LIMITATION OF LIABILITY OF VESSEL OWNERS.

The common law, as well as the civil law, made no distinction between the liability of an owner of a vessel for the negligent acts of his master and crew and the liability of an owner of a house for the negligent acts of his servants. But more than two centuries ago, France and Holland adopted laws in the interest of commerce, limiting the liability of vessel owners (not only for torts but for contracts of the master) to the value of the ship and freight. While it is frequently maintained that limited liability is one of the doctrines of the general maritime law, it is now accepted as the best authority that from these laws of France and Holland the doctrine of limited liability of vessel owners has sprung.

It was many years later, 1734, before England did anything to put her vessel owners on equal footing with the vessel owners of Continental Europe. While at the present time an English vessel owner may limit his liability in certain cases, he cannot limit below a certain sum, being required, in each instance where he is entitled to limit, to pay in so many pounds a ton, based upon the tonnage of the vessel, before he can avail himself of the benefits of the act. He cannot limit at all for contracts entered into by his master as his agent, England never having adopted the laws of Continental Europe in this respect.

To promote commerce, induce ship building and put our vessels on an equal footing with vessels of other nations, Congress adopted, in 1851, certain laws known as "An act to limit the liability of ship owners and for other purposes." By this act Congress conferred upon the United States District Courts jurisdiction in all cases brought to limit the liability of ship owners. The parts of the act more particularly within the purview of this article are now sections 4282 and 4283 of the General Statutes.

SEC. 4282. LOSS BY FIRE:

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

SEC. 4283. LIABILITY OF OWNER NOT TO EXCEED HIS INTEREST:

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.

It has often impressed me as strange that vessel owners permit their cases, growing out of accidents on vessels, to be tried in a common law forum before a jury, when in almost every instance such forum is incompetent to give them complete justice. The only way I can account for it is that the law of Admiralty has been but meagerly taught in the universities and consequently lawyers, no matter how great their ability to try cases, have, because of this lack of training, not selected the proper forum and in many instances have consequently got their clients into expensive and prolonged litigation. The courts in the different states are to-day filled with cases that have been brought because of accidents happening on vessels. These courts, undoubtedly, have jurisdiction of the actions (although I have heard from law students that they have been taught that such actions could not be tried in a common law court) and these cases will probably be tried before a jury and the owner of the vessel, in many instances, be required to pay more than the value of his vessel. No doubt, every one of these cases could be removed to the United States District Court and the case tried in Admiralty before an Admiralty Judge where the owner of the vessel could get more perfect justice.

To illustrate the great benefit and importance of the limited liability act to a vessel owner, I will suppose a case under each statute.

Under section 4282. Suppose a small steamer worth \$10,000, carrying passengers and freight, while entering New Haven harbor, should take fire from an overheated boiler and destroy cargo, injure some passengers and kill others. Suits are brought for several times her value. The fire burned the steamer to the water's edge and her hull became practically useless so that her value was reduced to but a few dollars. Suppose that service could be obtained upon the owner in the states of New York, New Jersey and Connecticut and suits were brought against him for loss of cargo, injury to passengers and for loss of life, and suppose that some of these suits were brought in state courts in these states and some in the United States Courts. Suppose that the suits which were brought aggregated from fifty to sixty thousand dollars. The

owner of the steamer in such a case should file a libel and petition to limit his liability to the value of the wreck right after the accident. Of course, if there were any other paraphernalia belonging to the vessel, like a yawl boat, that should be surrendered also. Upon filing the libel and petition, the owner should either file a stipulation for value if he desires to keep the wreck, or if not, ask that it be surrendered to a trustee to sell, and in the libel and petition an injunction should be asked for, which, upon being signed by the district judge, all the various suits which have been brought in the different jurisdictions, whether in the state courts or in the United States Courts, would be at once stayed and all the various people who have brought suits would be brought into this one suit where they would have to answer the libel and petition and file their claims. Then the case would be tried, and unless the various claimants show under this statute that the fire from this overheated boiler was caused by the owner's "design or neglect," their suits must fail and the owner's libel and petition would not only be sustained but he would be relieved from all liability and the proceeds from the sale of the wreck, after paying the court expenses, would be paid to him; for in the petition to limit liability the owner does not concede that the various litigants are entitled to anything, but does, on the other hand, deny any liability just as he might had he tried each separate case in the forum in which it was brought.

Under the other statute, 4283, I will suppose that a small excursion steamer takes an excursion out from New Haven to some point in the sound. Upon returning she has a collision with a schooner, which collision injures several passengers and seriously damages the schooner, and that a libel is filed by the schooner for her injuries, in Admiralty, in the United States District Court, and that the passengers bring suits in the state courts. Suppose that the steamer were worth five thousand dollars, that the libel of the schooner alleges damages for six thousand dollars and that the actions brought by the different passengers were for ten thousand dollars more. A petition to limit the liability of the owner should be filed in the United States District Court, and suppose the steamer were not seriously damaged and the owner wanted to keep her. A stipulation for her value should be filed and an injunction asked for as in the other case. This would stay all the suits both in Admiralty and at common law and even if the court should find that the steamer were guilty of improper navigation and liable, the claimants could not get more than the value of the steamer which would have to be distributed pro rata among them unless the court found

that the accident was not "without the privity or knowledge of the owner." If the court should so determine, it would dismiss the petition to limit liability and the various cases which had been stayed would then proceed in the different courts in which they had been brought.

It will be noticed from the two supposed cases that there is a distinction between the two statutes in that in the case of "design or neglect" under the statute in regard to fire, unless the owner is shown to be guilty of "design or neglect" it is an absolute limitation, while under section 4283, an owner's vessel may be held to blame for an accident even if it is occasioned "without the privity or knowledge of the owner," and yet the owner while he gets his limitation may be held liable up to the value of his vessel and pending freight for the voyage.

It will be noticed also that in case of fire both of the statutes may be used.

Whether an accident is within the privity or knowledge of the owner under the statute covers a very interesting class of cases in the Federal Reporter, which would be out of place to go into at length in this article. An illustration or two will, I believe, show how the statute has been interpreted.

The employing of a Chinese crew whose talk could not be understood by the officers was sufficient in a case on the Pacific Coast to deny the owner of the steamer a limitation of liability because the vessel was not seaworthy, having a crew which could not be understood and therefore was not properly manned and equipped, which it is the owner's duty to see is done.

A corporation in transporting passengers from the shore by means of a yawl-boat to its steamer, put more people into the yawl-boat than she was qualified to carry, which resulted in the boat's upsetting and several passengers losing their lives. The overloading of the yawl-boat was done in the presence of one of the officers of the corporation owning the steamer, and the overloading was therefore held to be with the privity or knowledge of the owner and a limitation of liability was denied.

A barge not having any tongs with which to discharge her cargo of rails, her captain borrowed some from another barge. The tongs borrowed were worn and inefficient and one of the employees in using them was injured. The owner was denied a limitation of liability for not supplying the barge with proper equipment suitable for the work in which she was engaged.

The employing of a captain who was shown to be inefficient,

which fact the owner of the boat ought to have known, was enough in a case where an accident occurred because of the captain's incompetency, to deny the owner the protection of the limited liability act.

These statutes at first did not apply to barges and canal boats, neither did they apply where an accident happened on vessels in bays, rivers and inland waters, but now they have been extended by different acts so that they apply to all waters navigable from the sea by vessels of ten tons or more and to the great lakes and to every kind of craft.

An act has also been passed which gives an owner in a vessel the right to limit his liability for any debts which may have been contracted for supplies for the vessel, to his interest in the vessel, so, if a managing owner of a vessel should run a vessel in debt beyond her value, an owner cannot be required to pay any more of the debt than his interest in the vessel is worth.

I have frequently had motions made to dismiss petitions for limitation of liability that I have filed, upon the ground that they were in violation of the Constitution in denying people a trial by jury. It is needless to say that such motions have never been successful.

Under the Constitution the judicial power of the United States is extended to all cases of Admiralty and Maritime jurisdiction. Congress has given the District Courts jurisdiction over all Admiralty and Maritime cases and has excepted all civil cases of Admiralty and Maritime jurisdiction from trial by jury. Hence, an accident happening on a vessel is within the limited liability act and under the Constitution is of Admiralty and Maritime jurisdiction and the District Courts have jurisdiction of such cases, and the case being a civil case of Admiralty and Maritime jurisdiction, it is excepted under the judiciary act from a trial by jury; therefore it must be obvious that the limited liability act which merely grants relief in cases that are within the Admiralty and Maritime jurisdiction, does not deny people a right of trial by jury, for they never had any right to a trial by jury of an Admiralty case and no state statute can give them such a right. If Congress had not passed the limited liability act a person injured on a boat could have had his case tried in a common law court to a jury if he wished; for under the judiciary act such rights are saved to suitors. But as it has been said it was the right to a trial in the common law court that is so saved and not a common law case that was created.

There is one other form of limitation of liability which applies to damage of cargo and is a matter of defense in the answer. But this is not part of what is commonly known as "Limitation of Liability."

This is but one of the many interesting branches of Admiralty with its tales of the seas.

It is to be regretted that just because the law of Admiralty does not seem to open a field for money-making to the average student, the universities should deny the students the benefit of the broadening culture derived from the study of this branch of the law. It is strange, too, that when the universities do add this branch of the law to their curriculum, they generally select someone to teach it who has never practiced it. There is no part of jurisprudence, if properly presented to a class, that would create so much interest and enthusiasm and would consequently have such a tendency to help students in all other branches of the law, as the study of Admiralty. It would take the students to every shore, get them interested in something beyond their state border line and make them feel that they were becoming a part of this law of nations which has helped to civilize the sea commerce of the world and has had much to do with the advancement and enlightenment of the peoples of the earth.

James D. Dewell, Jr.