

The Wildcroft

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Appeal No. : 201 U.S. 378

Appellant : The Wildcroft

Judgement :

The Wildcroft - 201 U.S. 378 (1906)

U.S. Supreme Court The Wildcroft, 201 U.S. 378 (1906)

The Wildcroft

No. 127

Argued December 12, 13, 1905

Decided April 2, 1906

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CERTIORARI TO THE UNITED STATES CIRCUIT

COURT OF APPEALS FOR THE THIRD CIRCUIT

SYLLABUS

The relief afforded by 3 of the Harter Act, 27 Stat. 445, to shipowners is purely statutory, and in order for a shipowner to avail of the exemptions from liability for errors of management or navigation, the burden is on him to prove affirmatively, in all cases, and not only in those where there is conflicting testimony, that the vessel was seaworthy at the beginning of the voyage or that due diligence had been used to make her so. The discharge of the duty of the shipowner in this respect is not left in the absence of proof to any presumption.

Findings of fact by both the district court and the circuit court of appeals as to seaworthiness of a vessel at, and due diligence used prior to, the commencement of the voyage will not ordinarily be disturbed by this Court, and so held in this case.

The facts are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

The original action was begun by the filing of a libel in the District Court of the United States for the Eastern District of Pennsylvania to recover damages alleged to have been sustained by the petitioner with respect to a cargo of sugar of which it was the consignee, shipped upon the steamship *Wildcroft* from ports in Cuba to Philadelphia. The evidence showed that, in the month of April, 1901, the *Wildcroft*, having discharged a cargo of coal at the port of Havana, proceeded to Cardenas and Matanzas, where she took on the load of sugar, to be delivered to the petitioner in Philadelphia. This sugar was stored in bags in holds Nos. 1, 2, 3, and 4 of the ship. On the voyage, a severe storm was encountered and some damage was done by salt water finding its way into hold No. 3 because of the tearing away of the tarpaulins over the hatches and the washing off of the starboard ventilator cover. At the

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hearing in the district court, the claim for damage, because of injury alleged to have been caused to the sugar in holds Nos. 1 and 2, was held to be waived by the libellant, who disclaimed damage on that account. And the district judge added, we think correctly, as to the surface damage in hold No. 3, "This damage was concededly caused by a peril of the seas." There is nothing in the testimony to show that the injury to the cargo of sugar in holds Nos. 3 and 4 of the vessel by means of fresh water was occasioned until the ship arrived at Philadelphia.

A more distinct understanding of the construction of the vessel and the manner in which fresh water could be communicated to hold No. 3, and from thence into hold No. 4, may be had by a perusal of the full finding of the facts made in the case in the district court, 124 F. 631, 126 F. 229, approved by the circuit court of appeals, 130 F. 521, which findings fully explain the situation and the method by which the injury was inflicted. It is enough for us to say that both courts unite in the conclusion that the cargo was injured on Monday, April 29, after the ship arrived at the dock in Philadelphia, when, because of the letting in of fresh water for the purpose of filling the engine room tank, which was accomplished by opening a valve on the ship's side which admits water from the river, and because of an open cock to a valve in the connection from the tank-filling pipe to the service or feed donkey, connecting with the distribution box, water was permitted to flow from the tank-filling pipe through this open cock to the distribution chest and down a pipe and through a valve, which must have also been held open in some way so that water flowed into this suction pipe leading into No. 3 hold, and flowing thence into No. 4 hold, damaged the cargo of sugar therein contained. It is evident from the testimony that, if these cocks, and more particularly the one marked "D," had been properly closed, the water could not have found its way into the holds and inflicted the damage. Of these findings, the circuit court of

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appeals, adopting the conclusions of the court below, said:

"All of the testimony in this respect is uncontradicted, and no facts are shown from which any other conclusion can be drawn than that the water which came into the

bottom of these holds, to the depth of several feet, doing the damage in question, came in after the early morning of the twenty-ninth of April, and before the close of that day, while the cargo was being discharged at the wharf in Philadelphia. It is not disputed that the water was fresh water, such as was the water in the Delaware River, in which she was lying. In connection with these facts, it was shown by the testimony that the sea cock for filling the engine room tank was open at 10 o'clock that morning, and kept open for a period of three hours, and that, if two certain cocks, fully described in the evidence and pointed out by the learned judge of the court below, were left open by accident or design, there would be a free flow of water from the open sea cock into the bilges of hold No. 3. Directly after the filling of the tank and the closing of the sea cock, water to a considerable depth was reported in holds No. 3 and No. 4. This sea cock had not been open from the time the cargo was put on board in Cuba until, as just stated, on the morning of the twenty-ninth of April at Philadelphia. We think the court below was fully justified in its finding, that the damage here in question was due to 'the water that flowed into the hold through the pipeline on April twenty-ninth, in the manner just described,' and that 'it is impossible that the damage could have occurred in any other way.'"

In order to have the benefit of the exemptions provided in the Harter Act, 27 Stat. 445 against errors of management or navigation, by reason of the third section, which was relied upon in the case, it was incumbent upon the shipowner to prove that the vessel was seaworthy at the time of beginning the voyage or that due diligence had been used to make her so. *International Navigation Company v. Farr & Bailey Manufacturing Company*, [181 U. S. 218](#) ; [The Southwark](#), 191

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U.S. 1. It therefore became incumbent upon the shipowner to show that a due and proper inspection had been had and the vessel ascertained to be in all respects seaworthy and fit to carry the cargo which she had undertaken to transport, or that due diligence to that end had been used. As we understand the findings of both the district court and the court of appeals, the testimony in this regard introduced by the shipowner was sufficient in the judgment of those courts, to establish that

the vessel was seaworthy in the respects involved, and that an inspection had been had, and the valves and connections, the negligent use of which was productive of this injury, found in due order at the beginning of the voyage. This finding of two courts will ordinarily not be disturbed, and is usually accepted by this Court as conclusive. *The Carib Prince*, [170 U. S. 655](#) , [170 U. S. 658](#) . The only testimony directly upon the subject at the hearing was that of the master and the engineer, taken upon deposition in England, upon interrogatories filed. The charge in the libel was very broad and general, and the interrogatories were not as specific as they might have been, and no cross-interrogatories were filed. While the testimony is not as specific as it might be, we still think it was sufficient to show that an inspection was had, and everything found in order at the beginning as well as during the voyage, and from the record we reach the conclusion, sustained by the findings of the courts below, that the ship was seaworthy in all respects at the beginning of the voyage, and it was a careless and recent opening of the valve or valves, shortly before the fresh water was let in, which resulted in the damage complained of. We are very clear that this is not a case where the findings of the court below can be disturbed, as was our conclusion in the case of *The Southwark*, *supra*, relied upon by the petitioner, where it was shown that the damage inflicted was the result of unseaworthiness in respect to a condition which a proper inspection of the vessel at the beginning of the voyage would have discovered and remedied. We therefore reach the conclusion that the decree of the

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circuit court of appeals should be affirmed, and, but for its construction of the rule of evidence in cases of this kind, this opinion might well end here. But we are unable to agree with the views expressed in the opinion of the learned circuit court of appeals to the effect that, where a shipowner seeks the protection of the immunity afforded by the Harter Act under 3, reliance may be had upon the presumption of law that the vessel was seaworthy at the beginning of the voyage, and that it is only in cases of conflicting proof that the burden is imposed upon the shipowner of establishing by testimony the seaworthiness of the vessel, or due

diligence in that behalf, in order to have the benefit of the act. We think this construction of the law is opposed to the terms and policy of the act, and contrary to the decisions of this Court heretofore announced, from which we see no occasion to depart. The relief afforded by the third section of the Harter Act to the owner of a vessel transporting property is purely statutory. In the case at bar, there could be no question as to the liability of the vessel owner from the established facts of the case but for the immunity afforded by that act. To permit a cargo of sugar to be injured by the introduction of fresh water in the manner shown, but for the provisions of this act, would have made a case of clear liability against the owner, and where the statute has given immunity against such loss by reason of error in navigation or management, it does so upon the distinct condition that the owner shall show that the vessel was in all respects seaworthy and properly manned, equipped, and supplied for the voyage, or, if this cannot be established, that he has used due diligence to obtain this end. The discharge of this duty is not left to any presumption in the absence of proof. It is the condition precedent, compliance with which is required of the vessel owner in order to give him the benefit of the immunity afforded by the act. The reason for requiring this proof by the owner is apparent. He is bound to furnish a seaworthy and properly equipped ship for the purpose of the voyage. Whether he has done so is a matter

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peculiarly within his own knowledge. The inspection which he can give, but which the shipper cannot give, for lack of opportunity, will establish whether this duty has been complied with. The whole matter is in the control of the owner. The law says, in substance, that when the owner can show that he has discharged this duty, he shall be relieved from errors of navigation and management on the voyage, over which he has not such direct control. It is not a case where there is either the necessity or propriety of resorting to presumptions. It is only when he has discharged the burden which the law imposes upon him, and shown that he has furnished a vessel fit and seaworthy or has used due diligence to that end, that the law relieves him of the liability which he would otherwise incur. This construction of the statute has been more than once announced in the decisions of this Court --

recently in *International Navigation Company v. Farr & Bailey Mfg. Co.*, [181 U. S. 218](#) , [181 U. S. 226](#) , in which this Court, speaking through MR. CHIEF JUSTICE FULLER, said:

"We repeat, that, even if the loss occur through fault or error in management, the exemption cannot be availed of unless the vessel was seaworthy when she sailed, or due diligence to make her so had been exercised, and it is for the owner to establish the existence of one or the other of these conditions."

This case was quoted and followed in the still later case of *The Southwark*, [191 U. S. 1](#) , in which it was reiterated that the burden was upon the vessel owner to show by reasonable and proper tests that the vessel was seaworthy and in a fit condition to receive and transport the cargo undertaken to be carried, and that, if, by failure to adopt such tests and furnish the required proof, the question of the ship's seaworthiness was left in doubt, that doubt must be resolved in favor of the shipper, because the vessel owner had not sustained the burden cast upon him by the law to establish that he had used due diligence to furnish a seaworthy vessel.

While we therefore accept the decision of the learned circuit court of appeals as to the facts in this case, we do not

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wish to be regarded as sanctioning any relaxation of the rule above stated, already laid down in the prior decisions of this Court.

Decree affirmed.

MR. JUSTICE BROWN concurs in the result.