

**The Continental**

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**Court :** US Supreme Court

**Decided On :** 1871

**Appeal No. :** 81 U.S. 345

**Appellant :** The Continental

**Judgement :**

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U.S. Supreme Court The Continental, 81 U.S. 14 Wall. 345 345 (1871)

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**81 U.S. (14 Wall.) 345**

## **SYLLABUS**

1. Although one vessel may be sailing at night with lights other than those whose use is made obligatory on her by acts of Congress, and may by actually misleading another vessel tend to cause a collision, yet this will not discharge the other vessel if she, on her part, have suffered herself to be misled by the wrong lights when, if she had been intelligently vigilant, other indications would have pointed out or led her to suspect that the vessel was not what her lights indicated.

2. Accordingly, where one vessel was using wrong lights, and the other was not thus intelligently vigilant, the two vessels were made to divide equally a loss by collision between them.

An act of Congress -- that of July 25, 1866 [ [Footnote 1](#) ] -- prescribes that all coasting steamers and those navigating *bays, lakes, or other inland waters* shall carry a green light on the starboard side, a red light on the port side, and in addition thereto *a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel,* the headlight to be so constructed as to show a good light through twenty points of the compass -- namely from right ahead to two points abaft the beam on either side of the vessel -- *and the after light to show all around.* It also enacts that *oceangoing steamers* shall carry "at the foremast-head a bright white light," on the starboard side a green light, and on the port side a red light, these two last so fixed as to throw the light from right ahead to two points abaft the beam, and fitted with inboard screens projecting three feet, so as to prevent these lights being seen across the bow.

A previous act, the well known one of April 29, 1864, "for preventing collision on the waters," [ [Footnote 2](#) ] thus prescribes:

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"ARTICLE 5. Sailing ships under way . . . shall carry the same lights as steamships under way, *with the exception of the white masthead lights, which they shall never carry.* "

"ARTICLE 13. If two ships under steam are meeting end on, so as to involve risk of collision, the helm of both shall be put to port so that each may pass on the port side of each other."

"ARTICLE 15. If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship."

"ARTICLE 16. Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed or, if necessary, stop and reverse."

These two statutes being in force, the steam propeller *North Hampton* and the side-wheel steamboat *Continental*, two vessels of rival lines, were in the habit of making regular daily trips between New York and New Haven on the Long Island Sound, the *North Hampton* leaving New York about 6 P.M. on one day, and the *Continental* leaving New Haven about midnight on the same day.

On the night of the 23d of October, 1868, the rival vessels were making their customary trips. That night, though cloudy and with occasional spits of rain, was not very dark nor windy. The sea was open and comparatively smooth. About midnight, the wind being north-northeast, the *North Hampton* approached New Haven, and by the captain's order steered straight east-northeast for the New Haven lighthouse; a right course apparently for her to steer when about to enter the harbor. She soon saw the lights of a steamer, which she inferred, and rightly, was the *Continental* coming down and out of the harbor. After the *Continental* came down the harbor, she changed her course to go down the Sound towards New York. "When she first changed her course," said the captain of the *North Hampton*, who was examined as a witness, "she headed directly for the *North Hampton*, which," said he, "I could tell by her range of lights, they being exactly in range after she got her course." He continued:

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"After a little, her course varied a little southerly. She was then, when she hauled up, on her course westerly, distant about three miles. I continued going our course east-northeast until I was distant from the *Continental*, I should judge, about three-quarters of a mile. She was then bearing a very little on our port bow, nearly ahead. I then gave one blast of the whistle and changed my course one point easterly to east by north. I received no response to that whistle for, I should say, nearly or quite a minute. I then heard two blasts of the *Continental's* whistle, which I immediately answered by one whistle, rung two bells to stop the boat, and

in the meantime told the pilot to heave the wheel hard a-port."

Notwithstanding this the two steamers came violently together, the *Continental* striking the *North Hampton* on her port side a little abaft midships, nearly square on, and running through her in such a way that she went down in half an hour; her passengers just escaping with their lives.

The defense set up by the *Continental* for this collision was, the fact that the *North Hampton* had had no "central range of two white lights," for want of which, as the *Continental* alleged, she took the steamer for a sailing vessel, and starboarded her helm instead of porting it. On the subject of the *North Hampton's* lights generally, one of the boat's hands of that vessel who had been at the wheel prior to the collision, and left it when he saw the steamer coming down the Sound, testified thus:

"I found the bow light burning brightly. The side lights were also burning brightly. The stern light I found burning dim. There were two lanterns in one box. They showed as one light. I went aft and lowered it down. After I got the box down, I went into the door where the space is, out of the draft, so they would not blow out, and when there picked up the wicks of both lights, one after another. After that was done, I took them to the staff and put them in the box and hoisted them up. I heard the *North Hampton* blow one whistle. I was aft then, at the time of this first whistle, was just stepping inside the passageway with the lights, as near as I can recollect. After an interval, there was a reply with two whistles from the *Continental*. I was then coming out of the passageway,

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as near as I can remember. The *North Hampton* blew one whistle again, directly after. I was then in the act of hoisting the lights at that time. After hoisting up the lights I saw the *Continental* coming for us, and I ran forward on starboard side. I got part of the way forward, when the vessels came together and the concussion knocked me down."

It appeared from the testimony of those on board the *Continental* that they had in point of fact mistaken the *North Hampton* for a sailing vessel.

The lookout of the *Continental* -- her forward deck lookout, who had no other duty than that of lookout -- "not seeing the vessel itself, but seeing a green and white light" -- which he judged to be then a mile or a mile and a half distant -- reported, five or six minutes before the collision, "Sail off starboard bow," and was answered at the pilot house, "Aye, aye!"

The wheelsman, who heard the lookout's report, saw also a green and white light, "but no red light then four or five minutes before the collision, as he judged, and a mile or a mile and a half off, the *North Hampton's* lights bearing pretty much the whole time, until it was too late to avoid the collision, about three points on the *Continental's* bow."

*He thereupon starboarded his helm so as to keep her off.*

The captain, who had been on the line for thirty years and who was in the pilot house with the wheelsman, said:

"I saw the *North Hampton's* green and white light; she had no stern light; sometimes in a sailing vessel they come forward and stick out a white light when they get frightened; sometimes they have a light forward to overhaul the anchor chain."

The captain added:

"A lookout reports a steamer as a steamer, and a vessel as a vessel; all he knows by is the lights; at night, he reports four lights as a steamer, and two lights as a vessel. If the vessel seen has one colored and only one bright light, he reports her as a sail vessel. That's his orders."

On board the *Continental* there happened to be, going

down the Sound that night, one Horton, for seven years a Hellgate pilot. He had been in the pilot house, and saw a green and white light -- the white light forward, but he saw no aft light. The vessel on which they were seemed to him, he testified, to be a sailing vessel. He said:

"I guessed she was a sailing vessel because she did not have any stern light; I could not see her hull when I first saw her. It is generally the case for a vessel coming into port to take a light forward, to get her chain and anchor ready to drop anchor. I went away from the pilot house to the lower cabin after I saw the lights. From the time I left the pilot house till the collision was five or six minutes. After the collision, I saw a stern light halfway up the flag mast."

As already mentioned, the *Continental* was starboarded under the impression that the *North Hampton* was a sailing vessel, and with a view of keeping out of her way. The *North Hampton* being in fact a steamer, and knowing that the approaching vessel was one, ported. A collision came of course.

The owners of the *North Hampton* having libeled the *Continental* in the District Court of Connecticut, that court dismissed the libel, considering that the *North Hampton* was in fault. having had no stern light, and running in direct violation of law, which required her to have a central range of two white lights. The circuit court affirmed this decree, and the owners of the *North Hampton* brought the case here.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Ships and vessels are held liable for damage occasioned by collision, either on account of the culpable neglect or complicity, direct or indirect, of their owners, or on account of the negligence, unskillfulness, or carelessness of those employed in their control and navigation. When employed in

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navigation ships and vessels should be kept seaworthy and be well manned and equipped for the voyage, and in cases where they are not seaworthy or not well manned or equipped, and a collision ensues between such a vessel and one without fault in that respect, the owners of the vessel not seaworthy or not well manned and equipped cannot escape responsibility, if it appears that the unseaworthiness of the vessel or the want of a competent master or of a sufficient crew or of suitable tackle, sails, or other motive power, as the case may be, caused or contributed to the disaster; and as the owners of the vessel appoint the master and employ the crew, they are also held responsible for their conduct in the control and navigation of the vessel.

Controversies growing out of collisions are cognizable in the admiralty, and when prosecuted in that jurisdiction, the rules of decision are different in several respects from those which prevail even in similar controversies when prosecuted in the courts of common law. Where the collision occurs exclusively from natural causes and without any fault on the part of the owners of either vessel or those entrusted with their control and management, the maritime rule, as defined by the federal courts is, that the loss shall rest where it falls, on the principle that no one is responsible for such a disaster when produced by causes over which human skill and prudence could exercise no control. [ [Footnote 3](#) ] Admiralty courts everywhere have now adopted that rule, but it cannot be applied where both or either of the vessels are in fault -- as where the vessel of the respondent is alone in fault the libellant is entitled to a decree for his damages, and the converse of the proposition is equally true, that if the vessel of the libellant is alone in fault, proof of that fact is a sufficient defense to the libel, but if both vessels are in fault, then the damages must be equally apportioned between the offending vessels. Much uncertainty often attends the inquiry by which of those rules a given controversy should be determined, and where the evidence is conflicting the issue presented is frequently one of doubt and difficulty.

Full damages are claimed by the libellants in this case, upon the ground that the steamboat of the respondents was alone in fault, or if that theory cannot be sustained, then they contend that both steamers were in fault and that the damages should be divided. On the other hand, the respondents contend that the vessel of the libellants, the propeller, was wholly in fault, and that the decree of the circuit court dismissing the libel should be affirmed.

Daily trips were run by the propeller between the ports of New Haven and New York, carrying passengers and freight, and she was on her return trip from the latter port and near the entrance to the harbor of her home port when she was struck by the *Continental*, the steamboat of the respondents, on her port side, abaft her midships, and damaged to such an extent that she sunk in half an hour. Corresponding trips were run by the steamboat of the respondents between the same ports, the *Continental*, however, usually leaving the port of New Haven on the same day that the propeller, the *North Hampton*, left New York on her return trip to the port where both steamers belonged. Accustomed as they were to start on their respective trips at stated hours, each knew pretty nearly when they would meet and where they would pass each other on the route, except when one or the other was detained by stress of weather or other special circumstances, and the proofs exhibited furnish no reason to suppose that either of the steamers met with any detention during this trip. Testimony was taken on both sides and both parties having been heard, the district court entered a decree for the respondents. Prompt appeal was taken by the libellants to the circuit court, but the circuit court affirmed the decree of the district court, and the libellants appealed to this Court.

Before the *Continental* came out of the lower harbor her lights were seen by those on board the propeller when the two steamers were four or five miles apart. Distant from each other as they then were, the better opinion is that they were not at that time on courses which involved any risk of collision, but the *Continental*, shortly after she came out of

the lower harbor, hauled up as usual on her Sound course, heading more directly towards her ultimate destination, and from that moment the course of the two steamers was such that the rules of navigation as well as the dictates of common prudence made it the duty of each to adopt proper precautions to prevent a collision. Beyond doubt, they were approaching each other nearly end on, within the maritime meaning of that phrase, and under such circumstances all must admit that the rules of navigation require that "the helms of both shall be put to port, so that each may pass on the port side of the other." [ [Footnote 4](#) ]

Extended argument to establish that theory of fact does not appear to be necessary, as it agrees with the first finding of the district judge and is supported by all the attending circumstances as well as by the weight of the direct testimony. Evidently the two steamers were far enough apart at that time to have adopted whatever precautions were necessary to have prevented a collision, and it is clear that if each had obeyed the rules of navigation, they would have passed each other in safety. Fault is imputed to the steamboat *Continental*, because she did not port her helm as required by the rules of navigation established by the act of Congress, but the respondents contend that they were deceived and misled as to the character of the approaching vessel and consequent nature of their duty by the failure of those on board of the propeller to display proper lights, as they also were required to do by the same Congressional regulations, as amended by a subsequent act. [ [Footnote 5](#) ]

Evidence to that effect was given by one of the witnesses called by the libellants. He testified that he was at the wheel prior to the collision; that he saw the *Continental* coming down the harbor and spoke to another seaman to take his place; that the seaman spoken to did as requested; that he went and called the master and the mates; that he looked at the lights; that the bow light and both the side lights were burning brightly, but that the stern light, which

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consisted of two lanterns and showed as one light, he found was "burning dim;" that he went aft and took down both lanterns and went forward in the passageway

on the starboard side and having picked up the wicks carried the lanterns back and put them in the box where they belonged; that he stepped forward into the passageway to get out of the draft, so that the wind might not blow the lights, out, and he further states that he heard the propeller give one whistle just as he was stepping into the passageway with the lanterns; that he also heard two whistles from the *Continental* in reply just as he was returning to replace the lights in the box; that the propeller, just as he was hoisting the lanterns, again blew one whistle; that after he replaced the lights he saw the *Continental* approaching the propeller, when he ran forward part way and was knocked down by the concussion.

Such a disaster could not have occurred without fault on the part of one or both vessels, as they had an open sea and good weather, and the night, though cloudy, was not very dark, as fully appears from the fact that those on board the propeller saw the lights of the *Continental* when she was at least four miles distant.

Coasting steamers are required to carry a central range of two white lights as well as the red and green lights prescribed for oceangoing steamers, the after light to be carried at least fifteen feet above the light at the head of the vessel, and the requirement of the act of Congress in respect to it is that it shall "show all around the horizon." [ [Footnote 6](#) ] Signal lights are required by the acts of Congress in order that they may be seen by an approaching vessel in season to enable those in charge of the vessel to adopt the necessary precautions to prevent a collision with the vessel whose lights are so displayed, and when it appears that they were burning so dimly as not to fulfill the purpose and object for which they are required, they cannot be regarded as constituting a compliance with the prescribed requirement. [ [Footnote 7](#) ] Apply that rule to the present case and it is quite clear that the propeller

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was in fault, and it appears that the district and circuit courts both came to the conclusion that she was solely in fault and denied to the libellants all claim for damages, either as owners of the propeller or as bailees of the cargo. Whether

that decision is correct or not must depend upon the evidence, as it is clear that the absence of one or more of the lights required by the act of Congress will not necessarily cast upon the delinquent party the entire consequences of such a disaster. Absence of lights in a case falling within the acts of Congress renders the owners of the vessel liable for the consequences resulting from the omission, but it does not confer any right upon the other vessel to disregard or violate any rule of navigation or to neglect any reasonable or practicable precaution to avoid a collision which the circumstances afford the means and opportunity to adopt.

Steamers displaying proper signal lights are in that respect without fault, but they have other duties to perform to prevent collision besides complying with that requirement, and if they neglect to perform such other duties they will not be held blameless because they displayed proper lights as required by the act of Congress upon that subject. [ [Footnote 8](#) ]

Some conflict undoubtedly exists in the testimony as to the precise manner in which the two steamers were approaching each other after the *Continental* came out of the harbor and hauled up upon her Sound course, but the better opinion we all think is that they were approaching each other nearly end on, or substantially in that manner, as found by the district court. Inquiry as to what their respective courses were before that time would be useless, as the respondents do not claim that either the lookout or master of the steamboat saw the propeller or her lights before the steamboat was put upon her Sound course. Unquestionably the lights of the propeller might have been seen earlier, but it is clear that they were not, if the witnesses are to be believed.

Lookouts are required to be vigilant, and it is not doubted

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if proper vigilance had been exercised in this case those on board the steamboat might have ascertained the character of the approaching vessel in season to have adopted every necessary precaution to have avoided a collision. They must have expected to meet the propeller about that time, and under the circumstances they

had no right to assume without a closer scrutiny that the approaching vessel was a sail vessel because she did not show a stern light. She did show a bow light, which might well have satisfied them that the vessel was not a sail vessel, as it is more reasonable to suppose that the stern light of a steamer has become dim or extinguished than that a sail vessel will show a light not required nor authorized by the prescribed regulations. Proper scrutiny as to the character of the approaching vessel would or should have induced greater caution on the part of the master of the *Continental*, and if any doubt remained after such scrutiny was made the steamboat should have slackened her speed or have stopped until every reasonable degree of uncertainty was overcome. Navigators have no right arbitrarily to assume under all circumstances that every vessel approaching which does not show both the signal lights and the central range of two white lights is a sail vessel which is bound to keep her course, and that if she does not she may be run down and sunk.

Prior to the enactment of the sailing rules neither steamers nor sail vessels, except on the lakes, were required to carry lights of any kind, and yet the rules of navigation were substantially the same as those prescribed in the existing acts of Congress. Lights are now required, but the omission of one vessel to comply with the requirement will not excuse the other from the exercise of all due and reasonable care to prevent a collision. [ [Footnote 9](#) ]

Viewed in the light of these suggestions, as the case must be, the Court is fully satisfied that those in charge of the steamboat did not exercise due care and vigilance to ascertain the character of the approaching vessel, and that if

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they had done so they would have been enabled to have adopted reasonable precautions to have prevented the collision. Consequently the Court is of the opinion that both vessels were in fault, and that the damages should be equally apportioned between the offending vessels. [ [Footnote 10](#) ]

Where two steamers are approaching each other in an open sea on a night when the lights of a vessel may be seen five miles, the defense that one of the steamers mistook the other for a sail vessel cannot be admitted as valid unless it is established by full proof, and where, as in this case, it appears that the approaching steamer showed a bow light in addition to the red and green lights, the Court will be still less inclined to give credence to the theory as a valid defense.

*Decree reversed and the cause remanded for further proceedings in conformity to the opinion of this Court.*

[ [Footnote 1](#) ]

14 Stat. at Large 228.

[ [Footnote 2](#) ]

13 *id.* 58.

[ [Footnote 3](#) ]

[\*Union Steamship Co. v. N.Y. & Va. Steamship Co.\*](#), 24 How. 313.

[ [Footnote 4](#) ]

13 Stat. at Large 60.

[ [Footnote 5](#) ]

14 *id.* 228.

[ [Footnote 6](#) ]

14 Stat. at Large 228-229.

[ [Footnote 7](#) ]

[\*Chamberlain v. Ward\*](#), 21 How. 566.

[ [Footnote 8](#) ]

[The Gray Eagle](#), 9 Wall. 510.

[ [Footnote 9](#) ]

13 Stat. at Large 58; 9 *id.* 382; 14 *id.* 228; [Steamship Company v. Rumball](#), 21 How. 384.

[ [Footnote 10](#) ]

[Catharine v. Dickinson](#), 17 How. 170; 1 Parsons on Shipping 527; [The Morning Light](#), 2 Wall. 557.

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