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The Elizabeth Jones

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Court : US Supreme Court

Decided On : Dec-15-1884

Appeal No. : 112 U.S. 514

Appellant : The Elizabeth Jones

Judgement :

The Elizabeth Jones - 112 U.S. 514 (1884)
U.S. Supreme Court The Elizabeth Jones, 112 U.S. 514 (1884)

The Elizabeth Jones

Argued November 13, 1884

Decided December 15, 1884.

112 U.S. 514

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SYLLABUS

A schooner was sailing E. by N., with the wind S., and a bark was close-hauled, on the port tack. The schooner sighted the green light of the bark about half a point on the starboard bow, about three miles off, and starboarded a point. At two miles off, she starboarded another point. As

a result, the light of the bark opened about two points. The bark let her sails shake and then filled them twice. The schooner continued to see the green light of the bark till the vessels were within a length of each other, when the bark opened her red light. At the moment the vessels were approaching collision, the schooner put her helm hard a-starboard and headed northeast. At that juncture, the bark ported, and her stem struck the starboard side of the schooner amidships at about a right angle. *Held* that the bark was in fault and the schooner free from fault.

If the case was one of crossing courses, under article 12 of the Rules prescribed by the Act of April 29, 1884, c. 69, 13 Stat. 58, the schooner being free and the bark close-hauled on the port tack, the bark did not keep her course, as required by article 18, and no cause for a departure existed under article 19, and she neglected precautions required by the special circumstances of the case, within article 20.

The final porting by the bark was not excusable as being done *in extremis,* because it was not produced by any fault in the schooner.

The decree of the Circuit Court was affirmed, without interest.

On the 12th of August, 1873, James R. Slauson and William R. Pugh filed a libel in admiralty in the District Court of the United States for the Northern District of Illinois against the bark *Elizabeth Jones* to recover damages for the total loss of the schooner *Willis,* owned by them, and of the freight money on her cargo, through a collision which occurred between the two vessels shortly before two o'clock A.M. on the 11th of November, 1872, on Lake Erie. The *Willis* was on a voyage from Chicago to Buffalo with a cargo of barley, and the *Jones* was bound from Buffalo to Chicago with a cargo of coal.

The libel alleged that the course of the *Willis* was E. by N., the wind being from the southward, and about S., and about a six-knot breeze; that about 2 o'clock A.M. the lookout reported a green light half a point on the starboard bow of the *Willis,* and apparently two or three miles distant; that the *Willis* had the wind free, and the vessel showing the green light, and which afterwards proved to be the *Jones,* was, to those on board of the *Willis,* evidently by the wind and close-hauled; that the helm of the *Willis* was put to starboard, and she went off a point and was steadied; that the *Jones* came on, still showing her green light, when, in order to give her a wide berth, the helm of the *Willis* was again put to starboard, and she went off another point and was steadied; that the *Jones* continued to approach, but apparently not holding her course, keeping away, though still showing her green light only; that the helm of the *Willis* was put to starboard, and she swung off so as to head N.E.; that about the same time, the *Jones* showed both her red and green lights; that the *Jones* immediately came into collision with the *Willis,* head on, striking her amidships at right angles, crushing in her side, and causing her to sink in a very short time; that had the *Jones* kept her course, she would have passed the *Willis* on her starboard hand safely, and that the *Jones* not only kept away while she was approaching the *Willis,* but when she had neared the *Willis,* so that there was imminent danger of colliding, she improperly ported, instead of starboarding her helm.

On the first of October, 1873, the owners of the *Jones* filed their answer to the libel. It averred that the *Willis* had the wind free, about a six-knot breeze, from about S.; that the *Jones* was sailing by the wind, close-hauled; that the *Willis* discovered the *Jones* two or three miles distant; that immediately preceding the collision the *Willis* put her helm to starboard, and the *Jones* put her helm to port, but in approaching the *Willis,* the *Jones* did not change her course until a collision became imminent, and the *Willis* made no change of course to avoid the *Jones* except, as before stated, immediately preceding the collision; that the lookout of the *Jones* discovered what proved to be the light of the *Willis* from two to four

miles distant; that she

"was approaching the *Jones* in an opposite direction from the course of the *Jones;* that, when the light of the *Willis* was first seen, it was almost dead ahead, and continued on that line as the vessels approached each other;"

"that the *Jones* was kept steadily on her course until, seeing that there was danger of a collision, her helm was ported, but those in command of the *Willis* caused her helm to be put to starboard, which threw her across the bows of the *Jones* and caused the collision, and that it resulted entirely from the fault of the *Willis.* "

On the 4th of October, 1873, the owners of the *Jones* filed a cross-libel against the *Willis* to recover for damage caused to the *Jones* by the collision. It contained substantially the same averments as the answer to the libel of the *Willis,* adding the fact that the *Jones* struck the *Willis* between her fore and main rigging.

The case was heard on pleadings and proofs by the district court in February, 1875, and after the hearing and before a decision, leave being granted to the owners of the *Jones* to amend their answer and their cross-libel, they filed an amended answer on the eighth of March, 1875. It varied the allegations of the original answer by stating that the *Willis* discovered the *Jones* about three miles distant, but did not see the green light of the *Jones;* that immediately preceding the collision, the *Jones* began to put her helm to port, but, seeing that the *Willis* was starboarding her helm, immediately changed it to starboard; that the lookout of the *Jones* discovered, about half a point on his port bow, and three miles off, the red light of a vessel that proved to be the *Willis;* that after the light of the *Willis* was first seen, it continued to show more on the port bow of the *Jones;* that the *Jones* was kept on her course until immediately before the collision, when she began to port her helm, but, seeing that the *Willis* was starboarding her helm, immediately changed it to starboard, but the *Willis* continued to starboard her helm, which threw her across the bows of the *Jones,* and that the starboard bow of the *Jones* came in contact with the starboard side of the *Willis* about

amidships. On the same day, the owners of the *Jones* filed an amended

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cross-libel, containing substantially the same averments as the amended answer, in variation of those in the original cross-libel. The original libel was, by stipulation, made the answer to the cross-libel.

In July, 1875, the district court entered a decree finding that the *Willis* was in fault, dismissing her libel, pronouncing for the libellants in the cross-libel and awarding to them $1,500 damages. The owners of the *Willis* appealed to the circuit court. In August, 1881, that court entered a decree finding that the *Jones* was in fault, reversing the decree of the district court, dismissing the cross-libel, pronouncing for the libellants in the original libel, and awarding to them $32,826.75 for damages, and interest. From that decree the owners of the *Jones* have appealed to this Court.

The circuit court filed the following findings of fact:

"First. That on the 11th day of November, 1872, a collision occurred between the schooner *Willis* and the bark *Elizabeth Jones* on Lake Erie at about 16 miles east of Point an Pelee. The libellant, the schooner *Willis,* was bound for Buffalo; the respondent, the bark *Jones,* was bound for Chicago. The vessels collided at a quarter before 2 in the morning. The *Willis* was sailing E. by N. The bark was sailing a general course S.W. by W. 1/2 W., steering by the wind. The wind was S., about a six-knot breeze at the time of the collision. Previous to the collision, it had been S.E. picking up to the westward. At 12 o'clock, the wind was E. At 20 minutes after 1 it was S.E. At the time of the collision it was S. The *Willis* had the wind free, and the bark was close-hauled on the port tack. Both vessels had their proper lights and watch on deck. The vessels were between two and four miles apart when they sighted each other's lights. The night, though it occasionally clouded up, was favorable, and light enough to make objects easily discernible for two or three miles. The schooner was laden with a cargo of barley and the bark with a cargo of coal. When the vessels collided, the starboard side of the stem of

the bark struck the schooner on the starboard side between the fore and main rigging -- struck her amidships at about

right angles on the starboard side. The schooner and her cargo sank in less than half an hour and was a total loss. The injury sustained by the *Jones* was fixed in the decree of the district court at $1,500."

"Second. The officers and men of the schooner *Willis* first sighted the green light of the bark *Jones* about half a point off the schooner's starboard bow at a distance of about three miles off, and continued to see the green light of the *Jones* until the vessels were within a length of each other, when the *Jones* opened her red light."

"Third. The helm of the *Willis,* as soon as the light of the *Jones* appeared, was at once put to starboard, and she went off a point and then steadied, the light of the *Jones* thereupon opening about a point and a half. When about two miles distant, the helm of the *Willis* was again put to starboard a point, and then steadied, the light of the *Jones* thereupon opening about two points."

"Fourth. That the mate in command of the *Jones* gave the following order immediately after first sighting the light of the *Willis* :"

" I went aft to the man at the wheel to see how she was headed, and her sails were then kind of shaking. I told him to 'look out and keep the sails full.' Then I went forward again. By the time I got forward, the sails was lifting. Again I told him to keep the sails full -- 'draw up and keep the sails full.' "

"Fifth. At the moment the vessels were approaching collision, the helm of the *Willis* was put hard a-starboard, and she must have swung so as to head N.E. and thus have exposed her starboard side. At this juncture, the *Jones* ported her helm, and the vessels collided, the stem of the *Jones* striking the *Willis* amidships on the starboard side."

The circuit court also filed the following conclusions of law:

"First. The court finds as a conclusion of law that this case falls under the 12th article of the regulations for preventing collisions at sea, applicable to the navigation of vessels."

"Second. That the bark *Jones* being close-hauled and the schooner *Willis* being free, it became the duty of the *Willis* to

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keep out of the way, and she, having come into collision, must show why she did not discharge that duty and avoid the collision."

"Third. The court finds as a matter of law that each of the changes heretofore recited in the findings of fact as having been made by the *Jones* was improper."

"Fourth. The court also finds as a matter of law that the changes recited in the findings of fact as having been made by the *Willis* were proper."

MR. JUSTICE BLATCHFORD delivered the opinion of the Court. He recited the facts as above stated, and continued:

There is a bill of exceptions containing exceptions by the claimants of the *Jones* to the first, third, and fourth conclusions of law. Our review of the decree below is limited by statute to a determination of the questions of law which arise on the record under the facts stated by the circuit court. The opinion of that court, although, as required by a rule of this Court, annexed to and transmitted with the record, is no part of it.

When this collision occurred, the regulations in force for preventing collisions on the water were those prescribed by the Act of April 29, 1864, 13 Stat. 58. Articles 11, 12, 18, 19, and 20 of the "Steering and Sailing Rules" in that act have a bearing on this case, and are as follows:

" *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 on 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

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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."

" *CONSTRUCTION OF ARTICLES 12, 14, 15, AND 17"*

"ARTICLE 18. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article:"

" *PROVISO TO SAVE SPECIAL CASES"*

"ARTICLE 19. In obeying and construing these rules, due regard must be had to all dangers of navigation and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger."

" *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, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

A reference to the statements of the original answer of the *Jones* and of her original cross-libel shows that the case she first attempted to make was one under article 11, of two sailing vessels meeting end on, or nearly end on, so as to involve risk of collision, where both are required to port. This is shown by the averments that the *Willis*

"was approaching the *Jones* in an opposite direction from the course of the *Jones;* that when the light of the *Willis* was first seen, it was almost dead ahead, and continued on that line as the vessels approached

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each other,"

and that the *Jones,* seeing danger of a collision, ported, but the *Willis* starboarded. After the trial before the district court, the amended answer and the amended cross-libel set up a case where the *Jones* saw, on her port bow, the red light of the *Willis;* that light continued to show more on the port bow of the *Jones;* the *Willis* did not see the green light of the *Jones;* and, immediately before the collision, the *Jones* began to port her helm, but, seeing that the *Willis* was starboarding, changed her helm to starboard. This new theory on the part of the *Jones* as to her defense indicates plainly that she was conscious that her porting was a wrong maneuver, and that she undertook to account for the collision by alleging that she saw the red light of the *Willis* on her port bow, and that it opened more on that bow, and that the *Willis,* by starboarding after that, came across her path. This theory is negatived by the findings of the circuit court.

The salient facts exhibited in those findings are as follows:

The *Willis* was sailing E. by N. The *Jones* was sailing a general course S.W. by W. 1/2 W., steering by the wind. The collision occurred at a quarter before 2 A.M.

At 12 midnight, the wind was E. At 20 minutes past 1, 25 minutes before the collision, the wind was S.E. At that time, if the *Jones* was sailing S.W. by W. 1/2 W., her course was nine points and a half from the wind, and she was not close-hauled. She could certainly, though a bark, hold the wind at seven points off. At the same time, the *Willis,* if sailing E. by N., was five points from the wind. The wind being a six-knot breeze, it is plain, in view of the combined speed of the vessels, that they had not yet seen each other twenty-five minutes before the collision. The wind was hauling to the southward, and changed the four points, to S., in those twenty-five minutes. If, because of that change of the wind, the *Jones,* to hold the wind, fell off to seven points from the wind, she would be heading W. by S., or directly opposite to the E. by N. course of the *Willis.*

The *Willis* made the green light of the *Jones* about half a point on her starboard bow, about three miles off, and continued

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to see that green light till the *Jones* was within a length off, when the *Jones* opened her red light. As soon as the *Willis* saw the green light of the *Jones,* she put her own green light against it by starboarding, and went off a point, and then steadied -- that is, she headed E.N.E. It follows that she showed her green light to the *Jones.* This starboarding by the *Willis* was when the vessels were about three miles apart, and from fifteen to eighteen minutes before the collision, as their combined speed was from ten to twelve miles an hour. The *Jones* must have seen that the *Willis* was falling off and trying to get out of her way. Green light to green light was safety. When the *Willis* thus headed E.N.E., the green light of the *Jones* was one point and a half on her starboard bow. When the vessels were about two miles apart, that is, from ten to twelve minutes, the *Willis* fell off one point more, to N.E. by E., and the green light of the *Jones* got to be two points on her starboard bow. All this time the *Willis* was trying to get out of the way of the *Jones.* She did so in a proper manner, by carrying her own green light away from the green light of the *Jones,* and by taking a course which did not and could not cross the course of the *Jones.* When the *Willis* thus at two miles distance from the *Jones,* headed N.E. by E., the *Jones* with the wind S., would, if close-hauled

at seven points from the wind, head no further off than W. by S. At the collision, the *Willis* was heading N.E. or one point more off, and the starboard side of the stem of the *Jones* struck the starboard side of the *Willis* amidships at about right angles. To do this, the *Jones* must have headed about N.W. which was a change, by porting, of five points from her course of W. by S., which latter course, with the wind S., would have allowed her at seven points off, to be close-hauled, and have her sails full.

The *Jones* ran into danger by porting. She did not port to avoid collision or immediate danger. She ported when she must have seen all the time that the *Willis* was going away from her. This porting by the *Jones* was no part of keeping her course, and it caused the collision. It was a departure, by

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the *Jones,* from the course which the *Willis,* constantly seeing the green light of the *Jones,* had a right to think the *Jones* would keep, especially in view of the persistent falling off of the *Willis.* It was therefore a change of course by the *Jones.* It was a change, by her, across the course of the *Willis* to the extent of five points beyond her close-hauled course of W. by S.

Conceding it to have been the duty of the *Willis,* under article 12, to keep out of the way of the *Jones,* it was equally the duty of the latter not to baffle or prevent the efforts of the *Willis* to that end. Her departure from the requirement of article 18 that she should keep her course cannot be justified under article 19, because there were no special circumstances which rendered such departure necessary in order to avoid immediate danger. In *The Elizabeth Jenkins,* L.R. 1 P.C.App. 501, it is laid down that if a ship bound to keep her course under article 18 justifies her departure from that course under the words of article 19, she takes upon herself the obligation of showing both that her departure was at the time it took place, necessary in order to avoid immediate danger, and that the course adopted by her was reasonably calculated to avoid that danger. Under article 20, the special circumstances of the case required that the *Jones* should be careful not to port as and when she did. Article 20 was in force at the time of this collision, although it

is not reenacted in the Revised Statutes. Why it was omitted is not apparent, as it had not been repealed. It was one of the articles in the British Act of 1862, 25 & 26 Vict. c. 63, from which our act of 1864 was taken, and it still remains an article in the regulations promulgated by the British Order in Council of August 14, 1879, 4 P.D. 241, which states that it has been made to appear that the government of the United States is willing that those regulations shall apply to ships of the United States, whether within British jurisdiction or not, after September 1, 1880. We do not intend to intimate, however, that the precautions it enacts are not to be enforced as parts of the general law of navigation, though not now embodied in any statute.

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The circuit court held that each of the changes recited in the findings of fact as having been made by the *Jones* was improper, and that the changes recited therein as having been made by the *Willis* were proper. In regard to the *Jones,* it is contended for her that she was at liberty to make such variations from her course as the wind rendered necessary to enable her to keep her sails filled and keep on her port tack. It must be concluded from the fourth finding of fact and the third conclusion of law that the *Jones* was maneuvered on two occasions in such a manner as first to allow her sails to shake, and second to allow her to fall off and fill her sails; that this falling off was effected by putting her helm up or to port, and that the circuit court regarded these maneuvers as changes, and as improper ones. In view of what it is found the *Willis* was doing, it is plain that these changes were calculated to baffle the efforts of the *Willis* by starboarding, to get away from the *Jones,* and that they amounted to a following up of the *Willis* by the *Jones.* Although the wind had got as far as S., the *Jones* had no right to persist in falling off toward the *Willis* to an extent sufficient to produce a collision, when the *Willis* was all the while going away in the same direction. The duty of the *Jones* to keep her course did not permit her to do so in such a way as to bring about a collision with a vessel whose green light was constantly receding. There is no idea appertaining to keeping a course which justifies holding to it in such way as to bring on a peril. The only principle inherent in it is to so act as to

enable the other vessel, on whom the duty rests, to adopt with success means of getting out of the way.

It is apparent that notwithstanding the alleged endeavor of the *Jones* to keep close-hauled, with the wind S., the *Willis,* by her starboarding two points, from a course E. by N. to a course N.E. by E., would have gone clear of the *Jones* but for the porting of the *Jones,* as found in the fifth finding of fact, which carried her head around at least five points toward the *Willis.* The following diagram illustrates the courses and bearings of the two vessels, prior to any starboarding by the *Willis* and to any porting by the *Jones* :

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image:a

It shows the *Willis* on a course E. by N., and the *Jones* on a course S.W. by W. 1/2 W., five points and a half from S. At that time the vessels were three miles apart, or 15 to 18 minutes. When they were two miles apart, or ten to twelve minutes, after the *Willis* had twice starboarded, and to N.E. by E., the green light of the *Jones* bore two points on the starboard bow of the *Willis.* Then, with any proper falling off of the *Jones* to hold a S. wind, even to the extent of seven points, or to W. by S., when the *Willis* was on a course N.E. by E., or two points away from the course of the *Jones,* there would have been no collision, if the *Jones* had not ported five points more.

It is contended for the *Jones* that the *Willis* should have ported instead of starboarding. But, as she saw the green light of the *Jones* on her starboard bow, to have ported would have thrown her across the course of the *Jones,* as shown by the following diagram:

image:b

By starboarding and going away from the green light of the *Jones,* the *Willis* took a course of safety, and, in the language of the cases, "determined the risk." Article 12 applies only to cases where the vessels "are crossing so as to involve

risk of collision." Even assuming on the facts found that these vessels were crossing so as to involve risk of collision when they first sighted each other, the *Willis* "determined the risk" when

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she had gone off two points by starboarding, and brought green light to green light. This is the point in judgment in *The Earl of Elgin,* L.R. 4 P.C.App. 1. But it is urged for the *Jones* that the porting mentioned in the fifth finding was a porting *in extremis,* and therefore excusable. The finding is not to that effect. The changes made by the *Willis* are found to have been proper and were proper. This being so, no fault of the *Willis* induced the final act of porting by the *Jones.* To be an excusable mistake *in extremis,* a pardonable maneuver, though contributing to or inducing a collision, when the maneuver would have been faulty if not excusable, it must be one produced by fault or mismanagement in the other vessel. *New York & Liverpool Steamship Co. v. Rumball,* 21 How. 372, 88 U. S. 383 ; *The Nichols,* 7 Wall. 656, 74 U. S. 666 ; *The Carroll,* 8 Wall. 302, 75 U. S. 305 ; *The Dexter,* 23 Wall. 69, 90 U. S. 76 ; *The Bywell Castle,* L.R. 4 P.D. 219. The last case is a well considered judgment by Lords Justices James, Brett, and Cotton in the Court of Appeal, and the rule there formulated is that

"Where one ship has, by wrong maneuvers, placed another ship in a position of extreme danger, that other ship will not be held to blame if she has done something wrong, and has not been maneuvered with perfect skill and presence of mind."

On the whole case we are of opinion that

The decree of the circuit court must be affirmed, but without interest on the amount of that decree.

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