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

Watts Vs. Camors

Watts Vs. Camors

SooperKanoon Citation : sooperkanoon.com/84988

Court : US Supreme Court

Decided On : Nov-16-1885

Appeal No. : 115 U.S. 353

Appellant : Watts

Respondent : Camors

Judgement :

Watts v. Camors - 115 U.S. 353 (1885)
U.S. Supreme Court Watts v. Camors, 115 U.S. 353 (1885)

Watts v. Camors

Argued October 29, 1885

Decided November 16, 1885

115 U.S. 353

APPEALS FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

In a charter party which describes the ship by name and as "of the burthen of 1,100 tons or thereabouts, registered measurement" and by which the owner agrees to receive on board, and the charterer engages to provide "a full and complete cargo, say about 11,500 quarters of wheat in bulk," the statement of her registered tonnage is not a warranty or condition precedent, and if her actual carrying capacity is about 11,500 quarters of wheat, the charterer is bound to accept her although her registered measurement (unknown to both parties at the time of entering into the contract) is 1,203 tons.

The clause in a charter party by which the parties mutually bind themselves, the ship and freight, and the merchandise to be laden on board, "in the penal sum of estimated amount of freight," to the performance of all and every of their agreements is not a stipulation for liquidated damages, but a penalty to secure the payment of the amount of damage that either party may actually suffer from any breach of the contract, and is to be so treated in a court of admiralty of the United States, whatever may be the rule in the courts of the particular state in which the contract is made and the court of admiralty sits.

Under a charter party which allowed fifteen lay days for loading after the ship was ready to receive cargo, the owner tendered her to the charterers, they immediately refused to accept her, and thirty-six days afterwards he obtained another cargo, but negotiations were pending between the parties for half of that time, and the owner sustained substantial damage in a certain amount by the failure of the charterers to comply with their contract. The circuit court found these facts and entered a decree against the charterers for that amount. *Held* no error in law for which the charterers could have the decree reversed in this Court.

This was a libel in admiralty by a citizen of London, in the Kingdom of Great Britain, owner of the steamship *Highbury,* against two citizens of New Orleans, in the State of Louisiana, upon a charter party the terms of which were as follows:

"This charter party, made and concluded upon in the City of New Orleans, La. the 7th day of August, 1879, between A.

B. French & Co., agents for the owners of steamship *Highbury,* of the burden of 1,100 tons or thereabouts, registered measurement, now due here between 10th and 20th of September, of the first part, and J. B. Camors & Co., of the second part, witnesseth that the said party of the first part agrees in the freightening and chartering of the whole of the said vessel (with the exception of the cabin and necessary room for the crew and storage of provisions, sails, and cables) unto said party of the second part for a voyage from New Orleans to Havre, St. Nazaire, Antwerp, Bordeaux, or Bremen, orders on signing bills of lading, on the terms following:"

"The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board during the aforesaid voyage the merchandise hereinafter mentioned."

"The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo, say about 11,500 quarters of wheat in bulk, and pay to the said party of the first part, or agent, for the use of the said vessel during the voyage aforesaid, seven shillings and six pence per quarter of 480 pounds weight delivered in full, payable in cash on right delivery of the cargo."

"It is agreed that the lay days for loading and discharging shall be as follows (if not sooner dispatched): commencing from the time the vessel is ready to receive or discharge cargo, fifteen running days (Sundays excepted) for loading and discharging, lay days to commence when the captain reports the vessel is ready for cargo, and that for each and every day's detention by default of said party of the second part or agent, fifty pounds sterling per day, day by day, shall be paid by said party of the second part or agent to the said party of the first part or agent."

"The cargo or cargoes to be received and delivered within the fifteen days above specified, the dangers of the sea and navigation of every nature and kind always mutually excepted."

"To the true and faithful performance of all and every of the foregoing agreements we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, and also the said vessel, freight, tackle, and appurtenances, and the

Page 115 U. S. 355

merchandise to be laden on board, each to the other, in the penal sum of estimated amount of freight."

The district court dismissed the libel, and the libellant appealed to the circuit court, which found the following facts:

The charter party was executed at New Orleans on August 7, 1879, by the libellant, through his agents, A. B. French & Co., and by the respondents. The libellant complied in all things with his contract. The *Highbury* arrived at the port of New Orleans on or before September 11. On that day, she being in that port and ready to receive cargo, her master notified that fact to the respondents, tendered her to them, and demanded of them a full cargo of wheat in bulk according to the terms of the charter party. On the next day, the respondents in writing refused to accept the ship or to furnish the cargo for the reason that her tonnage was greater than that expressed in the charter party. Thereafter, during the lay days, various negotiations were pending between the parties, until September 30, when the master caused public protest to be made before a notary and witnesses of the respondents' refusal. On October 19, the master obtained at the same port a full cargo of cotton and oil-cake, the freight of which exceeded in value by $532.10 that of the cargo of wheat which the respondents had contracted to furnish.

The actual tonnage of the *Highbury* was 1,203 tons, registered measurement. Her actual carrying capacity for grain was about 11,500 quarters of wheat, depending upon the length of voyage between coaling stations. The estimated amount of freight, the penalty stipulated in the charter party, was $20,872.50.

At the date of the charter party, the *Highbury* was a new ship, and neither of the contracting parties in New Orleans knew her exact registered measurement or tonnage or carrying capacity. All the negotiations between them preliminary to the contract were with reference to her carrying capacity, which, under the custom among merchants and shippers of grain, might run not exceeding ten percent over or under the cargo stipulated for.

By reason of the respondents' failure to accept the ship,

Page 115 U. S. 356

furnish a cargo, and comply with their contract, the libellant suffered damages to the amount of $5,693.15 (consisting of $611.15 for expenses incurred in fitting up the *Highbury* to receive a cargo of wheat, and $5,082 for the delay, after the expiration of the fifteen lay days, of twenty-one days at the rate of 50 a day, in obtaining and loading another cargo), with interest from the date of the libel.

The circuit court stated as conclusions of law that the libel should be maintained, and that the libellant recover from the respondents the sum of $5,693.15, with interest and costs, and entered a decree accordingly, and each party appealed to this Court. The opinion of the circuit court upon the merits is reported in 10 F. 145.

Page 115 U. S. 359

MR. JUSTICE GRAY delivered the opinion of the Court. He stated the facts in the language reported above, and continued:

In this case, as brought before us by the appeal and the cross-appeal, three questions have been argued which may naturally and conveniently be considered in the following order:

"1st. Is the statement of the registered tonnage of the *Highbury* in the charter party a warranty or condition precedent?"

"2d. If it is not, is the owner of the ship entitled to recover the estimated amount of freight -- that is to say, the sum of $20,872.50, as liquidated damages?"

"3d. If both these questions are answered in the negative, have the charterers shown any error in law in the amount of damages for which a decree was rendered against them in the circuit court?"

1. In the charter party the ship is described as the "steamship *Highbury,* of the burden of 1,100 tons or thereabouts, registered measurement," and the owner agrees to receive on board, and the charterer engages to provide, "a full and complete cargo, say about 11,500 quarters of wheat in bulk." In fact, her registered tonnage was 1,203 tons, a little more than nine percent above that stated in the charter, but this was not known to either party at the time of entering into the contract, and her actual carrying capacity corresponded to the cargo which the charterers engaged to furnish and the owner agreed to receive on board.

The statement in the charter party concerning the registered tonnage of the ship clearly does not constitute a warranty or condition precedent that she is of 1,100 tons registered measurement. The intention and the agreement of the parties, as apparent upon the face of their written contract, were that the steamship *Highbury* should receive and carry a full and complete cargo of about 11,500 quarters of wheat in bulk. There being no willful or fraudulent misrepresentation, the description "of the burden of 1,100 tons, or thereabouts, registered measurement" (if it could, under other circumstances, be held a warranty) is controlled by the designation of the ship by name, and by the unequivocal stipulations regarding the cargo to be carried. *Brawley v. United States,* 96 U. S. 168 ; *Norrington v. Wright,* 115 U. S. 188 , 115 U. S. 204 ; *Barker v. Windle,* 6 E. & B. 675; *Ashburner v. Balchen,* 7 N.Y. 262; *Morris v. Levison,* 1 C.P.D. 155. The refusal of the charterers to accept her cannot therefore be justified.

2. The concluding clause of the charter party, by which "to the true and faithful performance of all and every of the foregoing agreements" the parties bind

themselves, their heirs, executors, administrators, and assigns, and also the vessel and freight and the merchandise to be laden on board, each to the other, "in the penal sum of estimated amount of freight," is clearly not a stipulation for liquidated damages, but a penalty to secure the payment of the amount of damage that either party may actually suffer from any breach of the contract. The principal object of this clause appears to be to pledge the ship and freight as security for the performance of the agreements of the owner, on the one hand, and the merchandise to be laden on board as security for the performance of the agreements of the charterer, on the other. It is in the form of a penalty; it covers alike an entire refusal to perform the contract, and a failure to perform it in any particular, however slight, and for any breach, whether total or partial, a just compensation can be estimated in damages. At the common law, indeed, before the statute of 8 & 9 W. III. c. 11, 8, judgment might have been rendered for the full amount of the penalty. But in a case like this, a court of

Page 115 U. S. 361

equity would stay proceedings at law upon payment of the damages actually suffered. *Clark v. Barnard,* 108 U. S. 436 , 108 U. S. 453 ; *Sloman v. Walter,* 1 Bro.Ch. 418; *In re Newman,* 4 Ch.D. 724. And at the present day even a court of law would regard such a clause in such a contract as a penalty only, and not as liquidating the damages. *Tayloe v. Sandiford,* 7 Wheat. 13; *Van Buren v. Digges,* 11 How. 461, 52 U. S. 477 ; *Higginson v. Weld,* 14 Gray 165; *Harrison v. Wright,* 13 East, 343.

In Abbott on Shipping (Shee's ed.) pt. 4, c. 2, 2, speaking of charter parties, it is said that

"it is usual for each of the parties to these contracts to bind himself, his heirs, executors, and administrators, and the owner or master to bind the ship and her freight, and the merchant the cargo to be laden in a pecuniary penalty for the true performance of their respective covenants. This is commonly done by a clause at the end of the instrument. Such a clause is not the absolute limit of damages on either side; the party may, if he thinks fit, ground his action upon the other clauses

or covenants, and may in such action recover damages beyond the amount of the penalty if in justice they shall be found to exceed it. On the other hand, if the party sue on such a penal clause, he cannot in effect recover more than the damage actually sustained."

In such cases, accordingly, the courts of the United States, sitting in admiralty, award the damages actually suffered, whether they exceed or fall short of the amount of the penalty. *The Salem's Cargo,* 1 Sprague 389; *The Marcella,* 1 Woods 302. In England and in this country, a court of admiralty, within the scope of its powers, acts upon equitable principles, and when the facts before it in a matter within its jurisdiction are such that a court of equity would relieve and a court of law could not, it is the duty of the court of admiralty to grant relief. *The Juliana,* 2 Dodson 504, 521; *The Harriett,* 1 W.Rob. 182, 192; *The Virgin,* 8 Pet. 538, 33 U. S. 550 ; *Brown v. Lull,* 2 Sum. 443; *Hall v. Hurlbut,* Taney 589, 600; *Richmond v. New Bedford Cordage Co.,* 2 Lowell 315.

The provisions of the Civil Code of Louisiana and the decisions of her supreme court tend to show that in the courts of that state in case of a total breach of the contract by one

Page 115 U. S. 362

party, the other might have judgment for the full amount of the penalty stipulated by the parties although for a partial breach he could only recover his actual damages. Civil Code La. 1870, arts. 1945, 2117, 2124, 2125, 2127; *M'Nair v. Thompson,* 5 Martin (La.) 525, 563, 564; *English v. Latham,* 3 Martin N.S. 88; *Welch v. Thorn,* 16 La. 188, 196; *Barrow v. Bloom,* 18 La.Ann. 276.

But the law of Louisiana does not govern this question, whether it is treated as a question of construction of the contract of the parties or as a question of judicial remedy.

If it is considered as depending upon the intent of the parties as manifested by their written contract, the performance of that contract is to be regulated by the law which they must be presumed to have had in view when they executed it.

Wayman v. Southard, 10 Wheat. 1, 23 U. S. 48 ; *Pritchard v. Norton,* 106 U. S. 124 . Americans and Englishmen, entering into a charter party of an English ship for an ocean voyage, must be presumed to look to the general maritime law of the two countries, and not to the local law of the state in which the contract is signed.

If it is considered as a question of the remedy and relief to be judicially administered, the equity and admiralty jurisdiction of the courts of the United States, under the national Constitution and laws, is uniform throughout the union, and cannot be limited in its extent or controlled in its exercise by the laws of the several states. *United States v. Howland,* 4 Wheat. 108; *Livingston v. Story,* 9 Pet. 632; *Russell v. Southard,* 12 How. 139; *Neves v. Scott,* 13 How. 268; *The Chusan,* 2 Story 455; *The St. Lawrence,* 1 Black 522; *The Lottawanna,* 21 Wall. 558; Rev.Stat. 913, 914.

The circuit court therefore rightly held that the charterers were liable only for the amount of damages which their breach of the contract had actually caused to the owner of the ship.

3. It is contended in behalf of the charterers that as the ship was tendered on September 11 and refused in writing on the next day, it was the duty of the master and the owner at once to seek another cargo and thus prevent any damage that might follow, instead of lying idle until the lay days had expired,

Page 115 U. S. 363

and therefore, within the rule laid down in *Warren v. Stoddart,* 105 U. S. 224 , no damages should have been decreed. But the circuit court having found as facts that various negotiations were pending between the parties after the first refusal until September 30, and that it was by reason of the failure of the charterers to accept the ship, furnish a cargo, and comply with their contract that the owner suffered damages to the amount decreed, no error in law is shown in the decree, and it is not open to revision by this Court in matter of fact. Act of February 16, 1875, c. 77, 1; 18 Stat. 315; *The Abbotsford,* 98 U. S. 440 ; *The Francis Wright,* 105 U. S. 381 ; *The Connemara,* 108 U. S. 352 .

Decree affirmed.

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