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The Alaska

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Decided On : Apr-01-1889

Appeal No. : 130 U.S. 201

Appellant : The Alaska

Judgement :

The Alaska - 130 U.S. 201 (1889)
U.S. Supreme Court The Alaska, 130 U.S. 201 (1889)

The Alaska

No. 1217

Submitted March 11, 1889

Decided April 1, 1889

130 U.S. 201

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

In a suit in admiralty *in rem* in a district court against a British steamship, brought by the widows of five persons to recover $5,000 each for the loss of their lives on board of a pilot boat by a collision which occurred on the high seas between the two vessels through the negligence of the steamship, a stipulation for value was given by the claimant of the steamship in the sum of $25,000 to obtain her release. The district court dismissed the libel. It was amended by claiming $10,000 for the loss of each life, and then the libelants appealed to the circuit court, which made the same decree. The libelants having appealed to this Court, the appellee made a motion, under subdivision 5 of Rule 6, to dismiss the appeal for want of jurisdiction, and united with it a motion to affirm. *Held* that the amount involved, if not the entire sum of $25,000, was at least, the sum of $10,000 in each case, and that the motion to dismiss must be denied

But as there was sufficient color for the motion to dismiss to warrant this Court in entertaining the motion to affirm, the decree was affirmed on the ground that the appeal was taken for delay only, in view of the decision in *The Harrisburg,* 119 U. S. 199 , that in the absence of an act of Congress or of a statute of a state giving a right of action therefor, a suit in admiralty cannot be maintained in the courts of the United States to recover damages for the death of a human being on the high seas or on waters navigable from the sea, which was caused by negligence.

Motions to dismiss or to affirm. The Court in its opinion stated the case as follows:

This is a motion to dismiss the appeal in this case, and united with it is a motion, under subdivision 5 of Rule 6, to affirm the decree below on the ground that although the record may show that this Court has jurisdiction, it is manifest

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the appeal was taken for delay only or that the question on which the jurisdiction dependent is so frivolous as not to need further argument.

The suit is a libel *in rem* in admiralty, filed in the District Court of the United States for the Southern District of New York by the owners of the pilot boat *Columbia* , against the British steamship *Alaska,* to recover damages for the loss

of the *Columbia* by a collision with the *Alaska* on the second of December, 1883, on the high seas, near the coast of Long Island, New York. The libel also embraced a claim for the loss of property and personal effects by some of the libelants. There was claimed for the loss of the pilot boat $16,000, and for the loss of the other property $2,100. It was alleged that the collision occurred solely through the negligence of the persons in charge of the *Alaska.* All the persons on board of the pilot boat were drowned. Among them were four pilots and a cook. One of the four pilots was a part owner of the *Columbia.*

William Pearce, of Glasgow, Scotland, filed a claim to the *Alaska* after her attachment, and also gave a stipulation for value in the sum of $20,000 to secure the release of the *Alaska* from the claims for the loss of the *Columbia* and of the personal effects. A supplemental libel was filed by the widows of the four pilots and of the cook, who were drowned, and in it four of them on behalf of themselves and infant children severally, and the other one on her own behalf, claimed in each of the five instances damages in the sum of $5,000 for the loss severally of the lives of the persons so drowned. After the filing of the supplemental libel, Pearce gave a further stipulation for value in the sum of $25,000 to secure the release of the *Alaska* from the claims for the loss of the five lives. The latter stipulation was in the following terms:

"Whereas a supplemental libel was filed on the 22d day of November, in the year of our Lord one thousand eight hundred and eighty-four, by Catharine A. Metcalfe, Mary E. Noble, Agnes Arnold, Mary Wolf, and Bella Forblade against the British steamship *Alaska,* her engines, etc., for the reasons and causes in the said libel mentioned, and whereas the said

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steamship *Alaska,* her engines, etc., in the original action brought against said vessel by Augustus Van Pelt and others, were in the custody of the marshal under the process issued in pursuance of the prayer of the said libel, and whereas a claim to said vessel has been filed by William Pearce, and the value thereof has been fixed by consent at twenty-five thousand dollars for the purposes of this

action, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of claimant or his surety, execution for the above amount may issue against their goods, chattels, and lands,"

"Now therefore the condition of the stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Wilcox, Adams & Macklin, Esqs., proctors for the claimant of said steamship *Alaska,* her engines, etc., abide by and pay the money awarded by the final decree rendered by this court or appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue."

Pearce put in exceptions and an answer to the libel and the supplemental libel denying the liability. The district court, on a hearing on pleadings and proofs, entered an interlocutory decree adjudging that the collision was caused by the mutual fault of the *Alaska* and the *Columbia,* and referring it to a commissioner to ascertain the damages. 27 F. 704. The commissioner made his report, which was excepted to by both parties, and a decree was made by the district court awarding to the libelants certain sums as damages for the loss of the *Columbia* and of personal effects, and dismissing the supplemental libel in respect of the damages claimed for the loss of lives.

Both parties appealed to the circuit court, the claimant on the ground that the libelants were not entitled to any damages, or, if to any, that the damages allowed were excessive, the libelants on the ground that they were entitled to full

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damages instead of only half damages, and that the value of the *Columbia* had been allowed at too small a sum, and the libelants in the supplemental libel on the ground that they were entitled to full damages. Before these appeals were perfected, it was consented by the parties that the supplemental libel might be

amended so that the claim for the loss of life should be $10,000 in each of the five cases, instead of $5,000.

The circuit court, 33 F. 107, made a like decree with that of the district court, finding that both vessels were in fault for the collision and dividing the damages and the costs of both courts between the respective parties and dismissing the supplemental libel for the loss of the lives, without costs of either court to either party.

The sums awarded by the decree of the circuit court were paid, and the libelants in the supplemental libel appealed to this Court.

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MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

The object of the appeal is to obtain a decree here that the *Alaska* is liable for the loss of the five lives. The ground alleged for the motion to dismiss the appeal is that the sum in dispute as to each of the five lives is not over the sum of $5,000, and therefore is not sufficient to give jurisdiction to this Court. The view urged is that the amount originally claimed by the supplemental libel for the loss of each of the five lives was $5,000; that the stipulation in the sum of $25,000, given to release the *Alaska* from the five claims, was $5,000 for each claim, the amount in dispute in each case being one-fifth of $25,000, and that the case stands as if each of the five parties had commenced a separate suit for $5,000, and five separate stipulations had been given, each in that amount.

But as the stipulation is a unit, and is for the sum of $25,000, and in it the stipulators agree that execution may issue for the $25,000 against their property, and the condition of the stipulation is that the stipulators shall pay the money awarded by a final decree -- not exceeding, of course, $25,000 -- and as the claim of damages made by each one of the five parties is, by the amendment of the libel, $10,000, instead of $5,000, it might very well be that some of the libelants would recover more than $5,000, even on an apportionment of the damages. The fund of

$25,000 is a common fund for the benefit of the five parties, and, on the facts of this case, the amount involved, on the question of jurisdiction, if not the entire sum of $25,000, is at least, the sum of $10,000 in each case. *Gibson v. Shufeldt,* 122 U. S. 27 , 122 U. S. 31 *et seq.,* and cases cited.

But there is sufficient color for the motion to dismiss to warrant us in entertaining the motion to affirm. *Whitney v. Cook,* 99 U. S. 607 ; *Hinckley v. Morton,* 103 U. S. 764 ; *Micas v. Williams,* 104 U. S. 556 ; *The S.C. Tryon,* 105 U. S. 267 ; *Micas Independent School Dist. v. Hall,* 106 U. S. 428 ; *Davies v. Corbin,* 113 U. S. 687 .

On the merits, we are of opinion that this case is governed

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by the decision in the case of *The Harrisburg,* 119 U. S. 199 , and that this appeal was taken for delay only. In the case of *The Harrisburg,* it was held that, in the absence of an act of Congress or of a statute of a state giving a right of action therefor, a suit in admiralty could not be maintained in the courts of the United States to recover damages for the death of a human being on the high seas or on waters navigable from the sea, which was caused by negligence. It is admitted by the counsel for the libelants that the statute of New York, Code Civil Procedure, 1902, on the subject of actions for death by negligence does not apply to the present case because the deaths did not occur within the State of New York or in waters subject to its jurisdiction. It is further to be said that that statute gives a right of action only to the executor or administrator of the deceased person, while the present suit is brought by widows, and that the statute provides only for a suit against an individual person or a corporation, and not for a proceeding *in rem.*

A distinction is sought to be drawn between the present case and that of *The Harrisburg* on the ground that in that case, the vessel was owned in Pennsylvania, while here the *Alaska* is a British vessel, and that in that case the wrongful killing occurred in the waters of the State of Massachusetts, while here it occurred on the high seas. But we see no sound distinction between the two

cases. In the case of The Harrisburg, the alleged negligence which resulted in the death occurred in a sound of the sea embraced between the coast of Massachusetts and the islands of Martha's Vineyard and Nantucket, parts of the State of Massachusetts. The question involved and decided in that case was whether the admiralty courts of the United States could take cognizance of a suit to recover damages for the death of a human being on the high seas or on waters navigable from the sea, caused by negligence in the absence of an act of Congress or a statute of a state giving a right of action therefor. That question was answered by this Court in the negative, and the decision entirely covers the present case.

The motion to dismiss the appeal is denied, and the decree of the circuit court is affirmed.

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