

Newell Vs. Norton and Ship

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Decided On : 1865

Appeal No. : 70 U.S. 257

Appellant : Newell

Respondent : Norton and Ship

Judgement :

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Newell v. Norton and Ship

70 U.S. (3 Wall.) 257

APPEAL FROM A DECREE OF THE

CIRCUIT COURT FOR LOUISIANA

SYLLABUS

1. A libel *in rem* against a vessel and personally against her master may properly under the present practice of the court be joined. And if the libellant have originally proceeded against vessel, master, owners, and pilot, the libel may with leave of

the court be amended so as to apply to the vessel and master only in the way mentioned.

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2. Such an amendment, neither increasing nor diminishing their liability, will not discharge the sureties to the usual bond given on release of a vessel seized by process of the admiralty.

3. A person who is master and part owner of a vessel in which a cargo has been wrongly sunk by collision from another vessel may properly represent the insurer's claim for the loss of the cargo, and proceed to enforce it *in rem* and *in personam* through the admiralty.

The court, seeing no reason to doubt the correctness of a decision below, again declares what it has often before decided, that it will not reverse from doubt where the issue is one entirely of fact, depending on the credibility of witnesses who differ in their statements, and where the district and circuit courts have concurred in viewing the merits. And it announces emphatically that in cases where both courts below concur, parties need not bring appeals here with the expectation of reversal because they can find in a mass of conflicting testimony enough to support the appellant's allegation if the testimony of the other side be wholly rejected, or by attacking the character of witnesses and so raising a mere *doubt* as to what justice required.

This was an appeal from a decree of the Circuit Court for Louisiana *affirming a decree of the district court* in admiralty in a case of collision between the steamboats *Hill* and *World*.

The owner of the *World* filed his libel in the district court March 12, 1863, setting forth that his vessel, sailing down the Mississippi and laden with a valuable cargo, had been lost by collision with the *Hill* and solely through the fault of the *Hill*.

The collision out of which the proceeding came took place in a bend of the Mississippi below the town of Princeton, Mississippi. The *Hill* received no material

injury. The *World* sank almost immediately, carrying down with her about thirty persons. *The wreck and cargo were soon afterwards abandoned to the underwriters, who subsequently assigned their claims to the libellant.*

The account of the catastrophe, as given by the libellant, was briefly this: that the *World* was descending the river in the ordinary channel when the *Hill*, which had been running up on the Mississippi side, came quartering out from that side, attempted to cross the river in front of the descending boat, but, being a little too late, ran into her and sank her.

The libellant accounted for the accident on the ground

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that the pilot of the *Hill* failed, for want of proper watchfulness, to discover the *World* in time to avoid the collision; that he was either ignorant or disregarding of his obligations to obey signals which he ought to have obeyed; and that he maneuvered his boat with entire want of skill.

The respondent admitted an attempt of the *Hill* to cross the river, but asserted that it was effected in safety and that, after the *Hill* had gained the Arkansas side, the *World* came square across the river, directly towards the *Hill*, struck her, inflicting, however, no damage, but was herself by the blow stove in and sunk.

The district court, *in accordance with the prayer of the libel*, issued process *in rem* against the *Hill* and citations *in personam* against the captain, owner, and pilot. The 15th rule in admiralty of this Court, of the Rules of 1845, [[Footnote 1](#)] it should be said, allows a libellant, in all cases of collision, "to proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*. "

The owners of the *Hill*, *of whom the master was one*, put in a claim, and on the same day the boat was released on a bond conditioned that *the claimants and sureties should abide by all the orders of the court and pay the libellant the amount awarded by the final decree*. The claimants immediately afterwards filed an

exception to the libel for misjoinder of owners and pilot in a proceeding against the vessel and master, and prayed that the libel be dismissed. The court ruled that an action against the owners and pilot could not be joined with the proceeding *in rem*, and that the libellant must elect which remedy he would pursue, and he having elected to proceed *in rem* against the steamboat and *in personam* against the master, it was ordered that the libel be dismissed as to the owners and pilot and sustained against the steamboat and master. Proofs were then taken.

The testimony was voluminous and conflicting. With the documents, it filled a book of three hundred and ten pages of long primer, "solid." One hundred and ten persons, first

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and last, and through a term of five years that the case was in the courts below, were examined. It embraced a number of questions, as whether a sufficient watch had been kept -- sufficient and proper signals given -- whether the engines had been rightly worked when the boats approached -- whether certain officers of the *World* were or were not intoxicated -- what was the character of the pilots for sobriety and skill -- and whether Henry Evans, "a flatboat pilot" on the Mississippi, who saw the collision and testified strongly that the *Hill* was to blame for it, was worthy of faith -- seven persons swearing that he was not, and twenty-two that he was. And finally, whereabouts exactly in a bend of the river the collision took place, and what topographical inference could be made from the hydrographical fact that portions of the *World's* cargo had floated to a particular spot of the shore, and that cattle which had been on the boat were found the next morning walking contemplatively in the State of Mississippi, and not in the opposite one of Arkansas.

The district court decreed for the libellants (\$52,500), a decree which the circuit court, on full consideration and after giving an opinion at large, which the record contained, *affirmed* with interest and costs.

After the decree in the circuit court, a motion was made for a rehearing, "upon the ground that the court had erred in its view of the evidence and that the damages ought to be apportioned." This motion was refused, Campbell, J., who gave its opinion, saying:

"I have considered the evidence with much care; it is very conflicting, and an opinion founded upon one portion of it must necessarily be hostile to conclusions which have their support in another portion. I think it is a case in which men may naturally form different conclusions, *and that an appeal is a very proper remedy for the party who is aggrieved. A rehearing of the case would not speed the cause to its final determination,* and upon the suggestions that the decree is erroneous, I do not think I should be authorized to allow a rehearing."

The case was now here on appeal.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The libel in this suit was originally against the steamboat *Hill* and against the master, who was part owner, and also against the pilot. It was amended in the district court by dismissing it as to the pilot, and sustained as against the vessel and the master or owner. The allowance of this amendment was within the discretion of the court, and was very proper. The objection that a libel *in rem* against a vessel and *in personam* against the owner cannot be joined was properly overruled, as it was in conformity with the 15th rule in admiralty as established by this Court.

It has been objected here that the allowance of the amendment was injurious to the sureties in the bond given for the property. But this objection is without foundation, as their liability was neither increased nor diminished. "Every person bailing such property is considered as holding it subject to all legal dispositions of the court." [[Footnote 2](#)]

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It has been contended also that the right of the libellant to sustain this action ceased by his abandonment to the underwriters. The circuit court very properly ruled that as the libellant was the owner and master of the steamer *World*, he was the bailee of the cargo, and so responsible to the shippers or insurers for the safe transportation and delivery thereof, and to fulfill his obligations and secure his reward, he was entitled to possession, and might maintain an action for its destruction. [[Footnote 3](#)]

"The respondent is not presumed to know or bound to inquire as to the relative equities of parties claiming the damages. He is bound to make satisfaction for the injury he has done. When he has once made it to the injured parties, he cannot be made liable to another suit at the instance of any merely equitable claimant. [[Footnote 4](#)]"

The question of merits was the next question argued.

During the five years in which this case was pending in the district and circuit courts, more than a hundred depositions have been taken. In these there is the usual conflict of testimony which always attends such cases. The issue is one entirely of fact and depending on the credibility of witnesses. The district and circuit courts, after patient investigation of the testimony, concur in the opinion that the libellant has fully established his case. The record contains the opinion delivered by the learned judge of the circuit court, which fully vindicates the correctness of his decree.

It would be a very tedious as well as a very unprofitable task to again examine and compare the conflicting statements of the witnesses in this volume of depositions. And even if we could make our opinion intelligible, the case could never be a precedent for any other case, or worth the trouble of understanding.

It is enough to say that we find ample testimony to support the decision, if believed, and that we again repeat what we have often before decided, that in such cases, parties

should not appeal to this Court with any expectation that we will reverse the decision of the courts below, because counsel can find in the mass of conflicting testimony enough to support the allegations of the appellant, if the testimony of the appellee be entirely disregarded, or by attacking the character of his witnesses when the truth of their testimony has been sustained by the opinions of both the courts below. Parties ought not to expect this Court to revise their decrees merely on a doubt raised in our minds as to the correctness of their judgment, on the credibility of witnesses, or the weight of conflicting testimony. In the present case, we see no reason to doubt the correctness of the decision of the circuit court, which is accordingly

Affirmed with costs.

[[Footnote 1](#)]

3 How. vi.

[[Footnote 2](#)]

The Schooner Harmony, 1 Gallison, quoting *King v. Holland*, 4 Term 459.

[[Footnote 3](#)]

See [The Propeller Commerce](#), 1 Black 582.

[[Footnote 4](#)]

See [Monticello v. Mattison](#), 17 How. 152.