SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The Dexter

The Dexter

SooperKanoon Citation : sooperkanoon.com/82730

Court : US Supreme Court

Decided On : 1874

Appeal No. : 90 U.S. 69

Appellant : The Dexter

Judgement :

The Dexter - 90 U.S. 69 (1874)
U.S. Supreme Court The Dexter, 90 U.S. 23 Wall. 69 69 (1874)

The Dexter

90 U.S. (23 Wall.) 69

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND

SYLLABUS

1. The rule of navigation prescribed by the Act of Congress of April 29th, 184, "for preventing collisions on the water," which requires "when sailing ships are meeting end on, or nearly so, the helms of both shall be put to port," is obligatory from the time that necessity for precaution begins, and continues to be applicable so long as the means and opportunity to avoid the danger remain.

2. In a collision at sea, happening on a bright moonlight night and when the approaching vessel was seen by the officer in charge of the deck long before the collision occurred, the absence of a lookout *held* unimportant, it being assumed that his presence would have done nothing to avert the catastrophe.

Appeal from the Circuit Court for the District of Maryland, affirming a decree of the district court dismissing a libel filed by the owners of the schooner *Julia* against another schooner, the *Dexter,* in a cause of collision in Chesapeake Bay by which the *Julia* was totally lost, the only difficulty in the controversy being -- that usual one in causes of collision at se -- to ascertain what were the facts of the case; in other words, to settle the case, a matter rendered difficult in this cause, as in so many others of collision, by the circumstance that witnesses of one side swore in direct opposition to witnesses of the other. The adjudication therefore ministers nothing to juridical science.

The case, as it was assumed in both the courts below and in this upon the contradictory testimony adverted to was thus:

On the night of November 17th, 1870 -- the night being clear and the moon shining brightly -- the schooner *Julia* was sailing up Chesapeake Bay. The schooner *Dexter* was sailing down it. The wind, which was fresh, was between northwest and west-by-north, and the vessels were each sailing at the rate of eight miles an hour, approaching, therefore, rapidly. The *Julia* was close to the wind, though not as close as she would lie without impeding her course.

The helmsmen of the two vessels saw them respectively when three miles from each other. What their exact course then was and whether likely to come together did not so plainly appear. Some evidence tended to show that, at that time, the vessels were not approaching end on, but that the *Dexter* was sailing with the wind free. But by the time that they got to within a half mile of each other, the *Julia* was heading north-northeast, and the *Dexter* south-southwest -- that is to say the vessels were approaching from exactly opposite directions, and the vessels were

approaching also

end on, or nearly so. As they thus approached, the *Dexter* ported her helm. The *Julia* kept on her course till the vessels got very near, when a collision was plainly threatened. The *Julia* then starboarded her helm. A collision ensued, and the *Julia,* which was heavily laden with oysters, went to the bottom.

The only lookout on the *Dexter* when the *Julia* came in sight was the captain, who, at the time of the collision, was standing aft of the foremast.

The act of Congress "fixing certain rules and regulations for preventing collisions on the water," among its "Steering and Sailing Rules" thus provides: [Footnote 1]

" *TWO SAILING SHIPS MEETING"*

"ARTICLE 11. If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass to the port side of the other."

" *TWO SAILING SHIPS CROSSING"*

"ARTICLE 12. When two sailing ships are crossing, so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close-hauled, and the other ship free, in which case the latter ship shall keep out of the way. But if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward."

" *NO SHIP UNDER ANY CIRCUMSTANCES TO NEGLECT PROPER PRECAUTIONS"*

"ARTICLE 20. 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.;

The district court, as already said, decreed a dismissal

Page 90 U. S. 72

of the libel; the circuit court affirmed the decree, and the owner of the *Julia* took this appeal.

Page 90 U. S. 74

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Objection is made by the libellant that the lookout of the *Dexter* was insufficient, but it is unnecessary to decide the question, as it was a clear night, and as each vessel was seen by the other long before there was any necessity for precaution and in ample time before the collision to have done whatever the circumstances required to have prevented the disaster. Sufficient lookouts are required by the rules of navigation, but where it appears that the officer in charge of the deck saw the approaching vessel while she was yet so distant that no precautions to avoid a collision had become necessary, and that the want of a lookout did not and could not have contributed to the collision, the vessel omitting such a proper precaution will not be held responsible for the consequences of the disaster if in all other respects she is without fault. [Footnote 2]

It is insisted by the libellant that the wind was from the northwest and that his schooner was close-hauled. On the other hand, it is contended by the claimant that the wind was west-by-north, and he denies that the course of the schooner was such as is alleged by the libellant.

Strong doubts arise whether the wind was as far north as the point assumed by the libellant, and the proofs fail to convince the court that it was as far to the west as is supposed by the claimant. Difficulties attend the inquiry, but the better opinion is that the course of the schooner of the libellant was not as close to the wind as she would lay, without impeding her headway. Nor is it very material whether

Page 90 U. S. 75

she was or not when the vessels were first seen by each other, as they were then two miles apart and were moving through the water, by estimation, at the rate of fourteen or fifteen miles an hour. Satisfactory proof is exhibited that the schooner of the claimant was heading south-southwest, and whatever may have been the course of the other schooner when they were two miles apart, the proof is equally satisfactory that her course when they were a half a mile apart was exactly opposite to that of the schooner of the claimant. Evidence is certainly exhibited in the record tending to show that the course of the schooner of the libellants was east-northeast when the vessels were first seen by each other, but it is convincing that when they were only a half-mile apart, they were approaching from exactly opposite directions and that the case falls within the true intent and meaning of the eleventh sailing rule prescribed by Congress.

Sailing ships are meeting end on within the meaning of that provision when they are approaching each other from the opposite directions or on such parallel lines as involve risk of collision on account of their proximity, and when the vessels have advanced so near to each other that the necessity for precaution to prevent such a disaster begins, which cannot be definitely defined, as it must always depend to a certain extent upon the speed of the respective vessels and the circumstances of the occasion. [Footnote 3]

Rules of navigation such as the one mentioned are obligatory upon vessels approaching each other from the time the necessity for precaution begins and continue to be applicable as the vessels advance so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to

keep her course after the approach is so near that the collision is inevitable, and are equally inapplicable to vessels of every description while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision.

Apply the eleventh sailing rule to the case and it is clear

Page 90 U. S. 76

that the decree of the circuit court should be affirmed, as the evidence shows that the two vessels when they were half a mile apart were approaching each other in opposite directions and that the schooner of the claimant ported her helm as required by that rule, and it is equally clear that the collision would have been prevented if the schooner of the libellant had performed her duty in that regard. Instead of that, she held her course until the danger became imminent, and then, by the mistake of the man at the wheel, put her helm in the wrong direction, which rendered the collision inevitable.

Attempt is made in argument to exculpate the error of the helmsman upon the ground that the danger was imminent, but such an excuse cannot be admitted as a valid one where it appears that the imminence of the peril was occasioned by the negligence, carelessness, or unskillfulness of those in charge of the vessel setting up such an apology for a violation of a plain rule of navigation.

Serious conflict exists in the testimony as to what was done by the respective vessels when they were more distant from each other, but it is not deemed necessary to give that part of the evidence much examination, as it is clear that they had ample time and opportunity to adopt every needful precaution to avoid a collision after it must have been apparent to both that they were fast approaching each other from opposite directions.

Resort is had by the libellant to that part of the evidence to show that the case falls under the twelfth sailing rule, and not under the eleventh, as contended by the claimant. Even suppose that proposition could be maintained, which is denied, it is quite clear that it would not benefit the libellant, as it is conceded that his schooner

changed her course by putting her helm to starboard and that it was that error which produced the collision.

Viewed in any light it is clear that the libellant is not entitled to recover.

Decree affirmed.

[Footnote 1]

13 Stat. at Large 60.

[Footnote 2]

The Farragut, 10 Wall. 337.

[Footnote 3]

The Nichols, 7 Wall. 664.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com