

**Clark Vs. Barnwell**

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**Court :** US Supreme Court

**Decided On :** 1851

**Appeal No. :** 53 U.S. 272

**Appellant :** Clark

**Respondent :** Barnwell

**Judgement :**

Clark v. Barnwell - 53 U.S. 272 (1851)

U.S. Supreme Court Clark v. Barnwell, 53 U.S. 12 How. 272 272 (1851)

**Clark v. Barnwell**

**53 U.S. (12 How.) 272**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF SOUTH CAROLINA*

## **SYLLABUS**

Where goods are shipped and the usual bill of lading given, "promising to deliver them in good order, the dangers of the seas excepted," and they are found to be damaged, the *onus probandi* is upon the owners of the vessel to show that the

injury was occasioned by one of the excepted causes.

But although the injury may have been occasioned by one of the excepted causes, yet still the owners of the vessel are responsible if the injury might have been avoided by the exercise of reasonable skill and attention on the part of the persons employed in the conveyance of the goods. But the *onus probandi* then becomes shifted upon the shipper, to show the negligence.

Where spools of cotton thread, put up in boxes, were shipped at Liverpool for Charleston, and the vessel had a voyage of sixty-one days, going far south into a warm climate, and the thread was an article peculiarly subject to the effect of dampness, some of the inside boxes being stained, whilst the outside ones were not, the cargo

Page 53 U. S. 273

also being well stowed and dunnaged, the injury must be attributed to the dangers of the seas.

The usage of trade is to bring sacks of salt in the same vessel with dry goods, and the evidence in this case is that if the salt be well stowed, it does not increase the humidity of the vessel, but rather acts the other way.

In this case also there was no evidence that the shipmaster was guilty of any negligence in omitting to provide proper precautionary measures. He was not responsible for the effect of boisterous weather or adverse winds.

The words "contents unknown," being annexed to a bill of lading, imply that the master only meant to acknowledge the shipment in good order of the cases as to their external condition. He might justify himself by showing that the contents were not in good order, but the evidence in this case shows that they were so, and the injury must be attributed to the dangers of the seas.

This was originally a libel, filed in the district court by Barnwell & Ravenel against the ship *Susan W. Lind* under the following circumstances:

On 4 March, 1848, Richard Shiel & Co. shipped, at Liverpool, in the ship *Susan W. Lind*, Tristram Clark, master, twenty-four boxes of cotton thread, consigned to Barnwell & Ravenel at Charleston. The bill of lading contained the usual clause, "to be delivered in like good order, all and every, the dangers and accidents of the seas and navigation, of whatsoever nature and kind, excepted," and was signed by Clark, with the remark, "contents unknown."

The vessel sailed from Liverpool on 14 March, and arrived at Charleston on 13 May.

On his arrival, the captain made a protest showing that the voyage had been very boisterous and that the vessel had often shipped large quantities of water.

On 15 May, the captain requested the wardens of the port to make the survey of his vessel, and they continued the inspection during the discharging of the cargo. The following is that part of their report which related to the goods in question:

"On the 29th and 31st, the wardens examined twenty-two cases marked C [B R] + 71 & 92. After they were landed and in store, found many of them stained outside with mud, dry, and in good order; on opening the cases, the wood inside in several of the cases appeared stained; inside of these cases were stowed small boxes; on opening them, the cotton thread contained therein was found musty, mouldy, and damaged, which, in our opinion, has been caused by the great humidity, sweat, and dampness of the hold."

Barnwell & Ravenel also had a survey made by Mood and Smith, who reported as follows:

"That we found the whole of the contents of the said twenty-two

Page 53 U. S. 274

cases to be in a damaged and unmerchantable condition, and we concurred in recommending an early sale thereof at public auction for account of whom it may concern. And we do further certify that if the said cotton sewing thread had been landed in a sound and merchantable state, the same would be worth in this

market, at the present time, for cash, forty-five dollars per box, containing one hundred dozen spools, say 22 cases, each containing 6 boxes of 100 dozen."

"132 boxes a \$45 per box . . . . \$5,940"

"Witness our hands at Charleston aforesaid, the thirty-first day of May in the year 1848."

"WM. G. MOOD"

"THOS. P. SMITH"

The goods were sold at auction, and produced only the net sum of \$3,335.09, but the duties being abated by \$376.02, the loss was claimed to amount to \$2,228.89.

On 31 May, 1848, Barnwell & Ravenel filed their libel in the district court of the United States against the ship, her tackle, apparel, and furniture, and against Clark and all persons who should intervene.

On 13 June, 1848, Clark filed a claim for himself, Royal Williams, Ebenezer McLellan, Thomas McLellan, and James R. S. Williams, all of Portland, in Maine, and afterwards an answer was filed denying all the allegations of the libel.

A considerable amount of evidence was heard tending to show the value of the articles shipped, the state in which they were landed, the amount of damage sustained, and the causes to which it could be attributed.

On 24 June, 1848, the district judge dismissed the libel on the ground of there not being introduced at the trial of the cause sufficient evidence to establish the fact of the goods being in good order and condition at the time of their shipment.

The libellants appealed to the circuit court. Additional testimony was taken to show that the goods were shipped in good condition.

On the 8th of May, 1849, the circuit court reversed the decree of the district court,

"conclusive evidence having been given to this Court which was not produced before the said district court as to the shipment of the goods at Liverpool in good order and condition,"

and decreed that the respondents should pay to the libellants the sum of \$2,228.89 with costs.

The respondents appealed to this Court.

Page 53 U. S. 279

MR. JUSTICE NELSON delivered the opinion of the Court.

The libel was filed against the ship *Susan W. Lind* and owners for alleged damage to cargo shipped to the libellants, as consignees, from Liverpool to Charleston through the neglect and fault of the master. The goods shipped were twenty-four boxes of cotton thread which, on delivery at Charleston, were damaged to the amount of some fifty percent. The spools of thread were packed in small wooden boxes lined with paper, one hundred dozen in each box, and again enclosed in a large wooden box, six small boxes in each large one, lined with paper between the small boxes. When these boxes were delivered and opened, the spools of thread in each of the small boxes were more or less stained, and spotted by dampness and mould, though the large and small boxes themselves were generally dry, as was also the paper covering the thread.

The respondents in their answer allege that if the contents of the boxes were in a damaged state when opened, the damage must have existed, or originated in causes that existed, before they were delivered on board the ship, though not indicated by the external appearance of the boxes, or must have been produced by the effects of the dampness of the atmosphere in the hold of the vessel to which goods, wares, and merchandise are exposed, and especially such as were shipped for the libellants, in all vessels, however tight and staunch, with cargoes however well stowed, on as long and boisterous a passage as was experienced by the *Susan W. Lind*, or the same was caused by such dampness in consequence

of the neglect of the shipper in not having packed the cotton thread in boxes calculated to exclude the damp air which otherwise it must be subject to in the transportation across the Atlantic.

Page 53 U. S. 280

The vessel sailed from Liverpool on the fourteenth day of March, 1848, and arrived at Charleston, her port of destination, on the fourteenth day of May following, making a long voyage of sixty-one days, during which she encountered rough weather and violent gales, causing her to labor heavily, and occasionally ship water.

As we have already stated, the cotton thread, when the boxes were delivered to the consignees and opened, was found damaged on account of stains and spots, the effect apparently of dampness and mould happening in the course of the shipment.

The bill of lading admits that the twenty-four boxes were shipped in good order, and bound the respondents to deliver the same in like good order, "all, and every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted." And the main question in the case is whether or not the damage in question was occasioned by one of the perils and accidents within this clause of the bill of lading. For as the masters and owners, like other common carriers, may be answerable for the goods although no actual blame is imputable to them and unless they bring the case within the exception, in considering whether they are chargeable for a particular loss the question is not whether the loss happened by reason of the negligence of the persons employed in the conveyance of the goods, but whether it was occasioned by any of those causes which, either according to the general rules of law or the particular stipulations of the parties, afford an excuse for the nonperformance of the contract. After the damage to the goods, therefore, has been established, the burden lies upon the respondents to show that it was occasioned by one of the perils from which they were exempted by the bill of lading, and even where evidence has been thus given bringing the particular

loss or damage within one of the dangers or accidents of the navigation, it is still competent for the shippers to show that it might have been avoided by the exercise of reasonable skill and attention on the part of the persons employed in the conveyance of the goods, for then it is not deemed to be, in the sense of the law, such a loss as will exempt the carrier from liability, but rather a loss occasioned by his negligence and inattention to his duty. Hence it is that although the loss occurs by a peril of the sea, yet if it might have been avoided by skill and diligence at the time, the carrier is liable. But in this stage and posture of the case the burden is upon the plaintiff to establish the negligence, as the affirmative lies upon him. On this ground, in the case of *Muddle v. Stride*, 9 Car. & P. 380, which was an action against the proprietors of a steam vessel to recover compensation for damage to goods sent by them as carriers, Lord Chief Justice Denman, in

Page 53 U. S. 281

summing up to the jury observed

"If on the whole it be left in doubt what the cause of the injury was, or, if it may as well be attributable to 'perils of the sea' as to negligence, the plaintiff cannot recover; but if the perils of the seas require that more care should be used in the stowing of the goods articles of silk and linen on board, than was bestowed on them, that will be negligence for which the owners of the vessel will be liable. That the jury were to see clearly that the defendants were guilty of negligence before they could find a verdict against them."

Now applying these principles to the facts disclosed in the record, we shall be enabled to determine whether or not the respondents in the court below are liable for the damage that happened to the goods in question, as they settle, with great clearness the rule of responsibility and also on which side the burden of proof lies to charge or exonerate them as common carriers. And on looking into these facts it will be seen that all the witnesses concur in the conclusion that the damage was occasioned by the humidity of the atmosphere and dampness of the ship's hold, producing mould and mildew upon the cotton spools and thereby staining and spotting the thread, impairing its strength, and rendering it unmerchantable. The

article appears to be peculiarly subject to the effect of humidity and dampness, as the paper with which it was covered in the small boxes was generally dry and unaffected, when at the same time the thread beneath was mildewed and stained, and what is more remarkable, in many instances the upper layers of the spools were perfectly dry and sound, while those lying in the center were mouldy and spotted, and in other instances the only part affected were the layers in the center.

The vessel was a general ship, tight and staunch, well equipped and manned, and was laden with a mixed cargo consisting of cases and crates of dry goods, hardware, and about two thousand sacks of salt. The cargo was well stowed and dunnaged. The sacks of salt when discharged were dry as usual, and in good condition, and no part of the cargo except the cases in question appears to have been injured in the voyage or the subject of any complaint.

It was insisted on the argument that the respondents were in fault in taking on board their vessel the goods in question with salt as part of the cargo, but the evidence is full that salt in sacks is part of a mixed cargo of nearly all the vessels engaged in the trade between Liverpool and Charleston. One witness who has been in the Liverpool trade for ten years states that salt is part of the cargo of nine out of ten vessels trading from that port to the United States. Several shipmasters who have been engaged in this trade state that salt always constituted a part

Page 53 U. S. 282

of their cargo, and they never knew any damage occasioned to the other goods. Indeed the evidence is all one way on this point. In consequence of damage occasionally happening to these goods, and others of like character in vessels of a mixed cargo of which salt was a part, some merchants latterly gave particular directions to their correspondents not to send their goods in a ship of this description. But this only shows that the general usage of the trade would justify the shipment with salt as part of the cargo, and hence the necessity of the particular instructions.

The weight of the evidence also seems to be, that the presence of salt as part of the cargo of the ship does not produce humidity or dampness in the atmosphere, but tends rather to diminish it by attracting and absorbing the humidity, and that unless in contact with the salt or exposed to the drain from it by bad stowage, no injury would accrue to the other goods.

Some attempt was also made upon the argument to show that the salt was badly stowed, regard being had to the nature and character of the goods in question, and that the damage was properly attributed to this circumstance. But there is no foundation for the argument upon the evidence. The salt was not within thirty feet of the cases of dry goods, with the exception of two cases, which were well dunnaged with matting and an inch board between them and the salt. The spools of thread in these were not damaged more than in the rest of the boxes.

Now the evidence showing very satisfactorily that the damage to the goods was occasioned by the effect of the humidity and dampness, which in the absence of any defect in the ship or navigation of the same or in the stowage is one of the dangers and accidents of the seas for which the carrier is not liable, the burden lay upon the libellants to show that it might notwithstanding have been prevented by reasonable skill and diligence of those employed in the conveyance of the goods. For it has been held if the damage has proceeded from an intrinsic principle of decay naturally inherent in the commodity itself, whether active in every situation or only in the confinement and closeness of the ship, the merchant must bear the loss as well as pay the freight, as the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event. 12 East 381; 4 Campb. 119; 6 Taunt. 65; Abbott on Ship. 428 (Shee's ed.). But if it can be shown that it might have been avoided by the use of proper precautionary measures and that the usual and customary methods for this purpose have been neglected, they may still be held liable. And the same rule applies in the case of damage on account of the humidity and

dampness of the ship, which is more or less incident to all vessels engaged in trade and navigation, especially upon the high seas. Notwithstanding, therefore, the proof was clear that the damage was occasioned by the effect of the humidity and dampness of the vessel, which is one of the dangers of navigation, it was competent for the libellants to show that the respondents might have prevented it by proper skill and diligence in the discharge of their duties; but no such evidence is found in the record. For aught that appears, every precaution was taken that is usual or customary or known to shipmasters to avoid the damage in question. And hence we are obliged to conclude that it is to be attributed exclusively to the dampness of the atmosphere of the vessel, without negligence or fault on the part of the master or owners.

No doubt the unusual duration of the voyage on account of tempestuous weather and adverse winds, in connection with the fact that it was one in which the ship passed from a northern to a southern latitude, and in a season of the year when the change from a cold to a warm climate must have been considerable, greatly increased the dampness, and also the influence of it upon goods liable to damage from that cause.

But the carrier is not responsible for delay in the voyage on account of boisterous weather or adverse winds, low tides, or the like, as was held in the case of *Boyle v. M'Laughlin*, 4 Har. & J. 291. These are dangers and accidents of the navigation over which he has no control and against which his contract contains no warranty.

Another point was made on the part of the respondents below which it may be proper briefly to notice. It was insisted that these goods had not been packed in good condition in the boxes at Paisley by the manufacturer, or if otherwise, that the damage might have happened to them in the conveyance from that place to Liverpool, before they were shipped for Charleston.

The bill of lading contained the usual clause that they were shipped in good order, but there was added, at the conclusion, "contents unknown."

It is obvious therefore that the acknowledgment of the master as to the condition of the goods when received on board extended only to the external condition of the cases, excluding any implication as to the quantity or quality of the article, condition of it at the time received on board, or whether properly packed or not in the boxes. Abbott 339 (Shee's Ed.), p. 216 (Story's Ed.). And if the evidence on the part of the defense laid a foundation for a reasonable inference that the damage resulted from an imperfection in the goods when packed in the cases or had occurred previously to their being shipped on board,

Page 53 U. S. 284

the burden was thrown upon the libellants to rebut the inference. It was accordingly assumed in this case, and evidence produced as to the condition of the thread when packed at Paisley, and also in respect to the mode of conveyance from that place to Liverpool, preparatory to the shipment. The explanation is as full perhaps as could be well furnished or as is usual under the circumstances, and brings the case down, we think, to the question of damage occasioned by the effect of the humidity and dampness of the vessel in the course of the voyage. We have already expressed our views on that question, the result of which is that the decree must be

*Reversed.*

MR. CHIEF JUSTICE TANEY and MR. JUSTICE WAYNE dissented.

## **ORDER**

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of South Carolina, 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 reversed with costs and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this Court.

