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

The Albert Dumois

The Albert Dumois

SooperKanoon Citation : sooperkanoon.com/88929

Court : US Supreme Court

Decided On : Apr-09-1900

Appeal No. : 177 U.S. 240

Appellant : The Albert Dumois

Judgement :

The Albert Dumois - 177 U.S. 240 (1900)
U.S. Supreme Court The Albert Dumois, 177 U.S. 240 (1900)

The Albert Dumois

Nos. 139, 272

Argued January 31, 1900

Decided April 9, 1900

177 U.S. 240

CERTIORARI TO THE CIRCUIT COURT

OF APPEALS FOR. THE FIFTH CIRCUIT

SYLLABUS

In January, 1897, the navigation of the Mississippi River below New Orleans was governed by the rules and regulations of 1864 (Rev.Stat. sec. 4233) and also by the supervising inspectors' rules for Atlantic and Pacific inland waters.

A steamer ascending the Mississippi within 500 feet of the eastern bank made both colored lights of a descending steamer, approaching her "end on, or nearly end on." She blew her a signal of two whistles and starboarded her wheel. *Held* that she was in fault for so doing, and that this was the primary cause for the collision which followed. *Held also* that the facts the descending steamer seemed to be nearer the eastern bank and that her lights were confused with the lights of other vessels moored to that bank was not a "special circumstance" within the meaning of Rule 24, rendering a departure from Rule 18 necessary "to avoid immediate danger," since, if there were any danger at all, it was not an immediate one, or one which could not have been provided against by easing the engines and slackening speed.

Exceptions to general rules of navigation are admitted with reluctance on the part of courts, and only when an adherence to such rules must almost necessarily result in a collision.

The descending steamer, running at a speed of twenty miles an hour, made the white and red lights of the *Dumois,* the ascending steamer, upon her port bow, and blew her a signal of one whistle to which the *Dumois* responded with a signal of two whistles, starboarded her helm, shut in her red and exhibited her green light. *Held* that the descending steamer, the *Argo,* in view of her great speed, should at once upon observing the faulty movement of the *Dumois,* have stopped and reversed, and that her failure to do so was a fault contributing to the collision, and that the damages should be divided.

While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed, and the very fact of her being so fast and apparently uncontrollable is additional reason for greater caution in her navigation.

The nineteenth rule, which declares that "the vessel which has the other on her own starboard side shall keep out of the way of the other," does not absolve the preferred vessel from the duty of stopping and reversing in case of a faulty movement on the part of the other vessel.

Page 177 U. S. 241

The representatives of two passengers on the descending steamer who lost their lives filed a libel against the owner of the ascending steamer for damages, and recovered. *Held* that, as both vessels were in fault, one-half of such damages should be deducted from the amount recovered from the *Dumois* notwithstanding that the local law gave no lien or privilege upon the vessel itself.

The limited liability act applies to cases of personal injury and death as well as to those of loss of or injury to property.

This was a libel in admiralty filed by Oscar M. Springer, owner of the steamer *Argo,* a small vessel of forty-eight tons burthen, against the steamship Albert *Dumois,* to recover damages sustained by a collision between these two vessels in the early morning of January 28, 1897, in the Mississippi River, about eighty miles below the City of New Orleans. An intervening libel was also filed against the *Dumois* by the crew of the *Argo* to recover the value of their clothing lost by the collision.

Upon the seizure of the *Dumois,* one Anders Jakobsen, of Christiana, Norway, appeared as claimant and owner, and on February 3, 1897, filed a petition for a limitation of liability in which he also denied any negligence on behalf of the *Dumois.* Upon the same day, Marie B. Bourgeois de Blesine, mother of Faure de Blesine, a passenger on board the *Argo,* filed a libel *in personam* against Jakobsen, claiming damages for the death of her son through the negligence of the *Dumois.* Her suit was thereupon consolidated with that of Springer and treated as a petition against the stipulation given for the release of the steamer under the proceedings for a limitation of liability. Upon the appraisement of the *Albert Dumois* at the sum of $30,000, and pending freight at the sum of $1,333.75

and the filing of a stipulation to pay these sums into court, an order was issued enjoining further proceedings against the steamship and her owner and directing all persons claiming damages by reason of the collision to appear before a commissioner and make proof thereof.

On May 5, 1897, Genevieve Keplinger Hester, widow of Harrison P. Hester, a passenger on the *Argo* and natural tutrix of his minor child, filed an intervening petition under the limited liability proceedings, claiming damages for the death of her

Page 177 U. S. 242

husband, and alleging that the same was caused solely through the fault of the *Dumois.*

Thereafter, on December 16, 1897, Springer, as the owner of the *Argo,* filed a surrender of his vessel and pending charter money to the intervening claimants against the *Dumois,* and prayed for relief under the limited liability act.

The case of the *Argo,* as set forth in her libel and answer to the petition of the owner of the *Dumois* for a limitation of liability, was this: on January 27, 1897 at 7 o'clock in the evening, the *Argo* started from the port of New Orleans on a trip to the jetties at the mouth of the Mississippi River. Upon the following morning, about 12.40 A.M., while proceeding down the middle of the river at or near Oyster Bayou, the master noticed the white and red lights of a steamer coming up stream about 500 feet from the east bank, and immediately gave a signal of one blast of his whistle, signifying that he would turn to starboard and pass on the port side of the approaching steamer, to which the latter responded with two blasts of her whistle, and began crossing the river, shutting out her red and showing her green light. Thereupon the *Argo* promptly responded with one blast of her whistle, still claiming her right to pass on the port side of the approaching steamer, and put her helm hard-a-port to clear the *Dumois,* as she had the right to do and as in the judgment of her master it was best for her to do. Whereupon the *Dumois* continued her course across the river and blew a danger signal of three blasts of

her whistle, but too late to avoid a collision, the *Argo* striking the *Dumois* while she was crossing the *Argo's* bow about eight feet abaft her stem, causing the *Argo* to fill with water and sink about four minutes thereafter, whereby she was totally lost and two of her passengers were drowned.

The case of the *Dumois* was that, while proceeding up the Mississippi River about half-past twelve at night, on a voyage from Port Limon, Costa Rica, to New Orleans, with her full complement of officers and seamen, she had reached a point in the Mississippi River about eighty miles below the City of New Orleans, and was proceeding up the river as close to the east bank as it was safe for her to do at a moderate speed of about

Page 177 U. S. 243

nine miles an hour, when her watch discovered the lights of a steamer coming down the river close to the east bank, nearly "head and head," but somewhat upon the starboard bow of the *Dumois;* that the *Dumois,* before any signal was given by the approaching steamer, gave two clear and distinct blasts of her steam whistle, indicating that she desired to pass the *Argo* to the left, starboard to starboard, and at the same time her wheel was put to starboard. In answer, the *Argo* wrongfully responded to this signal with one blast of her whistle. Thereupon the pilot of the *Dumois,* fearing that the *Argo* had misunderstood his signal, immediately repeated it, and at once caused three or more short blasts of her whistle to be given in quick succession, to indicate danger, and at the same time stopped and backed her engines; but the *Argo* neglected to stop and back, and kept her course and speed until her pilot saw the green or starboard light of the *Dumois,* when he attempted to pass her by putting his wheel hard-a-port, which brought the *Argo* in collision with the steamship, striking her at right angles on the starboard side, about ten feet abaft the stem, from which collision the *Argo* sank and became a total loss.

Upon a hearing upon pleadings and proofs, the district court announced in an oral opinion its conclusion that the collision was caused solely by the fault of the *Dumois,* and awarded the libellant Springer $11,000 for the loss of the *Argo;* to

Mrs. Hester, $5,000; to Mrs. de Blesine, $2,500, and to the crew of the *Argo* the respective sums claimed by them.

From this decree the owner of the *Dumois* appealed to the circuit court of appeals, assigning in substance as error that the collision was caused through the sole fault of the *Argo,* and that the amount awarded was excessive. An appeal was also taken by Springer, claiming that the amount awarded him as the value of the *Argo* was too small, but no appeal was taken by the intervening libellants.

The circuit court of appeals reversed the decree of the district court, holding that both vessels were in fault for the collision and that, as between the owners of the steamships, the damages should be divided. It further increased the allowance of damages to Springer to $15,000, and assessed those sustained

Page 177 U. S. 244

by the *Dumois* at $185. It was further decreed that Springer recover $7,500 of the *Dumois* and her bondsmen, subject to a credit of one-half of the damages of the *Dumois,* and one-half of the amounts decreed in favor of Mrs. Hester and Mrs. de Blesine, leaving a balance due upon this decree in favor of Springer of $3,657.50, for which he was awarded execution. 59 U.S.App. 108. Both parties filed petitions for rehearing, which were denied.

Whereupon both parties applied for and were granted writs of certiorari from this Court.

MR. JUSTICE BROWN delivered the opinion of the Court.

This collision occurred in January, 1897, in the Mississippi River about eighty miles below New Orleans, and the steamers in their signals and manoeuvres were governed by the original rules and regulations of the act of 1864, reproduced in Rev.Stat. sec. 4233. A brief review of the numerous acts subsequent thereto upon the same subject will show that the act of 1864 continued in force upon the Mississippi River at the time of this collision.

1. The original act, now known as Rev.Stat. sec. 4233, was adopted from the British Orders in Council of 1863, was made of general application "in the navigation of vessels of the navy and of the mercantile marine of the United States," and was supplemented by secs. 4412 and 4413, giving the board of supervising inspectors power to

"establish such regulations to be

Page 177 U. S. 245

observed by all steam vessels in passing each other as they shall from time to time deem necessary for safety."

This Code remained in force substantially unaffected by legislation until March 3, 1885, when the "Revised International Regulations for Preventing Collisions at Sea" were adopted by act of Congress, Act of March 3, 1885, 23 Stat. 438, c. 354, and made applicable to

"the navigation of all public and private vessels of the United States upon the *high seas* and in all *coast waters* of the United States *except* such as are otherwise provided for."

By section two, all laws inconsistent with these rules were repealed " *except* as to the navigation of such vessels within the *harbors, lakes, and inland waters* of the United States." As to such waters, the original Code of 1864 remained in force, explained and supplemented by the rules of the supervising inspectors. *The Delaware,* 161 U. S. 459 , 161 U. S. 463 ; *The New York,* 175 U. S. 187 , 175 U. S. 193 .

On August 18, 1890, Congress adopted a new Code

"to be followed by all public and private vessels of the United States upon the *high seas* and in all waters connected therewith, navigable by seagoing vessels,"

Act of August 19, 1890, 26 Stat. 320, article thirtieth of which declared that

"nothing in these rules shall interfere with the operation of a special rule duly made by local authority, relative to the navigation of any *harbor, river, or inland waters.* "

The second section repealed all inconsistent laws, and the third section provided that the act should take effect at a time to be fixed by the President by proclamation issued for that purpose. This act was amended by Act of May 28, 1894, 28 Stat. 82, c. 83, providing certain lights for small vessels. By another Act of June 10, 1896, 29 Stat. 381, c. 401, amending the law with regard to signals, it was declared in the second section that the original act as amended should "take effect at a subsequent time to be fixed by the President by proclamation," although another Act approved February 23, 1895, 28 Stat. 680, c. 127, had already provided that it should take effect at a time to be fixed by the President. The President at first declared that the act should take effect March 1, 1895, 28 Stat. 1250, which date was subsequently postponed by another proclamation, 28 Stat. 1259.

Page 177 U. S. 246

By still another proclamation of December 31, 1896, 29 Stat. 1885, it was declared that the Act of August 19, 1890, as subsequently amended, should take effect July 1, 1897.

Meantime, however, and on February 8, 1895, 28 Stat. 645, Congress passed another Code to be

"followed in the navigation of all public and private vessels of the United States upon the *Great Lakes* and their *connecting and tributary* waters as far east as Montreal,"

to take effect March 1, 1895. This act repealed the act of 1864 so far as it applied to the Great Lakes and their connecting waters. All this legislation, however, left the harbors, rivers, and other inland waters of the United States unaffected either by the acts of 1885, 1890, or 1895, and to make the intention of Congress more certain in this particular, on February 19, 1895, 28 Stat. 672, c. 102, Congress

enacted that the original provisions of sections 4233, 4412, and 4413 of the Revised Statutes, and regulations of the supervising inspectors pursuant thereto, shall be followed on the *harbors, rivers,* and *inland waters* of the United States, and the provisions of said secs. were declared special rules duly made by local authority relative to the navigation of such waters, as provided for in article 30 of the Act of August 19, 1890, above quoted. Section 4 provided that the words "inland waters" should not be held to include the Great Lakes and their connecting and tributary waters as far east as Montreal, and that the act should not in any respect affect the Act of February 8, 1895.

Finally, on June 7, 1897, 30 Stat. 96, c. 4, Congress adopted a set of regulations to be

"followed by all vessels navigating all *harbors, rivers,* and *inland waters* of the United States, except the Great Lakes and their connecting and tributary waters, as far east as Montreal and the Red River of the north and rivers emptying into the Gulf of Mexico, and their tributaries."

This act, as well as that of August 19, 1890, adopting regulations for preventing collisions at sea, was amended February 19, 1900, so far as it related to lights on steam pilot vessels, but as this act of 1897 was approved June 7, to take effect four months thereafter, it is unnecessary to consider to what waters it is applicable. It certainly has no bearing upon this collision, which took place

Page 177 U. S. 247

January 28, 1897, and is cited merely as a part of the history of Congressional action upon the general subject.

The effect of all this legislation was, at the time of the collision, and perhaps is still, to leave the rivers emptying into the Gulf of Mexico subject to the provisions of the original act, Rev.Stat. section 4233.

2. If the legislation of Congress in this connection be somewhat complicated, the result is at least clear that the navigation of the Mississippi was subject to the

original rules and regulations of Revised Statutes, 4233, but the rules of the supervising inspectors supplementary thereto are ambiguous, and in one respect quite difficult of interpretation. There are three sets of these rules: 1. pilot rules for Atlantic and Pacific inland waters; 2. pilot rules for western rivers; 3. pilot rules for the Great Lakes and their connecting tributary waters as far east as Montreal. The third may be left out of consideration in this case.

The pilot rules for western rivers are entitled

"Rules and Regulations for the Government of Pilots of Steamers Navigating the Red River of the North and Rivers Whose Waters Flow into the Gulf of Mexico, and their Tributaries."

There can be no doubt whatever that these rules apply to the Mississippi and its tributaries, and there could be no doubt that it applied to the river below New Orleans, were it not for Rule XIV, which declares that

"the line dividing jurisdiction between the pilot rules on western rivers and harbors, rivers, and inland waters at New Orleans shall be the lower limits of the city."

This should evidently be construed as if it read

"he line dividing jurisdiction between the pilot rules on western rivers and *the pilot rules* on harbors, rivers, and inland waters at New Orleans shall be the lower limits of the city."

This excludes the Mississippi below New Orleans, and indicates that some other rules are applicable.

But, on referring to the pilot rules for the Atlantic and Pacific coast inland waters, we find them entitled,

"Rules and Regulations for the government of Pilots of Steamers Navigating *Harbors, Rivers,* and *Inland Waters* (except the Great Lakes, the Red River of the North, and *Rivers Emptying into the Gulf of*

Mexico and their Tributaries) when Meeting or Approaching Each Other, Whether by Day or Night, and as Soon as Fully Within Sound of the Steam Whistle."

Rule IX of these pilot rules contains the same provisions as Rule XIV of the pilot rules for western rivers, namely that the line dividing jurisdiction between pilot rules on western rivers and harbors and inland waters at New Orleans shall be the lower limits of the city. There could be no doubt whatever that the intention was to divide the jurisdiction as to the Mississippi River between the rules applicable to western rivers and the rules for Atlantic and Pacific coast inland waters, were it not for the fact that in the entitling of these latter rules rivers emptying into the Gulf of Mexico are excepted. But we are of opinion that these words were intended as a general exception of the waters covered by the pilot rules for western rivers, and that they were not intended to apply to the Mississippi below New Orleans, in view of the provision of both sets of rules that the pilot rules for western rivers should cease to be applicable at the lower limits of that city. As New Orleans is practically the head of navigation for foreign trade, it was perfectly reasonable that the supervising inspectors should apply to the lower Mississippi the rules and regulations adopted for the harbors, rivers, and inland waters navigated by vessels engaged in foreign trade, while they still left the regulations provided for western rivers to remain applicable to the Mississippi above New Orleans, where the commerce is almost altogether domestic in its character. The only alternative of this proposition is to hold that the supervising inspectors intended to exempt from their jurisdiction altogether the waters of the Mississippi below New Orleans, some 150 miles in length -- a supposition so improbable that it must be rejected at once. We hold, therefore, that the Atlantic and Pacific coast rules apply to these waters.

Such being the rules and regulations applicable to this case, we are remitted to the inquiry how far they were obeyed and how far disregarded by the vessels concerned in this collision. The night was clear and starlight, the river substantially straight at this point, and about half a mile wide, with no obstruction or other special circumstances, under Rule 24, rendering a departure

from the general rules necessary in order to avoid immediate danger. In short, the conditions were all favorable to safety, and the collision could not have occurred without egregious fault on the part of one or both vessels. In endeavoring to locate this fault, we are at liberty to consider the movements of each vessel from its own standpoint, and, without attempting to reconcile the conflicting statements of the two crews or to settle disputed questions of fact, to inquire upon the showing made by each whether that vessel was guilty of fault contributing to the collision.

3. As to the *Albert Dumois,* she was a Norwegian vessel, 210 feet long, drawing 17 feet of water, and was bound up the river to New Orleans. While proceeding up the east side of the river at a speed of about nine miles an hour, and from 250 to 500 feet from the east bank, she made directly ahead, and at a probable distance of about half a mile, the white and colored lights of the *Argo* coming down the river. Her theory of the case was, and the entire testimony of her watch showed, that the *Argo* was approaching her "end on, or nearly end on," within the meaning of Rule 18, which declares that

"if two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

Notwithstanding this, however, the wheel of the *Dumois* was put to starboard, and a signal of two whistles blown to the *Argo,* manifesting an intention on the part of the *Dumois* to sheer out into the river and pass the *Argo* starboard to starboard. Her excuse for doing this was her own proximity to the east bank and a cluster of white lights belonging to a tug and two luggers inside of the *Argo,* and in fact moored to the east bank of the river.

We cannot, however, accept this as a "special circumstance" within the meaning of Rule 24 rendering a departure from Rule 18 necessary "to avoid immediate danger," since, if there were any danger at all, it was not an immediate one, or one which could not have been provided against by easing the engines of the *Dumois*

and slackening her speed. Exceptions to the general rules of navigation are admitted with reluctance on the part of the courts, and only when an adherence to such rules must almost necessarily result in a collision -- such, for instance, as a manifestly wrong manoeuvre on

Page 177 U. S. 250

the part of an approaching vessel. *Belden v. Chase,* 150 U. S. 674 , 150 U. S. 699 ; *The Britannia,* 153 U. S. 130 ; *The Test,* 5 Notes of Cases 276; *The Superior,* 6 Notes of Cases 607; *The Khedive,* 5 App.Cas. 876; *The Benares,* 9 Prob. Div. 16; Marsden, Collisions 480. As was said in *The John Buddle,* 5 Notes of Cases 387:

"All rules are framed for the benefit of ships navigating the seas, and, no doubt, circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule, howsoever wisely framed. It is at the same time of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary are most distinctly approved and established; otherwise, vessels would always be in doubt and doing wrong."

The case of *The Concordia,* L.R. 1 Ad. & Ecc. 93, resembles much the instant case in this particular. That was a collision between two steam vessels meeting nearly end on in the River Thames. Defendants alleged that the helm of their vessel was put to starboard to avoid a barge. It was held that the burden of proof that a departure from the rule which required both steamers to port was necessary in order to avoid immediate danger rested upon the defendants, and that, in the absence of sufficient evidence to show what became of the barge, the defendants had failed in their proof, and were therefore in fault for the collision, the result of not porting their helm. *See also The Agra,* L.R. 1 P. C. 501.

Manifestly the *Argo* had a right to rely upon the *Dumois'* pursuing the usual course of putting her helm to port, and her failure to do so was likely to raise a doubt on the part of the *Argo* as to her own duty, and to bring about the collision

it was designed to avoid. If, as insisted by the crew of the *Argo,* the *Dumois* was nearer to the east bank than the descending steamer, and exhibited to the latter her white and red lights only, the fault of the *Dumois* in starboarding and crossing the course of the *Argo* becomes still more manifest. The fact put

Page 177 U. S. 251

forward by the pilot of the *Dumois,* that the *Argo* seemed so close to the luggers that she appeared to be one of them (although contradicted by the testimony of the libellant that the *Argo* was in the middle of the river) was one which undoubtedly called for caution on the part of the *Dumois,* but it did not involve an immediate danger which justified a departure from the general rule.

4. The *Argo,* a vessel of forty-eight tons burthen, 101 feet in length, and drawing six feet of water, had been chartered by some representatives of the press to meet at the mouth of the river, a congressional committee sent to inspect the jetties and to report the proceedings of the committee. According to her inspection certificate, the *Argo* should have had one pilot, one engineer, and a crew of five men, but as they were in great haste to get away, Messrs. Hester, Lindauer, and Blesine, newspaper correspondents, all of whom were said to be familiar with the management of watercraft, agreed to enroll themselves as part of the crew, and if necessary to lend a hand. Their assistance does not seem to have been of any great value, as they all "turned in" immediately upon coming on board. The *Argo* left New Orleans about 7 o'clock in the evening, having on board a master, who also served as pilot, an engineer, a fireman, one deck hand, and a steward, who also served as cook, besides the newspaper correspondents. She took her course down the river at a speed of about twenty miles an hour, and at the time of making the lights of *Dumois,* was either in the middle of the river or between that and the east bank. There was conflict of evidence upon her exact location, but in the view we have taken of the case, it does not become necessary to determine this with accuracy. Her testimony indicates that she made the white and red lights of the *Dumois* upon her port bow, and blew her a signal of one whistle; that the *Dumois* responded with a signal of two whistles, starboarded her helm, shut in her red and exhibited her green light, and took her course across the path of the *Argo.* The

Argo again blew her a signal of one whistle, to which the *Dumois* again responded with two, followed it with a danger signal, and the *Argo,* still maintaining her great speed, put her wheel hard-a-port, struck

Page 177 U. S. 252

the *Dumois* upon her starboard bow, and was herself almost immediately sunk by the force of the impact.

The master of the *Argo* excuses his failure to stop and reverse, which it was his duty to do as soon as he saw the wrong manoeuvre of the *Dumois,* by the fact that the starboarding of the *Dumois* put him in a position in which he was obliged to decide instantly what ought to be done; that, in the exercise of his best judgment, he determined to put his helm hard-a-port, and endeavor to cross the bows of the *Dumois,* and that, if he made a mistake in this particular, it was an error *in extremis,* for which the *Argo* is not responsible. The argument is undoubtedly entitled to great weight, but we think the real error was not committed *in extremis.* The theory of the *Argo* is that she was coming down the middle of the river, and that she made the *Dumois* on her port bow, exhibiting a red light. She was running herself at twenty miles an hour, with the added force of the current. The *Dumois* was running against the current at the rate of nine miles an hour. That the *Dumois* must have starboarded and shown her green light some time before the *Argo* ported is evident from the place of the collision, which was to the westward of the middle of the river, and, upon the theory of the *Argo,* was near the westerly bank. As the *Dumois* was within five hundred feet of the easterly bank when she starboarded -- the river at that point being about 2,500 feet wide -- she must have run under her starboard helm about a quarter of a mile before reaching the point of collision. Now if the *Argo* had promptly ported as soon as she heard the cross-signal or observed the starboarding of the *Dumois,* she would inevitably have passed the point of intersection before the *Dumois* reached it. The fault of the *Argo* was not in the hard-a-port order when the collision was inevitable, but in failing to stop and reverse at once as soon as she noticed the starboarding of the *Dumois.* The testimony from the *Dumois* indicates that she blew her first whistle and starboarded as soon as the *Argo's*

lights were seen, and that, if the *Argo* had starboarded and reversed, the collision would not have occurred. The truth seems to be that the *Argo* did not port when giving her first signal, but waited for some time, and then put her helm hard-a-port, but too late to be of any avail.

Page 177 U. S. 253

The testimony indicates that the *Argo* is chargeable with an infraction of the third rule of the supervising inspectors in failing to stop and reverse after receiving the cross-signals from the *Dumois.* This rule requires that

"if, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and repeated blasts of the steam whistle, and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage way until the proper signals are given, answered, and understood, or until the vessels shall have passed each other. Vessels approaching each other from opposite directions are forbidden to use what has become technically known among pilots as 'cross-signals' -- that is, answering one whistle with two, and two whistles with one. In all cases and under all circumstances, a pilot receiving either of the whistle signals provided in rules, which for any reason he deems injudicious to comply with, instead of answering with a cross-signal, must at once observe the provisions of this rule."

The master also seeks to excuse himself by alleging that the *Argo* was so constructed that her headway could not have been stopped in time to be of any service. This may be true, and yet the *Dumois* should not be held responsible for the faulty construction of the *Argo* in this particular. While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed, and the very fact of her being so fast and apparently uncontrollable is

an additional reason for the greater caution in her navigation. Her increase of speed should have been obtained with as little increase of risk to other vessels as was possible, and if any precautions in that direction were neglected, it was a fault for which she alone ought to be called upon to respond. This Court has repeatedly held the fault, and even the gross fault of one vessel, does not absolve the other from the use of such precautions as good judgment and accomplished seamanship require. *The*

Page 177 U. S. 254

Maria Martin, 12 Wall. 31; *The America,* 92 U. S. 432 ; *The Lucille,* 15 Wall. 679; *The Sunnyside,* 91 U. S. 208 .

But counsel for the *Argo* also insists that, as the two vessels, from the moment the *Argo* ported and the *Dumois* starboarded, were upon crossing courses, the nineteenth rule, which declares that "the vessel which has the other on her own starboard side shall keep out of the way of the other," applied, and that the *Dumois* should have ported, and the *Argo* was bound, under the case of *The Britannia,* 153 U. S. 130 , to keep her course and speed. We are reluctant, however, to say that where two vessels are meeting end on, or nearly end on, under the eighteenth rule, the faulty movement of starboarding by one absolves the other from the obligation of Rule 21, which requires that "every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse."

In the case of the *Britannia,* the decision of the Court that, of two crossing steamers, the preferred vessel should have kept her course and speed, was put upon the ground that the course of the *Britannia,* the obligated vessel, was precisely what might have been anticipated, and did not warrant the *Beaconsfield,* the preferred vessel, in disregarding the injunctions of the twenty-third rule, which required her to keep her course. It was intimated that a different conclusion might have been reached if it had appeared that the *Britannia* was herself violating a rule of navigation. Now as it appears from the testimony of the *Argo's* crew that they not only heard the signal of two whistles from the *Dumois,* but saw her turn

under her starboard wheel, and exhibit her green light when she should have ported, they were at once apprised of the fact that she was violating a rule of navigation, and that prompt action was required to avoid a collision.

The fact that the *Argo* was short-handed and was also running without a proper lookout, though not decisive of a fault contributing to the collision, may be taken into consideration as bearing upon the probabilities of the case and raising a presumption against her.

We are of opinion that the *Dumois* was primarily in fault

Page 177 U. S. 255

for this collision, in starboarding instead of porting when she first sighted the *Argo,* and while the case with respect to the *Argo* is by no means free from doubt, the majority of the Court are also of opinion that the *Argo* was in fault for failing to observe the twenty-first rule, which required her to stop when risk of collision was involved, as well as the third rule of the supervising inspectors to the same effect.

5. There was no error in fixing the value of the *Argo* at the sum of $15,000, an increase of $4,000 over the amount fixed by the district court. The evidence of her builders was that she originally cost $18,000, and that, if she had been kept in good repair, she would have been worth two-thirds of that amount at the time of the collision. There was also testimony to the effect that her owner had at the time of the collision, concluded a sale of one-half the *Argo* for $7,500, and that it was to have been delivered and the money paid for this moiety on the day following that upon which she was lost, and upon her return to the city. This is better evidence of her actual value than the conflicting opinions of experts more or less friendly to the owner, who put her value at from $8,500 to $30,000. As the district court and the circuit court of appeals agreed that her value did not exceed $15,000, we should be unwilling to increase that amount unless upon clear proof of inadvertence or mistake.

There was no error in refusing to allow interest upon her valuation. The allowance of interest in admiralty cases is discretionary, and not reviewable in this Court

except in a very clear case. *The Scotland,* 118 U. S. 507 , 118 U. S. 518 .

6. In the assessment of damages, an important question arose as to whether a moiety of the amounts awarded to Mrs. Blesine and Mrs. Hester should be deducted from the amount recoverable by the owners of the *Argo.* The libel of Mrs. Blesine was filed against Jakobsen as owner of the *Dumois,* and process of attachment prayed against his goods and chattels, credits and effects. This libel, subsequently consolidated with that of Springer, was treated as a petition against the bond given for the release of the steamer under the proceedings for a limited liability. A similar petition was filed by Mrs. Hester. In the

Page 177 U. S. 256

following December, Springer, the libellant and owner of the *Argo,* surrendered to the claimants and interveners his vessel and the freight. These intervening libels, as well as that of the seamen, proceeded as one suit, and in the decree of the circuit court of appeals, Mrs. Blesine was awarded $2,500 and Mrs. Hester $5,000, one-half of which was deducted from the amount awarded to Springer.

Admitting that, if these intervening libels had been filed against Springer as owner of the *Argo,* nothing could have been recovered of him by reason of the total loss of the *Argo* and her freight and the consequent extinguishment of personal liability on the part of the owner, does it follow that the *Dumois* is not entitled to deduct from the amount awarded to the *Argo;* or, in other words, to recover of the *Argo* one-half of the amount payable to these libellants, in view of the fact that the *Argo* was also in fault? We think this question is practically answered by prior decisions of this Court.

The case of *The North Star,* 106 U. S. 17 , arose from the mutual fault of two steamers, in which one, the *Ella Warley,* was totally lost. The court awarded the owners of the Ella Warley so much of their damage as exceeded one-half of the aggregate damage sustained by both vessels. The owners of the *Warley* contended that, as she was a total loss, her owners were not liable at all, and that they were entitled to one-half of their damages in full, without deduction for the half

of the damage sustained by the *North Star,* the other vessel. We held, however, that the admiralty rule that where both vessels are in fault, they must bear the damage equally, applied, and that the one suffering least should be decreed to pay to the other the amount necessary to make them equal, namely, one-half of the difference between the respective losses sustained, and that when this resulting liability of one party to the other has been ascertained, then, and not before, was the proper time to apply the rule of limited responsibility, if the party decreed to pay is entitled to it. "It will enable him to avoid payment *pro tanto* of the balance found against him." "The contrary view," said the Court,

"is based on the idea that, theoretically (supposing both vessels in fault), the owners of the one are liable to

Page 177 U. S. 257

the owners of the other for one-half of the damage sustained by the latter; and, *vice versa,* that the owners of the latter are liable to those of the former for one-half of the damage sustained by her. This, it seems to us, is not a true account of the legal relations of the parties. . . . These authorities conclusively show that, according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden. This is the rule of mutual liability between the parties."

In *The Chattahoochee,* 173 U. S. 540 , which was also a collision occasioned by the mutual fault of a steamer and a schooner, followed by a total loss of the latter, the survivor was permitted to deduct from one-half of the damages recovered for the loss of the vessel one-half of the value of the cargo of the latter, notwithstanding the total loss of the schooner, and the fact that, under the Harter Act, she would not have been liable to the owner of the cargo for negligence in navigation. We held in that case that the sunken vessel was not entitled to the benefit of any statute tending to lessen its liability to the other vessel, or to an increase of the burden of such other vessel, until the amount of such liability had

been fixed upon the principle of an equal division of damages.

The case under consideration is distinguishable from this only in the fact that intervening libels are for loss of life, for which no lien is given upon the vessel, in the absence of a local law to that effect, while in the case of the *Chattahoochee,* the libel sought to recover for the loss of the cargo, for which a lien was given by the law maritime upon the vessels in fault.

Assuming for the present that the question of lien is material, we are next to inquire whether such lien is given by the local law of Louisiana. We are cited in this connection to two articles of the Civil Code, the first of which, article 2315, as amended in 1884, declares that

"every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it; the right of this action shall survive, in

Page 177 U. S. 258

case of death, in favor of the minor children or widow of the deceased, or either of them, and in default of these, in favor of the surviving father and mother, or either of them, for the space of one year from the death. The survivors above mentioned may also recover the damages sustained by them by the death of the parent, or child, or husband, or wife, as the case may be."

It was held by us in *The Corsair,* 145 U. S. 335 , a case arising out of a collision which also took place on the lower Mississippi, that this local law did not give a lien or privilege upon the vessel, and that nothing more was contemplated by it than an ordinary action according to the course of the law as administered in Louisiana.

Our attention is also called by the owners of the *Dumois* to subdivision 12 of Art. 3237 of the Civil Code, which reads as follows:

"Where any loss or damage has been caused to the person or property of any individual by any carelessness, neglect, or want of skill in the direction or management of any steamboat, barge, flatboat, water craft, or raft, the party injured shall have a privilege to rank after the privileges above specified."

No reliance was placed upon this article in the case of the *Corsair,* probably because it was thought to refer only to losses or damages to persons still living, and that an action would lie in favor of the party injured. Certainly if this article had been supposed to give a remedy for damages occasioned by death to the representatives of the deceased person, it would never have escaped the attention of the astute counsel who participated in that case.

The question whether "damage done by any ship," jurisdiction over which was given to the High Court of Admiralty in England, included actions brought by the personal representatives of seamen or passengers killed in a collision, has been the subject of many and conflicting judicial opinions in the English courts, a summary of which may be found in *The Corsair,* 145 U. S. 345 , and was finally settled against the jurisdiction by the House of Lords in the case of *The Franconia,* 10 App.Cas. 59.

In this country, the law is so well settled that, by the common

Page 177 U. S. 259

law, no civil action lies for an injury resulting in death that we need only refer to the case of *Insurance Co. v. Brame,* 95 U. S. 754 , and to the same doctrine applied in admiralty in the case of *The Harrisburg,* 119 U. S. 199 . The object of Article 3237 was not to extend the cases in which damages might be recovered to such as resulted in death, but merely to provide that, in cases of damages to person or property, where such damage was occasioned by negligence in the management of any watercraft, the party injured should have a privilege or lien upon such craft. We deem it entirely clear that the article was not intended to apply to cases brought by the representatives of a deceased person for damages resulting in death.

But it does not necessarily follow that, because there is no lien, there can be no deduction of a moiety of these damages from the sum awarded to the *Argo.* Neither the case of the *North Star* nor that of the *Chattahoochee* is put upon the ground of a lien, since in both cases the vessel against which the deductions were

made were totally lost by the collision, and in the *Chattahoochee,* the provisions of the Harter Act would have exonerated her even if no total loss had occurred. But no extended discussion of this is necessary, since the question is settled by the case of *Butler v. Boston and Savannah Steamship Co.,* 130 U. S. 527 , in which it was unanimously held that the Limited Liability Act applied to cases of personal injury and death as well as to those of loss of or injury to property. This was an independent libel *in personam* against the steamship company to recover damages for death, and the company pleaded in defense certain proceedings in a case of limited liability instituted by it and then pending. There was a statute of Massachusetts relied upon which gave a personal remedy, but no lien upon the vessel. The loss occurred within the jurisdiction of the state. The single question presented was whether the Limited Liability Act applied to damages for personal injury and loss of life, and thus deprived those entitled to damages of the right to entertain suit for recovery, provided the ship owner had taken appropriate proceedings to limit his liability. The Court, after a careful examination of the law of limited liability of ship owners, had no difficulty

Page 177 U. S. 260

in reaching the conclusion that it covered the case of injuries to persons as well as that of injury to goods and merchandise, and that these proceedings were a good defense to the libel.

It follows that the claims of the intervening libellants, Mrs. Blesine and Mrs. Hester, were valid claims under the Limited Liability Act, notwithstanding that there was no lien under the local law, and that there was no error in deducting a moiety of these claims from the amount awarded Springer.

Upon the whole case, we are of opinion that the decree of the circuit court of appeals was right, and it is therefore, as to both cases,

Affirmed.

THE CHIEF JUSTICE and MR. JUSTICE PECKHAM dissented.

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