

The Beaconsfield

The Beaconsfield

SooperKanoon Citation : sooperkanoon.com/87820

Court : US Supreme Court

Decided On : May-20-1895

Appeal No. : 158 U.S. 303

Appellant : The Beaconsfield

Judgement :

The Beaconsfield - 158 U.S. 303 (1895)

U.S. Supreme Court The Beaconsfield, 158 U.S. 303 (1895)

The Beaconsfield

No. 943

Submitted April 22, 1895

Decided May 20, 1895

158 U.S. 303

CERTIFICATE FROM THE CIRCUIT COURT

OF APPEALS FOR THE SECOND CIRCUIT

SYLLABUS

The carrier is so far the representative of the owner that he may sue in his own name, either at common law or in admiralty, for a trespass upon or injury to the property carried.

If a cargo be damaged by collision between two vessels, the owner may pursue both vessels, or either, or the owners of both, or either, and in case he proceeds against one only and both are held in fault, he may recover his entire damages of the one sued.

A person who has suffered injury by the joint action of two or more wrongdoers may have his remedy against all or either, subject to the condition that satisfaction once obtained is a bar to further proceedings.

If the owner of a vessel, libellant on his own behalf and on behalf of the owner of the cargo, takes no appeal from a decree dismissing the libel as to his own vessel, the owner of the cargo may be substituted as libellant in his place, and the failure of the owner of the vessel to appeal is a technical defense which ought not to prejudice the owner of the cargo.

Page 158 U. S. 304

Stipulations in admiralty are not subject to the rigid rules of the common law with respect to the liability of the surety, and so long as the cause of action remains practically the same, a mere change in the name of the libellant, as by substituting the real party in interest for a nominal party, will not avoid the stipulation as against the sureties.

This case, which is an outgrowth of that of *The Britannia*, [153 U. S. 130](#) , arose upon a certificate of the circuit court of appeals touching the liability of the *Beaconsfield* to respond for a moiety of the loss upon her cargo by reason of her collision with the *Britannia*. The questions certified are based upon the finding of facts printed in the margin. [*](#)

Page 158 U. S. 305

Upon this state of facts, the court of appeals certified to this Court for its decision the following questions:

Page 158 U. S. 306

1. Whether, in entering said final decree, condemning each vessel in a moiety of said damages, the circuit court obeyed the mandate of the Supreme Court.
2. Whether, upon the above statement of facts, the libelant Albert W. Sanbern was entitled to a final decree condemning the steamship *Beaconsfield*, her engines, tackle, apparel, and furniture, in a moiety of the cargo damage, amounting to \$31,526.64, as adjudged in the said final decree.
3. Whether, upon the above statement of facts, the libelant Albert W. Sanbern was entitled to judgment against William Libbey, surety, in the sum of \$23,000, as directed by the said order of June 12, 1894, and as adjudged in the said judgment

Page 158 U. S. 307

entered pursuant to the said order, and filed June 12, 1894.

MR. JUSTICE BROWN, after stating the facts in the foregoing language, delivered the opinion of the Court.

Stripped of its complication of libels and cross-libels, this case is by no means difficult to understand. The *Beaconsfield* having been sunk in a collision with the *Britannia*, her master and owner, as bailees of her cargo, proceeded against the *Britannia* for damages done to such cargo. This they had a right to do. It is perfectly well settled that the carrier is so far the representative of the owner that he may sue in his own name, either at common law or in admiralty, for a trespass upon or injury to the property carried. If a cargo be damaged by collision between two vessels, the owner may pursue both vessels or either, or the owner of both or either, and in case he proceed against one only and both are held in fault, he may recover his entire damages of the one sued. A person who has suffered injury by the joint action of two or more wrongdoers may have his remedy against all or

either, subject, however, to the condition that satisfaction once obtained is a bar to any further proceeding. *The Atlas*, [93 U. S. 302](#) , [93 U. S. 315](#) ; [Lovejoy v. Murray](#), 3 Wall. 1. Did the case rest here, there could be no doubt of the right of the libellant to recover the whole damage to the cargo of the *Britannia*, although, as owner of the *Beaconsfield* herself, Cleugh could recover only a moiety of his damage to the vessel in case the collision were adjudged to be the mutual fault of both vessels.

By General Admiralty Rule 59, however, it is provided that,

"In a suit for damage by collision, if the claimant of any vessel proceeded against . . . shall, by petition, on oath, . . . showing fault or negligence in any other vessel contributing

Page 158 U. S. 308

to the same collision, and the particulars thereof, and that such other vessel, or any other party, ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against."

Pursuant to this rule, the French company, owner of the *Britannia*, filed its petition, alleging fault on the part of the *Beaconsfield* and praying that she might be proceeded against in the same suit for such damage. This was done, and the litigation resulted in a decree of the district court dividing the damages. A moiety of the decree was really against the libellants, as owner and master of the *Beaconsfield*, or rather against Libbey and Magoun, sureties, upon their stipulation.

Both parties appealed to the circuit court, which reversed the decree of the district court and adjudged the *Britannia* to be solely in fault. The owner of the *Britannia* appealed, but Cotton, master of the *Beaconsfield*, who in the meantime had become sole libellant, did not appeal from the decree dismissing his libel against his own vessel, for the obvious reason that his position as libellant of his own

vessel for damage to her cargo was forced upon him by the act of the French company, and conflicted with his interest as representing the owner of the *Beaconsfield*. In this Court, the decree of the circuit court was reversed and the case remanded for further proceedings in conformity with the opinion. This opinion stated that the conclusion reached in this Court was the same as that arrived at in the district court,

"and accordingly we reverse the three decrees and remand the causes to the circuit court with directions to enter decrees in accordance with this opinion, that both vessels were in fault, and that the damages should be divided."

153 U.S. [153 U. S. 144](#) . The result of this was virtually a restoration of the decree of the district court dividing the damages and awarding to Cotton, master of the *Beaconsfield*, and bailee of her cargo, a decree against the *Beaconsfield* for one-half the damages.

Page 158 U. S. 309

In this juncture, the proctors for Elizabeth Cleugh, administratrix (who in the meantime had become owner of the *Beaconsfield*), and Cotton, were instructed by their clients not to consent to any decree against the *Beaconsfield*, upon the ground that they, Cotton and Cleugh, had only consented to be libelants, as bailees of the cargo, against the *Britannia*, and they (the proctors) were forbidden to use their names for any decree against the *Beaconsfield*. Upon libelants' motion, Sanbern, the owner of the cargo, was then substituted as libelant in the place of Cotton, and a final decree entered against the *Beaconsfield* in the circuit court for a moiety of the damages, and the sureties ordered to show cause why execution should not issue against them.

We know of no reason why this decree should not have been granted. Sanbern had a right to suppose that his interests as owner of the cargo would be protected by Cotton, who was suing as his bailee. Had he sued in person, he could, and probably would, have libeled both vessels, and ought not to be prejudiced by the fact that Cotton, assuming to act for him, libeled but one. When the *Beaconsfield*

was drawn into the litigation by the petition of the French company, and his own vessel thus made to respond to his libel, Cotton should have either withdrawn from the suit and asked that Sanbern be substituted, or in his answer to the petition of the French company should at least have set up any defense he might have had against the owner of the cargo arising under the bill of lading or from any other cause. If the attention of the court had then been drawn to the fact that Cotton was occupying inconsistent positions, it would doubtless have ordered the owner of the cargo to be substituted for him as libelant. Had no petition been filed against the *Beaconsfield* by the French company, the case would have stood quite differently, as there would have been no suit against the *Beaconsfield* upon which a decree could have been rendered. The failure of Cotton to call the attention of the court to the inconsistent positions occupied by him, or, in answering the petition of the French company, to claim any defense arising upon the bill of lading or otherwise, was ample authority for

Page 158 U. S. 310

the court to enter a decree for a moiety of damages against the *Beaconsfield*.

The failure of Cotton, acting as bailee of the cargo, to appeal from the decree of the circuit court dismissing his libel as against his own vessel is a technical defense which ought not to prejudice the owner of the cargo. If Sanbern had then been the libelant and had failed to appeal from the decree dismissing his libel as against the *Beaconsfield*, possibly he might be held to be estopped, but he cannot be estopped by the failure of Cotton, who was acting in his own interest in not appealing. In this particular, the case is much like that of *The Umbria*, 59 F. 489, in which a decree was entered in the court below in favor of the owners of the cargo of a vessel sunk in a collision with another vessel, which was there found to be solely in fault; but on appeal by the owner of such vessel -- the owners of the cargo not appealing -- both vessels were found in fault, and a decree was entered dividing the damages. The owners of the cargo, though not appealing, were held to be entitled to a decree against the owner of the sunken vessel to the same extent as though they had appealed. This case goes to the extent of holding that even if Sanbern himself had been the libelant, his failure to appeal from the decree

of the circuit court dismissing his libel as against the *Beaconsfield* would not estop him from recovering against her if such decree were reversed by this Court and both vessels adjudged to be in fault.

It is insisted, however, that the sureties on the stipulation were released by the amendments to the libel, first, continuing it in the name of Cotton alone after the death of Cleugh, instead of in the name of Cotton and Cleugh, as administratrix, and again in substituting Sanbern as owner of the cargo instead of the original libelants. Stipulations in admiralty are not subject to the rigid rules of the common law with respect to the liability of the surety, and so long as the cause of action remains practically the same, a mere change in the name of the libelant, as by substituting the real party in interest for a nominal party, will not avoid the stipulation

Page 158 U. S. 311

as against the sureties, or, as it is stated in some cases, stipulations are to be interpreted as to the extent and limitation of responsibility created by them by the intention of the court which required them, and not by the intention of the parties who are bound by them. It was said by Judge Ware in *Lane v. Townsend*, 1 Ware 286, 293:

"If therefore there is an ambiguity in the terms of the stipulation, or the construction of them is doubtful, it is not the intention of the party for which we are to inquire, for the will of the party had nothing to do in determining its conditions; the doubt must be removed by consulting the intention of the court, or the law which required the stipulation and dictated its terms."

The introduction, however, of a new cause of action is something which the sureties are not bound to contemplate, and it necessarily follows that they cannot be held. This was the ruling of this Court in the recent case of *The Oregon*, ante, [158 U. S. 186](#) , in which, after a libel had been filed for a collision and the usual stipulation to answer judgment given, other libels for damages arising from the same collision were filed without a rearrest of the vessel, and it was held that this

was a new cause of action, and the court acquired no jurisdiction to render a judgment against the sureties. See also [The North Carolina](#), 15 Pet. 40.

The law upon this subject is nowhere better stated than in *The Nied Elwin*, 1 Dodson 50, cited and abstracted in *The Oregon*, in which Sir William Scott held that, in a case of prize, the substitution of the Crown for the captors did not release the sureties, but that they could not be held for a new cause of action, viz., the intervention of hostilities between Great Britain and Denmark, after the stipulation was given. In respect to the first question, he says:

"I cannot entirely accede to the position which has been laid down on behalf of the claimant that these bonds are mere personal securities given to the individual captors, because I think they are given to the court as securities to abide the adjudication of all events at the time impending before it. This Court is not in the habit of considering the effect of bonds precisely in the same limited way as they are viewed by the courts of common

Page 158 U. S. 312

law. In those courts, they are very properly construed as mere personal securities for the benefit of those parties to whom they are given. In this place, they are subject to more enlarged considerations. They are here regarded as pledges or substitutes for the thing itself, in all points fairly in the adjudication before the court."

Even if this action had been at common law, it is not altogether certain that the amendment substituting the name of the real party in interest for a nominal party would not be good. *Chapman v. Barney*, [129 U. S. 677](#) . The obligation of the sureties to respond for the damage done by the *Beaconsfield* to her cargo was neither increased nor diminished by a mere change in name of the party libellant.

All the questions certified are therefore answered in the affirmative.

*

" STATEMENT OF FACTS"

"1. On December 21, 1886, John Lucas Cotton, master, and George Cleugh, owner, of the *Beaconsfield*, as bailees of her cargo, filed an amended libel against the *Britannia* in the District Court for the Southern District of New York, to recover the sum of \$45,000, damage to such cargo by reason of her collision with the *Britannia*, for which the latter was charged to have been solely in fault."

"2. On January 7, 1887, the Compagnie Francaise de Navigation a Vapeur, owner of the *Britannia*, answered this libel, claiming the collision to have been caused solely by the fault of the *Beaconsfield*. "

"3. On the same day, it also filed a petition against the *Beaconsfield*, reciting the former proceedings, averring the collision to have been caused wholly or partly by the fault of the *Beaconsfield*; that she ought to be proceeded against in the same suit for the damage to her cargo, and prayed for process against her to the end that she might be condemned for such damage."

"4. The *Beaconsfield* was arrested under process issued upon this petition, and was released from custody upon her claimant, Cleugh, filing a stipulation for value in the sum of \$23,000 with William Libbey and George C. Magoun as sureties."

"5. Subsequently George Cleugh, owner of the *Beaconsfield*, answered this petition, denying the liability of the *Beaconsfield* and excepting to the jurisdiction of the court to enforce any liability against her by reason of the proceedings taken under this petition. John Lucas Cotton and George Cleugh, as libelants, also answered this petition, denying liability on the part of the *Beaconsfield*. "

"6. The case came on to be tried in the district court upon these pleadings, and also upon cross-libels by the owners of the *Britannia* and *Beaconsfield* against each vessel, respectively, for damages sustained by the vessels themselves. The district court found both vessels to have been in fault, and divided the damages. The case is reported in 34 F. 546."

"7. A final decree was entered in the district court July 9, 1889, in favor of Cotton and Cleugh, libelants, against the steamship *Britannia* and the steamship *Beaconsfield* in the sum of \$50,249.26, and condemning each vessel in a moiety

of said sum, amounting to \$25,124.63."

"8. Cross-appeals from this decree were taken to the circuit court by George Cleugh, claimant of the *Beaconsfield*, and the Compagnie Francaise, claimant of the *Britannia*. "

"9. Pending these appeals, and on October 3, 1890, Elizabeth Cleugh was substituted as claimant of the *Beaconsfield*, in place of George Cleugh, deceased, and the libel of John Lucas Cotton and George Cleugh against the *Britannia* was continued in the name of Cotton alone."

"10. Upon hearing in the circuit court upon the cross-appeals, the decree of the district court was reversed, and the *Britannia* found to have been solely in fault for the collision. 42 F. 67; 43 F. 96. A decree was thereupon entered in favor of Cotton, as bailee of the cargo of wheat laden on the *Beaconsfield*, against the *Britannia* in the sum of \$53,907.11."

"11. From this decree the Compagnie Francaise appealed to the supreme court October 8, 1890. John Lucas Cotton, libelant, did not appeal from the decree of the circuit court."

"12. The appeal of the Compagnie Francaise came on to be heard in the supreme court with the appeals of the *Britannia* from the decree dismissing her libel against the *Beaconsfield*, for damage sustained by the vessel itself, and from the decree sustaining the libel of the *Beaconsfield* against her for like damage sustained in the collision."

"13. In the supreme court, both vessels were found to have been in fault, and a mandate issued directing the decree of the circuit court to be reversed, and the cause to be remanded, with directions to enter a decree in accordance with the opinion of such court, and for further proceedings in conformity, etc."

"14. Upon the further proceedings so ordered, an affidavit was filed, showing that a telegram had been received from the owners of the *Beaconsfield* as follows:"

"You must not consent to any decree in our names, except against *Britannia* for half damages. We only agreed to be libelants as bailees of cargo against *Britannia*. We forbid our names being used in any decree against *Beaconsfield* for loss of cargo. Please do needful to give effect to this. [Signed] Cleugh, Cotton."

A like telegram was addressed by libelant Cotton to his own counsel.

"15. Libelant then moved, June 1, 1894, that the libel be amended by substituting the name of Albert W. Sanbern, owner of the cargo of the *Beaconsfield*, as sole libelant in the place of John Lucas Cotton, and for the entry of a final decree in the name of Sanbern. This motion was opposed by Elizabeth Cleugh, claimant of the *Beaconsfield*, and by the sureties, but was granted by order of June 4, 1894, and on the same day a decree was entered in favor of Sanbern, as owner of the cargo, against the *Britannia* and *Beaconsfield*, for the sum of \$63,053.28, and condemning each vessel for one-half of this amount, namely, \$31,526.64. By this decree, the stipulators on the part of both steamships were ordered to show cause why execution should not issue against them for the amount of their stipulations."

"16. The sureties upon the stipulation of the *Beaconsfield* made return to the order to show cause, alleging the filing of the libel by Cotton, master, and Cleugh, owner, of the *Beaconsfield*, as bailees of the cargo; that there was no allegation of fault on the part of the *Beaconsfield* in this libel, or in their answer to the petition of the Compagnie Francaise; that the question of liability between the *Beaconsfield* and the libelants was never actually litigated, and the bills of lading under which the goods were carried had never been interposed by way of defense; that at the time the stipulation was given, Cotton and Cleugh were the parties libelant, and continued to be such until after the final decree in the district court, when the libel was amended by dropping the name of George Cleugh, who had died, and continuing it in the name of Cotton alone, although Elizabeth Cleugh, as administratrix of the co-libelant, was substituted in George Cleugh's place as claimant; that after the mandate was handed down, the libel was again amended by substituting the name of Sanbern, as owner of the cargo, in place of Cotton, one of the bailees. By reasons of these matters. Libbey, the surviving surety, claimed to be exonerated from his liability on the stipulation of value of

January 10, 1887. An order was, however, entered directing judgment and execution against Libbey in the amount of his stipulation, \$23,000, and judgment was accordingly entered against him."

"17. Thereupon Elizabeth Cleugh, claimant of the *Beaconsfield*, appealed from the decree against the steamer, and William Libbey, surety, appealed from the judgment against him, to the court of appeals, each assigning separate errors, and bringing up the matters aforesaid for review by such court. Meantime, the decree against the *Britannia* for a moiety of the damages had been paid."

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