RE POLEMIS CASE (1921) 3KB 560- CRITICAL APPRAISAL

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ABSTRACT

Polemis & furness, withy & company, limited is a case where the judgment revolved around the concept of negligence. The case was held on July 7, 1921, it is an English tort case based on Negligence. Tort is a very important concept because the reason for tort law is to re-establish somebody who has been harmed because of some unacceptable deeds of another to the condition they were before the injury by granting them financial aid which would make up for the misfortunes endured.

There were various cases of negligence decided by the court of law jurisdiction, only a few have given rise to such controversy as referred to re Polemis case 1921, the authority or the lordship have never expressly approved of the case however has opened a lot of questions to answer, for instance how far has the concept of negligence been incorporated properly and it also raised questions on the traditional way of finding faults of the wrongdoer and asking for complete compensation.

Negligence is the main topic of the case, the aforesaid case i.e. Re Polemis will be analyzed in the proposed work with regards to negligence. Re Polemis managed the issue of obligation, which includes basic law. The subsequent result, not very clear yet, straightforwardly discernible to negligence, is a matter of certainty and relies upon conditions and on the happenings ensuing to the careless demonstration.

The foreseeability-proximate cause issue has created a surge of writing and many remarks by judges, the greater part of it in the language of predictability, causation, and distance.The only excuse for adding a few drops to this ocean of words is a belief that neither the principles enunciated in the Re Polemis nor those stated in In wagon Mound (a case which overthrew the principles of Re polemis) are an adequate answer to the basic legal problem about which the controversy rages.

RESEARCH QUESTION

What does the case manage?

Was the judgment pertaining to Re Polemis justified?

What were the issues and current realities of the case?

What in true essence means negligence?

LITERATURE REVIEW

THE ROAD FROM MOROCCO: POLEMIS THROUGH DONOGHUE TO NO-FAULT By: Martin Davies

It is an examination paper, the idea of this paper makes a short synopsis of the notable occasions in Re Polemis. The paper criticized the choice of Re Polemis on the premise social setting of time, depicted the reason for activity in Re Polemis, and gave reminiscent comments on the legitimate scholarly response to Re Polemis.

REQUIEM FOR POLEMIS

By : J. C Smith

In this article the author explained the concept of negligence, an attempt was made to establish that negligence is a normative judgment of fault, that a judgment can only be made meaningfully about people and not about conduct or states of mind, argued that the Polemis-Wagon Mound problem arises from the fact that while fault, experienced as a psychological feeling, varies in intensity.

THE MODERN LAW REVIEW on Re polemis

Published By: Wiley

It is a paper summing up the historical backdrop of the regulation in 1921 and the clashing perspectives. The article met the protest that if predictability is an adequate test to fix duty regarding demonstration, it ought to likewise be a test for the proportion of harms. And analyzed there is no genuine relationship between predictability and harm.

NEGLIGENCE. REMOTENESS. THE POLEMIS RULE

By: R. W. M. Dias

This paper gave a case comment on various cases related to remoteness on negligence, it further emphasized the wagon mound case. It also gave a case comment on foreseeability, culpability. and raised questions like, why, when the damage of one kind is foreseeable and damage of a different kind is actually caused, is it more just for the plaintiff than the defendant to bear the loss?

THE PASSING OF POLEMIS

By: JOHN G. FLEMING

The author of the paper went on to first give the facts of the famous Wagon mound case and then described foreseeability, negligence. Commented on the theories of Negligence keeping the historical perspective and need for the development of such concepts.

REMOTENESS PRINCIPLES AND UNJUST RESULTS IN COMMON LAW AND IN EAST AFRICA

By: SP SINGH

In this article after making a note of the judgments of a couple of cases, the author came to a conclusion that the development of remoteness principles has really made the liability very remote in English law and consequently in East African law. It answered the main problem, where to draw a demarcation line between the narrowest and the broadest level of abstraction in respect of foreseeable damage?

CHAPTER 1

Things to know about the case

CITATION - 1921 3KB 560

NAME OF THE CASE - Re polemis and furness withy co

COURT - Court of the appeal of England and Wales

JUDGES – Lord Justice Bankes, Warrington , Scrn bvutton

ABOUT THE CASE - Polemis and Boyazides were the owners of the Greek steamship *Thrasyvoulos (which was further lost due to fire in the present case), the company* has chartered their steamship to Furness, Withy & Co., Ltd. In this case, the charters i.e. Furness,withy & co.Ltd took the ship on a voyage from Nantes to Lisbon to Casablanca, loaded tins of benzine and petrol cases besides other cargo, but with the advent of the voyage the tins leaked and it produced vapors in the hold thus is required for the ship to stop at a port and required the stevedores to transfer some cases to the tween decks, carrying out this process due to the negligence of some workers a plank knocked out and cause a spark and this spark ignited the whole ship which was further also supported by the petroleum vapors present in the hold. The ship got destroyed.

The owners asked for full compensation from the charters i,e the full value of the ship but due to unsettlement, the case went all the way to arbitration.

The arbitrator found that the ship was lost due to fire and the ignition of the fire was due to the negligent work of the workers it was held,the charters were liable for the direct consequences though the consequences could have not to be anticipated reasonably as a result of which charters were liable for the fire of the ship.

Tests have been formulated over time to understand the remoteness of damage and reasonable foreseeability , after the re Polemis case was declared it was realized that the law was too restrictive in a sense that, always the faults are found in the work of the wrongdoer and are asked to compensate for the acts done, the foreseeability is reduced for the purpose.

The Court held (1) the litigants were at risk for the immediate outcomes of their careless demonstration, regardless of whether those results were sensibly predictable, and (2) that an exclusion statement in the charter party (cl. 21) didn't absolve the respondents from obligation.

CHAPTER-2

NEGLIGENCE A COMMENT

In ordinary speech, and often in the language of judges, the term negligence is loosely used. Those who attempt to clarify tort law usually perpetuate these ambiguous usages rather than clarify the concept[1]. There are two theories of the nature of negligence which have led to much confusion in the law of torts. First, there is the concept of negligence as a particular kind of conduct, and second, the concept of negligence as a state of mind." An attempt will be made in this paper to demonstrate that the Polemis decision is based on the theory that negligence is conduct.

If we assume negligence to be a kind of conduct we may then speak of negligent and non-negligent acts, in which negligence must be a quality of the act itself. This is to say that a negligent act, or conduct which is negligent, must have some characteristic that conduct which is not negligent does not have. This quality is not the fact that the act results in damage since some conduct which is termed negligent do not, while some conduct not commonly referred to as negligent, does. Thus driving down a busy street at eighty miles an hour would generally be considered negligent irrespective of whether any pedestrian or other vehicle was struck, while the driving of a vehicle into a stone wall in order to test certain safety factors of the car would not be a negligent act.

If it is assumed that negligence is a particular kind of conduct then the attention must be focussed upon the conduct and its causal relationship to the loss suffered. Since the emphasis is on the particular act causing injury, the directness of causation (whatever that may mean), the test of whether or not a loss will be shifted once culpability is found, has at least an appearance of logical consistency.

Both the theory of negligence (conduct), and the test of liability (direct consequences) are related to the particular behavior in the issue. The basis of shifting loss, therefore, is the proposition that one ought to be responsible for the direct consequences of his negligent acts. If, however, negligence is not conducted but something else, there is no logical basis for such a test.

Given a state of mind theory of negligence in which the state of mind in regard to the consequences of an act becomes the criterion of liability, the finding of liability and culpability become one question. If there is no liability for the consequences of an act without negligence, i.e., a negligent state of mind in regard to those consequences, the presence or absence of this state of mind decides liability. Once you have found negligence or culpability the question of liability is settled. The state of mind theory of negligence therefore negates any basis for separating the question of culpability and liability. Thus the Privy Council states that the proposition of Lord Sumner in Weld-

[1] J.C SMITH,REQUIEM FOR POLEMIS,HEIN ONLINE, Dec 23,2020, https://heinonline.org/HOL/License

Blundell v. Stephen[2], that "this, however, goes to culpability, not to compensation,"' [3]is fundamentally false. The Privy Council see the question of liability and culpability as a single problem

Acts, conduct, or behavior may have the characteristic of being negligent in that the doing of them creates risks of harm. But negligence is a non-normative characteristic. It may be ascertained by examining the act itself irrespective of who does it. As pointed out above, however, all acts which create risks of harm, may not be classified as negligence. Acts may be classified as beneficial or harmful by evaluating the desirability of the predicted results. This again is a non-normative quality which can be ascertained by examining the act alone. But in any such characterization of an act there is no normative meaning of fault implied. No one can meaningfully predicate the quality of negligence of an act unless sufficient facts are introduced to allow a normative judgment of negligence to be made directly or indirectly of the actor. Then, and only then, may the normative quality of the actor be imputed to the act. The quality which makes conduct negligent is therefore not factual and it cannot be ascertained from the act alone. The reason for this has been pointed out by Hume who has demonstrated that a normative 'ought' proposition cannot be derived from the 'is' of fact.[4] Negligence implies that something was done which ought not to have been done and therefore the quality of negligence cannot be derived from the 'is' of behavior,thus the act of the charters was considered as negligent in the Re Polemis case and this ought to be out of the conduct.

CHAPTER -3

CRITICISM

In Donoghue period, the exceptional strands of the objection of Re Polemis. To start with, there were the articles that assaulted its doctrinal family, contending that the points of reference expressed through the court don't help its decision.

The years of 1932 to 1952 didn't really observe a reworking of history with respect to Re Polemis, they surely observed the union of an undetectable difference in view that will at last lead to a noticeable difference in perspectives. In the scholastic tempest released by the instance of Thorogood v. Van Den Berghs and Jurgens Ltd[5]. The scholastic reaction to the case gave obvious signs of an inferred change of position on Re Polemis that was obviously the aftereffect of post-Donoghue thinking. The Court of Appeal in Thorogood

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[2] Weld-Blundell v. Stephen | [1920] UKHL 646

[3] Wright,Re Polemis,The modern law review,14,397,1951, https://heinonline.org/HOL/License

[4] Wright,Re Polemis,The modern law review,14,399,1951, https://heinonline.org/HOL/License

[5] Thorogood v. Van Den Berghs and Jurgens Ltd, ' (1951) 2 K.B. 537

had unequivocally attested that Re Polemis was still acceptable law after Donoghue. This evidently caused issues.

Lordships in Bourhill v. Young[6] declined the invitation to pronounce upon the Polemis rule, their express caveat that it was open for future reconsideration at the highest level was anticipating the inevitable.

The most persuasive of the articles showing up, in 1952 was by one of Re Polemis' fiercest doubters, by A. L. Goodhart.

Goodhart assaulted the general guideline on which the " direct outcome " test was based, and the idea of his analysis makes it very certain that he felt that not exclusively was the test too hard on respondents, in addition, this was exclusively the issue of the test itself.

Goodhart in articles preceding Wagon Mound had scrutinized Re Polemis on the very ground to which the Privy Council tended to itself in the head case.[7] The Judicial Committee felt that it was unjust that a man should bear the weight of obligation for any harm that emerged out of his lead, as long as he owed an obligation to take care of the offended party. This test was shameful in light of the fact that it allowed recuperation for harm which followed whether the respondent could be blamed in his lead as for the real injury perpetrated.

CHAPTER-4

Comment on The judgement

Re Polemis is firmly established by the general principle affirmed in Donoghue v. Stevenson[8] and by its special applications in Bourhill v. Young[9] and other similar cases in the House of Lords, in all of which the criterion of negligent conduct is reasonable foreseeability of harm to the other person.

The courts in Re Polemis just viewed two inquiries: (1) what test should be applied for a distance of harm? (2) regardless of whether Clause 21 of the charter party avoided the litigant charterers' liability?

Lord Justices Bankes, Warrington, and &rutton drew a distinction between culpability and liability and stated further that foreseeability was clearly relevant in establishing culpability, fault, or negligence, but was not necessarily relevant to the question of whether having once found culpability on the part of the defendant, he ought to stand the loss." Smith v. The London and South Western Ry. Co[10].and Weld-Blundell v.

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[6] Lordships in Bourhill v. Young, [1943] AC 92

[7] Martin Davies , THE ROAD FROM MOROCCO: POLEMIS THROUGH DONOGHUE TO NO-FAULT , https://www.jstor.org/stable/1095194?seq=1

[8] Donoghue v. Stevenson, [1932] UKHL 100 [1932] SC (HL) 31 [1932] AC 562 [1932] All ER Rep 1

[9] Bourhill v. Young, [1943] AC 92

[10] Smith v. The London and South Western Ry. Co, (1869-70) LR 5 CP 98

Stephens[11] was cited as authority for this proposition. The Court suggested the test of the directness of consequences in ascertaining whether, once negligence had been found, the loss ought to be shifted, and held the defendants liable on the ground that their servant's negligent act was the direct cause of the loss. From the words of the judgment, it is evident that all three judges adhered to a "behavior" theory that negligence was a particular kind of conduct

In Re Polemis, the adjudicators followed the standards set down in Smith v. London and South Western Rail Co., they expressed that once a demonstration has been discovered to be careless as in injury to somebody is predictable, at that point any people straightforwardly harmed by it can recuperate despite the fact that it is unforeseeable that he may endure harm in any capacity. This, however, would conflict with the basic principle that before liability in negligence can exist there must be a breach of a duty owed to the plaintiff. As per Winfield, the subject of the litigant's underlying risk i.e., has he submitted a misdeed against the offended party, should be recognized from the auxiliary inquiry of distance of harm i.e., for what outcomes of the respondent's direct the offended party is qualified for recuperating pay. The case is no authority for liability to the unforeseeable plaintiff'. sI should jump at the chance to cite the instance of Smith v. London South Western Ry. Co." a choice firmly followed by the Court of Appeal in Re Polemis;

Re Polemis never pulled in the itemized thought of the House of Lords. In Dredger Liesbosch v. Steamship Edison12 the House of Lords, without having itemized thought, recognized the Re Polemis and confined its activity. In the Liesbosch case, the appellants, whose vessel had been fouled by the respondents, asserted harms under different heads. The respondents conceded their shortcoming for sinking the offended party's dredger, however, the inquiry was the amount they needed to pay. It was contended for the benefit of the appellants, summoning the standard of Re Polemis, that the respondents should be answerable for all the immediate results if sensibly predictable. The House of Lords held that they could recuperate as harms the market cost of a dredger and pay for misfortune in doing the agreement between the date of the sinking and the date on which the subbed dredger could sensibly have been accessible for work: however, the case for additional costs because of neediness was dismissed. Master Wright (with whose discourse the remainder of the Lords agreed), recognized Re Polemis on the ground that all things considered the wounds endured were the "quick actual outcomes of the careless demonstration"

CHAPTER – 5

CONCLUSION & SUGGESTION

The death blow has now, however, been struck by the English Court of Appeal itself in Doughty v. Turner Manufacturing Co. Ltd[13]. Surely, now that In re Polemis has been repudiated by the very court which gave it birth, no self-respecting judge will ever again cite it as an authority.

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[11] Weld-bluddell v Stephens| [1920] UKHL 646
[12] Liesbosch Dredger v SS Edison [1933] AC 449
[13] Doughty v Turner Manufacturing Company Ltd | [1964] 2 WLR 240

In the Polemis case, "foreseeability" as a test of remoteness was definitely rejected and it was held that negligence being proved, or admitted, liability for the particular consequences of that negligence depends solely upon whether or not they are the direct consequences of the negligent act or omission. Foreseeability determines the existence of negligence but it has nothing to do with the question as to liability for the consequences which in fact ensued; for such consequences directly resulting from the negligence, liability attaches whether the defendant could have foreseen them or not.

No explicit theory of the nature of negligence is stated in the judgment, the reasoning of the Privy Council implicitly expresses a theory of negligence as a state of mind. The state of mind theory of negligence identifies -tifs concept with a mental state which is the opposite of intention the standard in Re Polemis is solidly settled by the overall rule avowed in Donoghue v. Stevenson and by its extraordinary applications in Bourhill v. Youthful[14] and other comparable cases in the House of Lords, in all of which the rule of careless direct is sensible predictability of mischief to the next individual. appear to be an extremely dubious and inconclusive premise however it builds up an adequate standard of definition to be applied in making a decision about current realities.

The Law Lords preserved the rule of Re Polemis that if some damage is foreseeable, then the wrongdoer liable for the direct consequences even if unforeseeable provided they are “immediate physical consequences”. It thus appears that the Law Lords created a distinction between “immediate physical consequences” and “immediate other consequences”. The former is taken into account whereas the latter is not. It is not understandable, why a differentiation should be drawn between the two. Additionally, it is truly troublesome, if certainly feasible, to draw a line between “immediate physical consequences” and “immediate other consequences”

Regardless of whether one acknowledges the instrumentalist,Re Polemis was chosen in additional finishes of British boat industry, one can't decline significant point that it helps facilitate closures, thus invited by British shipowners. Whatever its stalls concerning the law of misdeed Re Polemis being choice as to that segment of society most quickly influenced by it, a choice particularly in contact with necessities of the time.

The interest of the respondent should be shielded in order to try not to saddle him unjustifiably with anything else than the offended party's misfortune straightforwardly because of that penetrate of his obligation, yet to the extent that that break has brought about harm to the offended party, it is uncalled for to leave the offended party to bear the harm so coming about and due exclusively to the respondent's deficiency.

[14] Bourhill v Young [1943] AC 92

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LIST OF CASES

Weld-Blundell v. Stephen | [1920] UKHL 646

Hadley v Baxendale [1854] EWHC J70

Thorogood v. Van Den Berghs and Jurgens Ltd, ' (1951) 2 K.B. 537

Donoghue v. Stevenson, [1932] UKHL 100 [1932] SC (HL) 31 [1932] AC 562 [1932] All ER Rep 1

Bourhill v. Young, [1943] AC 92

Smith v. The London and South Western Ry. Co, (1869-70) LR 5 CP 98

Weld-bluddell v Stephens| [1920] UKHL 646

Liesbosch Dredger v SS Edison [1933] AC 449

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Doughty v Turner Manufacturing Company Ltd | [1964] 2 WLR 240