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CASE COMMENTS

ABANDONMENT OF A SUNKEN SHIP UNDER
THE WRECK ACT

The owner of a ship accidentally or negligently sunk in a channel or river is not required to raise it, but may abandon the hull by giving notice to the proper authorities. He thereby limits his liability for removal expenses incurred by the Government or by some private individual to the value of the sunken vessel, which is forfeited.¹ This is true even though the wreck is a hazard to navigation and completely blocks a navigable passage. The Wreck Act² so limits an owner's liability unless he fails to abandon the wreck. However, the Act does provide that it is unlawful deliberately or carelessly to sink a ship in a navigable channel and to fail to mark such a wreck, unless it is abandoned. Oftentimes, the applicability of the Wreck Act to a particular factual situation is not clear from the statutory language,³ and thus, its effect is judicially questioned.

*United States v. Bethlehem Steel Corp.*⁴ involved the interpretation and effect of the Wreck Act as it applies to the abandonment of a sunken craft. The S.S. *Texmar*, a ship owned by the Bethlehem Steel Corporation and operated at the time of its sinking under a bareboat charter⁵ by the Calmar Steamship Corporation, grounded on a shoal in Gray's Harbor, Washington. After several unsuccessful

¹E.g., *United States v. Zubik*, 295 F.2d 53 (3d Cir. 1961); *City of Newark v. Mills*, 35 F.2d 110 (3d Cir. 1929); *Petition of Highlands Navigation Corp.*, 29 F.2d 37 (2d Cir. 1928); *Loud v. United States*, 286 Fed. 56 (6th Cir. 1923); *Orrell v. Wilmington Iron Works, Inc.*, 89 F. Supp. 418 (E.D.N.C. 1950), *aff'd in part and rev'd in part*, 185 F.2d 181 (4th Cir. 1950); *The Manhattan*, 10 F. Supp. 45 (E.D. Pa. 1935); *The Central States*, 9 F. Supp. 934 (E.D.N.Y. 1935); *The Irving F. Ross*, 8 F.2d 313 (D. Mass. 1923); *De Bardeleben Coal Co. v. Cox*, 16 Ala. App. 172, 76 So. 409 (1917); *Winpenny v. Philadelphia*, 65 Pa. 135 (1870); *Hagan v. City of Richmond*, 104 Va. 723, 52 S.E. 385 (1905).

²Rivers and Harbors Appropriation Act of March 3, 1899, ch. 425, §§ 15, 19, 20, 30 Stat. 1152-54 (1899), 33 U.S.C. §§ 409, 414, 415 (1958).

³E.g., *Zubik v. United States*, 190 F.2d 278 (3d Cir. 1951); *The YFNX-6*, 156 F. Supp. 325 (D. Md. 1957); *In re Eastern Transp. Co.*, 102 F. Supp. 913 (D. Md. 1952).

⁴319 F.2d 512 (9th Cir. 1963).

⁵A bareboat or demise charter is one in which the charterer takes complete control of the ship for a particular voyage or for a period of time and mans her with his own people. Here, the relationship between the charterer and the owner is analogous to that of a lessee and lessor of a building or tract of land. With other common types of charters, e.g., time and voyage charters, the vessel is manned and navigated by the owner. *Gilmore & Black, The Law of Admiralty 170-73 (1957); Robinson, Admiralty § 83 (1939).*

attempts to free it, the ship broke up and sank, obstructing the channel leading into the harbor. Bethlehem and Calmar notified the Corps of Army Engineers that they were abandoning the wreck. About two weeks later the Corps of Engineers informed the two corporations that it refused to accept the tendered abandonment and that it was going to remove the ship from the channel at the expense of the owner and charterer. Subsequently the channel was cleared at a cost of more than \$336,000, beyond the salvage value of the ship; the Army then notified the corporations that it was charging them with this amount.

Bethlehem and Calmar filed a petition in the U.S. District Court asking for a limitation of liability from this expense. The Government answered and alleged that the ship had been negligently sunk by the corporations, and this allegation was taken as true by both the trial and appellate courts for the purpose of considering the Government's claim for reimbursement made in the suit and the companies' motion to dismiss the claim. The United States averred that its claim was valid because of the Rivers and Harbors Appropriation Act,⁶ and because even in the absence of this legislation, there was such a liability at Common law. To point out the construction which it thought should be given to the Wreck Act, the government cited a U.S. Army Corps of Engineers regulation which imposed liability for removal costs on a negligent shipowner.⁷

On appeal, after the District Court had dismissed the Government's claim, the United States Court of Appeals for the Ninth Circuit affirmed the decision below. The court pointed out that the precedents clearly showed that there was no such liability at common law. Also, it found that the right given the Government under the Wreck Act was in the nature of an *in rem* right against the removed vessel and not an *in personam* right against the vessel's owner. Since the particular claim which the Government asserted was not dealt with in the Wreck Act, the court felt that it should be very hesitant to read such an obligation into it. One judge of the Court of Appeals dissented, thinking that Bethlehem and Calmar should stand the expense of removal because the sinking had been negligent.⁸ His view was based on the idea that since the statutory prohibition against negligent sinking in section 409 of the Wreck Act was directed at personal conduct, an *in personam* remedy was implied. Also, he asserted

⁶Rivers and Harbors Appropriation Act of March 3, 1899, ch. 425, §§ 9-20, 30 Stat. 1150-54 (1899), 33 U.S.C. §§ 401-15 (1958).

⁷Note 4 *supra* at 520.

⁸*Id.* at 522.

that *United States v. Republic Steel Corp.*,⁹ in which the Government was granted an injunction to stop the deposit of waste and to restore the depth of a navigable channel based on a violation of 33 U.S.C. § 403,¹⁰ served as a compelling analogy to the case under consideration.

According to the common law, when a vessel accidentally sinks in a channel or river, the owner can abandon it and thereafter have no further responsibility for its removal.¹¹ By abandonment, he is relieved of liability even where the sinking is due to his negligence,¹² although there is some contrary authority to this view.¹³ But, until the wreck is abandoned, the owner remains responsible for any unreasonable obstruction.¹⁴ If a ship is scuttled intentionally, the shipowner continues to be responsible for removal even though he abandons.¹⁵

The rationale behind this right of abandonment and of the subsequent limitation of liability is one of public policy designed to encourage and promote the maritime industry. It is felt that the owner has already suffered sufficient loss by the destruction of his ship and should not be further burdened with having to pay for the cost of removal to restore safe navigation conditions.¹⁶ Connected with this policy of nonliability for removal expenses is the idea that where a vessel blocks or is dangerous to traffic in navigable waters, the responsibility for its disposition should fall on the public since navigation conditions are a matter of public concern.¹⁷

Based on the power of Congress to regulate commerce,¹⁸ the Federal Government is given dominion over the navigable waters¹⁹ of the

⁹362 U.S. 482 (1960).

¹⁰Section 403 says in part: "The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited...and it shall not be lawful to excavate or fill, or in any manner to alter . . . the . . . condition . . . of the channel of any navigable water of the United States, unless...authorized by the Secretary of the Army..." Rivers and Harbors Appropriation Act of March 3, 1899, ch. 425 § 10, 30 Stat. 1151 (1899), 33 U.S.C. § 403 (1958).

¹¹E.g., *Winpenny v. Philadelphia*, 65 Pa. 135 (1870); *White v. Crisp*, 10 Exch. 312, 156 Eng. Rep. 463 (1854); *The King v. Watts*, 2 Esp. 675, 170 Eng. Rep. 493 (N.P. 1798); cf. Annot., 3 L.R.A. (N.S.) 1120 (1906).

¹²45 C.J. Navigable Waters § 95 at 471 n.29. (1928).

¹³*De Bardeleben Coal Co. v. Cox*, 16 Ala. App. 172, 76 So. 409 (1917); *Boston & Hingham Steamboat Co. v. Munson*, 117 Mass. 34 (1875).

¹⁴45 C.J. Navigable Waters § 95 at 471 (1928).

¹⁵*United States v. Hall*, 63 Fed. 472, 473 (1st Cir. 1894).

¹⁶*Gulf Coast Transp. Co. v. Ruddock-Orleans Cypress Co.*, 17 Fed 858 (E.D. La. 1927); *The Manhattan*, 10 F. Supp. 45, 49 (E.D. Pa. 1935); 45 C.J. Navigable Waters § 95 at 471 n.28(a) (1928).

¹⁷*Ibid.*

¹⁸U.S. Const. art. 1, § 8; *Gilman v. Philadelphia*, 70 U.S. (3 Wall.) 713 (1865).

¹⁹33 U.S.C.A. § 409 n.5 (1957).

United States to the exclusion of the states.²⁰ Under this authority, the Wreck Act was passed in 1899 as a part of that year's Rivers and Harbors Appropriation Act.²¹ In effect, it preserves the general maritime common law.²² Section 409²³ of the Act prohibits the wilful or negligent sinking of a vessel in navigable channels and directs that a sunken craft be immediately marked unless abandoned. Also this section asserts that it is the owner's duty to proceed with the timely removal of the craft, and that a failure to do so is considered to be an abandonment which permits the United States to take possession and remove it. Section 414²⁴ sets forth the procedure for removal by the Secretary of the Army where the wrecked ship has been abandoned. This provision regulates the relationship between the United States and the owner and applies without regard to the cause of the sinking.²⁵

Unless a shipowner abandons his sunken craft as provided for in the Wreck Act, he may lose his right to limit liability to the value of the ship and may become personally liable for removal expenses and

²⁰E.g., *City of Tacoma v. Taxpayers*, 357 U.S. 320, 334 (1958).

²¹Note 6 supra. §§ 409, 414 and 415 are known as the Wreck Act.

²²"The Rivers and Harbors [Appropriation] Act of March 3, 1899 . . . recognized the right of abandonment given by the general maritime law, and points out the intention of Congress to preserve that right." *Petition of Highlands Nav. Corp.*, 29 F.2d 37, 38 (2d Cir. 1928). In *The Manhattan*, 10 F. Supp. 45, 49 (E.D. Pa. 1935), it was suggested that a possible change in the common law was effected by these statutes in that the Government is given the wreck itself to cover expenses where it undertakes to remove the ship after abandonment, or is given a lien against the raised craft for the cost of removal where the United States has taken possession of the wreck because of emergency before it has actually been abandoned.

²³§ 409 . . . It shall not be lawful . . . to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels . . . And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States . . ." 33 U.S.C. § 409 (1958).

²⁴33 U.S.C. § 414 (1958). "Section 414 merely reaffirms the law as it stood by which the owner terminates his liability by abandonment (which may consist of doing nothing for 30 days) and the Secretary of . . . [the Army] is authorized (but not required) to assume the general governmental duty of clearing the navigable channel. Section 415 provides that he may perform this duty without waiting for abandonment by the owner." *The Manhattan*, 10 F. Supp. 45, 49 (E.D. Pa. 1935).

²⁵Note 4 supra at 524.

for damages to other ships which run against it.²⁶ Abandonment as contemplated by section 409 may apparently be accompanied by the actual notification to the U.S. Government of such an intention.²⁷ This may be effected through the U.S. Army Corps of Engineers,²⁸ the U.S. Coast Guard,²⁹ or other appropriate governmental agencies. There is a similar procedure at common law where some public official such as a harbor master must be notified of the abandonment.³⁰ According to sections 414 and 415,³¹ there is a presumption of the abandonment after thirty days,³² and the Secretary of the Army, even though thirty days has not passed, has the right to take immediate possession of a sunken wreck and proceed to remove or destroy it, if there is an emergency as a result of the hazard.³³ The provisions concerning abandonment under sections 414 and 415 merely terminate ownership and do not relate to the imposition of liability where there has been fault in the cause of the sinking. If there has been fault, liability may be imposed under section 409.³⁴

The Wreck Act is primarily a criminal statute dealing with the marking and removal of wrecks.³⁵ The provision relating to the negligent sinking of vessels, so far as civil liability is concerned, is simply declaratory of the common law obligation to exercise due care.³⁶ Some decisions have used the Wreck Act to impose civil liability on a ship-

²⁶See *The Snug Harbor*, 53 F.2d 407 (E.D.N.Y. 1931); *People's Coal Co. v. Second Pool Coal Co.*, 181 Fed. 609 (W.D. Pa. 1910).

²⁷Id. 33 U.S.C.A. §§ 409 n.19, 414 n.6 (1957).

²⁸See 33 U.S.C.A. § 414 (1957).

²⁹See *Berwind-White Coal Mining Co. v. Pitney*, 187 F.2d 665 (2d Cir. 1951); *New York Marine Co. v. Mulligan*, 31 F.2d 532 (2d Cir. 1929); *The Plymouth*, 225 Fed. 483 (2d Cir. 1915); *The Snug Harbor*, 53 F.2d 407 (E.D.N.Y. 1931). Some of the earlier cases refer to notification of the Lighthouse Service. This Service has now been incorporated into the U.S. Coast Guard. 1963-64 United States Gov't Organization Manual 121 (1963).

³⁰E.g., *The Douglas*, 7 P.D. 151 (1882).

³¹*Rivers and Harbors Appropriation Act of March 3, 1899*, ch. 425, §§ 19, 20, 30 Stat. 1154 (1899), 33 U.S.C. §§ 414, 415 (1958).

³²E.g., *Orrell v. Wilmington Iron Works, Inc.*, 89 F. Supp. 418 (E.D.N.C. 1950), *aff'd in part and rev'd in part*, 185 F.2d 181 (4th Cir. 1950).

³³33 U.S.C.A. § 415 (1957).

³⁴33 F.C.A. § 409 nn. 32-45 (1960).

³⁵33 U.S.C. § 411 (1958) imposes criminal penalties on persons or corporations who do not comply with section 409. A violation of this section is said to constitute a misdemeanor, and a conviction therefor is punishable by a fine of from \$500 to \$2500, or 30 days to 1 year imprisonment, or both.

³⁶*Sullivan v. P. Sanford Ross, Inc.*, 263 Fed. 348 (2d Cir. 1920); *The YFNX-6*, 156 F. Supp. 325 (D. Md. 1957); *People's Coal Co. v. Second Pool Coal Co.*, 181 Fed. 609 (W.D. Pa. 1910).

owner for his wrongful acts,³⁷ in accordance with the view that where a statute makes certain conduct criminally punishable, civil liability for damages caused by the unlawful conduct attaches though not proscribed in the statute.³⁸

Whether Congress in drafting the Wreck Act meant to include such a claim as the United States asserted in the *Bethlehem* case is not entirely clear. However, it is possible that a claim of this sort could be included. The Army Corps of Engineers regulation,³⁹ which the government cited, is illustrative of this view. The regulation recognizes that an owner may abandon his sunken craft if it sank without fault on his part; but if the sinking was due to negligence or wilfulness, he cannot relieve himself from criminal or civil liability by merely abandoning the wreck. It states that if the owner has wrongfully allowed his vessel to sink, he may be subject to criminal penalties. He may also be compelled to remove the wreck or to pay for its removal. To impose liability such as this does not seem to go beyond the scope of section 409.⁴⁰ In fact, the bare language of the section appears to allow this result.⁴¹

³⁷E.g., *Petition of Boat Demand, Inc.*, 174 F. Supp. 668 (D. Mass. 1959); *In re Eastern Transp. Co.*, 102 F. Supp. 913 (D. Md. 1952). See also, *United States v. Hall*, 63 Fed. 472 (1st Cir. 1894).

³⁸Gregory, *Breach of Criminal Licensing Statutes in Civil Litigation*, 36 Cornell L.Q. (1951); Morris, *The Role of Criminal Statutes in Negligence Actions*, 49 Colum. L. Rev. 21 (1949).

³⁹209.410 *Abandonment of Wrecks*. By the maritime law the owner of a vessel which is sunk without fault on his part may abandon the wreck in which case he cannot be held responsible for removing it even though it obstructs navigation. That law has not been changed by sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152, 1154; 33 U.S.C. 409, 414, 415), which fully recognize the owner's right of abandonment. However, a person who willfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor or punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or to pay for its removal." 33 C.F.R. § 209.410 (1962).

⁴⁰The dissenting judge in the *Bethlehem* case said: "An innocent shipowner should be free of removal costs because his innocence places him beyond the reach of the prohibition in Section 409; but one who voluntarily or carelessly sinks a vessel should not be permitted to avoid liability for the costs of his wrongdoing simply because he happens also to own the vessel, and chooses, in his own interest, to abandon it." Note 4 *supra* at 523.

⁴¹Note 4 *supra* at 523-26. See 33 U.S.C.A. § 409 (1957). "...Section 409, when properly construed, permits abandonment of a vessel only as a result of such things as fire, storm, collision or unforeseen unseaworthiness, and that if abandonment results under such circumstances the craft becomes subject to removal by the Government pursuant to Section 414, but that it is only under such conditions that