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The Farragut

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 77 U.S. 334

Appellant : The Farragut

Judgement :

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The Farragut

77 U.S. (10 Wall.) 334

APPEAL FROM THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF ILLINOIS

SYLLABUS

The usually obligatory rule of navigation which requires a special lookout does not apply to a case where the collision or loss could not have been guarded against by a lookout, and where it is clear that the absence of a lookout had nothing to do in causing it.

Clark libeled the steamer *Farragut* for causing the destruction of the canal boat *Ajax* and her cargo on the 8th of March, 1866. The Buckeye Mutual Insurance Company having paid Clark $1,500 insurance on the canal boat, came in by petition, and were made parties libellant, and subrogated to Clark's rights in the cause to the amount thus paid. The principal charges of the libel were that the steamer *Farragut,* being engaged in running between Beardstown, Illinois, and St. Louis, Missouri, on the Illinois and Mississippi Rivers, on the 7th of March, 1866, took the canal boat *Ajax,* loaded with wheat, corn, and oats, in tow at Beardstown; that the owner or master of the *Farragut* contracted to tow the *Ajax* safely to St. Louis and return for $130, and caused it to be lashed to the side of the steamer, and proceeded safely down the Illinois River until about four o'clock in the morning of the 8th of March, when, in attempting to pass through the railroad bridge at Meredosia, the steamer was so carelessly and negligently managed that she caused the *Ajax* to come in contact with the pier of the bridge, whereby boat and cargo sank and became a total loss.

The answer alleged that the canal boat was unsound and rotten; that the only contract between the parties was a verbal contract to tow the *Ajax* to St. Louis for $65, made

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with reference to the general usage on the Illinois and Mississippi Rivers, by which contracts for towing, in the absence of special agreements, are contracts to tow safely, except the usual dangers and hazards of river navigation, and do not involve the liabilities of a common carrier. The answer denied that the steamer was carelessly and negligently managed, or that the loss of the *Ajax* was attributable to the unskillfulness, negligence, or fault of any person having charge of her, and alleged that it was due to the usual dangers of river navigation; that the bridge in which the loss occurred is located at a bend in the river, which there changes its course from southeast to southwest; that this bend rendered it difficult to pass the draw of the bridge at any time without striking the eastern pier; that this difficulty was greatly enhanced at high water by a cross-current which strikes it diagonally across the draw, and that at the time of the loss complained of this

current was at its worst; that the captain of the steamer himself, one Ebaugh, who was a skillful pilot of the river, took the helm on this occasion, and was steering the vessel when the accident occurred; but that, by the strength of the diagonal current, she was forced towards the piles protecting the east pier, with which the canal boat came into contact and was stove and sunk, without any want of care or skill on the part of the owner or those in charge of the steamer. It was further alleged that the said piles formerly yielded to pressure, so that a sound boat rubbing against them received no serious damage therefrom; but that, during the preceding winter, the piles had been stiffened up with braces, so that when the unsound and rotten timbers of the *Ajax* came in contact with them they were crushed.

Both courts below were of opinion that the defense was sustained by the evidence, and decreed against the libellant. That party now brought the case here.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

The district and circuit courts were both satisfied that the evidence in the case fully supported the defense, and this Court concurs in that conclusion, unless the position strenuously insisted on here by the appellants' counsel can be maintained, to-wit, that the absence of a special lookout is evidence of negligence, which renders the owners of the steamer *prima facie* liable.

It is undoubtedly true that the absence of a special lookout, would, in many cases, perhaps in most cases, be regarded as evidence of great negligence. The last rule prescribed

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by Congress by the Act of April 29, 1864, * declares that

"nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any

neglect to keep a *proper lookout,* "

&c.; thus intimating that "a proper lookout" is one of the ordinary precautions which a careful navigation involves. But it would be against all reason to contend that the master or owners of a vessel should be made liable for the consequences of an accident by reason of not having a special lookout where the collision or loss could not have been guarded against by a lookout, or where it is clear that the absence of a lookout had nothing to do in causing it. Suppose that a sunken rock, dropped from a cargo of quarried stone, and unknown to the navigators of the channel, were the cause of the accident, could the presence of a lookout have the least tendency to guard against it? A hundred such instances might be suggested where the presence or absence of a lookout would have no influence whatever on the happening of the catastrophe. We are not to shut our eyes and to accept blindly an artificial rule which is to determine, in all cases, whether the navigator is liable to the charge of negligence in causing any loss or damage that may happen. A lookout is only one of the many precautions which a prudent navigator ought to provide; but it is not indispensable where, from the circumstances of the case, a lookout could not possibly be of any service. The object of a lookout is to discover dangers that are unknown, the advance of an approaching vessel, the appearance of a light on the coast, the discovery of a dangerous object, and many other things, the existence and presence of which could not be so easily and quickly known to the pilot as to a person whose sole business it was to make and communicate such discoveries. The cases referred to, taken in connection with the particular circumstances of each, cannot receive a different interpretation.

In the case before us no lookout could have been of any

possible advantage. No lookout would have ventured, or presumed, to interfere with the captain, who had the helm at the time. It would probably have been rather an interference and a hindrance to the safe management of the boat for any third person in such an exigency to have diverted his attention. The obstacle was there in plain sight. Its position was better known to the captain than to any other

person. No lookout could have aided him in the emergency. But, if a lookout were needed, we have the evidence of the mate that he was on the hurricane deck watching the course of the steamer at the time; and, had it been possible for any lookout to have been of any service, he would have rendered it. Clark, the captain of the canal boat, was also on the watch as well as Nolte, the ship's carpenter, and one of the owners of the steamer. It is perfectly evident that the absence of a special lookout had nothing at all to do with the happening of the accident, and therefore it can have nothing to do with fixing the liability of the parties.

It is also evident that the loss was occasioned by the violence of the cross-current, which was due to the great height of water prevailing at the time, and was therefore the result of one of the ordinary dangers of river navigation.

Decree of the circuit court affirmed with costs.

* 13 Stat. at Large 61.

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