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# Admiralty - Maintenance and Cure of Seamen - Right to Contribution Between Shipowners For Co-Existing Obligation - Gooden v. Sinclair Refining Co., 378 F.2d 576 (3rd Cir. 1967)

Thomas G. Horne

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# CURRENT DECISIONS

**Admiralty—Maintenance and Cure of Seamen—Right to Contribution Between Shipowners for Coexisting Obligation.** While in the employ of defendant Texaco, Gooden suffered a back injury from which he had not fully recovered at the time of his subsequent employment with defendant Sinclair. In an action against Sinclair by Gooden for failure to pay the continuing costs of cure and maintenance,[1] Texaco was impleaded.[2] The Court of Appeals for the Third Circuit allowed contribution between the respondent shipowners for the period of their coexisting maintenance and cure obligations to the injured seaman,[3] thus raising an important question as to the scope of the court's authority, sitting in admiralty, to grant contribution according to the equities of the case before them. In searching for a rationale with which to answer this question, the court has reached a decision which may have broader implications beyond the quasi-contractual obligation of the shipowners for cure and maintenance.

The court reached its decision so as " " to achieve the equitable result of assuring that the ultimate liability of the shipowners remains the same regardless of how seamen choose or happen to seek recovery " [4] Dismissing doubts as to its authority to reach such a decision, the court found that, absent congressional legislation to the contrary, the result reached could be reconciled within the court's broad discretionary powers relative to the law of admiralty [5]

It is an accepted tenet of maritime law that costs of maintenance and cure are recoverable pursuant to the contract of employment, irrespective of a finding of fault on the part of shipowner in occasioning the seaman's injury [6] As the fact of the liability of both defendants

1. Gooden v. Texaco, Inc., 255 F Supp. 343 (E.D. Pa. 1966).

2. Fed. R. Civ. P. 14(c). Two separate libels against Texaco (1964) and Sinclair (1965) were consolidated for trial in which Sinclair impleaded Texaco.

3. Gooden v. Sinclair Refining Company, 378 F.2d 576 (3d Cir. 1967).

4. *Id.*, at 582.

5. *Id.*, at 583.

6. The Osceola, 189 U.S. 158 (1903); Pacific Steamship Co. v. Peterson, 278 U.S. 130 (1928); Vaughn v. Atkinson, 369 U.S. 527 (1962); G. Gilmore and C. Black, The Law of Admiralty 253 (1957). The Court in *The Osceola* at 169 traces the development of the obligation of a shipowner for cure and maintenance to Article VI of the Rules of Oleron, Article 18 of the Laws of Wisbuy and similar provisions found in the Marine Ordinances of Louis XIV, Book III, Title 4, Article II; and in a Treatise

during the contested period was uncontroverted, the importance of *Gooden v. Sinclair Refining Company*[7] is due primarily to the court's decision to grant contribution. The significance of this allowance of contribution lies not only in the application of this concept to a case of first impression arising out of a quasi-contractual obligation; rather the full impact of the decision is found in the possible application of contribution to the field of maritime tort law.[8]

Absent the passage of a statute, courts exercising common law jurisdiction have generally refused to grant contribution among joint tortfeasors in actions for negligence.[9] However, admiralty courts need not look to parallel precedents in the common law ". . . in declaring the general maritime law, free from inappropriate common law concepts."[10] Admiralty courts have dealt, nonetheless, with questions of contribution[11] and indemnity[12] arising from the joint liability of shipowners and

upon the Sea Laws, published in 2 Pet. Admiralty Decisions. *See* Justice Story's comment in *Harden v. Gordon*, 11 Fed. Cas. 480, 483 (No. 6047) (C.C.D. Maine 1823). "There is perhaps upon this subject a greater extent and uniformity of maritime authority, than can probably be found in support of most of those principles of commercial law, which have been so successfully engrafted into our jurisprudence within the last century."

7. *Supra* note 3.

8. The theory of contractual obligation to seamen has given vent of a conflict as to whether a shipowner may be indemnified to the extent of costs for maintenance and cure arising from an injury occasioned through the singular negligence of a third party. *See generally* The Federal No. 2, 21 F.2d 313 (2d Cir. 1927); Jones v. Waterman S.S. Corp., 155 F.2d 992 (3d Cir. 1946).

9. W. PROSSER, THE LAW OF TORTS 274 (3d ed. 1964). (See cases collected therein).

10. Kermarec v. Compagnie Generale, 358 U.S. 625, 630 (1959). *Accord,* The Lottowana, 88 U.S. (21 Wall.) 558 (1874); The Max Morris, 137 U.S. 1 (1890).

11. Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp., 342 U.S. 282 (1951). An employee of Haenn was injured while making repairs on Halcyon's ship. The employee brought an action for negligence against the shipowner, Halcyon. Haenn was then brought into the action as a third party defendant on the ground that his negligence had contributed to the injury. The jury found both parties to have been negligent. The Supreme Court refused to grant contribution to Halcyon concluding (at 285), ". . . it would be unwise to fashion new judicial rules of contribution and that the solution of this problem should await congressional action." It is of interest to note that the decision of the Supreme Court overruled a contrary finding of the Court of Appeals for the Third Circuit which granted contribution, limiting such only to the amount which the employee might have recovered under the Harbor Workers' Compensation Act had he not elected to sue the shipowner. Baccile v. Halcyon Lines, 187 F.2d 403 (3d Cir. 1951). The Court of Appeals said (at 406), "Nor do we think it an insuperable obstacle that the result we reach does not satisfy the historical notions of the relation between tortfeasors. The Act (The Harbor Worker's Act) has intervened in their affairs, and in so responsive a system as the admiralty, we have no difficulty in reaching the equitable solution to a problem not previously contemplated by judicial expressions." *See generally* Pope and Talbot, Inc. v. Hawn, 346 U.S. 406 (1953).

third parties to injured persons, with particular emphasis upon the preeminent right of Congress to legislate in the area of maritime personal injury cases.

It is a well-established rule that admiralty courts will apportion damages with regard to comparative negligence[13] and allow contribution between joint tortfeasors in collision cases.[14] Previous to the present case it was understood that contribution would not be permitted between wrongdoers in non-collision cases.[15] The mainstream of judicial thought in this area has thus concerned itself primarily with the right of a shipowner to indemnity from a negligent third party within the purview of congressional legislation governing recovery for personal injury to dockworkers and seamen.[16]

The court in *Gooden* confined its decision to the novel circumstances before it in reaching what it felt was an equitable solution based upon the broad powers of the court in admiralty. It thus granted contribution despite the conclusion in *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp.*[17] a case of first impression in which the Court held that, ". . . it would be unwise to fashion new judicial rules of contribution," [18] and also despite the fact that the solution to the problem was dependent upon congressional action.[19] In denying contribution to the shipowner in the *Halcyon* case the Supreme Court implied that a different decision might infringe upon the power of Congress to legislate

12. *E.g.*, Ryan Stevedoring Co. Inc. v. Pan-Atlantic Steamship Corp., 350 U.S. 124 (1956).

13. *E.g.*, The Max Morris, 137 U.S. 1 (1890); The Schooner Catherine, 58 U.S. (16 How.) 170 (1854); Curtis v. A. Garcia Y. Cia, 272 F.2d 235 (3d Cir. 1959); Ahlgren v. Red Star Towing Co., 214 F.2d 618 (2d Cir. 1954).

14. *E.g.*, The North Star, 106 U.S. 17 (1882); The Atlas, 93 U.S. 302 (1876). *See generally* United States v. Weyerhaeuses Steamship Co., 294 F.2d 179 (1961).

15. Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp. 342 U.S. 282, 286 (1951). The Supreme Court noted that the record was silent as to the wishes of employers, carriers and shippers concerning the issue of contribution among joint tortfeasors. It was of the opinion that it would be in the best interest of justice to leave the situation to Congress where passage of legislation would be preceded by hearings before which the multifold of interests involved could be heard.

16. *See*, The Longshoremen's and Harbor Worker's Compensation Act, 44 Stat. 1424, 33 U.S.C. sec. 901 (1927); The Jones Act, 41 Stat. 1007, 46 U.S.C. sec. 688 (1920); The Public Vessels Act, 43 Stat. 1112, 46 U.S.C. sec. 781-790 (1925).

17. 342 U.S. 282 (1951).

18. *Id.*, at 285.

19. *See*, Panama R.R. v. Johnson, 264 U.S. 375 (1924). The Court, at 385, concluded that by implication Sec. 2 Art. III of the Constitution had made admiral and maritime law, the law of the United States, subject to the power of Congress to "alter, qualify or supplement it as experience or changing conditions might require."

with regard to the maximum amount recoverable against the dockworker's employer under the Harbor Workers Act.[20] Later court decisions were able to circumvent in part the *Halcyon* decision by granting indemnity to the shipowner where primary fault lay with the injured man's employer, basing their decisions upon the nature of the contractual relationship between the employer and shipowner.[21] Nevertheless, the Halcyon case seems to have stood as a bar to contribution in cases of mutual fault.[22]

In seizing upon the rationale of Justice Black,[23] who wrote the majority opinion in *Halcyon*, the court in *Gooden* concludes that in cases of this kind, where there has been no infringement of any legislative policies, contribution may be granted so long as, ". . . liabilities of reimbursement which are imposed do not increase already existing liabilities of shipowners toward seamen. And seamen lose no rights which are now possessed because no obstacle is placed in the way of their recovery in full from whatever source they choose." [24] Thus, it appears that so long as these conditions are met, admiralty will not be adverse to granting contribution when the equities of the situation so dictate its application.

The decision here, however, must also be viewed within the narrow

20. 342 U.S. at 286.

21. Ryan Stevedoring Inc. v. Pan-Atlantic Steamship Corp., 350 U.S. 124, 134 (1956). "It is clear that as between themselves, the contractor, as the warrantor of its own services, cannot use the shipowner's failure to discover and correct petitioner's own breach of contract cannot here excuse that breach." The employee's injuries were here the result of improperly stowed cargo which an employee of the ship had failed to detect. *Accord*, Waterman S.S. Co. v. Dugan and McNamara Inc., 364 U.S. 421 (1960) (applied even though no contract between shipowner and stevedoring company); Reed v. Yaka, 373 U.S. 410 (1963) (liability held where company which owned the ship same as that which hired the longshoreman); Italia Society v. Oregon Stevedoring Co., 376 U.S. 315 (1964) (stevedoring company held liable to shipowner for unseaworthiness of ship created by stevedoring company even though no negligence on part of stevedoring company was shown).

22. *E.g.*, Amerocean Steamship Co. v. Copp, 245 F.2d 291 (9th Cir. 1957); Connors v. Brown S.S. Co., 115 F.Supp. 775 (W.D. N.Y. 1953); American President Lines v. Marine Terminals Corp., 135 F.Supp. 363 (N.D. Cal. 1955); Mickle v. The Henriette Wilhelmine Schulte, 188 F.Supp. 77 (N.D. Cal. 1960).

23. Italia Society v. Oregon Stevedoring Corp., 376 U.S. 315, 325 (1964) (dissent). Justice Black, in referring to the holding in the Halcyon case, states: ". . . we held that the system of compensation which Congress established in the Longshoremen's and Harbor Worker's Compensation Act as the sole liability of a stevedoring company to its employees . . . ." *Accord*, Ryan Stevedoring Inc. v. Pan-Atlantic Steamship Corp., 350 U.S. 124, 135 (1956) (dissent).

24. 378 F.2d at 583.

limits of the circumstances before the court in determining a claim peculiar to admiralty.[25] It is a subject of conjecture, as to the ultimate effect of the decision upon the field of maritime torts, where previously contribution has been granted only in collision cases. Perhaps a reconsideration has begun within the law of admiralty due to the inequities resultant in a failure to share in the payment of joint tort liability where each is as unintentionally responsible as the other. Such a development would indeed be in line with the well-accepted theory of apportionment of damages in cases of comparative negligence. It would appear that, rather than wait upon congressional action, the courts have begun to remedy the injustices reached by a broad application of the rule in *Halcyon.* At the very least, the court has filled a gap, heretofore untouched in the ancient remedy of cure and maintenance to injured seamen.

*Thomas D. Horne*

**Criminal Law—Effective Assistance of Counsel—Burden of Proof.** While serving a sentence in a State Convict Road Force Camp in Bedford County, Virginia, James Fields escaped from custody. He was recaptured within an hour and placed in the county jail, where he was held for twelve days. During this period an indictment was returned against him for escape and statutory burglary,[1] but no one discussed the charges with him prior to the date of his trial. When he was brought into the courtroom to be tried, the presiding judge appointed an attorney to defend him. After a brief consultation with this attorney in the rear of the courtroom, Fields pleaded guilty and received sentences totaling six years.[2]

Fields subsequently petitioned the circuit court for a writ of habeas corpus, contending that he had been denied the effective assistance of counsel by virtue of the last-minute appointment. The circuit court granted the writ but was reversed by the Virginia Supreme Court of

25. *Id.*, at 582.

1. During his hour of freedom, Fields entered a building described in the record only as "a cabin," apparently to hide from his pursuers. The paucity of information regarding this charge was later made the subject of comment by the federal court. Fields v. Peyton, 375 F.2d 624, 629 (4th Cir. 1967).

2. The total elapsed time between appointment of counsel and sentencing by the court was estimated at fifteen to thirty minutes. The petitioner testified that the appointed attorney did not question him as to the facts of the case, and did not ask if he was guilty, prior to recommending a guilty plea. Fields v. Peyton, 375 F.2d 624, 625-6 (4th Cir. 1967).