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The Manitoba

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Court : US Supreme Court

Decided On : May-23-1887

Appeal No. : 122 U.S. 97

Appellant : The Manitoba

Judgement :

The Manitoba - 122 U.S. 97 (1887)
U.S. Supreme Court The Manitoba, 122 U.S. 97 (1887)

The Manitoba

Argued May 5, 1887

Decided May 23, 1887

122 U.S. 97

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

Prior to a collision between two steam vessels, the C. and the M., they were moving on nearly parallel opposite but slightly converging lines, and that fact was apparent to the officers of both for some considerable time before the C. ported and ran across the course of the M. The M. did not slacken her speed or signal her intentions or reverse until it was too late. The relative courses of the vessels, and the bearing of their lights, and the manifest uncertainty as to the intentions of the C., in connection with all the surrounding facts, called for the closest watch and the highest degree of diligence on the part of each with reference to the movements of the other. *Held* that although the C. was in fault, the M. was also in fault for not indicating her course by her whistle and for not slowing and for not reversing until too late.

The proper mode of applying a limitation of liability where both vessels are in fault and the damages are divided and both vessels are allowed such limitation stated.

The M. having been bonded in the limited liability proceedings on a bond in a fixed sum conditioned to "abide and answer the decree," that sum does not carry interest until the date of the decree of the district court.

The loss of the C., with interest from the date of the collision to the date of the decree of the circuit court, exceeded the loss of the M., with like interest, by a sum one-half of which was greater than the amount of such bond, with interest from the date of the decree of the district

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court to the date of the decree of the circuit court. It was therefore proper for the circuit court to award to the C., as damages, the amount of the bond, with such interest.

In admiralty. The case is stated in the opinion of the Court.

MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

The propeller *Comet* and the steamboat *Manitoba* came into collision between 8 and 9 o'clock in the evening of the 26th of August, 1875, on the waters of Lake

Superior about six or seven miles to the southward and eastward from Whitefish Point on the south shore of that lake, the *Comet* being bound from Grand Island, in Lake Superior, to Cleveland, Ohio, and the *Manitoba* being on a voyage from Sarnia, Ontario, to Duluth, in Minnesota. The *Manitoba* struck the *Comet* on her port bow, causing her to sink almost immediately, and she and her cargo were totally lost. The *Manitoba* was also injured.

Howard M. Hanna and George W. Chapin, as owners of the *Comet,* filed a libel *in rem* against the *Manitoba* on the 4th of September, 1875, in the District Court of the United States for the Eastern District of Michigan to recover damages for the loss of the *Comet* and her cargo and freight money, claiming $70,125, being $30,000 for the *Comet,* $35,000 for her cargo, and $5,125 as freight money. The libel alleges that the collision was occasioned solely by the negligence and unskillfulness of the persons navigating the *Manitoba*

"in not having proper officers and men on duty and at their posts; in not porting, signaling, answering signals, or stopping engine, and in starboarding and running into and upon said propeller; and, by said omissions of duty and other omissions of duty, and by said and other wrong movements and misconduct, solely causing said collision, and making it inevitable by any conduct,

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vigilance, or effort on the part of those in charge of the"

Comet.

The statement of the libel is that the *Comet* made the white light, and shortly afterwards the red light, of the *Manitoba* off the port bow of the *Comet,* the night being clear; that the *Manitoba* was on a course opposite, or nearly opposite, to that of the *Comet;* that the *Comet* proceeded on her course with such red light off her port bow, and properly ported her helm, and gave a signal blast of her whistle and stopped her engine, and that although the lights of the *Comet* were properly set and burning and visible to the *Manitoba,* the *Manitoba,* instead of porting and taking further measures to avoid the *Comet,* starboarded her wheel

and struck the *Comet* on her port bow.

Henry Beatty and John D. Beatty appeared as claimants of the *Manitoba* and, with Robert J. Hackett and Frederick B. Sibley as sureties, gave a bond for the release of the *Manitoba,* in the sum of $28,694.95, $200 of that sum being for costs.

On the 17th of November, 1875, James H. Beatty, Henry Beatty, William Beatty, and John D. Beatty answered the libel of the owners of the *Comet.* The answer denies the version of the occurrence given in the libel and avers that the *Manitoba* made the bright light of the *Comet* when the *Comet* was heading upon nearly, if not quite, a parallel opposite course to that of the *Manitoba,* the *Manitoba* being on a course about northwest half north; that the *Comet* showed her bright and green lights bearing from one-half to three-quarters of a point on the starboard bow of the *Manitoba;* that the *Manitoba* starboarded half a point and was steadied on that course; that the *Comet* continued to approach the *Manitoba,* showing only her white and green lights, and as if to pass at a good, fair berth on the starboard hand of the *Manitoba,* until she appeared to be but a short distance off, when she was observed by the watch of the *Manitoba* to be swinging across the bows of the *Manitoba,* as if under a port wheel, upon which the engine of the *Manitoba* was at once checked, stopped, and backed, but it was not possible for her to avoid the collision, and that the *Manitoba* suffered $5,000

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damages. The answer denies the allegations of fault in the *Manitoba* set forth in the libel and alleges that the collision was caused entirely by the fault of those navigating the *Comet* in that (1) she did not have competent officers and watch on deck carefully attending to duty; (2) she did not keep her course, and pass the *Manitoba* on her starboard hand, but recklessly attempted to cross the bow of the *Manitoba* when she was so near as to make collision probable; (3) she did not stop and reverse, but kept up a reckless speed in her approach to the *Manitoba* "when there was risk of collision." The answer also avers that with the claim filed to the *Manitoba,* after her seizure under the warrant for her arrest, the respondents

filed a petition setting forth that the claim of the libellants was much greater than the value of the *Manitoba* and her freight, and praying that she and her freight then pending might be appraised, and that such proceedings were had that the claimants gave a bond, with sureties, in the sum of $28,950 as a substitute for the vessel and her freight then pending. The answer claims the benefit of a limitation of liability, under the act of Congress, against any recovery for any sum greater than the penal sum named in said bond.

On the same day, the owners of the *Manitoba* filed a cross-libel against Hanna and Chapin, as owners of the *Comet,* to recover the damages caused to the *Manitoba* by the collision, being $5,000. The cross-libel gives the same account of the collision that is given in the answer to the libel, and alleges the same faults on the part of the *Comet.* The case rested in this position for more than two years, when Hanna and Chapin filed an answer to the cross-libel, denying its allegations as to the facts attending the collision, alleging the facts to be as set forth in the original libel, and denying any fault on the part of the *Comet.* It also avers that as the *Comet* and her pending freight were totally lost by the collision, her owners became, by virtue of 4283 of the Revised Statutes, discharged from any liability to the cross-libellants by reason of the collision.

The two cases were heard together before the district court, and on the 29th of April, 1878, it made a decree, on

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pleadings and proofs, that the damages be divided and referred it to a commissioner to report their amount. On the 14th of June, 1880, the commissioner reported as follows: value of the *Comet,* a total loss, $25,000; value of her cargo, $31,941.88; freight money earned by her at the time of the collision, $500; making a total of $57,441.88. He reported the damage to the *Manitoba* to be $5,000.

On a hearing on the report, the district court, on the 15th of March, 1882, made a decree, entitled in both causes, confirming the report at the amounts so reported by the commissioner. The decree then proceeded as follows:

"And it further appearing to the court that the said libellants and cross-libellants have respectively claimed the benefit of the Act of Congress of the United States entitled 'An act to limit the liability of ship owners, and for other purposes,' being 4283, 4284, 4285, and 4286 of the Revised Statutes of the United States, and that the said steamer *Manitoba* has been duly bonded in accordance with the provisions of said statutes by Henry Beatty and John D. Beatty, claimants, and Robert J. Hackett and Frederick B. Sibley, as sureties, in the sum of $28,694.95, by their bond or stipulation, conditioned to abide the decree of this Court, and consenting that unless they shall so do execution should issue against them therefor, which sum is less than the damages occasioned by said collision, and this court having, by its interlocutory decree heretofore entered in this cause, found that both said vessels were in fault for said collision and that the damages occasioned thereby be equally divided, it is therefore ordered, adjudged, and decreed that said libellants recover from the said claimants and their sureties the sum of twenty-eight thousand six hundred ninety-four 95/100 ($28,694.95), being the amount of said bond or stipulation, and that said libellants have execution therefor against said Henry Beatty, John D. Beatty, Robert J. Hackett, and Frederick B. Sibley, and it is further ordered that neither the libellants nor the cross-libellants herein recover costs against the other."

This decree was proper in its figures. Allowing interest on the damages from the date of the collision to the date of the decree (which was proper), and fixing the liability

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for the $28,694.95 as of the date of the decree (which was proper in view of the fact that the condition of the bond was to "abide and answer the decree," and so the $28,694.95 did not carry interest prior to the date of the decree), the *Manitoba* was liable to pay to the *Comet* $36,476.74 on a proper computation based on a division of the damages, according to the principle of computation hereinafter stated, and the *Manitoba* had the proper limitation of liability in paying only $28,694.95 at the date of the decree. The discrepancy between that amount and the amount stated in the bond is not explained, but is not remarked upon by the

parties. The obligors in such a bond are not liable for interest prior to the decree of the district court, but are liable for interest from the date of such decree. *The Ann Caroline,* 2 Wall. 538; *The Wanata,* 95 U. S. 600 .

The owners of the *Manitoba,* on the 13th of April, 1882, appealed to the circuit court from so much of the final decree of the district court of March 15, 1882, as adjudged the *Manitoba* to be in fault for the collision, and also from so much of that decree as awarded to Hanna and Chapin the sum of $28,694.95, "without any deduction or allowance therefrom to these appellants on account of injuries occasioned by said collision to the said steamer *Manitoba,* " and also from so much of the interlocutory decree of the 29th of April, 1878, as decreed that the *Manitoba* was in fault for the collision, and that the damages occasioned thereby should be equally divided between the owners of the *Comet* and the owners of the *Manitoba.* The owners of the *Manitoba* perfected their appeal by giving a stipulation for damages and costs in the sum of $35,000, in the names of James H. Beatty, Henry Beatty, and John D. Beatty, with the Detroit Dry-Dock Company as surety. The owners of the *Comet* did not appeal.

The circuit court heard the case on pleadings and proofs, and filed its finding of facts and conclusions of law, entitled in both causes, on the 26th of December, 1883, as follows:

"That the collision between the propeller *Comet* and the steamship *Manitoba* took place between the hours of eight

and nine o'clock on the night of the 26th of August, 1875, and at about six or seven miles distant from, and to the southward and eastward of, Whitefish Point, on the south shore of Lake Superior; that at that time, said propeller was bound down the lake, upon a voyage from Grand island to Cleveland, Ohio, and, when she made the *Manitoba's* light, her general course was southward. The *Manitoba* was moving in nearly an opposite direction, on a voyage from Sarnia, Ontario, to Duluth, Minnesota. She first made the *Comet's* light when she was between

Whitefish Point and Point Iroquois, her general course then being northwest half north. The officers of each of the colliding vessels discovered, soon after the *Comet* had rounded Whitefish Point, first the white and soon thereafter the green lights of each other, and they continued to approach each other on nearly parallel opposite courses, each showing to the other her white and green lights only. Both vessels had the usual complement of officers and men. When they were from one and a half to two miles apart, the *Manitoba* had the *Comet's* green light about three-quarters of a point on her starboard bow. The *Manitoba* then starboarded her wheel half a point, and continued her course without change until just before the collision. In the meantime the *Comet* ported her wheel for the second time half a point, and the two vessels thus continued to approach each other, showing their green and white lights only, until they had come within from 400 to 500 feet of each other, the *Comet* being then from 200 to 300 feet on the starboard side of the *Manitoba,* and if each had kept their respective courses, they would have passed without colliding; but at this juncture, the *Comet* ported her wheel, displayed her red light, and suddenly sheered across the *Manitoba's* course. The *Manitoba* thereupon starboarded her wheel, and the collision ensued. At the time the *Manitoba* was running about eleven and the *Comet* about nine miles an hour. The *Manitoba* struck the *Comet* on her port bow, which caused her to sink in about two minutes, whereby she and her cargo were irrecoverably lost and the *Manitoba* quite severely injured. Neither of said vessels sounded any signal of the

whistle indicating the side it intended or desired to take, nor did either of them reverse its engine or slacken its speed until the collision was inevitable, but the *Manitoba* did, just before or about the time it collided with the *Comet,* reverse its engine. The fact that the two vessels were moving on nearly parallel, opposite but slightly converging, lines was manifest and apparent to the officers of both for some considerable time before the *Comet* ported and ran across the *Manitoba's* course as hereinbefore stated. Nevertheless, neither, as hereinbefore stated, slackened speed, changed its course, or signaled its intentions. The relative courses of these vessels, and the bearing of their lights, and the manifest

uncertainty as to the *Comet's* intentions, in connection with all the surrounding facts, called for the closest watch and the highest degree of diligence on the part of both with reference to the movements of the other, and it behooved those in charge of them to be prompt in availing themselves of any resource to avoid not only a collision, but the risk of such a catastrophe. If the requisite precautions had been observed by both or by either of said vessels, the collision, in the opinion of the court, would not have happened. Each vessel misapprehended the purposes of the other. The *Comet* was endeavoring to apply art. 18 of c. 5, title 'Commerce and Navigation,' of the Revised Statutes of the United States, while the *Manitoba* probably believed, until the *Comet's* sudden sheer across her bow, that the *Comet* intended to pass on her starboard side. It was this misapprehension on the part of said respective vessels, which might have been timely obviated by proper signals from either, that occasioned the collision."

The court then finds the value of the *Comet,* and of her cargo and pending freight and the damage to the *Manitoba* at the amounts reported by the commissioner; that the value of the *Manitoba* and her pending freight was duly appraised under the order of the district court, and proceedings were had pursuant to 4283 to 4286 of the Revised Statutes, and security was filed for such appraised value in the sum of $28,694.95, and that the owners of both vessels claimed and

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are entitled to the benefit of those sections. The court then proceeds:

"And from these facts the court deduces the following conclusions of law:"

"1. That said vessels were not meeting end on, or nearly end on, within the meaning of art. 18 of c. 5 of tit. XLVIII, 'Commerce and Navigation,' of the Revised Statutes of the United States, and that the *Manitoba* was not, in view of the circumstances of the case, in fault for starboarding her wheel just prior to said collision."

"2. That the immediate or proximate cause of the collision was the putting by the *Comet* of her wheel hard a-port, as herein previously found, and endeavoring to

cross on the port side of the *Manitoba,* and that she was in fault for so doing."

"3. That the *Manitoba* was in fault in ignoring the fact that the *Comet* was approaching under a port wheel, and that the courses of the two vessels were convergent and involved risk of collision, and in failing to take proper precaution in time to prevent the collision which afterwards occurred."

"4. That she was further in fault in not indicating her course by her whistle and for not slowing up, and in failing to reverse her engine until it was too late to accomplish anything thereby."

"5. That both vessels were in fault in failing to take necessary and proper precautions against collision, which the circumstances manifestly required, and that the damages occasioned by said collision ought to be equally apportioned between said two vessels."

The court further finds that the libellants are entitled to recover from the owners of the *Manitoba,* and their sureties on appeal, by reason of the limited liability proceedings, only the sum of $28,694.95, and interest thereon from March 7, 1882, the date of the decree of the district court, together with the costs of the libellants on the appeal; that to the extent of the $28,694.95, the libellants are entitled to enforce payment of their damages against the claimants of the *Manitoba* and their surviving surety on the stipulation filed in the District Court for the appraised value of the *Manitoba,* and that by reason of the total loss of the *Comet* and her cargo and the provisions as to limited liability and the fact that one moiety of the damages suffered by the libellants far exceeds

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the damages suffered by the owners of the *Manitoba,* and interest thereon, the owners of the *Manitoba* are not entitled to recover any sum whatever from the libellants.

On the 18th of March, 1884, the circuit court made a final decree, entitled in both causes, which fixes the damages at the amounts reported by the commissioner

and declares that both vessels were in fault for the collision; that the damages shall be equally divided; that the owners of both vessels claims and are entitled to the benefit of a limitation of liability, and that the sum of $28,694.95, at which the *Manitoba* and her pending freight were appraised in the limited liability proceedings and bonded, is less than one moiety of the damages occasioned by the collision, and then proceeds as follows:

"It is therefore ordered, adjudged, and decreed that said libellants, Howard M. Hanna and George W. Chapin, do recover of and from said James H. Beatty, Henry Beatty, William Beatty, and John D. Beatty, claimants of said steamer *Manitoba,* and appellants herein, and of and from the Detroit Dry-Dock Company, their surety on the bond or stipulation on appeal, filed in this court, the sum of $28,694.95, and the further sum of $3,395.50, being the interest at six percent per annum on the aforesaid sum of $28.694.95, from the 7th day of March, 1882, the date of the decree of the district court, to the date of the decree of this Court herein, in all, the sum of $32,090.45, together also with the costs of said libellants in this Court, to be taxed, upon the appeal of said claimants of said steamer *Manitoba* from the decree of the district court on said libel and cross-libel. And it further appearing to the court that said Robert J. Hackett, one of the sureties on the bond or stipulation filed in the district court for the appraised value of the steamer *Manitoba* and her freight, as aforesaid, has deceased, it is therefore ordered, adjudged, and decreed that said libellants, Howard M. Hanna and George W. Chapin, do recover of and from the said James H. Beatty, Henry Beatty, William Beatty, and John D. Beatty, claimants of the steamer *Manitoba,* and Frederick B. Sibley, their surviving surety upon the bond for the appraised value of said steamer *Manitoba* and her freight

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pending at the time of the collision mentioned in the pleadings in this cause, the sum of $28,694.95 in case of nonpayment thereof by the claimants and their surety on appeal to this Court."

"And that said libellants, Howard M. Hanna and George W. Chapin, have execution for the damages and costs to them adjudged and decreed by the judgment and decree of this Court against said claimants, James Beatty, Henry Beatty, William Beatty, and John D. Beatty, and the Detroit Dry-Dock Company, their surety on the bond or stipulation given by said claimants on appeal to this Court, for the aforesaid sum of $28,694.95, and said further sum of $3,395.50, as interest thereon, and for the costs of said libellants in this court to be taxed. And it is further ordered, adjudged, and decreed that for the recovery of the damages decreed to libellants by the decree of the district court and of this Court, libellants have execution against James H. Beatty, Henry Beatty, William Beatty, and John D. Beatty, claimants, and said Frederick B. Sibley, their surviving surety on the bond or stipulation, for the appraised value of said steamer *Manitoba* and the freight pending as aforesaid, in and for the amount of $28,694.95, the appraised value thereof as aforesaid, provided proceedings shall be had on the bond or stipulation given on appeal to this court by said claimants of said steamer *Manitoba* before recourse shall be had for collection on the bond or stipulation filed in the District Court for the appraised value of the steamer *Manitoba* and her freight pending at the time of said collision."

The claimants of the *Manitoba* have appealed to this Court from so much of the decree of the circuit court as decrees the *Manitoba* to be in fault for the collision and from so much of it as awards to the original libellants $32,090.45 "without any deduction or allowance therefrom to these appellants on account of injuries occasioned by said collision to the said steamer *Manitoba.* " The main question of law arising on the record is as to the liability of the *Manitoba.*

The circuit court finds as one of its conclusions of law

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"that the *Manitoba* was in fault in ignoring the fact the *Comet* was approaching under a port wheel, and that the courses of the two vessels were convergent and involved risk of collision, and in failing to take proper precaution in time to prevent

the collision which afterwards occurred."

The expression "risk of collision" found in the third conclusion of law is not contained in the findings of fact proper, and it is therefore insisted on the part of the *Manitoba* that it is not found as a fact that the courses of the two vessels involved risk of collision by the movement of the *Comet* under a port wheel in her approach to the *Manitoba* prior to the time when she put her wheel hard a-port and crossed the bows of the *Manitoba.* But we think this is not a correct view. The findings of fact state that when the vessels were from one and a half to two miles apart, the *Manitoba* had the *Comet's* green light about three-quarters of a point on her starboard bow, and that the *Manitoba* then starboarded her wheel half a point, and continued her course without change until just before the collision. This starboarding would bring the green light of the *Comet* further on the starboard bow of the *Manitoba,* but, in the meantime, the *Comet* ported her wheel half a point, and it is not found that the green light of the *Comet* continued to open wider to the view of the *Manitoba.* On the contrary, the findings state that the fact that the two vessels were moving on nearly parallel opposite but slightly converging lines was apparent to the officers of both vessels for some considerable time before the *Comet* ported her wheel and displayed her red right to the *Manitoba* and suddenly sheered across the course of the *Manitoba.* The findings also state that from the relative courses of the two vessels and the bearing of their lights, there was manifest uncertainty as to the intentions of the *Comet,* and that this called for the closest watch and the highest degree of diligence on the part of the *Manitoba* with reference to the movements of the *Comet,* and that it behooved those in charge of her to be prompt in availing themselves of any resource to avoid not only a collision but the risk of such a catastrophe. The findings further state that neither of the vessels sounded any

signal of the whistle indicating the side it intended or desired to take, nor did either of them reverse its engine or slacken its speed until the collision was inevitable, and that if the requisite precautions -- meaning the precautions just mentioned -- had been observed by both or either of the vessels, the collision would not have

happened.

In addition to the facts thus found, the answer of the claimants of the *Manitoba* to the original libel charges, as a fault in the *Comet,* that she did not stop and reverse, but kept up a reckless speed in her approach to the *Manitoba* "when there was risk of collision." This allegation is repeated in the cross-libel of the owners of the *Manitoba.* If there was risk of collision in the approach of the *Comet* toward the *Manitoba* prior to the sudden sheer of the *Comet,* it was a risk affecting the *Manitoba* equally with the *Comet,* and imposing upon her the same duties of slackening her speed or, if necessary, stopping and reversing, under Rule 21 of 4233 of the Revised Statutes, which it imposed on the *Comet.*

On the facts, the circuit court found as a conclusion of law, and we think correctly, that the *Manitoba* was in fault in not indicating her course by her whistle, and in not slowing up, and in failing to reverse her engine until it was too late to accomplish anything thereby.

The facts in this case are very much like those in *The Stanmore,* 10 P.D. 134, where one of two steam vessels, under like circumstances with those of the *Manitoba,* was held in fault for not stopping and reversing, although the collision was mainly caused by the fault of the other vessel, which was also condemned.

A few words are necessary on the question as to whether, in the amount decreed to the original libellants by the circuit court, allowance is made to the owners of the *Manitoba* on account of the damages to her. The findings of fact state that the owners of both vessels are entitled to the benefit of a limitation of liability, and that owners of the *Comet* are entitled to recover from the owners of the *Manitoba* and their sureties on appeal, by reason of the proceedings for a limitation of liability, only $28,694.95 and interest thereon

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from March 7, 1882, the date of the decree of the district court. The decree of the circuit court states that the value of the *Manitoba* and her freight pending at the time of the collision was duly appraised in the proceedings for a limitation of

liability at the sum of $28,694.95, and that she was duly bonded for that sum, "which sum," the decree states, "is less than one moiety of the damages occasioned by said collision." Those damages, with interest at six percent per annum from the date of the collision to the date of the decree of the circuit court, amounted to $93,288.16. One-half of that is $46,644.08. On the ground that the amount of the appraised value of the *Manitoba* and her pending freight was "less than one moiety of the damages occasioned" by the collision, the circuit court adjudged that the owners of the *Comet* should recover from the claimants of the *Manitoba,* and from their surety on appeal, the Detroit Dry-Dock Company, the sum of $28,694.95, with interest thereon from the 7th of March, 1882, the date of the decree of the district court, and should recover from the claimants of the *Manitoba* and the surviving surety on the bond given in the district court for the appraised value of the *Manitoba* and her pending freight the sum of $28,694.95 in case of nonpayment thereof by the claimants and the Detroit Dry-Dock Company.

We had occasion to consider this subject at length in the case of *The North Star,* 106 U. S. 17 , in which MR. JUSTICE BRADLEY delivered the opinion of the Court. In that case, there was a collision between two steam vessels, the *Ella Warley* and the *North Star.* The circuit court held both vessels in fault, the *Ella Warley* being sunk and lost and the *North Star* damaged. There was a libel *in rem* against the *North Star* and a libel *in personam* against the owners of the *Ella Warley.* The circuit court rendered a decree in favor of the owners of the *Ella Warley* for so much of the damage to her (it being greater than that sustained by the *North Star*), as exceeded one-half of the aggregate damage sustained by both vessels. The owners of the *Ella Warley* had claimed the benefit of a limitation of liability. On appeals to this Court by both parties, it was contended on behalf of the *Ella Warley*

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that, as she was a total loss, the half of the damage to her must be paid in full, without any deduction for the half of the damage sustained by the *North Star.* This Court, after a full examination of the subject, held that the proper rule was

that as each vessel was liable for one-half of the damage done to both, if one suffered more than the other, the difference should be equally divided and the one which suffered least should be decreed to pay one-half of such difference to the one which suffered most, so as to equalize the burden. In other words, as both parties were in fault, the damage done to both vessels should be added together in one sum, and equally divided, and a decree by pronounced in favor of the owners of the vessel which suffered most against those of the vessel which suffered least for one-half of the difference between the amounts of their respective losses. The House of Lords established the same rule in *Stoomvaart Maatschappy Nederland v. Peninsular & Oriental Steam Nav. Co.,* 7 App.Cas. 795.

Applying this rule to the present case, the amount of the aggregate damage to both vessels, computed with interest to the date of the decree of the circuit court, was $93,288.16, being for the *Comet* $85,818.16 and for the *Manitoba* $7,470. One-half of this was $46,644.08. The loss of the owners of the *Comet* and of her cargo and pending freight was greater than that of the owners of the *Manitoba* by the sum of $78,348.16. One-half of that difference was $39,174.08. That was the amount of the liability of the *Manitoba* to the *Comet* at the date of the decree of the circuit court, on a division of the damages, after a proper allowance to the *Manitoba* for the damage to her, and without reference to the limitation of liability. As the amount of the bond of the *Manitoba,* $28,694.95, which interest at six percent per annum, from the date of the decree of the district court to the date of the decree of the circuit court, was only $32,090.45, the *Manitoba* had the proper limitation of liability allowed to her by the decree of the circuit court, and was entitled to that limitation.

Decree affirmed.

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