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Admiralty -- Limitations on the Sieracki Doctrine

Guy C. Evans

NOTES AND COMMENTS

Admiralty—Limitations on the Sieracki Doctrine

In *Seas Shipping Co., Inc. v. Sieracki*,[1] plaintiff-stevedore was injured while in the process of loading cargo into a ship. As a result, he subsequently sought to recover for his damages from the operator of the ship on the theory of unseaworthiness.[2] Theretofore the ship and her operator had been held liable to a seaman who was injured by reason of the unseaworthiness of the vessel.[3] The Supreme Court held, however, that liability for unseaworthiness was not limited to seamen but was available as well to persons who did a seaman's work irrespective of whether such persons were hired directly by the shipowner, through his consent, or by his arrangement. Doing a seaman's work was said to incur a seaman's risks for which a seaman would be entitled to a seaworthy ship. Since the loading and unloading of a ship's cargo was "historically" the work of the crew, plaintiff was allowed to recover.

Mr. Chief Justice Stone, writing for the dissent, thought the doctrine of unseaworthiness was applicable to seamen only. There is much to be said for the dissent's hypothesis. At least the risks incurred while loading a ship are not those "historically" categorized as "perils of the sea"[4] nor such that might render a ship unseaworthy to the extent that the crew had a right to abandon it.[5]

The *Sieracki* "historical" doctrine was restated and affirmed in *Pope & Talbot, Inc. v. Hawn*.[6] There the shipowner's duty to furnish a seaworthy ship was extended to an employee of a refitting company who was injured while aboard doing carpentry work. It appeared after this decision that any land servant who came aboard a ship to perform any work would be entitled to a seaworthy ship because it would seem that all shipboard labor was "historically" traceable to the crew.

[1] 328 U.S. 85 (1946).

[2] "The test of seaworthiness is whether the vessel is reasonably fit to carry the cargo which she has undertaken to transport." The Silvia, 171 U.S. 462, 464 (1898). Spencer Kellogg & Sons v. Great Lakes Transit Corp., 32 F. Supp. 520 (E.D. Mich. 1940). In McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958), it was stated that unseaworthiness did not necessarily mean the entire ship must be unfit, but that the ship was considered unseaworthy if any part of it was unseaworthy, as where a ladder step was defective.

[3] The Osceola, 189 U.S. 158 (1903).

[4] "[S]omething so catastrophic as to triumph over those safeguards by which skillful and vigilant seamen usually bring ship and cargo to port in safety." The Rosalia, 264 Fed. 285, 288 (2d Cir. 1920).

[5] The Arizona v. Anelich, 298 U.S. 110, 121 n.2 (1936).

[6] 346 U.S. 406 (1953).

Apparently, the *Sieracki* doctrine has been limited by two recent decisions decided the same day by the Supreme Court. In the first, *The Tungus v. Skovgaard,*[7] an action for wrongful death, based jointly upon negligence and unseaworthiness,[8] was brought under the New Jersey wrongful death statute.[9] The district court had dismissed the suit.[10] The court of appeals reversed,[11] and the Supreme Court affirmed this reversal.

Historically, there was no survival of a right of action where the death was caused by unseaworthiness.[12] After passage of the Jones Act[13] and the Death on the High Seas Act,[14] this anomaly was wiped away. Both of these acts established rights in certain classes of survivors. Jones applies to deaths and injuries which occur on any navigable water but is restricted to members of the crew.[15] Therefore, no land servant, regardless of the nature of his work, is covered by its provisions. The Death on the High Seas Act, as the name implies, is applicable only to deaths which occur more than a marine league from the shore although it is unrestricted as to persons covered. Its provisions are available to the survivors of a land servant, then, only if the death occurs more than three miles offshore. Consequently, survivors of a land servant who chanced death within the territorial waters of a state upon an unseaworthy ship can recover only if they have a remedy under the state's wrongful death statute. Such statutes had previously been held to supply a remedy in admiralty for the survivors of a person killed upon the navigable waters[16] of the state under a theory

[7] 358 U.S. 588 (1959).

[8] In Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928), it was held a seaman had to elect to sue either under a theory of negligence or a theory of unseaworthiness. However, in McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958), it was held that a seaman need not elect but if he sued under both theories, he must do so in the same suit because the two were not separate causes of action but alternative causes. Therefore, there could be but one recovery for the one injury. In Pope & Talbot, Inc. v. Hawn, *supra,* a suit under a joint theory was held valid for the non-seagoing type of seaman as well.

[9] N.J. STAT. ANN. § 2A: 31-1.

[10] Skovgaard v. The Tungus, 141 F. Supp. 653 (D.N.J. 1956). The court held that the unseaworthiness action did not lie. The negligence cause was also dismissed on the ground that no duty of exercising ordinary care to provide a safe place to work was owed the deceased by the shipowner.

[11] Skovgaard v. The Tungus, 252 F.2d 14 (3d Cir. 1957). It was held the district court had erred with respect to the unseaworthiness count and with respect to the shipowner's duty to use reasonable care for the deceased's safety.

[12] Lindgren v. United States, 281 U.S. 38 (1930).

[13] 41 STAT. 1007 (1920), 46 U.S.C. § 688 (1952).

[14] 41 STAT. 537 (1920), 46 U.S.C. § 761-67 (1952).

[15] Obrecht-Lynch Corp. v. Clark, 30 F.2d 144 (D.C. Md. 1929).

[16] "Admiralty and maritime jurisdiction in the substantive sense can be stated in terms of waters. Events must occur on certain waters in order to be within the general jurisdiction in tort." ROBINSON, ADMIRALTY § 6 at 31 (1939). "Thus to the question, what waters are within the admiralty jurisdiction so that events occurring on them may have cognizance in admiralty courts, the answer is, all

of negligence,[17] but a recovery under a theory of unseaworthiness had not been attempted. It appeared the Court was urged to incorporate (without state-imposed conditions) the state created remedy into the federal maritime law to make effective the federal cause of action and to adhere to the doctrine of uniformity.[18]

The majority, relying on *The Harrisburg*,[19] rejected this argument, in part at least. They took the view that when admiralty adopts a state created statutory remedy, it can only enforce the remedy within the jurisdictional limits attached by the creating state. Therefore it had to be determined whether the New Jersey act had incorporated the federal maritime law and thus embraced a cause of action for unseaworthiness. The court of appeals' resolution of this question in the affirmative was upheld notwithstanding the fact that New Jersey's own courts had never considered it.

Four members of the Court concurred in the result but dissented from the reasoning. Their opinion, by Mr. Justice Brennan, stresses the incongruity of applying state law where death occurs but having to apply the federal admiralty law where an injury is non-fatal. That admiralty substantive law must be applied to admiralty causes wherever they are heard and whether the remedy is maritime in nature only or known also to the law courts is a well known admiralty doctrine.[20] But since the remedy for wrongful death is solely statutory, it would seem that the enacting sovereign could burden or limit the right to the remedy as it saw fit. Therefore despite the admonitions of the minority opinion, it is difficult to discern why the federal courts may not look to the state law in an effort to discover whether the statutory right to recover for wrongful death has been limited or encumbered in any manner.

Originally, *Sieracki* endowed non-seagoing "seamen" with a sub-

waters whether fresh or salt, tidal or non-tidal, which are navigable in fact . . . ." *Id.* at 33.

[17] The Corsair, 145 U.S. 335 (1892).

[18] "One thing . . . is unquestionable; the Constitution must have referred to a system of law . . . operating uniformly in, the whole country." The Lottawanna, 88 U.S. 558, 575 (1874). "Article III, § 2, of the Constitution extends the judicial power of the United States 'To all cases of admiralty and maritime jurisdiction;' and Article I, § 8, confers upon the Congress power 'To make all laws which may be necessary and proper . . . .' Considering our former opinions, it must now be accepted as settled doctrine that in consequence of these provisions Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country." Southern Pac. Co. v. Jensen, 244 U.S. 205, 214, 215 (1917). "But the grant presupposed 'a general system of maritime law' . . . and contemplated a body of law with uniform operation." Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 43 (1934).

[19] 119 U.S. 199 (1886).

[20] "In the case at bar, plaintiff has sought his remedy at common law to obtain redress arising out of a maritime tort. He entered the common-law court with the same right as he would have entered the admiralty court." Port of New York Stevedoring Corp. v. Castagna, 280 Fed. 618, 624 (C.C.A.N.Y. 1922). But *cf.* Garrett v. Moore-McCormack Co., Inc., 317 U.S. 239 (1942).

stantive right to recover for injuries caused by the unseaworthy condition of a ship. The next logical step would have been the vesting in non-seagoing "seamen's" survivors a maritime susbtantive right to recover for deaths caused by the unseaworthiness of a ship. For the reasons previously mentioned, however, the Court refused to take this step. Whether such a substantive right does exist is a matter of statutory interpretation of state law rather than an inherent mandate of the admiralty law.

In the second recent case, *United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki,*[21] the plaintiff also sued under the New Jersey wrongful death statute, also employed a joint theory of negligence and unseaworthiness, and also saw the Court split 5-4, arraying itself identically as it had in *Skovgaard.* Mr. Justice Stewart again wrote for the majority and Mr. Justice Brennan for the minority which this time dissented totally.

Unlike *Skovgaard,* which did not get beyond the pleadings, *Halecki* proceeded to the merits. While *Skovgaard* limited *Sieracki* by making wrongful death recovery by survivors of *Sieracki*-type "seamen" dependent on state law, *Halecki* imposed a direct limitation on *Sieracki* by narrowing the class of land servants entitled to seaworthiness protection.

The decedent had been an employee of a sub-contractor hired by a shipyard to spray a ship's generators with carbon tetrachloride. Death was caused by carbon tetrachloride poisoning. It was stated in the majority opinion that seaworthiness was an absolute, non-delegable right owed by a shipowner to his crew.[22] The *Sieracki* doctrine was said to mean a shipowner could not escape liability for unseaworthiness by contracting to non-seamen work "traditionally" done by the crew. The substitution of "traditionally" for "historically," as used in *Sieracki,* may have significance.[23]

Reversing the decision for plaintiff below, it was held the decedent was not performing work "traditionally" performed by the crew. Four arguments were put forth to support the holding. First, the work could only be performed when the generators were dismantled and the ship was "dead" as opposed to a condition of readiness for sea. Historically,

[21] 358 U.S. 613 (1959).

[22] The Edwin I. Morrison, 153 U.S. 199 (1894), Globe S.S. Co. v. Moss, 245 Fed. 54 (6th Cir. 1917). See Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944), where this duty was held to be unaffected by the fact "that the negligence of the officers of the vessel contributed to its unseaworthiness." Also, Boudoin v. Lykes Bros. S.S. Co., Inc., 348 U.S. 336 (1954), where the vicious disposition of a seaman caused the ship to become unseaworthy bringing liability upon the shipowner for the injuries inflicted upon a fellow-seaman.

[23] In MERRIAM-WEBSTER NEW INTERNATIONAL DICTIONARY (2d ed. 1959), "historical" is defined as being: "Of, pertaining to, or of the nature of, history; as historical truth; narrating, dealing with, or based upon history . . . ." "Traditional" is defined as: "Following or conforming to tradition, or the order, code, practice, etc., accepted from the past; conventional, long established . . . ."

however, whether the ship was "dead" or not, it seems the crew was responsible for the maintenance of the propulsion and power units, at least in the days of sails and whale oil. Further, there seems to be no tradition that work on a dead ship necessarily be farmed out.

Second, the decedent was a specialist using special skills and equipment of which none was connected directly with a ship's seagoing operations. But if a generator is so important, as it obviously is, to the functioning of a ship that the ship is dead and not ready for sea when the generator is disassembled, it is difficult to understand how the skill or tools used to maintain it could be anything but directly connected with seagoing operations.

Third, it was said the work was of such a dangerous nature it was necessary to perform it on a week-end when only a minimum of the crew was aboard. Historically, again, it appears danger was no criterion for determining what was considered the work of the crew nor for deciding what work should be farmed out.

Fourth, quoting from the dissent below, it was said the decedent "was not doing what any crew member had ever done on this ship or anywhere else in the world so far as we are informed."[24] Such work is not "traditionally" done by the crew today or ever. This ground appears to be the strongest of the four. In fact it appears to be beyond refutation. There is no "tradition" in the maritime service to spray the generators with carbon tetrachloride irrespective of any historical background for preservation of the propulsion and power units.

Obviously the Court was attempting to ease the swing of the door flung open by the *Sieracki* and *Pope & Talbot* cases. But whatever may be said in criticism of those cases, their doctrine was manifestly positive. Anyone who performed work on a ship or its gear was entitled to a seaworthy ship due to the virtual impossibility of preventing some historical linkage between the work and the crew. However, there can be no "tradition" in mechanical innovations. Consequently, it seems a ship could become so modern that tradition would remain only in its floating in water. If this be the purport of *Halecki,* it would seem that the operation of *Sieracki* has been seriously limited. If the distinction lies in the degree of specialization required for the work, vexing fact questions arise which could lead to either arbitrariness or an importation of a doctrine into this area approximating the very unreliable "twilight zone."[25] If the case be limited to its facts, its doctrine would only be

[24] Halecki v. United N.Y. & N.J. Sandy Hook Pilots Ass'n, 251 F.2d 708, 715 (2d Cir. 1958).

[25] Davis v. Department of Labor and Indus. of Wash., 317 U.S. 249 (1942), where it was stated that an effort under certain conditions to determine whether a stevedore or harbor worker was covered by a state workmen's compensation act or the federal Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. §§ 901-50 (1927), might be unrewarded because "There is . . .

applicable where extremely dangerous specialized work is being performed on a dead ship.

The dissenters complained the *Sieracki* doctrine had been inverted by the majority so that a shipowner can escape his duties relative to seaworthiness by contracting the dangerous work to non-seamen. Modern ships are outfitted with modern equipment, and contracting out the dangerous maintenance work on such equipment has become the established practice. Further, the *Halecki* doctrine would introduce confusion. Who can tell what is traditional?

Whatever might have been the purpose behind the majority opinion, and the most cogent seems to be the substitution of the old "historical" test for a new "traditional" test, the dissent seems to have the better of the argument—at least to the extent that a rather definite standard has been traded for a somewhat nebulous one. *Halecki* has created a new area of confusion in a once certain field of the law already fraught with indecisiveness in other areas.

GUY C. EVANS

Contracts—Liability of Minor Upon Disaffirmance

The policy of North Carolina has been to cloak an infant with a mantle of protection in his contract dealings with adults by allowing him to disaffirm his contracts for personalty[1] either before[2] or within a reasonable time after[3] attaining his majority. The dominant purpose justifying this principle is to protect the minor from his own improvidence or want of discretion, and from the wiles of designing adults.[4] The disaffirmance when made is irrevocable,[5] voids the contract *ab initio*,[6] and entitles the infant to a return of any consideration passing from him, either in specie or its equivalent;[7] but the infant, unless he has the consideration within his possession or control, is not required to place the other party in *status quo ante*.[8]

clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements." *Id.* at 256.

[1] An infant's deed of realty can be neither disaffirmed nor ratified before he attains his majority. McCormic v. Leggett, 53 N.C. 425 (1862).

[2] Hight v. Harris, 188 N.C. 328, 124 S.E. 623 (1924).

[3] Coker v. Virginia-Carolina Joint-Stock Land Bank, Inc., 208 N.C. 41, 178 S.E. 863 (1935). The infant is liable for personal necessities if the contract price is reasonable. Barger v. M. & J. Fin. Corp., 221 N.C. 64, 18 S.E.2d 826 (1942); Hyman v. Cain, 48 N.C. 111 (1855); Smith v. Young, 19 N.C. 26 (1836). Certain contracts are permitted by statute. See N.C. GEN. STAT. § 39-4 (1950).

[4] McCormick v. Crotts, 198 N.C. 664, 153 S.E. 152 (1930).

[5] Pippen v. Mutual Benefit Life Ins. Co., 130 N.C. 23, 40 S.E. 822 (1902).

[6] Coker v. Virginia-Carolina Joint-Stock Land Bank, Inc., 208 N.C. 41, 178 S.E. 863 (1935).

[7] Collins v. Norfleet-Baggs, Inc., 197 N.C. 659, 150 S.E. 177 (1929).

[8] Faircloth v. Johnson, 189 N.C. 429, 127 S.E. 346 (1925). *Accord,* Bell v.