

**Ure Vs. Coffman**

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**Court :** US Supreme Court

**Decided On :** 1856

**Appeal No. :** 60 U.S. 56

**Appellant :** Ure

**Respondent :** Coffman

**Judgement :**

Ure v. Coffman - 60 U.S. 56 (1856)

U.S. Supreme Court Ure v. Coffman, 60 U.S. 19 How. 56 56 (1856)

**Ure v. Coffman**

**60 U.S. (19 How.) 56**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF LOUISIANA*

## **SYLLABUS**

Where a flatboat which was fastened to the bank of the Mississippi River at night was run down and sunk by a steamer, the circumstances show that the steamer was in fault, and must be responsible for the loss.

It was not necessary for the flatboat, in the position which it occupied, to show a light during the night.

When a boat or vessel of any kind is fastened for the night at a landing place to which other boats may have occasion to make a landing in the night, it is certainly prudent for her position to be designated lay a light, on her own account

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as well as that the vessel making a landing may have light to do so. But when a vessel is tied to the bank of a river, not in a port or harbor, or at a place of landing out of the line of customary navigation, there is no occasion for her to show a light, nor has it ever been required that she should do so.

This was a case of collision which occurred in the Mississippi River about fifty-five miles above New Orleans.

The narrative of the case is given in the opinion of the Court.

The district court decreed in favor of the owners of the flatboat, who were the libellants, in the sum of \$3,416.15, with five percent interest from the 24th of December, 1853, until paid, and costs.

Upon an appeal to the circuit court, this decree was affirmed, whereupon the claimants of the *Gipsey* appealed to this Court.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

It appears from the record that the steamer *Gipsey* was a packet on the Mississippi River, running from New Orleans to Lobdell's Store landing, above Bayou Sara, and, as all the other Mississippi steam river packets do, was in the habit of landing freight and passengers at all the intermediate points and plantations. She was making a trip up the river from New Orleans on the evening of the 21st December, 1853. The night was rainy and dark, and after midnight

somewhat foggy. It was light enough, though, for the boats navigation the river to run and to distinguish and make all their landings. All of the witnesses say it was a proper night for running, and none of the packets or other boats laid up on that night on account of the weather. Alexander Desarpes, a witness for the claimant, says,

"He was the pilot of the *Gipsey* and was on watch at the wheel at the time the *Gipsey* struck the flatboat. That the collision happened above the point at Trudeau's wood yard, about fifty-six miles above New Orleans, between twelve and one o'clock at night on the 22d December, 1853. He says it was a pretty bad night, rainy, dark, and smoky, rather than foggy, with a little fog. There was light enough, however, for the boat to distinguish landings, and she ran and made all of her's of freight and passengers as she went up. Her last landing before the collision was one of freight at J. B. Armant's plantation on the right-hand side of the river descending, about half a mile below Trudeau's wood yard. We then crossed the river from there, to go to George Mather's plantation. At that time, the night was dark and rainy, but the shore could be seen for some distance. There was a light

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at Trudeau's wood yard on the bank, which is pretty high there, at least fifteen feet above the water; I could see this light a long distance -- three or four arpents from the shore; there was a point of land just below the wood yard; I was looking out when the boat was approaching the shore, for the purpose of *going up that shore* to make a landing; *I could see an outline of the shore, or bank, all along, and distinctly, too;* I did not discover the flatboat until we were right up against her; the flatboat was lying close to the bank and in its shadow, and having no light on her, I could not see her; she was lying just at the foot of the wood yard; the light on the bank was a good distance from the flatboat, and did not shine upon her. As soon as we saw the flatboat, we stopped the engine of the *Gipsey* and backed. If there had been a light on the flatboat, I could have seen it at a sufficient distance to have avoided the collision, but there was no light on her. As the flatboat was low down in the water, if there had been a light on her, we should have known it was

something down in the water. I saw nobody on watch on the flatboat at the time of the collision, and heard no hail from her before it."

The witness further states that he had been a pilot on the river for more than ten years, "running in this lower trade," and adds,

"at the time of and before the collision, the weather was such as boats are in the habit of running and making landings, and I, as a pilot, consider that it was safe and proper to run the boat."

Mather's landing, where the *Gipse*y was going to land, was about a quarter of a mile above Trudeau's wood yard. Upon the cross-interrogation of this witness, he does not give an intelligent or certain statement of the collision or where or how the *Gipse*y struck the flatboat, but says she was tied to a point, and her stern lay a little out from the bank; she laid up and down the river in the same direction with the current; there are curvings in along the bank; the flat was lying at a point fastened, and there are curvings both above and below that point, which was a mere jutting out of the bank in consequence of curvings above and below it. The direct examination being resumed, this witness says,

"On a clear starlight night, in *such a stage of water as prevailed at the time of the accident*, we could have seen a flatboat at a good distance in time to prevent an accident. If there had been on the flatboat such a light as is generally carried on deck by a steamboat or a schooner or on flatboats *when they are running*, I could have seen it three or four arpents off, and this would have given me time to avoid the collision."

The evidence of this witness is not in any material particular changed by any other witness examined in the case. It is

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rather confirmed; but the captain of the *Gipse*y, who was also sworn as witness, gives a more certain account of the collision as to the part of the flatboat which was struck by the steamer and by what part of the steamer she was struck. The

testimony is conclusive that the flat, being tied to the shore at what might have been considered a proper and safe place, was struck by the steamer with sufficient force to cut a part of her down and to sink her in a few minutes.

There are three points to be noted in the testimony of Desarpes. The first is that the steamer, being upward bound, had made a landing at Armant's Plantation, about half a mile below Trudeau's wood yard, and that her next place for making a landing was a quarter of a mile above that, on the opposite side of the river, at Mather's Plantation, making the distance between the two places about three-quarters of a mile. Secondly, that in his opinion as an experienced pilot and accustomed to the navigation of the river, there was nothing in the state of the weather to prevent the steamer from being run as usual and put across the river to make a landing at Mather's plantation, but that she was run so close in shore as to be brought into collision with the flatboat, and thereby that the witness admits that the only cause of it was that the flatboat was lying close to the bank, and so much in its shadow, and not having a light, he could not see her. His language is that if there had been on the flatboat such a light as is generally carried on deck by a steamboat or a schooner or on a flatboat when they are running, he could have seen it far enough off to have avoided the collision.

Captain Ure, then in command of the *Gipsey*, gives the same account, scarcely with a variance, of the navigation of his vessel from Armant's Plantation until the collision had occurred, but says, with more positiveness than his pilot spoke, that the forward end of the *Gipsey* -- some part of the bow pretty far forward -- struck the flatboat. His language is that he

"was on the roof of the steamer in front all the time, when they had made their landing at Armant's, up to the moment of the collision. From Armant's we ran the bend of the river on the same side a short distance, and then crossed over to make a landing at Mather's, above Trudeau's wood yard. There was a light above the wood pile, but I saw nothing but its glare before the collision, the wood pile being between the light and my eyes. I could see the glare some three or five minutes before the collision took place. We had almost hit the flatboat when I saw it. I was looking out and saw the boat, seeing its outline pretty clearly about the

same time that I saw the glare of the light spoken of. It was the shadow of the bank, which is high there, which prevented me from seeing. *If there had*

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*been on the flatboat any such light as flatboats usually carry, I could have seen it in time to avoid hitting her."*

He further says,

"The night was slightly foggy and bad, and it had been raining, but cannot recollect whether it was raining at the time of the collision. There was no fog until we came to Armant's, and after we left Armant's, the fog came on and I think that smoke was mixed with the fog. We did not lay up that night for fog, but ran all night."

Other witnesses were examined by the claimants, but it is not necessary to notice their testimony further than to say that neither of them gives any additional facts concerning the navigation of the steamer from Armant's plantation or concerning the collision contradictory from what was said of both by Captain Ure and his pilot Desarpes.

Trying, then, the claimant's case only by the evidence introduced by himself, it is obvious that the steamer was put across the river from Armant's in a state of weather and on a night proper for running, without proper care to make her next landing at Mather's, which was at least a quarter of a mile above the wood yard, a little below which the flatboat was moored. Both the pilot and the captain attempt to indicate the place and the part of the steamer which was first in contact with the flatboat by mathematical figures. If that of the pilot's is taken as the fact of the case, it must be conceded that the *Gipsey* was put across the river a little below where the flatboat laid and so near the bank that she could not have been run above her by pursuing that course, without a collision. Running so near to the bank when there was ample channelway further out in the river for the steamer to pass the point and curve made by it at which and within which the flatboat was fastened was a want of proper care. Both pilot and captain knew that the wood yard and its immediate vicinity was a point of the river at which boats were

customarily moored at night as a place of safety against collisions from ascending or descending boats, and should have run the steamer further out in the river to avoid all chance of collision with boats tied to the bank or wood yard, and in this instance there was no occasion for the steamer having been run so near to the bank of the river, as it was not intended to make a landing at the wood yard, but to pass it to a landing higher up. The collision, according to the pilot's account of it, was caused by the steamer's not having been kept on a course further out from the bank. That, of itself, is sufficient to make her answerable for all the consequences of it, without any regard to the fact that the flatboat had not a light. A light upon her might, in the language of the witness, have enabled him to have avoided the collision by putting the steamer further out in the river, but

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the want of a light was not the cause of it. The cause was that the steamer's course was too near on shore.

But if the captain's account of the collision is taken as the fact of the case, as we think it ought to be, the steamer is altogether without excuse, for she was put across the river without due care as to her course, and would have been run bow on into the bank at the point where the flatboat was fastened if she had not been stopped by the collision. In such a view of the case as we have given from the testimony of the claimant's witnesses, it is not necessary for us to consider the point made by the witnesses and by counsel in the argument that the flatboat had not a light to show herself or her mooring during the night. Tied as she was in a recess of the land with a point of land extending into the river below the wood yard, there was no necessity for her to show a light to protect her from boats ascending or descending the river, or from landing, which might be made at the wood yard, as she was actually fastened to the bank, out of the line of a customary and safe navigation up or down the river. In other words, the steamer was either run closer into the bank than was necessary or usual at that point of the river and out of what should have been her course to make her landing at Mather's or she was run head upon the flatboat where the latter was tied to the bank. When a boat or vessel of any kind is fastened for the night at a landing place to which other

boats may have occasion to make a landing in the night, it is certainly prudent for her position to be designated by a light on her own account as well as that the vessel making a landing may have light to do so. But when a vessel is tied to the bank of a river, not in a port or harbor or at a place of landing, out of the line of customary navigation, there is no occasion for her to show a light, nor has it ever been required that she should do so.

After the best examination of this case, we are of the opinion that the steamer *Gipsey* was put across the river from Armant's, in the prosecution of the intention to make another landing with her at Mather's plantation, without skill or prudence, and that the collision with the flatboat was the consequence of it, without any fault or want of care by those navigating it. There is therefore no ground for reducing the damages given by the district and circuit courts to the owners of the flatboat.

Having examined the record very fully as to the items making up the aggregate of damage given by those decrees, we

*Affirm the decree of the circuit court in the case.*

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