

**Stainback Vs. Rae**

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**Court :** US Supreme Court

**Decided On :** 1852

**Appeal No. :** 55 U.S. 532

**Appellant :** Stainback

**Respondent :** Rae

**Judgement :**

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U.S. Supreme Court Stainback v. Rae, 55 U.S. 14 How. 532 532 (1852)

**Stainback v. Rae**

**55 U.S. (14 How.) 532**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MASSACHUSETTS*

## **SYLLABUS**

Where a collision takes place between two vessels at sea which is the result of inevitable accident, without the negligence or fault of either party, each vessel must bear its own loss.

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The facts are stated in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

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The libel charges, that the ship *Mary Frances*, laden with ice, was on a voyage from Boston to New Orleans, and that on the 11th December, 1847, at about half-past three o'clock in the morning, while on her starboard tack in the prosecution of the voyage, she was struck by the ship *Washington* nearly midships on her larboard side, breaking in her bulwarks and stanchions and starting her planks and timbers so that in a few hours she filled with water and the master and hands were obliged to abandon her, and she went to the bottom.

The respondents in their answer state that the ship *Washington*, at the time mentioned in the libel, was upon the high seas between George's Shoals and the south shore of Nantucket Island, at a distance of about sixty miles from land; that the wind was blowing a moderate breeze from the south-southwest, and *The Washington*, with all her reefs out, with courses free, and main-topgallant sails, jib, and flying-jib, and fore and main topmast stay-sails set, was sailing full and by upon her larboard tack and steering due west by the compass, and as near the wind as possible; that she had a competent watch on deck, keeping a good lookout, the weather being dark and hazy towards the horizon, especially to the leeward of the ship, but the stars visible above. That while she was thus pursuing her course at about half-past three o'clock in the morning, *The Mary Frances* was seen about four points on the lee bow of *The Washington*, and was then in the act of running up, and did immediately run up into the wind athwart the hawse of *The Washington*, and that instantly on the discovery of *The Mary Frances* and of the course she was pursuing, the helm of *The Washington* was put hard up and

every endeavor made by the hands on deck to put her before the wind and to avoid a collision.

The facts as proved on the part of the libellants are substantially as follows:

That about half-past three o'clock on the morning of 11 December, 1847, the hands on board *The Mary Frances*, while she was standing to the eastward on her starboard tack, the wind from the south-southwest, close-hauled, descried *The Washington* something less than a quarter of a mile distant, about a point and a half forward of *The Mary Frances'* larboard beam, some of the hands say, on the larboard bow two or three points. *The Washington* was standing to the westward when first seen, and orders were immediately given to put the helm hard down, and at the same time the hands cried out to those on board *The Washington* to keep off. The collision took place, as estimated, from five to seven minutes after *The Washington* was first discovered. *The Mary Frances* was struck midships on the

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larboard side, her bulwarks stove in, and her planks below the white streak on the opposite side were broken and all her fore-rigging carried away. The ship was abandoned with thirteen feet of water in her hold, being a wreck and wholly unmanageable. *The Washington* was not at first seen plainly, as the weather was hazy. The second mate of *The Mary Frances*, who had charge of the watch, and one of the first to descry *The Washington*, says the weather was hazy and thick, the sky was overcast, no moon or stars visible. *The Mary Frances* was about 320 tons burden; *The Washington* about 500 tons

The evidence on behalf of the respondents is substantially as follows:

*The Washington* was bound from Liverpool to Virginia by the way of New York, and had on board a cargo of salt and some 170 steerage passengers. She was on her larboard tack, close-hauled, the wind about south-southwest. The man at the wheel states that an order was given from the deck, "put the helm hard up, there is a ship into us;" that the order was obeyed instantly, but the collision immediately

followed. Simmons, one of the hands, states that he was on the weather side of *The Washington's* windlass on the lookout; that the weather was dark, cloudy, and hazy; that he descried *The Mary Frances* about a minute and a half or two minutes before the collision; that she was on the lee bow of *The Washington*, between three and four points; that at first he could not determine her course on account of the thick weather. When he first saw her, he sang out to the man at the wheel to put helm hard up. The witness heard a noise or hail about half a minute before he descried *The Mary Frances*, but could not determine whence it came; supposed it might be from some of the passengers, as they were in the habit of making a noise.

This witness is substantially corroborated by several others on board *The Washington*. Part of the watch were at the pumps at the time the collision took place.

The testimony on both sides agree that each vessel was going at the rate of five and a half knots the hour.

The court below decreed in favor of the libellants.

Upon a careful perusal of the evidence in behalf of the libellants and the respondents, it is apparent that there is much less discrepancy and contradiction among the witnesses called by the respective parties as to the material facts than are usually found in these collision cases.

All agree as to the state of the weather -- thick, hazy and dark; as to the direction of the wind -- from the south-southwest; the course of the vessels -- *The Mary Frances* on the starboard tack, standing southeast, and *The Washington* on the

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larboard, standing nearly due west; the rate of speed -- five and a half knots the hour. And even as it respects the distance the vessels were from each other when first descried there is very little if any difference.

According to the witnesses on board *The Mary Frances*, *The Washington* was less than a quarter of a mile distant when she was first seen. The distance of the former vessel when first seen by the hands on board *The Washington* is not stated directly, but Simmons, the lookout, testifies she was seen from one and a half to two minutes before the collision, which, regarding the combined speed of the two vessels, must have been at about the same distance. The probability is that the two vessels were much nearer each other than a quarter of a mile when first seen. The chief mate of *The Mary Frances*, who was asleep in his berth at the time but immediately afterwards on deck, fixes the distance the vessel could be seen in that state of the weather at about two hundred yards, and this corresponds with the opinion expressed by the master of *The Washington*, where he says *The Mary Frances* might have been seen at a distance of about four times her length. The answer of the experts is that the distance a vessel could be seen in such weather would be uncertain. The course the two vessels were steering was calculated to increase the difficulty and embarrass the lookout in descrying the vessel ahead, for as they were approaching each other by the wind, they presented to the eye the edges of the sails, and not the breadth of them, as in other positions.

There is some apparent discrepancy between the witnesses of the two vessels in respect to their relative position at the time they were first seen. The hands on board *The Mary Frances* state when they first decried *The Washington*, she was two or three points on their larboard bow; one of them states she was a point and a half forward of their larboard beam.

The hands on board *The Washington* state that *The Mary Frances* was on their lee bow when first seen, which would place *The Washington* to the windward. This may be reconciled, probably, by what is stated by the experts, who agree that two vessels approaching each other as these were, the hands on each would necessarily see the approaching vessel over the lee bow, and which may have led those on board *The Washington* to suppose this vessel was on the weather side.

The maneuver of each on discovering the other, it is agreed, was proper, and indeed the only one that could have afforded any chance of preventing the

collision. *The Mary Frances* was thrown into the wind by putting her helm hard down, and

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*The Washington* bore away before the wind by putting her helm hard up. The orders were not only proper and skillful, but were promptly given and instantly executed, and unless fault can be imputed to the latter vessel in not descrying *The Mary Frances* sooner so as to have afforded time for these maneuvers to have avoided the disaster, we do not see how she can be properly chargeable with the consequences; and as to that, the difficulty if not impossibility of discovering a vessel ahead at a greater distance than *The Mary Frances* was seen by the hands on *The Washington*, the relative position of the two vessels while approaching each other by the wind, presenting only the edges of the sails, instead of their breadth, and in thick and hazy weather such as existed in this case, in connection with the combined speed of the vessels at the time, seem to furnish evidence sufficient to repel any such imputation. The two vessels must have come together probably in less than two minutes after they were first seen. The lookout appears to have been competent and sufficient, and such is, as we understand it, the opinion of the experts examined, and who were selected by both the parties.

Indeed, the fact that *The Mary Frances* must have been seen about the same time by the hands of *The Washington* that she was seen by those on board of *The Mary Frances*, and which we think is fairly borne out by the evidence, of itself should be regarded as conclusive against the charge of fault in this respect.

We are of opinion, therefore that the collision was the result of an inevitable accident arising out of one of the perils of navigation, and in judgment of law is not attributable to the fault of either party. And in such cases the settled rule in admiralty in England is that each vessel must bear its own loss, which rule has been heretofore recognized by this Court, but has not been before directly applied. 2 Dodson's Adm. 83; [Woodrop Sims](#), 1 How. 28; [42 U. S. 1](#) How. 89; 3 Kent's Com. 231; Abbot on Shipping Pt. 3, ch. 1, and Pt. 4, ch. 10, 10; 2 Brown's Civ. &

Adm. Law, 204-7; [46 U. S. 5](#) How. 503 and cases.

The rule is not uniform upon the continent, as several of the maritime states in such cases apportion the loss upon the two vessels. Abbot, 224, 230; 2 Brown's Civ. & Ad. Law 204-2066; 3 Kent's Com. 230-232.

But we think it more just and equitable and more consistent with sound principles that where the loss happens from a collision which is the result of inevitable accident, without the negligence or fault of either party, each should bear his own.

There seems no good reason for charging one of the vessels with a share of a loss resulting from a common calamity

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beyond that happening to herself, when she is without fault and therefore in no just sense responsible for it.

Our opinion is that the decree of the court below must be

*Reversed with costs and the proceedings remitted with directions to enter a decree dismissing the libel with costs.*

## **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 Massachusetts, 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 with directions to dismiss the libel with costs.