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Negligence--Liability of Shipowner for Personal Injuries to Stevedores Employed by Independent Contractor (Anderson v. Lorentzen, 160 F.2d 173 (2d Cir. 1947))

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to this case, defendants are guilty of criminal contempt though they may be purged of civil contempt.[14]

Pleadings which fairly and completely apprise the defendants of the charges against them, though on information and belief, and which are not harmful to defendants by omission to specifically charge them with criminal contempt under rule 42 (B) of the Rules of Criminal Procedure,[15] as shown by defendants' pleadings and actions, are not prejudicial to defendants.[16]

It is proper to try both civil and criminal contempt actions at the same time if the defendants enjoy all of the protections that would have been afforded them in a criminal contempt proceeding.[17]

The United States may proceed as a party to civil proceedings in controversies to which the United States shall be a party.[18] This includes allowing the United States to bring civil contempt proceedings.

Sentences for criminal contempt are punitive[19] and the court may consider the extent of the wilful and deliberate defiance of the court, the seriousness of the defendant's actions, and the public interest. In sentencing for civil contempt the court has a twofold purpose, to force defendant to comply with its order, and to compensate the plaintiff for his losses;[20] therefore the magnitude of the harm threatened and the probable effectiveness of the fine is considered.[21]

In its decision the court placed great emphasis on the threat to orderly constitutional government and the economic and social welfare of the nation as well as on the lack of respect shown for the court by the defendants.

H. A. R.

NEGLIGENCE — LIABILITY OF SHIPOWNER FOR PERSONAL INJURIES TO STEVEDORES EMPLOYED BY INDEPENDENT CONTRACTOR.— Plaintiffs, stevedores, contracted a dermatitis when handling leaky steel drums containing cashew nut oil, which leaked out of the drums and onto the deck while plaintiffs were unloading ship owned by

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[14] Salvage Process Corp. v. Acme C. Process Corp., 86 F. (2d) 727 (C. C. A. 2d 1936).

[15] FED. R. CRIM. P., 42 (b).

[16] Conley v. United States, 59 F. (2d) 929 (C. C. A. 8th 1932); Kelly v. United States, 250 Fed. 947 (C. C. A. 9th 1918).

[17] Cooke v. United States, 267 U. S. 517, 69 L. ed. 767 (1925); *see* Michaelson v. United States, 266 U. S. 42, 67, 69 L. ed. 162, 168 (1924).

[18] McCrone v. United States, 307 U. S. 61, 83 L. ed. 1108 (1939); REV. STAT. §§ 563, 629 (1875), as amended, 28 U. S. C. § 41 (1940).

[19] Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 55 L. ed. 797 (1911).

[20] Leman v. Krentler-Arnold Co., 284 U. S. 448, 76 L. ed. 389 (1932).

[21] *See In re* Chiles, 22 Wall. 157, 168, 22 L. ed. 819, 823 (U. S. 1874).

defendant. The dock company employing plaintiffs knew the oil was a corrosive which might cause such a dermatitis, but neither the dock company nor the shipowner warned plaintiffs of this danger, although the dock company kept a supply of special salve on the premises to prevent such injury. Defendants claimed that since the dock company employing plaintiffs knew of the danger, defendants were under no duty to warn the stevedores. Jurisdiction was based on diversity of citizenship. The suits were consolidated for trial and were tried originally in the District Court of the United States, Southern District of New York. *Held,* judgment for plaintiffs affirmed. Defendants owed duty to plaintiffs as business visitors to provide a safe place to work and to warn them of concealed dangers of which it knew or could have known by exercise of reasonable care, despite concurrent duty and knowledge on part of dock company and latter's failure to warn plaintiffs. *Anderson v. Kerr Steamship Co.,* — F. (2d) — (C. C. A. 2d 1947).

The court based its decision on the following reasoning: A shipowner owes a duty to stevedores employed by an independent contractor, as business visitors, not only of providing a safe place to work,[1] but also of furnishing a seaworthy ship, since it has been held that this traditional protection afforded seamen by admiralty extends also to stevedores.[2] The oil leaking from the drums onto the deck made the place of work unsafe. Furthermore, the cargo was itself dangerous and cargo which is a hazard to workers handling it makes the place of work unsafe.[3] This duty may not be delegated,[4] and persists despite the fact that there is a concurrent duty on the part of the dock company.[5] The measure of care in such a case is the same as that which is due from an employer to his employees.[6] Therefore, defendants should at least have warned plaintiffs of latent dangers of which plaintiffs did not know or which they could not be

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[1] Fodera v. Booth Am. Shipping Corp., 159 F. (2d) 795 (C. C. A. 2d 1947); The Dalhem, 41 F. Supp. 718 (D. Mass. 1941); The S. S. Anderson, 37 F. Supp. 695 (D. Md. 1941); The Wearpool, 112 F. (2d) 245 (C. C. A. 5th 1940); The No. 34, 25 F. (2d) 602 (C. C. A. 2d 1928); The Joseph B. Thomas, 86 Fed. 658 (C. C. A. 9th 1898).

[2] Seas Shipping Co. v. Sieracki, 328 U. S. 85, 90 L. ed. 809 (1946); Fodera v. Booth Am. Shipping Corp., 159 F. (2d) 795 (C. C. A. 2d 1947); *see* W. J. McCahan Co. v. Stoffel, 41 F. (2d) 651, 654 (C. C. A. 3d 1930).

[3] La Guerra v. Brasileiro, 124 F. (2d) 553 (C. C. A. 2d 1942).

[4] Vanderlinden v. Lorentzen, 139 F. (2d) 995 (C. C. A. 2d 1944); Sciolaro v. Asch, 198 N. Y. 77, 91 N. E. 263 (1910).

[5] Puleo v. H. E. Moss & Co., 159 F. (2d) 842 (C. C. A. 2d 1947); Vanderlinden v. Lorentzen, 139 F. (2d) 995 (C. C. A. 2d 1944); Grillo v. Royal Norwegian Gov't, 139 F. (2d) 237 (C. C. A. 2d 1943); La Guerra v. Brasileiro, 124 F. (2d) 553 (C. C. A. 2d 1942).

[6] Puleo v. H. E. Moss & Co., 159 F. (2d) 842 (C. C. A. 2d 1947); Aurigemma v. Nippon Yusen Kaisha Co., 238 N. Y. 183, 144 N. E. 495 (1924); Lyman v. Putnam Coal & Ice Co., 182 App. Div. 705, 169 N. Y. Supp. 984 (2d Dep't 1918); Casey v. Lehigh Valley R. Co., 128 App. Div. 86, 112 N. Y. Supp. 522 (2d Dep't 1908).

reasonably expected to discover,[7] but which were within defendants' knowledge. Knowledge on part of defendants includes not only that which is actually known, but also that which defendants could by the exercise of reasonable care have learned about the condition and nature of the cargo.[8] Knowledge so imputable to defendants is also a factor to be given effect in determining the extent of their obligation to protect the cargo. This duty exists, however, only when the owner has present control over the vessel. Therefore *Freeman v. A. H. Bull S. S. Co.*[9] is distinguishable from the present case. In that case the vessel was under charter to another, so that the owner had no control over the loading and unloading of the ship, or any knowledge of the condition of the cargo.

The court, however, did not discuss defendants' contention that since the contractor knew of the danger, and this is unquestionable as the evidence revealed that a special ointment was kept on the premises by the dock company for the prevention of such a dermatitis, the ship company was absolved from the duty to warn the stevedores. The factual situation here is rather unusual. In the majority of cases where liability has been imposed on a shipowner for injuries to stevedores employed by a contractor, the defects causing the injury were within the peculiar knowledge of the owner, such as faulty machinery or cargo booms, which could not reasonably be discovered by one not familiar with the mechanical condition of the ship. The duty upon a contractor, as employer, extends only to known or ascertainable hazards. In most of the cases where liability attached despite a finding that a concurrent duty existed in the contractor, the problem of actual knowledge on contractor's part did not arise.

La Guerra v. Brasileiro[10] is somewhat analogous on the point of knowledge. There a shipowner was held liable as injury was caused by faulty stowage of cargo. However, it appears that contractor's foreman discovered the danger shortly before the injury occurred and did not order stoppage of work until the situation could be remedied. The facts there, however, differ from the case under discussion in that there the owner was not aware of the contractor's knowledge of the defect. In *Sagler v. Kellogg S. S. Corp.*[11] a shipowner supplied a cleaning fluid to contractor for use by contractor's men in cleaning ship tanks. The shipowner had advised contractor in the use of the fluid, warning him that it was a dangerous substance if not properly used. It was held there that the shipowner

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[7] Puleo v. H. E. Moss & Co., 159 F. (2d) 842 (C. C. A. 2d 1947); The Anderson, 37 F. Supp. 695 (D. Md. 1941); The Dalhem, 41 F. Supp. 718 (D. Mass. 1941); PROSSER, HANDBOOK OF THE LAW OF TORTS § 67 (1941).

[8] Williams S. S. Co. v. Wilbur, 9 F. (2d) 622 (C. C. A. 9th 1925).

[9] 125 F. (2d) 774 (C. C. A. 5th 1942).

[10] 124 F. (2d) 553 (C. C. A. 2d 1942).

[11] 155 Misc. 217, 277 N. Y. Supp. 792 (Sup. Ct. 1934).

had a right to rely on the contractor's warning his men of the dangerous nature of the compound, but if the shipowner knew that the men had actually not been told, or if the evidence established facts which would have led a reasonable man to inquire, there was nevertheless then a concurrent duty on the shipowner to advise contractor's workers. Here, then, even though the duty was based substantially on the doctrine of a supplier of dangerous chattels,[12] the duty was nevertheless made contingent upon knowledge that the contractor had not himself taken proper precautions. In the present case the court did not go into the question of whether or not the shipowner knew that the men had not been warned.

It may be that the doctrine of *Seas Shipping Co. v. Sieracki*[13] could be extended to cover this situation. There it was held that longshoremen are seamen in the sense that a shipowner owes them the duty of furnishing a seaworthy ship. "Where there is a failure in the discharge of the obligation of seaworthiness, liability follows regardless of negligence," [14] so that this is actually a form of liability without fault. This doctrine is novel and has not been interpreted to any great extent as yet. It may be the courts will construe the duty upon shipowners towards stevedores to be an absolute duty regardless of any concurrent duty or knowledge in other connected parties. On the other hand, one of the reasons offered by the court for adopting this view was that the contractor in that case had neither the right nor opportunity to discover or remove the cause of peril.

A. G. K.

TORTS—INTENTIONAL INFLICTION OF TEMPORAL DAMAGES IS CAUSE OF ACTION — REQUIRES LEGAL JUSTIFICATION BY DEFENDANTS.—The Advance Music Corporation is engaged in the business of publishing musical compositions. Deriving its income from sales of sheet music to the general public, music jobbers, motion picture studios, etc., it advertises extensively to promote the popularity of its songs. Sheet music is handled on a consignment basis by jobbers and premature return means severe loss of business to the plaintiff. The defendants, the American Tobacco Company and an advertising concern, are creators of a weekly commercial radio program with a widespread audience, which program is known as "Your Hit Parade" and which purports to present the ten most popular songs of the week. The defendants also circulate weekly lists of these songs

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[12] MacPherson v. Buick Motor Co., 217 N. Y. 382, 111 N. E. 1050 (1916).
[13] 328 U. S. 85, 90 L. ed. 809 (1946).
[14] Fodera v. Booth Am. Shipping Corp., 159 F. (2d) 795 (C. C. A. 2d 1947).