

The Gray Eagle

The Gray Eagle

SooperKanoon Citation : sooperkanoon.com/88208

Court : US Supreme Court

Decided On : 1896

Appeal No. : 76 U.S. 505

Appellant : The Gray Eagle

Judgement :

The Gray Eagle - 76 U.S. 505 (1896)

U.S. Supreme Court The Gray Eagle, 76 U.S. 9 Wall. 505 505 (1896)

The Gray Eagle

76 U.S. (9 Wall.) 505

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF WISCONSIN

SYLLABUS

1. A neglect by one vessel, on approaching another in the night, to show proper signal lights, or her showing a wrong one, does not absolve such other vessel, under the act of Congress of April 29, 1864, prescribing the lights which sailing vessels shall carry, from obligation to observe the usual laws of navigation or such reasonable and practicable precautions generally as the circumstances allow.

2. A loss equally divided between two vessels, on facts, set forth in the case, showing fault in both.

The owners of the schooner *Perseverance* filed a libel in the District Court of Wisconsin against the schooner *Gray Eagle*, for a collision in which their vessel had been sunk. The collision occurred in the Straits of Mackinaw soon after midnight of the 23d of November, 1864, the night not having been a dark one -- not so dark at least as that the sails of vessels could not be seen for near a quarter of a mile. The *Perseverance* had lost her lights in a storm, and was sailing

Page 76 U. S. 506

with a white light, contrary to the rules prescribed by the act of Congress, "fixing certain rules and regulations for preventing collisions on the water," approved April 29, 1864, and which made it her duty to carry a green light on her starboard side, and a red one on her larboard, "and no others" anywhere. She was sailing down the strait on a course E. by S., with the wind south, and discovered the lights of the *Gray Eagle* about a mile ahead, coming up the strait, on a course of about W.N.W. [[Footnote 1](#)] The witnesses differed a little as to these points, but this was according to the weight of the testimony. The libel alleged, and the evidence of all the libellant's witnesses corresponded with its statements, that when the *Gray Eagle* was first seen, or soon afterwards, she showed a red light; but that this soon disappeared; after which she showed a green light until near the moment of the collision, when she again showed her red light. The libellants asserted that they had a right to suppose that the *Gray Eagle* would pass on the starboard of the *Perseverance*; but that shortly before the disaster she kept away, and, although the master of the latter called on her to luff several times, in a loud voice, and at the same time ordered his own man at the wheel to put the wheel hard a-starboard, the *Gray Eagle* made no reply, but kept on her course, and in less than two minutes struck the *Perseverance* stem on, abreast the starboard quarter, with such force as to sink her in about two minutes, the master and crew with difficulty saving their lives.

The defense set up by the answer for the *Gray Eagle* was, chiefly,

1st. That the other vessel was sailing without the regulation lights and in violation of the act of Congress.

2d. That at a certain place in the bay mentioned

"a white light was seen about a mile distant, bearing about a point on the *Gray Eagle's* port bow, which was supposed to be a light on shore, or upon a vessel at anchor; that the *Gray Eagle* was then kept away about a point and steadied on her

Page 76 U. S. 507

course to give berth to the light; that *the light was not discovered to be a vessel's light in motion by the commanding officer until the Perseverance got within about three lengths of the Gray Eagle*, the said light being then nearly ahead and to windward; that the light was then supposed to be the binnacle light of a vessel that had hauled up all she could to pass the *Gray Eagle* to windward; that the mate, not seeing any other light, ordered the helm hard a-port, so as to pass on the port side and keep off and clear the stern of the vessel, and stepped to windward of his vessel, and then heard for the first time a cry from the other vessel to port the helm hard down, but that it was too late, and that the vessels were right together."

It seemed from the evidence that the light on the *Perseverance* was not reported to the mate in charge of the *Gray Eagle* till near the moment of collision. The mate testified that as soon as he saw it, he ordered the "wheel up;" a wrong order. The men who had been watching the light cried out, "hard down" -- a right order, but not the one obeyed.

The district court dismissed the libel, principally on the ground that the *Perseverance*, having lost her lights, ought to have lain by at anchor in the night time, and was expressly prohibited from sailing with a white light. The circuit court reversed this decision, and decreed that both vessels were in fault, and that the damages should be divided between them. From this decree the owners of the *Gray Eagle* appealed.

[image included in argument of counsel]

image:a

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The appellants in this Court, as in the courts below, strongly relied on the point, that the *Perseverance* was sailing with a white light at night, contrary to the express prohibition of the statutory regulations in that behalf, and, therefore, that the common law rule, which prohibits a recovery by a party who was himself in fault, and who contributed to the damage sustained, ought to be applied to her. But this Court has frequently held that the omission to exhibit the proper light, though a fault which undoubtedly puts a vessel *prima facie* in the wrong, does not exempt other vessels from the consequences of negligence on their part. It was so decided in the case of *Chamberlain v. Ward*. [[Footnote 2](#)] That case arose under the act of March 2, 1849, it is true; but that act seems quite as stringent in its provisions as the act of 1864, and the court, in reference to this question, says:

"Failure to comply with the regulation, in case a collision ensues, is declared to be a fault, and the offending party is made responsible for all losses or damage resulting from the neglect; but it is not declared by that section, or by any other rule

of admiralty law in the jurisprudence of the United States, that the neglect to show signal lights, on the part of one vessel, discharges the other, as they approach, from the obligation to adopt all reasonable and practicable precautions to prevent a collision. Absence of signal lights in cases falling within the acts of Congress renders the vessel liable to the extent already mentioned, but it does not confer

any right upon the other vessel to disregard or violate the laws of navigation, or to neglect any reasonable and practicable precaution to avoid a collision which the circumstances afford the means and opportunity to adopt."

We are of opinion that the same construction must be given to the act of 1864, and that the exhibition of a prohibited light, as well as the omission to exhibit the proper lights, is insufficient to relieve another vessel from the duty of observing the laws of navigation and of using all practicable precautions to avoid a collision. It is a fundamental rule of admiralty law that where both parties are in fault, both must contribute to make good the damage, and this rule will not be deemed to be abrogated without an express declaration of Congress to that effect.

Supposing, then, the *Perseverance* to have been in fault for not supplying herself with red and green lights, and for exhibiting a white light, or for not casting anchor and lying by till morning, or for any other reason (which, as her owner or master has not appealed, it is to be presumed she was), [[Footnote 3](#)] the only remaining question for us to consider is whether the *Gray Eagle* was also in fault, so as to be chargeable with contributing to the collision. This question, we think, has been properly answered by the circuit court. It is admitted by the answer of the appellants that the light of the *Perseverance* was seen when about a mile distant, bearing about one point on the *Gray Eagle's* port bow, and was supposed to be a light on shore, or upon a vessel at anchor; and that the *Gray Eagle* was kept away about a point and steadied in her course to give berth to the light; and that it was not discovered

Page 76 U. S. 512

to be a vessel's light in motion, by the commanding officer, until the *Perseverance* was within about three lengths of her. This is a very remarkable admission. The courses of the two vessels, after this light was seen, must have been at an angle of about two points of the compass with each other, and it is demonstrable from all the evidence taken together that the *Perseverance* must have passed from the *Gray Eagle's* port bow to her starboard bow before the collision took place, and yet it is said that the commanding officer did not discover that the light was in

motion until within three lengths of her. The appellees, witnesses all testify that the red light of the *Gray Eagle* was first seen, and then disappeared, after which her green light only was seen until just before the collision. This shows that the *Perseverance* had crossed the *Gray Eagle's* course, and that her motion must have been seen had a proper lookout been kept on the latter. It also shows that the *Perseverance* properly kept on her course, and had the *Gray Eagle* kept on hers, the collision would not have occurred. The night was not dark; the sails of the vessels could be seen nearly or quite a quarter of a mile. It seems to us evident that there must have been great negligence on the part of those having charge of the *Gray Eagle*. From the evidence of the appellants' witnesses, it appears that there was much confusion on board of her just as the collision was about to take place. One of the men on the lookout forward says: "When I sung out to put the wheel down, the mate sung out to put the wheel up." The man at the wheel testified to the same thing, and says that he obeyed the mate's orders, and that undoubtedly caused the collision. Had the mate been on the lookout as an officer in command with a light ahead ought to have been, the difficulty would not have occurred. We are therefore of opinion that the men in charge of the *Gray Eagle* were delinquent in their duty under the circumstances of the case, and that this delinquency contributed to cause the collision in question, and as a consequence that the loss should be divided between the parties.

Decree affirmed.

[[Footnote 1](#)]

A diagram on page <76 U.S. 509|>509 may perhaps assist the non-nautical reader in understanding the statement -- REP.

[[Footnote 2](#)]

[62 U. S. 21](#) How. 548, [62 U. S. 567](#) .

[[Footnote 3](#)]

See [Chittenden v. Brewster](#), 2 Wall. 196; [McDonough v. Dannevy](#), 3 Dall. 198.

