of the vessel." American Car and Foundry Co. v. Brassert, (7th Cir. 1932) 61 F. (2d) 162 at 164, affd. 289 U.S. 261 (1933). See also Great Lakes Towing Co. v. Mill Transport Towing Co., note 8 supra; Pendleton v. Benner Line, 246 U.S. 353 (1918); Petition of Paul F. Wood, (2d Cir. 1956) 230 F. (2d) 197.

[14] Ibid.

[15] The precise nature of the liability of a supplier of chattels has not been completely settled. In the principal case the asserted liability of the United States was that of a vendor of chattels to third persons, and it is possible that the United States might be considered liable to *T* on a tort rather than contract basis. See PROSSER, TORTS §84 (1955); 2 HARPER AND JAMES, THE LAW OF TORTS §28.29 (1956). If the liability is based upon tort, the personal contract doctrine would not be relevant. There then would be the question of whether the United States was an "owner" and whether it had privity or knowledge of the negligence which resulted in the misrepresentation.