

Strout Vs. Foster

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Court : US Supreme Court

Decided On : 1843

Appeal No. : 42 U.S. 89

Appellant : Strout

Respondent : Foster

Judgement :

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Strout v. Foster

42 U.S. (1 How.) 89

APPEAL FROM THE CIRCUIT COURT OF

THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

If a ship be at anchor, with no sails set, and in a proper place for anchoring, and another ship, under sail, occasions damage to her, the latter is liable.

But if the place of anchorage be an improper place, the owners of the vessel which is injured must abide the consequences of the misconduct of the master.

In this case, the anchored vessel was in the thoroughfare of the pass of the Mississippi River.

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There was much contradictory evidence about some of the facts. Those which were not disputed were these:

The *Harriet*, a ship of about three hundred tons, sailed from New Orleans for London on 25 May, 1836. On the 26th, she passed the bar of the Southwest pass, at the mouth of the river, and came to anchor. The ship *Louisville*, of five hundred tons burden or upwards, was coming in, and a collision ensued between the two vessels. The *Harriet* was so much damaged that she put back for repairs. Her owners, Jonathan Strout and others, libeled the *Louisville*. The district court, after a hearing, decreed in favor of the libellants, and against the ship *Louisville*, her tackle, apparel, and furniture, in the sum of \$2,701.07, and costs of suit. The defendants appealed.

The circuit court reversed the decree of the district court, with costs, and remanded the case to the district court, with instructions to dismiss the libel. The libellants appealed.

It was given in evidence on the trial below for the libellants, that, on 26 May, 1836, the *Harriet* was at anchor near the mouth of the Southwest pass of the Mississippi, outside the bar, on the western side of it, with her sails all furled; that the *Louisville* was also lying at anchor with her sails furled, at some considerable distance to the eastward; that the *Louisville* got under weigh, and stood down to the Southwest pass with all sails set, topsail, and jib, and spanker; that she got within a quarter of a mile of the *Harriet*, and let go her anchor; that there was no range of cable overhauled; that there was not more than enough cable to let the anchor out of sight; that when the *Louisville* dropped her anchor, her sails were

all set; that she came afoul of the starboard bow of the *Harriet*, whose helm was hard to starboard, and the jib and fore-top-mast stay-sail set to steer clear; that the people on board of the *Harriet* bore the *Louisville* off, and then she came afoul again; that they bore her off again; that instead of the *Louisville* making sail aft to bring her up, they set the fore-top-sail, and the ship paid off, and came afoul of the *Harriet* across her bows; that aboard the *Harriet* they continued to pay out cable, to permit the vessel to go clear; that there was plenty of room for the *Louisville* to have passed to the eastward of the *Harriet*, and a good free wind; that the *Harriet* was lying out of the usual track; that two brigs came down and

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went to sea to the eastward of the *Harriet*, after she had anchored; and that the wind was fresh from the S.E. or S.S.E.

On the part of the defendants, it was given in evidence, that the *Harriet* might have gone to sea when she anchored, as there was wind enough; that she was lying in the thoroughfare of vessels going in and out; that when the *Louisville* weighed anchor to come in, there was a fresh wind and favorable for coming in; that as she approached the bar, the wind died away; that a strong current set out of the pass; that it was stronger than usual in consequence of there having been a strong wind the night before from the south; that owing to the lightness of the wind, the *Louisville* drifted; that there was a pilot on board the *Louisville*, who said some time before that they would be obliged to go close to the *Harriet* on one side or the other; that as the *Louisville* neared the *Harriet*, the pilot ordered them to let go the anchor and take in sail; that they obeyed the order as soon as they could; that the anchor got afoul of the chain of the *Harriet*, which had a great scope out; that the chain of the *Harriet* was not forward of her, but off on the starboard bow; that the *Harriet* had met with a similar accident in and about the same place on a former voyage; that the entrances of passes at the mouth of the Mississippi are very intricate and difficult on account of the currents and counter-currents; that as vessels approach the bar and the water becomes more shoal, they are apt to become unmanageable, particularly when the wind dies away; that when the water is shoal, the undertow has a great effect, and frequently with the

greatest efforts a vessel cannot be steered; that there is one flood tide every twenty-four hours on the bar, and the undertow is the consequence of the flood tide setting in and the current out.

The opinion of the circuit court, as delivered by Mr. Justice McKinley, was as follows:

"This case comes before this court upon an appeal from the decree of the District Court for the Eastern District of Louisiana."

"The appellees, owners of ship *Harriet*, filed their libel in the court below for collision, and upon the trial the court rendered a decree in favor of the libellants for \$2701.07. By the evidence, it appears that the *Harriet* had passed over the bar through one of the passes or outlets at the mouth of the Mississippi River,

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outward bound, on 26 May, 1836, and came to anchor near the bar. The *Louisville*, lying below a distance of several miles, weighed anchor with a fresh and favorable wind for coming in through the same pass; as she approached the bar, the wind died away, and the current being stronger than usual owing to a strong wind from the south the night before, she drifted and ran afoul of the *Harriet*. These passes, it appears, are intricate and difficult to navigate, and subject to counter- and under-currents. If the wind die away when a ship is coming in, she is certain to drift and become unmanageable. Knowing these facts, a prudent master would never anchor his vessel in the thoroughfare of one of these passes. The evidence shows, however, that the master of the *Harriet* did anchor his vessel immediately in the thoroughfare, and that too after having been run afoul of by another vessel about a year before at or near the same place."

"There are four possibilities under which a collision may occur: "

"First. It may happen without blame being imputable to either party, as when the loss is occasioned by a storm, or any other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light, the other not being

responsible to him in any degree."

"Secondly. When there has been a want of due diligence or skill on both sides, in such case the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both."

"Thirdly. It may happen by the misconduct of the suffering party only, and then the rule is that the sufferer must bear his own burden."

"Lastly. It may have been the fault of the ship which run the other down, and in this case, the injured party would be entitled to entire compensation from the other. *The Woodrop Sims*, 2 Dodson's 83."

"The third rule here laid down, it seems to me, applies with great force to the case under consideration, the misconduct on the part of the master of the *Harriet*, in anchoring his ship immediately in the thoroughfare, is fully made out by the proof, while, on the contrary, there is no fault proved, going to show mismanagement, want of skill, or negligence on the part of the master of the *Louisville*. It is true that the opinions of some

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nautical men, found in the evidence, show that it was possible for the *Louisville* to have avoided the collision, had everything been done that it was possible to do. But the law imposes no such diligence on the party in this case; so far as the *Harriet* was concerned, the *Louisville* was entitled to the full use of the thoroughfare of the pass; the master of the *Harriet* having obstructed it, with a full knowledge of the danger of doing so, has been guilty of such misconduct as to deprive the appellees of the right of action against the appellants. 3 Hunt's Con. 230."

"It was insisted by the counsel of the appellees, that the *Harriet* being at anchor, and the other ship under sail, that the latter was therefore liable. It is true, if a ship be at anchor, with no sails set and in a proper place for anchoring, and another ship under sail occasions damage to her, the latter is liable. But the place where

the *Harriet* anchored was an improper place, and therefore the appellees must abide the consequences of the misconduct of the master. Wherefore, it is decreed and ordered that the decree of the district court be reversed, and held for naught, and that the appellants recover of the appellees their costs in this behalf expended, and it is further decreed and ordered, that this case be remanded to the district court, with instructions to dismiss the libel of the libellants. "

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The Court being equally divided, the judgment of the circuit court was affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

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