EFFECT OF THE AMENDMENTS TO THE FEDERAL LAW LIMITING THE LIABILITY OF SHIPOWNERS ON PENDING CLAIMS AND ACTIONS

The United States statute limiting the liability of shipowners was changed materially by amendments in 1935[1] and 1936. The original limitation of liability statute was passed in 1851 and the amendments referred to are the first ones to increase liability of shipowners since that time. The original statute provided as follows:

> "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."[2]

Under the original statute the extent of the liability of the shipowner was the value of the owner's remaining interest in the vessel after the occurrence, and the freight then pending. This sum in many instances was grossly inadequate to compensate claimants adequately for the loss sustained. In cases where the vessel was a total loss after the occurrence, its value very often was nominal. By the Act of August 29, 1935, Congress added a proviso to section 183 of the statute which was clarified by a further amendment, the Act of June 6, 1936.

These amendments increase the liability of the shipowner

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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., secs. 183, 183A, 183B, 185 and 189.

2. 9 Stat. 635 (1851), 46 U.S.C.A., sec. 183, etc.

by providing that in the case of any *seagoing* vessel, if the amount of the owner's liability is limited under the statute and the value of the boat and earned freight is insufficient to pay all claims, and the portion of the amount applicable to the payment of losses in respect of *loss of life* or *bodily injury* is less than $60.00 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60.00 per ton to be available only for the payment of losses in respect of loss of life or bodily injury.

It will, therefore, be seen that a decided advantage accrues under the amendments to personal injury claimants and in claims arising as a result of death. Under the original Act in many cases the amount available for distribution to claimants was often a mere pittance. Under the amendments, in addition to the value of the vessel after the occurrence and the earned freight, the shipowner is alternatively liable for a sum equal to $60.00 for each ton of the vessel's tonnage. When these amendments were debated in Congress, it was pointed out that under a petition for limitation of liability filed by the owners of the *Morro Castle* the claim was asserted that the value of the boat and the earned freight after the occurrence was $20,000, while if the amendments were applicable the shipowners' liability would have been approximately $700,000. In the case of the *Mohawk,* the petition for limitation of liability fixed the value of the vessel after the occurrence as $10,000, while the owner's liability under the amendments would have been approximately $350,000.

As a result of the amendments an interesting question in the construction of the statute has arisen; *i.e.,* whether the amendments should be construed prospectively or retroactively. It is quite natural that a claimant whose loss arose as a result of bodily injury or arose in respect of loss of life should assert that the amendments act retroactively so that he may take advantage of the increased liability of the shipowner; and on

the other hand, the shipowner is attempting to limit the amendments to prospective claims. Under the construction of the original Act by Congress, it has been established that a shipowner may file his petition of liability in admiralty immediately after claims arise, or he may wait and permit suits to be brought against him at common law or in admiralty, and may even wait until after judgment has been entered against him in suits brought by claimants, before filing his petition for limitation of liability.[3]

At the time of the enactment of the amendments, many claims were pending against shipowners, and many suits had been brought against shipowners for claims as a result of bodily injury or arising out of the death of persons. In many cases no action had been taken by shipowners to invoke the limitation of liability statute until after the amendments had been enacted, although the causes of action had arisen prior to the passage of the amendments. There is no doubt that the shipowner, prior to the amendments, had been taking advantage of the delay afforded him by the statute. He could permit a claimant to sue him in an action at law or admiralty and wait until the case was about to be reached for trial, and then file his petition for limitation of liability. In states where it takes several years for a law action to be reached for trial, this causes an unusual delay, not conducive to speedy trials and creating a great deal of disaffection for the admiralty courts among claimants. This delay has been remedied by the Act of 1936, which requires a shipowner to file his petition for liability within six months after a claimant shall have given, or filed with said owner, written notice of the claim.[4]

After the enactment of the amendment, many shipowners filed petitions for limitation of liability and invoked the statute

3. Langnes v. Green, 51 Sup. Ct. 243, 282 U.S. 531, 75 L.Ed. 520; *The James Horan*, 78 Fed. (2d) 870.

4. Grasselli Chemical Co., No. 4, 20 Fed. Supp. 394 (D.C. N.Y. 1937).

as to causes of action and claims arising prior to the enactment, and in many cases where suits had been pending for several years on the claims, asserting that their right to limit liability was based on the original statute prior to the amendments. The theory of the shipowner is primarily that he has acquired a vested right under the original statute which was in force and effect at the time the claim arose, and that under the general law, courts in construing amendments to statutes which affect vested rights will not construe them to act retroactively unless such intention on the part of the legislature is clear. On the other hand, the claimants contend that the act limiting liability is entirely remedial in nature and does not create any substantive or vested right in favor of the shipowner; that it is an exemption statute in derogation of the common law and it grants, by grace, a favor and a privilege to the shipowner not available to other persons; that the courts construe exemption statutes liberally in favor of the creditor and against the person to whom the exemption has been granted; that courts have frequently held that exemption statutes decreasing the exemption act retroactively.

There is only one reported case[5] dealing with the question and that has been decided in favor of the shipowner. In that case suit was instituted in the state court against the shipowner by claimants for personal injuries sustained as a result of a fall on a passenger steamer. When the case was about to be reached for trial in the state court the shipowner filed in admiralty a petition for limitation and exoneration of its liability. The cause of action arose in 1933 and the petition for limitation of liability was not filed until November, 1936, subsequent to the enactment of the amendments to the limitation of liability act. The shipowner filed an ad interim stipulation for the sum of $1600.00 which was conceded to be the value of

5. *The Pocahontas,* 20 Fed. Supp. 1004 (D.C. N.J. 1937).

the boat immediately after the occurrence and the earned freight. The claimants contended that the amount surrendered by the shipowner was inadequate, for the reason that under the amendments to the limitation of liability statute it was required to surrender a sum sufficient to compensate the claimants based on a value of $60.00 per gross ton of the vessel. The court held that it was not necessary to determine whether or not the liability statute was one relating to the substantive law or to the remedial law, for the reason that it did not appear to be the intention of Congress that these amendments should have a retroactive effect, and that statutes are not to be given a retroactive effect even though the law is remedial, unless such construction is required by explicit language or by necessary implication.[6] The court apparently disregarded the contention of the claimants that the statute was one of exemption and that the amendments did act retroactively, for the reason, primarily that there were no cases in the Federal courts to sustain the proposition. Reference was also made by the court to statements made by some of the legislators during the discussion of the amendments for the purpose of indicating that there was no intention in the minds of the legislators to have the amendments act retroactively. These statements refer to a comparison of the amounts which would be recovered under the old statute and under the new amendments. There is nothing, however, to indicate that the statements were made for the purpose or with the thought in mind that the statute would not act retroactively.

In view of the nature of the amendments and the recognition by Congress of the necessity for increasing the shipowners' liability under certain circumstances; and considering the evils which existed, the remedy prescribed and the object to be

6. U. S. v. Magnolia Petroleum Co., 276 U.S. 160, 48 Sup. Ct. 236, 72 L.Ed. 509 (1928); U. S. St. Louis S. F. & T. Rwy. Co., 270 U.S. 1, 46 Sup. Ct. 182, 70 L.Ed. 435 (1929).

accomplished, the court's conclusions in the *Pocahontas* case are not invulnerable. The statute is obviously an exemption statute—one which limits the amount of damages under certain circumstances, to which a shipowner is liable. The statute is in derogation of the common law. Prior to the passage of the original statute, the personal liability of the owner of a vessel for damages was the same as in other cases of negligence, and was limited only by the amount of the loss and by his ability to respond.

The theory of the limitation of shipowners' liability originated among the leading maritime nations of Europe towards the end of the 17th century. France, in its ordinance of 1681, declared that the shipowner should be answerable for the acts of the master but should be discharged from liability upon relinquishing the ship and freight. England passed its limitation of liability statute in 1734.[7] Massachusetts passed a statute[8] following the general language of the English statute in 1819, and Maine passed one in 1821 copying the statute of Massachusetts.[9] The Federal statute substantially followed the English statute.[10] The Federal statute, it has been suggested, resulted following the loss of a ship in 1847 owned by a citizen of the United States, which was carrying $18,000 in specie when it took fire and sank.[11] The American shipowner thus suffered doubly. The owner lost his ship and had to pay for the lost cargo. The original Act of 1851 was apparently enacted for the purpose of placing American shipowners on a parity with English shipowners and with shipowners of other nations, and to encourage and to promote the building of ships, and to encour-

7. Main v. Williams, 152 U.S. 122, 14 Sup. Ct. 486, 34 L.Ed. 381.
8. Act of Feb. 20, 1819, General Laws, c. 122.
9. 1 Laws of Maine, c. 14, sec. 8.
10. Norwich v. Wright, 80 U.S. 104, 20 L.Ed. 585.
11. N. J. Steam Nav. Co. v. The Merchants Bank of Boston, 6 How. 344.

age persons to engage in the business of navigation.[12] The courts generally have construed the original statute liberally in favor of the shipowner.[13]

The limited liability of the shipowner under the original statute continued uninterruptedly until the recent amendments, except that in 1884 the statute was extended to all debts and liabilities *ex contracto* as well as *ex delicto,* except seamen's wages;[14] and in 1886 the statute was extended to all vessels on lakes, rivers and inland navigation.[15] The English law, however, had been amended in 1862, increasing the liability of the shipowner in respect of loss of life of personal injury, to an aggregate amount not exceeding £15 for each ton of the ship's tonnage.[16]

Several other countries, among them Belgium, Denmark, Finland, Netherlands, Norway, Portugal and Spain, adopted the limitations of the Brussel's Convention in 1922 which limited liability in any event to £8 per ton with respect to personal injury claims and claims arising out of loss of life. The American shipowner, therefore, had a decided advantage over those operating under the English law and of shipowners in countries operating under the Brussel's Convention. It should be stated in all fairness, however, that under the French law the owner's responsibility is limited by abandonment of the ship and the freight to claimants. Italy, Japan, Greece, Roumania and many South American countries follow the French law. Under the German law, the shipowner has no personal responsibility.[17]

Following the disaster of the *Morro Castle,* the limitation of liability statute was brought to the public attention through

12. Moore v. American Trans. Company, 24 How. 1.
13. Norwich v. Wright, *supra,* note 10.
14. Act of June 26, 1844, c. 121, sec. 18, 23 Stat. 57, 46 U.S.C.A., sec. 189.
15. Act of June, 1886, c. 421, sec. 4, 24 Stat. 80, 46 U.S.C.A., sec. 188.
16. 25 and 26 Vict., c. 63, sec. 54 (1862).
17. St. John's Law Review, Vol. 11, p. 25.

newspapers and debate in Congress. It was asserted vigorously by the proponents of the amendment that the original statute had outlived its usefulness in its present form; that persons who had received personal injuries or next of kin of persons whose lives were lost through the negligence of shipowners' employees and agents were treated inequitably, and that possibly the statute as it existed did not encourage the shipowner to comply with every requirement of safety both as to material and personnel.

The limitation of liability statute does not create any cause of action or any right of action in favor of the shipowner or in favor of the claimant. The sole purpose of the statute is to exempt the owner under certain circumstances from liability for loss, damage or injury occasioned or incurred without the privity or knowledge of the owner, beyond the value of the vessel and the freight then pending. It affects the amount of damages which the shipowner, if liable, ultimately will have to pay to the claimants. The liability of the shipowner is not imposed or created by the limitation statute, it is assumed already to exist on other grounds.[18]

A clear application of the principle is shown where there is only one claimant who has instituted suit in the state court against the shipowner, and where the shipowner subsequently files a petition for limitation of its liability in the admiralty court; the admiralty court will then permit the claimant to maintain his action in the state court and prosecute it to judgment if he concedes the right of the shipowner to limit its liability (damages) to the value of the boat and the earned freight.[19]

Since the decision of the Supreme Court in *Oceanic Steam*

18. Oceanic Steam Nav. Co. v. Mellor, 233 U.S. 718, 58 L.Ed. 1171, 34 Sup. Ct. 754.

19. Langnes v. Green, 282 U.S. 531, 51 Sup. Ct. 243, 75 L.Ed. 520; *Ex parte* Green, 286 U.S. 437, 76 L.Ed. 1212, 52 Sup. Ct. 602.

Navigation Company v. Mellor,[20] it seems quite clear that the limitation statute is one relating solely to the remedy. The court, in upholding the right of the owner of the *Titanic,* a British company, as owner of a British ship (which sank as a result of a collision with an iceberg in the high seas) to limit its liability in a suit brought by the claimant, a British subject, in the Federal court, for damages sustained by him, referring to the statute said:

> "That does not impose, but only limits, the liability—a liability assumed already to exist on other grounds. The essential point was that the limitation might be applied to foreign ships if sued in this country, although they were not subject to our substantive law."

That there is no vested right of a citizen to have the rules of law remain unchanged for his benefit is settled. The imposition of liability without fault or the exemption from liability in spite of fault, as rules of conduct, are subject to legislative modification.[21]

In the interpretation of this statute, whether it acts retroactively or prospectively depends upon the view one takes of the situation. If one looks at the date of the cause of injury the remedy operates retrospectively. If it is viewed in relation to the means of reparation, then it acts prospectively, the limitation statute being one affecting the remedy only. It has been held in numerous cases construing remedial statutes, that the law as it exists at the time the statute is invoked is applicable and that this is so even though the statute was amended after the cause of action arose. Illustrative of this application are the following situations.

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20. 233 U.S. 718, 58 L.Ed. 1171, 34 Sup. Ct. 754.

21. Middleton v. Texas Power & Light Co., 249 U.S. 150, 63 L.Ed. 527, 39 Sup. Ct. 227.

Where a suit was brought for breach of a contract relating to unliquidated damages, the court permitted interest to be added to the amount of unliquidated damages. At the time the contract was entered into interest was not recoverable. A subsequent statute permitted recovery of interest in suits for unliquidated damages. The court held that the legislature was authorized to enact laws providing remedies for violation of contracts and to alter or enlarge those remedies from time to time; the mere fact that such legislation was retroactive did not invalidate it; that persons entering into contracts do so, with reference to the existence of the power of the state to provide remedies for enforcement; to secure adequate redress in case of breach. The effect of this statute was to increase the damages awarded to the plaintiff.[22]

Another instance is the power of the legislature to repeal usury laws to operate retrospectively, so as to cut off the defense of usury for the future, even in actions upon contracts previously made.[23]

In *McFaddin v. Evans-Snider-Buel Company,*[24] the Supreme Court held that in the absence of a direct constitutional prohibition, the legislature may pass retrospective laws which may in their operation affect suits pending and give to a party a remedy which he did not previously possess, or modify an existing remedy. The court, in quoting from *Freeborn v. Smith,*[25] said:

> "If it comes within the category of retrospective legislation, as has been argued, we find nothing in the Constitution limiting the power of Congress to amend or correct

22. Funkhouser v. Preston Co., 290 U.S. 163, 78 L.Ed. 243, 54 Sup. Ct. 134
23. Ewell v. Daggs, 108 U.S. 143, 27 L.Ed. 682, 2 Sup. Ct. 408.
24. 185 U.S. 505, 46 L.Ed. 1012, 22 Sup. Ct. 758.
25. 2 Wall. 160, 17 L.Ed. 922.

> omissions in previous acts. It is well settled that where there is no direct constitutional prohibition, a state may pass retrospective laws, such as, in their operation, may affect suits pending, and give to a party a remedy which he did not previously possess, or modify an existing remedy, or remove an impediment in the way of legal proceedings. . . . Such acts are of a remedial character, and are the peculiar subjects of legislation. They are not liable to the imputation of being assumptions of judicial power."

Also, where a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stand where the repeal finds them.[26] The amendments to the limitation of liability statute are silent as to any saving clause for the saving of any rights in favor of the shipowner on existing causes of action or claims.

In *Miceli v. Morgano*,[27] the court held that where the remedy is purely statutory, and where the statutory amendment is enacted while an action is pending before trial or judgment. the action is to be governed by the amendment.

It seems quite clear that the statute is one of exemption for a particular class. It limits the damages which a shipowner must pay to claimants in certain cases. As the law was originally enacted it did not apply to vessels on lakes and rivers, and those engaged in inland navigation. This was cured by an amendment in 1886. As the statute exists at present the increased liability of the shipowner to $60.00 a ton applies only to a seagoing vessel and excludes seagoing vessels which are pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nonde-

26. So. Carolina v. Gaillard, 101 U.S. 433, 25 L.Ed. 937; Washington Home for Incurables v. Amer. Security & Trust Co., 224 U.S. 486, 56 L.Ed. 854, 32 Sup. Ct. 554.

27. 36 Fed. (2nd) 507 (D.C. N.Y.)

script self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels. The statute is in derogation of the common law and provides an exemption in the amount of damages which the shipowner must pay for the negligence of his servants occurring without his privity or knowledge as defined in the statute. Stripped of legal verbiage it is a "shield of protection" in favor of the shipowner. It is a general rule of constitutional law that a citizen has no vested rights in statutory privileges and exemptions.[28] This rule has been held to apply to statutes exempting property from levy and sale on execution. Such a statute is not a contract between the judgment debtor and the state, and the amendment thereto altering exemptions by lessening them does not impair the obligation of a contract.[29] As one court said.

> "Exemption of property from levy and sale for the payment of debts is but a privilege for the time being—mere grace and favor, dependent on the will of the state . . . Exemption is but a statutory or constitutional shield which, being removed, the exposure to process is the same as if it had never been interposed "[30]

In another situation the plaintiff had recovered a judgment for alimony in Pennsylvania. At the time the alimony was awarded the suit could not be maintained in New York. Subsequently the legislature amended the statute so that the action could be brought in the courts of the State of New York. It was held that the amendment was retroactive and that suit for alimony obtained by a foreign decree prior to the amendment

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28. COOLEY'S CONST. LIM. (7th Ed.) p. 546.

29. Laird v. Carton, 196 N.Y. 169, 89 N.E. 822; Brearley School, Ltd. v. Ward, 201 N.Y. 358, 94 N.E. 1001, 40 L.R.A. (N.S.) 1215; Bull v. Conroe, 13 Wis. 233; Lapsley v. Brashears, 4 Litt. 66 (Ky.)

30. Harris v. Glen, 56 Ga. 94.

could be enforced. The court held that the amendment to the Code relating to the enforcement of the decree was remedial and retroactive, and applied to the Pennsylvania decree although adopted after such decree was rendered.[31]

A statute enacted to create a right to garnish wages of a debtor, was held applicable to existing judgments. The court pointed out that exemption privileges of a debtor are not vested rights and that it is within the power of the legislature to make property subject to execution for debts contracted or judgments entered under a previous law, by which it was exempt.[32]

A statute abolishing the exemption of a homestead from the lien of judgments was held to operate so as to include prior judgments.[33]

In a claim for personal injuries sustained as a result of an automobile accident the plaintiff was held to have the right to enforce her judgment by levy, under a statute passed subsequent to the institution of her suit, against property which was exempt from levy at the time her cause of action arose and when the suit was instituted. The court pointed out that the common law did not recognize exemptions, and that every species of property of a debtor was liable for the payment of his debts; that it has been uniformly held that a debtor has no vested rights in statutes fixing exemptions, and that a retrospective effect could be given to a statute which abolished or diminished them, without depriving the debtor of any constitutional rights; that exemption statutes create a privilege in favor of the debtor which he did not otherwise enjoy, and the state by the enactment of them does not agree that the amount of the exemptions provided in these statutes shall be permanent, but retains the right to alter or change them at will; that every

31. Moore v. Moore, 208 N.Y. 97, 101 N.E. 711.
32. Cavender v. Hewitt, 145 Tenn. 71, 239 S.W. 767.
33. Leak v. Gay, 107 N.C. 468, 12 S.E. 312.

government recognizes the moral duty of every debtor to pay his just debts, and when granting immunity from them does not base it upon any consideration moving from the debtor, but solely upon motives of public policy, of which the state is the sole judge.[34]

In *The Pocahontas, supra,* the court referred to *Humbodlt Lumber Manufacturers' Ass'n. v. Christopherson.*[35] In that case the limitation statute was passed four years subsequent to the injury. The defendant attempted to invoke the limitation statute. The court held that assuming the limitation statute to apply, it would not consider it to act in a retrospective manner. The courts have made a clear distinction between exemption statutes which increase exemptions and those which decrease exemptions. It is well settled that a statute increasing exemptions is invalid if applied to existing contracts, but on the other hand it is also clear that a retrospective effect can be given to a statute which abolishes or diminishes exemptions without de priving the debtor of any constitutional right.[36]

The limitation of liability statute being one of exemption and privilege granted to a shipowner, it cannot be denied that Congress can take away or alter that right in any way it sees fit. By reason of the amendments it attempted to correct what appeared to be an injustice to certain persons subject to the limitation of liability Act and who had claims against shipowners. When one considers that the limitation of liability statute is a remedy afforded the shipowner, which does not have any effect in any pending proceeding until the shipowner acts affirmatively to invoke the statute by filing his petition for limitation and exoneration from liability, and surrenders the vessel and the earned freight or its equivalent into court, it

34. Chandler v. Horne, 154 N.E. 748 (Ct. of App. Ohio).

35. 73 Fed. 239, 36 L.R.A. 264.

36. Brearley School, Ltd. v. Ward, 201 N.Y. 358, 94 N.E. 1001, 40 L.R.A. (N.S.) 1215.

would seem that the claimants are on firm ground in asserting that the shipowner is bound by the limitation statute as he finds it when he *invokes* it for the first time.

In *Berkovitz et al. v. Arbib Houlberg, Inc.,*[37] the New York Court of Appeals, through Judge Cardozo, in holding that an arbitration statute applied to a contract made prior to the enactment of the statute, aptly said:

> "A different problem arises when proceedings are already pending. There is then a distinction to be noted. The change is applicable even then if directed to the litigation in future steps and stages. . . . In the end it is in considerations of good sense and justice that the solution must be found. Maxwell Interpretation of Stat., 5th Ed. 348, 370. . . . The statute was enacted after the contract had been made but before a remedy was invoked. The range of choice is governed by the remedies available at the time when choice is made."

The shipowner had an opportunity to file his petition for Limitation and exoneration of liability, and invoke the remedy afforded by the statute immediately after the claims were presented against him, and if he delayed in doing so and his exemptions were reduced in the interim, there does not seem to be any legal reason why his rights should be preserved as they existed prior to the amendments. If Congress had repealed the limitation statute without any saving clause as to existing claims, it would seem that the shipowner would be prevented from limiting his liability on pending causes of action and on existing claims for which the statute had not been invoked. In this instance, Congress has taken away part of the exemption; and

37. 230 N.Y. 261, 130 N.E. 288.

logic and reason indicate that the shipowner should be bound by the extent of the exemption as it exists at the time he resorts to the statute and invokes the remedy.

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