

Reed Vs. United States

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SooperKanoon Citation : sooperkanoon.com/81965

Court : US Supreme Court

Decided On : 1870

Appeal No. : 78 U.S. 591

Appellant : Reed

Respondent : United States

Judgement :

Reed v. United States - 78 U.S. 591 (1870)

U.S. Supreme Court Reed v. United States, 78 U.S. 11 Wall. 591 591 (1870)

Reed v. United States

78 U.S. (11 Wall.) 591

APPEAL AND CROSS-APPEAL

FROM THE COURT OF APPEALS

SYLLABUS

1. An order by the United States to the owners of a vessel, during the rebellion, to get her ready, under pain of impressment, to transport a cargo to a particular place and back, under which order, though the owners protested against going, they got

ready the vessel and sailed with their own officers and crew, *held* not to make the government owners for the voyage, but to leave the possession with the general owners under a contract for *per diem* compensation from the commencement of the voyage until the same was broken up, including also so many days in addition as would have been spent if no disaster had occurred in completing the return trip.

2. A voyage was held to have been "completely broken up" by a vessel's being blown aground on the Missouri in July, 1865 (the owners having then made their protest to cover insurance), she having been swept off and totally destroyed by an ice freshet in the river nine months afterwards. And this so held although her engineer, a mate, and three watchmen were left to take care of her, and a military guard sent to protect her, until a rise should occur in the river; and though just before the boat was destroyed by the flood and ice, her owners, and the government, in whose employ she was, dispatched a pilot and crew to where the boat was aground to get the boat afloat upon the rise of the river and to bring her to her home port.

3. The government not having been owner for the voyage, the expenses of the pilot and crew just named were not chargeable against the United States, though both were sent by the owners of the vessel after consultation with the quartermaster of the United States at the port and for the purpose of protecting the interests of the government as well as the interests of themselves.

"The claimants were, on the 1st of June, 1865, owners of the steamer *Belle Peoria*. She was then lying at her wharf in St. Louis. The said owners were applied to by the United States quartermaster, at St. Louis, to take a cargo of military supplies to Fort Berthold, on the Missouri River about 1,700 miles from St. Louis. They declined on account of the lateness of the season. They were then ordered by the quartermaster to prepare for the trip, and informed that in case

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of refusal the boat would be impressed. They protested, but, under the orders, got the boat in readiness, put on the cargo, and left St. Louis on the 3d of June, 1865.

The boat arrived at Fort Berthold on the 22d of July, 1865, discharged her cargo, and started on her return trip on the 24th of the same month. She proceeded until the 26th, when a high wind sprung up, and she, in attempting to land, was blown aground. All efforts to get her off proved unavailing. After making all the effort that was deemed advisable, and finding it impossible to get her off *until a rise should occur in the river*, the officers and crew left her, leaving several persons in charge. The crew left her on the 31st of July, 1865, leaving on board one engineer, one mate, and three watchmen, who were *to take care of the boat*. These remained until the 30th September. The officer in command at Fort Rice also detailed and sent a military guard *to protect the boat*. The facts being communicated to the owners at St. Louis, *they made their protest in order to cover the insurance*. The boat remained aground until about the 15th of April, 1866, when *by an ice freshet in the Missouri River she was swept off and totally destroyed*. "

The quartermaster at St. Louis, when he seized the boat, fixed her *per diem* compensation at \$272. She was paid at this rate until the 10th day of August, 1865, being the time when information arrived at St. Louis that she was aground, and the captain and part of the crew returned. She was also paid, from the 10th of August to the 30th of September, at the rate of \$101 per day. This was while the engineer, mate, and watchmen remained on board. From the 30th of September until the 30th of November, 1865, vouchers were issued to the claimants at the rate of \$80 per day, which have not been paid. No vouchers were issued after that date. On the 3d of April, 1866, the claimants dispatched a pilot and crew up the Missouri River from St. Louis to where the boat was aground, *to get her afloat upon the rise of the river, and to bring her down to St. Louis*. These persons arrived at where the boat had been aground, U.S. about the 18th day of April, 1866, and after the boat had been destroyed

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by the flood and ice. These persons were sent after consultation with the quartermaster at St. Louis and for the purpose of protecting the interests of the United States as well as those of the claimants. The just and necessary expense incurred in these efforts to save the boat amounted to \$2,500.

After the destruction of the boat, the claimants applied to the third auditor, under the provisions of the act of 1849, and its supplements, for the payment of her value. These acts provide: [[Footnote 1](#)]

"That any person . . . who shall lose . . . or have destroyed by unavoidable accident any . . . steamboat . . . *while such property was in the service* (of the United States) shall be allowed and paid the value thereof at the time he entered the service, *provided* it shall appear that such destruction was without any fault or negligence on the part of the owner of the property and while it *was actually employed in the service of the United States*. "

The claim was allowed and her value, as of the time of her taking, June 1, 1865, fixed at \$30,000, and which amount was paid to the claimants. The accounting officers rejected the claim for the *per diem* compensation from September 30, 1865, until April 15, 1866, when the boat perished, including the vouchers until November 30, 1865. The accounting officers also rejected a claim for \$5,401.41, alleged to have been expended in efforts to save the steamboat.

This suit was brought to recover the amount of these vouchers and the *per diem* compensation of the boat from November 30, 1865, to April 15, 1866, and also the expenditure made in efforts to save the boat, making together the sum of \$21,161.41.

The court decided that the claimants were not entitled to recover the amount of the vouchers up to the 30th of November,

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1865, nor for the *per diem* compensation of the boat from November 30, 1865, till the 15th of April, 1866, but were entitled to recover the \$2,500, in efforts expended to save the boat.

From this decision both parties appealed, the claimants, because they did not have compensation for the use and detention of the boat from the 30th September, 1865, when engineer, mate, and watchmen left the boat, until the 15th

of April, when she was "swept off and totally destroyed." The United States appealed, because they were charged with this \$2,500 expenses.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court, both in the appeal by Reed and the cross appeal by the United States.

I . IN THE APPEAL

Affreightment contracts are of two kinds, and they differ from each other very widely in their nature as well as in their terms and legal effect.

Charterers or freighters may become the owners for the voyage without any sale or purchase of the ship, as in cases where they hire the ship and have by the terms of the contract, and assume in fact the exclusive possession, command, and navigation of the vessel for the stipulated voyage. But where the general owner retains the possession, command, and navigation of the ship and contracts for a specified voyage -- as, for example, to carry a cargo from one port to another -- the arrangement in contemplation of law is a mere affreightment sounding in contract, and not a demise of the

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vessel, and the charterer of freighter is not clothed with the character or legal responsibility of ownership. [[Footnote 2](#)]

Unless the ship herself is let to hire and the owner parts with the possession, command, and navigation of the same, the charterer or freighter is not to be regarded as the owner for the voyage, as the master, while the owner retains the possession, command, and navigation of the ship, is the agent of the general owner and the mariners are regarded as in his employment and he is responsible for their conduct. [[Footnote 3](#)]

Courts of justice are not inclined to regard the contract as a demise of the ship if the end in view can conveniently be accomplished without the transfer of the vessel to the charterer, but where the vessel herself is demised or let to hire, and the general owner parts with the possession, command, and navigation of the ship, the hirer becomes the owner during the term of the contract, and if need be he may appoint the master and ship the mariners, and he becomes responsible for their acts. [[Footnote 4](#)]

On the first day of June, 1865, the assistant quartermaster of the United States, stationed at St. Louis, applied to the plaintiffs, as the owners of the steamboat *Belle Peoria*, to transport a cargo of military supplies from that port to Fort Berthold, but the owners of the steamboat declined on account of the lateness of the season. He then ordered them to prepare for the trip, and informed them that in case of refusal, the steamboat would be impressed. They protested, but under the orders given, got the boat in readiness, put the cargo on board, and on the 3d of June, 1865, left St. Louis for the place of destination, where the steamboat arrived

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on the 22d of July following, when she discharged her cargo and on the 24th of the same month started down the river on her return trip. She proceeded for two days in safety, when a high wind "sprung up," and in attempting to land she was blown ashore and grounded. All efforts to get her off proved unavailing, and believing it impossible to do so until a rise should occur in the river, the master, most of the other officers, and crew decided to return, leaving on board the mate, one engineer, and three watchmen to take care of the boat, aided by a military guard detailed and sent from Fort Rice by the officer in command at that post. Information that the steamboat was aground reached the owners at St. Louis on the 10th of August, 1865, but she remained aground until the 15th of April of the next year, when she was swept off by an ice-freshet in the river and totally destroyed. When the assistant quartermaster ordered the owners to prepare for the trip, he fixed the *per diem* compensation of the boat at \$272, which appears to have been satisfactory to the owners, as they were paid at that rate to the time

they received information of the disaster, and they have presented no claim for any greater allowance for that period of time. They were also paid at the rate of \$101 per day from the said 10th of August to the 30th of September in the same year, covering the period, as stated in the finding, that the mate, engineer, and the three watchmen remained on board after the master and the rest of the officers and crew returned. Vouchers were also issued to the plaintiffs at the rate of \$80 per day from the 30th of September of the same year to the 30th of November following, but those vouchers have never been paid or recognized, and the plaintiffs sued the United States for the amount of those vouchers and for compensation for the use of the steamboat at the same rate from the time the last voucher was issued to the time when the steamboat was swept off from the place where she was grounded by the ice-freshet in the river and totally destroyed.

Although the plaintiffs objected to the order of the quartermaster at the time it was given, still it is quite evident

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that they ultimately consented to perform the service as matter of contract, and that they were content to receive the *per diem* compensation fixed by the assistant quartermaster at the time he gave the order. Abundant confirmation of that view is found, if any be needed, in the fact that they voluntarily accepted the prescribed *per diem* compensation from the commencement of the trip to the 10th of August following, when they received information of the disaster, which was at the time when the master and all the steamboat's company, except the mate, one engineer, and three watchmen, returned to the port of departure, and that the plaintiffs make no claim for any additional compensation during that period. Compulsion is not set up by the plaintiffs, and if it was, the theory could not be supported, as the jurisdiction of the Court of Claims does not extend to torts. They have also been paid for the value of the steamboat, and also a *per diem* compensation of \$101 per day from the 10th of August to the 30th of September, which is the date when the mate, engineer, and the three watchmen also left the steamboat and returned to St. Louis. No additional compensation is claimed for that period, but they claim for the amount of the vouchers issued at the rate of \$80

per day for the two months next succeeding that period, and at the same rate from the end of that period to the 15th of April in the following year, when the steamboat was swept off by the ice-freshet and was totally destroyed.

Judgment was rendered for the claimants for certain moneys, not involved in this appeal, which were expended by them in efforts to save the steamboat, but the petition, so far as respects the *per diem* compensation, was dismissed, and the claimants appealed to this Court.

Throughout the litigation, the plaintiffs have prosecuted their claim as a matter of contract, and it is quite clear that it could have no other foundation in the court where the suit was brought, and of course it must depend upon the proper application of the principles of commercial law to the facts of the case as found by the Court of Claims.

By the terms of the contract, they were to carry the cargo

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of military supplies from the port of St. Louis up the Missouri River to Fort Berthold for \$272 per day during the voyage, including the return trip as well as the trip to the place of destination, in full compensation for the entire services. By necessary implication, the plaintiffs were to victual and man the steamboat and keep her in a seaworthy condition, and in contemplation of law they retained the possession, control, and navigation of the steamboat, as the master was one of their own selection and the crew were in their own employment, and they were responsible for their conduct. Steamers require fuel as a means of creating motive power, and it is quite obvious that it was the duty of the plaintiffs to supply the steamboat with fuel for that purpose as well as provisions for the officers and crew, and that the master was their agent and not the agent of the charterers. Well founded doubts cannot be entertained upon that subject, and if those conclusions of fact are correct then it follows as a conclusion of law that the plaintiffs, as the general owners of the steamboat, were also the owners for the voyage and that the true relation of the United States to the adventure was that of a charterer for hire and

shipper of the cargo. [[Footnote 5](#)]

Through the assistant quartermaster at St. Louis, the United States put the cargo on board the steamboat, at a fixed *per diem* compensation during the round trip, for transporting the military supplies constituting the cargo to the place of destination, the steamboat having the right to take a return cargo from other shippers or to return in ballast, at the election of her owners. She performed the trip up the river and delivered the cargo in good condition and started on the return trip, the United States, as the charterers, having no further interest in the voyage except that the steamboat should return to the port of departure without delay. All sea risks were unquestionably upon the owners of the steamboat, as they were the owners for the voyage as well as the owners in fact, and the record shows that they must have so understood their own rights, as the statement

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in the record is that when they received information of the disaster, "they made their protest in order to cover the insurance."

Suggestion may be made that the act of the United States in paying for the value of the steamboat after she was swept off by the ice-freshet and destroyed is inconsistent with the theory that they were merely the charterers for hire, and that the plaintiffs were the owners for the voyage as well as the owners in fact, but the adjudication of the third auditor cannot change the rights of the parties in respect to any matters not within his jurisdiction. [[Footnote 6](#)] Whether that adjudication was correct or incorrect is not a question in this case, and it is only referred to as showing that it cannot have any weight in the decision of the case before the Court.

Freight, it is said, cannot be earned unless the voyage is performed and the cargo is delivered; but the voyage in this case, so far as respects the cargo, was performed and the cargo was duly delivered to the consignees, and to that extent the freight was earned; but the plaintiffs were entitled, under the contract, to the same *per diem* compensation during the return trip in case it was performed

without unnecessary delay, and it may be that the United States could not have claimed any deduction from the agreed compensation if the interruption in the voyage had been only a temporary one, and the master, when the cause of interruption had been removed or overcome, had proceeded with the steamboat to the return port.

Whatever repairs became necessary in consequence of the disaster would have been a charge to the steamboat or her owners, but it may be that the plaintiffs would have been entitled to the agreed compensation for the days spent in executing the repairs as well as for the days actually spent in the return trip, but it is not necessary to decide those questions in this case, and the Court does not express any decided opinion upon the subject. [[Footnote 7](#)]

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But the interruption in the voyage was not merely a temporary one of any proper sense of the term. On the contrary the voyage was completely broken up, as fully appears from the fact that the master and all the crew ultimately abandoned the steamboat, leaving her where she was stranded, and that she remained there until the 15th of April of the next year, when she was swept off by the ice freshet and became a total loss. Broken up as the voyage was by the perils of navigation, no doubt is entertained that the plaintiffs were entitled to the agreed *per diem* compensation to that time and to such further allowance at the same rate and for such additional time as it would have required for the steamboat to have completed the return trip. They had performed the whole of the stipulated service for the United States and had delivered the cargo to the assignees, and were proceeding on the return trip in good faith, when the voyage was broken up by causes beyond their control and without any fault on their part or on the part of the master or crew

Unless a carrier assumes the risk of all contingencies, he is not liable because he fails to perform what is rendered impossible by the perils of the sea. Such events as are known as the accidents of major force, or fortuitous events, or the acts of

God, always constitute an implied condition in every such engagement. [[Footnote 8](#)] Neither party is at liberty to abandon the contract without the consent of the other or without legal cause, and such cause must not be one procured or occasioned by the fault of the party who relies upon it. [[Footnote 9](#)]

Different views have been expressed by different courts as to the effect of a temporary interruption of a voyage upon the rights of the owner of the ship and the shipper or charterer, but the rule seems to be well settled that when the voyage is broken up by a sea peril, that neither the shipper nor the charterer is in general liable to the shipowner beyond the time when the peril occurred; but that rule is more particularly applicable in cases where the transportation of

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the cargo is not complete, and it cannot be applied at all to the case before the court without considerable qualification. [[Footnote 10](#)]

Reasonably construed, the contract gives the plaintiffs the agreed *per diem* compensation from the commencement of the voyage until the same was broken up, including also so many days in addition as would have been spent, if no disaster had occurred, in completing the return trip. Apply that rule to the case, and it is clear that the judgment of the court below must be affirmed, as the United States, upon the most liberal computation, have paid more than the contract would entitle the plaintiffs to demand. Payment was made to the time when the mate, engineer, and three watchmen returned home, and the plaintiffs have no right to claim anything more.

Judgment affirmed.

II . IN THE CROSS APPEAL

Supplies for the military service were transported by the appellees from St. Louis up the Missouri River to Fort Berthold, as more fully explained by the court in the case just decided. They were the owners of the steamboat *Belle Peoria*, and it appears by the findings in the court below that the assistant quartermaster at that

station, on the 1st day of June, 1865, applied to them to take such a cargo and transport it to that place. Objections were made by the owners of the steamboat, as explained in the preceding case; but they put the cargo on board, and on the 3d of the same month started on the upward trip, and it appears that they made the trip in safety, delivered the cargo to the consignees, and without any unnecessary delay started on the return trip. Two days after they started on the return trip the steamboat encountered a high wind, and while those in charge of her were endeavoring to land she was blown aground and became fast. All efforts to get her off proving

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unavailing, the officers and crew, except the mate, one engineer, and three watchmen, left her and returned to the port of departure. By the findings, it appears that the mate, one engineer, and three watchmen remained on board to the 30th of September of the same year, when they also left the steamer and returned.

Claim was made by the present appellees, in the case just decided, for compensation for the service performed in addition to what they had received; but it is unnecessary to enter into any of those details, except to say that the boat remained aground until the 15th of April of the following year, when she was swept off by an ice freshet, and was totally destroyed. Before that occurred, however, the owners of the steamboat dispatched a pilot and crew up the river to the place where the steamboat was aground, to get her afloat and bring her down the river, but the steamboat had been swept off and destroyed three days before they arrived at the place of the disaster. Expenses of course were incurred for the wages of the pilot and crew, and for provisions and transportation, and the court below found that those expenses amounted to the sum of \$2.500, and for that sum the Court of Claims rendered judgment for the appellees, and the United States appealed to this Court.

Apart from what appears in the opinion delivered in the other appeal, the only facts found by the court below in support of the claim are what is exhibited in the

following statement:

"These persons, meaning the pilot and crew, were sent, after consultation with the quartermaster at St. Louis, and for the purpose of protecting the interests of the United States as well as those of the claimants."

Unless the United States, in contemplation of law, were the owners of the steamboat for the voyage, they had no property interests in the stranded steamboat, as the cargo had, two days before the disaster occurred, been safely discharged at the place of destination and duly delivered to the consignees. They were not owners for the voyage, as the court has just decided, so that if the statement is founded

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on that theory it is error, and entitled to no weight; and if not founded on that theory, it does not appear to rest on any substantial foundation, as the court has decided in the other appeal that the appellees, as the general owners and owners for the voyage, assumed all risks from sea perils for the entire trip.

Temporary delays, if any had occurred, might have increased the *per diem* compensation which the United States had agreed to pay; but the voyage had been broken up and frustrated more than six months before the pilot and crew were sent to the place of the disaster for the purpose of getting the steamboat afloat. Suppose, however, that it could be admitted that the United States had some property interests in the steamboat, still the admission would not benefit the appellees, as it is perfectly clear that the assistant quartermaster had no authority to bind the United States in any such arrangement. He did not attempt to make any contract, and nothing of the kind can be inferred from the finding of the court, even if it be competent for this Court to make inferences to support the judgment, which is not admitted. All that is found is that the owners of the steamboat consulted with the quartermaster before they dispatched the pilot and crew to the scene of the disaster, which falls very far short of evidence to prove a contract, even if the quartermaster had been invested with authority for any such purpose.

Viewed in any light, the record does not show any legal foundation for the judgment.

Judgment reversed and the cause remanded with directions to dismiss the petition.

[[Footnote 1](#)]

Acts of March 3, 1849, and March 3, 1863; 9 Stat. at Large 415; 12 *id.* 743, 5.

[[Footnote 2](#)]

Donahoe v. Kettell, 1 Clifford 137; *The Volunteer*, 1 Sumner 551; *The Spartan*, Ware 153; [Gracie v. Palmer](#), 8 Wheat. 605; *Clarkson v. Edes*, 4 Cowan 470; *Taggard v. Loring*, 16 Mass. 336; *Christie v. Lewis*, 2 Broderip & Bingham 410.

[[Footnote 3](#)]

Putnam v. Wood, 3 Mass. 481.

[[Footnote 4](#)]

Sherman v. Fream, 30 Barbour 478; *Reeve v. Davis*, 1 Adolphus & Ellis 312; *Frazer v. Marsh*, 13 East 238; [Marcardier v. Chesapeake Insurance Co.](#), 8 Cranch 39; 1 Parsons on Shipping 278; *Campbell v. Perkins*, 4 Selden 430.

[[Footnote 5](#)]

Saville v. Champion, 2 Barnewall & Alderson 510.

[[Footnote 6](#)]

9 Stat. at Large 415.

[[Footnote 7](#)]

Abbott on Shipping 43; *Hawkins v. Twizell*, 5 Ellis & Blackburn 883; *Havelock v. Geddes*, 10 East 555.

[[Footnote 8](#)]

The Eliza, Davies' Admiralty 318.

[[Footnote 9](#)]

Clark v. Insurance Co., 2 Pickering 108.

[[Footnote 10](#)]

Palmer v. Lorillard, 16 Johnson 352.

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