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The Sapphire

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Decided On : 1870

Appeal No. : 78 U.S. 164

Appellant : The Sapphire

Judgement :

The Sapphire - 78 U.S. 164 (1870)
U.S. Supreme Court The Sapphire, 78 U.S. 11 Wall. 164 164 (1870)

The Sapphire

78 U.S. (11 Wall.) 164

THIS WAS AN APPEAL FROM THE CIRCUIT COURT OF

THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA

SYLLABUS

1. A foreign sovereign can bring a civil suit in the courts of the United States.

2. A claim arising by virtue of being such sovereign (such as an injury to a public ship of war) is not defeated, nor does suit therefor abate, by a change in the person of the sovereign. Such change, if necessary, may be suggested on the

record.

3. If an injury to any party could be shown to arise from a continuation of the proceedings after a change in the person of the sovereign, the court, in its discretion, would take order to prevent such a result.

4. If a vessel at anchor in a gale could avoid a collision threatened by another vessel and does not adopt the means for doing so, she is a participant in the wrong, and must divide the loss with the other vessel.

The case was one of collision between the American ship *Sapphire* and the French transport *Euryale,* which took place in the harbor of San Francisco on the morning of December 22, 1867, by which the *Euryale* was considerably damaged. A libel was filed in the district court two days afterwards in the name of the Emperor Napoleon III, then Emperor of the French, as owner of the *Euryale,* against the *Sapphire.* The claimants filed an answer alleging, among other things, that the damage was occasioned by the fault of the *Euryale.* Depositions were taken and the court decreed in favor of the libellant and awarded him $15,000, the total amount claimed. The claimants appealed to the circuit court, which affirmed the decree. They then, in July, 1869, appealed to this Court. In the summer of 1870, Napoleon

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III was deposed. The case came on to be argued here February 16, 1871. Three questions were raised:

1. The right of the Emperor of France to have brought suit in our courts.

2. Whether, if rightly brought, the suit had not become abated by the deposition of the Emperor Napoleon III.

3. The question of merits; one of fact, and depending upon evidence stated towards the conclusion of the opinion (*see infra,* pp. 78 U. S. 169 -170), where the point is considered.

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The first question raised is as to the right of the French Emperor to sue in our courts. On this point, not the slightest difficulty exists. A foreign sovereign, as well as any other foreign person, who has a demand of a civil nature against any person here may prosecute it in our courts. To deny him this privilege would manifest a want of comity and friendly feeling. Such a suit was sustained a want of comity and King of Spain in the Third Circuit by Justice Washington and Judge Peters in 1810. [Footnote 1] The Constitution expressly extends the judicial power to controversies between a state or citizens thereof and *foreign states,* citizens, or subjects without reference to the subject matter of the controversy. Our own government has largely availed itself of the like privilege to bring suits in the English courts in cases growing

out of our late civil war. Twelve or more of such suits are enumerated in the brief of the appellees, brought within the last five years in the English law, chancery, and admiralty courts. There are numerous cases in the English reports in which suits of foreign sovereigns have been sustained, though it is held that a sovereign cannot be forced into court by suit. [Footnote 2]

The next question is whether the suit has become abated by the recent deposition of the Emperor Napoleon. We think it has not. The reigning sovereign represents the national sovereignty, and that sovereignty is continuous and perpetual, residing in the proper successors of the sovereign for the time being. Napoleon was the owner of the *Euryale,* not as an individual but as sovereign of France. This is substantially averred in the libel. On his deposition the sovereignty does not change, but merely the person or persons in whom it resides. The foreign state is the true and real owner of its public vessels of war. The reigning Emperor or national assembly or other actual person or party in power is but the agent and representative of the national sovereignty. A change in such representative works

no change in the national sovereignty or its rights. The next successor recognized by our government is competent to carry on a suit already commenced and receive the fruits of it. A deed to or treaty with a sovereign as such enures to his successors in the government of the country. If a substitution of names is necessary or proper, it is a formal matter, and can be made by the court under its general power to preserve due symmetry in its forms of proceeding. No allegation has been made that any change in the

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real and substantial ownership of the *Euryale* has occurred by the recent devolution of the sovereign power. The vessel has always belonged and still belongs to the French nation.

If a special case should arise in which it could be shown that injustice to the other party would ensue from a continuance of the proceedings after the death or deposition of a sovereign, the court, in the exercise of its discretionary power, would take such order as the exigency might require to prevent such a result.

The remaining question relates to the merits of the case. And on the merits of the case as presented by the record, we think that the court below erred in imposing the whole damage upon the *Sapphire.* We think that the *Euryale* was equally in fault, and that the damage ought to be divided between them. It is not our general practice to scrutinize very carefully the weight of evidence in cases of collision, where the evidence is substantially conflicting and where both district and circuit courts have concurred in a decree upon the merits. Our views upon this subject will be found quite fully expressed by MR. JUSTICE CLIFFORD in the case of *The Baltimore.* [Footnote 3] But this case depends upon a narrow point, the evidence on which is in our view so decidedly adverse to the sole liability of the *Sapphire* that it becomes our duty to notice it.

The *Euryale* came to anchor in the harbor on the 14th of December, about six hundred yards from the wharf. She was of four hundred and fifty tons burden, drew thirteen feet of water, and had out fifty-six fathoms of chain, and an anchor

weighing 3,500 pounds. The *Sapphire,* of thirteen hundred tons burden, came to anchor about the 18th of December, about three hundred yards (as alleged both in the libel and answer) to the southeasterly of the *Euryale,* at a point father up the harbor, and farther from the wharf. She had out about fifty fathoms of chain, and an anchor weighing 3,600 to 3,800 pounds, and she was heavily laden, drawing about twenty-three feet of water.

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On the night of the 21st of December, it commenced to blow pretty strong from the southeast, by midnight blowing a six-knot breeze, and it kept increasing up to the time of the collision at five o'clock the next morning, when it seems to have been blowing a gale. At half-past three in the morning, the tide changed from ebb to flood, the direction of flood tide being southeasterly, directly contrary to that of the wind. And the captain of the *Euryale* says (and he is not contradicted) that the wind was twice as strong as the tide. The weight of the evidence is that the *Sapphire,* under the force of the wind, dragged her anchor and got inside of the *Euryale* -- that is, between her and the city. At a few minutes past five, the collision occurred.

The libellant insists that the *Sapphire* was in fault in two points: 1st, in anchoring too near the *Euryale* in the first instance; 2d, in not having out sufficient anchors. We think that the first charge is not sustained. Experienced pilots testified that two hundred and fifty yards distance is a good and sufficient berth in that harbor. And it is to be noted that the master of the *Euryale* made no complaint of too great proximity, although she and the *Sapphire* were lying in the same relative position for several days. On the other point, we agree with the district and circuit courts that the *Sapphire* was in fault. Had a second anchor been put out at an earlier period, the collision in all probability would not have occurred. Indeed, the captain of the *Sapphire* gave orders to the first officer that if she was likely to start, to put the second anchor down. But it was not done till the collision itself broke the ring-stopper and let it down. A more careful watch would have led to the discovery of the vessel's having started, and would have prevented the catastrophe which

ensued.

But we are also satisfied that the *Euryale* was not free from fault. The captain was not on board. The first officer, though on board, was not on deck from eleven o'clock until after the collision. Le Noir, the third officer, was officer of the deck that night. He was called up by the head, or chief, of the watch at three o'clock to observe that the *Sapphire*

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was approaching nearer to them than she had been. He attributed it to her letting out more chain, and returned below, and did not come on deck again until five o'clock, a few moments before the collision, when it was too late to avoid it. The instant he came on deck, he ordered done the thing that could have saved them had it been done earlier -- the jib to be hoisted. It would have sheered the vessel off and allowed the *Sapphire* to pass her. Such is the testimony of the libellant's own witnesses. It is the judgment of the first officer of the ship. Why was not this done before? Why was not the officer, on such a night, in such a gale, at his post? At four o'clock, the man in charge of the watch saw the *Sapphire* approaching, and says he made a report to that effect. The first officer says that no report was made to him. But the third officer, who was officer of the deck, does not say that it was not made to him. If the fact was not communicated to the proper officer, that was in itself a fault. If it was communicated and not attended to, the case of the libellant is not bettered. But the evidence is very strong that the officer received the information. Deveaux, the head of the watch, says that he reported the fact at four o'clock, and Bioux, who had charge of the watch between four and five o'clock, says that between those hours he saw the *Sapphire* with the wind astern, and heading the current, coming towards the *Euryale;* that she continued to approach gradually, and that he reported this to Mr. Le Noir between four and five o'clock. Here, then, was a clear neglect of proper precautions for an entire hour immediately preceding the collision.

We cannot avoid the conviction that there was a want of proper care and vigilance on the part of the officers of the *Euryale,* and that this contributed to produce the

collision which ensued. Both parties being in fault, the damages ought to be equally divided between them.

Decree of the circuit court reversed and the cause remitted to that court with directions to enter a decree in conformity with this opinion.

[Footnote 1]

King of Spain v. Oliver, 2 Washington's C.C. 431.

[Footnote 2]

King of Spain v. Hullett, 1 Dow & Clarke 169; *S.C.,* 1 Clarke & Finelly 333; *S.C.,* 2 Bligh N.S. 31; Emperor of Brazil, 6 Adolphus & Ellis 801; Queen of Portugal, 7 Clarke & Finelly 466; King of Spain, 4 Russell 225; Emperor of Austria, 3 De Gex, Fisher & Jones 174; King of Greece, 6 Dowling's Practice Cases 12; *S.C.,* 1 Jurist 944; United States, Law Reports 2 Equity Cases 659; Ditto, *ib.,* 2 Chancery Appeals 582; *Duke of Brunswick v. King of Hanover,* 6 Beavan 1; *S.C.,* 2 House of Lords Cases 1; *De Haber v. Queen of Portugal,* 17 Q.B. 169; also 2 Phillimore's International Law, part vi, chap. i; 1 Daniel's Chancery Practice, chap. ii, ii.

[Footnote 3]

75 U. S. 8 Wall. 382.

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