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Admiralty -- Contribution Among Joint Tort-Feasors in Non-Collision Cases

CASES NOTED

ADMIRALTY — CONTRIBUTION AMONG JOINT TORT-FEASORS IN NON-COLLISION CASES

A judgment was recovered against the defendant by an employee of the third-party defendant for injuries sustained in a fall on the defendant's ship while it was being repaired by the third-party defendant. In a suit for contribution in the district court, the defendant recovered half the amount of the judgment from the third-party defendant. The court of appeals agreed that a right of contribution existed, but limited it to the amount that the third-party defendant would have had to pay under the Longshoremen's and Harbor Workers' Compensation Act.[1] *Held*, on certiorari, that in admiralty there is no right of contribution among joint tort-feasors in non-collision cases. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 72 Sup. Ct. 277 (1952).

The right to contribution among joint tort-feasors has long existed in the law of admiralty of the United States.[2] Although the doctrine originally was applied to collision cases,[3] there was no express limitation to that effect and it was soon expanded to embrace non-collision cases.[4] Indeed, from the advent of the rule, the courts saw no reason, nor, apparently, did they conceive of the idea that there should be a differentiation between the two situations.[5]

A mass of lower federal court decisions reiterates the rule that the right to contribution exists in all manner of torts at admiralty.[6] The only

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1. 44 STAT. 1424 (1927), 33 U.S.C. § 901 *et. seq.* (1946).

2. See Barbarino v. Stanhope S.S. Co., 151 F.2d 553, 555 (2d Cir. 1945); The Alabama, 92 U.S. 695 (1875); The Catherine v. Dickinson, 17 How. 170 (U.S. 1854).

3. Erie R.R. v. Erie & Western Transportation Co., 204 U.S. 220 (1907); The North Star, 106 U.S. 17 (1882); The Alabama, 92 U.S. 695 (1875); The Catherine v. Dickinson, 17 How. 170 (U.S. 1854); The Mariska, 107 Fed. 989 (7th Cir. 1901), *reversing* 100 Fed. 500 (N.D. Ill. 1900); The Hudson, 15 Fed. 162 (S.D.N.Y. 1883),

4. The Jethou, 2 F.2d 287 (D. Ore. 1924).

5. In The Ira M. Hedges, 218 U.S. 264, 270 (1910), Mr. Justice Holmes pointed out that the right to contribution was an integral part of the law of admiralty and drew no distinction between different types of torts. "The right to contribution is a consequence of the joint tort and attaches to the joint liability. The right to contribution belongs to the substantive law of the admiralty and is not a mere incident of any form of procedure." 2 BENEDICT, ADMIRALTY, § 353 (6th ed. 1950).

6. Barber S.S. Lines, Inc. v. Quinn Bros., Inc., 94 F. Supp. 212, 213 (D. Mass. 1950) (". . . the principle of contribution among joint tort-feasors . . . is a familiar concept of martime law . . . . This principle has been applied not only to cases of injury of property but also to cases of personal injury . . . and in particular to situations in which indemnity or contribution was sought in cases involving personal injuries to stevedores."); N.Y. & Puerto Rico S.S. Co. v. Lee's Lighters, Inc., 48 F.2d 372 (E.D.N.Y. 1930); Coal Operators Cas. Co. v. United States, 76 F. Supp. 681 (E.D. Pa. 1947); The Samovar, 72 F. Supp. 574 (N.D. Cal. 1947).

limitation is that of common sense and general tort law that "[f]or a right of contribution to accrue between tort-feasors, they must be joint wrongdoers in the sense that their tort or torts have imposed a common liability upon them to the party injured,"[7] and that for the wrongdoers to be considered joint tort-feasors they must contribute simultaneously to the injury; there cannot be two or more independent acts.[8] In the only case involving contribution in a non-collision situation considered by the United States Supreme Court prior to the instant case, contribution was denied solely because of a contract between the parties limiting the liability.[9] The language of the decision makes it clear that, had there been no such contract, the usual rules of contribution in admiralty would have been applied.[10] At least one federal court has held that this case is one upholding the right to contribution in non-collision cases.[11]

The rationale of the instant case is that the court should not "fashion new judicial rules of contribution,"[12] but await legislative action. The reason ascribed by the Court for its position is the presence of the various conflicting interests of ship owners, dry dock, stevedoring and insurance companies.

The fear of fashioning new rules would appear to be a little tardy since it has been the practice of the lower courts, at least since 1924, to allow contribution in this type of case.[13] Indeed, the Supreme Court overlooks its own admission in the *Porello* case, albeit in the dictum, of the existence of this right. In effect, what the Court has done, then, is to fashion a new judicial rule through its denial of a remedy which has been available in admiralty for the past twenty-eight years; "the well established rule of contribution between joint tort-feasors."[14] It has overruled and reversed both the lower courts and itself, substituting confusion for what was, until now, considered a settled point of maritime law.

ATTORNEY AND CLIENT — UNAUTHORIZED PRACTICE OF LAW — CONTEMPT

A presentment to the Supreme Court of New Jersey by a county bar association committee on the unauthorized practice of law asked that de-

7. Porello v. United States, 153 F.2d 605, 607 (2d Cir. 1946), *rev'd on other grounds, sub nom.* American Stevedores, Inc. v. Porello, 330 U.S. 446 (1947). RESTATEMENT, RESTITUTION § 86 (1937).

8. United States v. Rothschild International Stevedoring Co., 183 F.2d 181 (9th Cir. 1950); The Mars, 9 F.2d 183 (S.D.N.Y. 1914).

9. American Stevedores, Inc. v. Porello, 330 U.S. 446 (1947).

10. *Id.* at 458 (" . . . the usual rule in admiralty, in the absence of contract, is for each joint tortfeasor to pay the injured party a moiety of the damages . . . .").

11. Coal Operators Cas. Co. v. United States, 76 F. Supp. 681 (E.D. Pa. 1947).

12. Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 72 Sup. Ct. 277, 280 (1952).

13. The Jethou, 2 F.2d 287 (D. Ore. 1924).

14. Portel v. United States, 85 F. Supp. 458, 462 (S.D.N.Y. 1949).