

The Eugene F. Moran

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SooperKanoon Citation : sooperkanoon.com/90706

Court : US Supreme Court

Decided On : Feb-23-1909

Appeal No. : 212 U.S. 466

Appellant : The Eugene F. Moran

Judgement :

The Eugene F. Moran - 212 U.S. 466 (1909)

U.S. Supreme Court The Eugene F. Moran, 212 U.S. 466 (1909)

The Eugene F. Moran *

Nos. 87, 88

Argued January 22, 25, 1909

Decided February 23, 1909

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CERTIFICATES FROM THE CIRCUIT COURT OF

APPEALS FOR THE SECOND CIRCUIT

SYLLABUS

Where two tugs and two scows in tow of one of the tugs are all in fault for a collision, each of the four vessels is liable for an equal share of the damages, and the liability is to be so apportioned even if more than one of the vessels are owned by the same person.

[Sturgis v. Boyer](#), 24 How. 110, followed to the effect that a tug having control of a vessel in tow is solely responsible for damages to the other vessel caused by the tug alone.

Fiction, not being a satisfactory ground for taking one man's property to satisfy another man's wrong, should not be extended.

The fact that vessels are tied together in a flotilla does not make the flotilla a unit in proceedings *in rem*.

In a proceeding *in rem* where several vessels are found in fault, each bears its share, regardless of ownership, and notwithstanding this rule results in charging one who owns more than one of the vessels with a larger proportion than he would be charged in a personal suit against himself and the owners of the other vessels.

When a duty is imposed for the purpose of preventing a certain consequence, its breach's not leading to that consequence does not make a defendant liable for the tort of a third person merely because the observance of the duty might have prevented that tort.

Questions certified in 154 F. 54 answered.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

These cases come here on certificates setting forth in nearly the same terms the facts of a collision. They both are proceedings *in rem*. In the first, the New York Central & Hudson River Railway Company, as owners of a car float that was damaged, libels the steam tug *Charles E. Matthews*, the steam tug *Eugene F.*

Moran, and the scows *15 D* and *18 D*. In the second, the Henry Dubois Sons Company, as owner of the two scows, libels the two steam tugs. The statement of facts, slightly abridged, is as follows: at about half-past seven in the evening of February 1, 1905, the railroad company's car float was proceeding

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up the Hudson River in tow of the tug *Matthews*, the navigation of the two being conducted solely by the master of the tug. They met the tug *Moran*, which was towing two mud scows down the river, scow *15 D*, immediately behind the *Moran*, on a hawser, and, behind *15 D*, scow *18 D* on another hawser. A collision took place between the car float and *15 D*. Neither *15 D* nor *18 D* had the required lights. There was an employee of the owner in charge of each scow, and it was their duty as well as the duty of the master of the *Moran* to have the lights put up. The *Moran* was guilty of other faults also, so that the tug and the scows all three wrongfully contributed to the damage done to the float. The tug *Matthews* also was to blame, but the car float was not, unless, contrary to [*Sturgis v. Boyer*](#), 24 How. 110, answerable for the faults of the *Matthews*, which her owner had hired to move her from place to place in the harbor. The cases in the district court are reported in 143 F. 187; in the circuit court of appeals, in 154 F. 41.

The question certified in the first case is, "in what proportion shall the damages sustained by the car float be assessed upon the offending vessels?" In the second, the same question is put concerning the damages sustained by the libellant, the owner of the two scows. In the latter case, neither the car float nor the scow *18 D* are made parties or brought in. The district judge divided the liability for damages to the float equally among the four vessels in fault, and on the same principle charged one quarter of the damage suffered by scow *15 D* to that scow and one quarter to each of the other three, thus leaving the libellant to bear one-half and dividing the other half between the two tugs. Counsel for the two tugs agree that this result was right, although it is argued for the *Moran* that the true ground for it in the second case is the rule, that, when a vessel has contributed to a collision by her own fault, her owner cannot recover more than one-half of the

damages.

For the Henry Dubois Sons Company, which, as owner of the two scows, was required to pay one-half the total amount due

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to the float, it is contended that the court should look to the owners after they have appeared, and should divide the damages on the ordinary principles of personal liability into thirds, or else regard the *Moran* and the two scows as one vessel, jointly liable for one-half, each owner to bear a quarter as between themselves. There is a faint suggestion that, in the last apportionment, regard might be had to the degree of fault.

The New York Central Railroad gets all its damages in any view, unless *Sturgis v. Boyer, supra*, should be overruled. In that case, it was held that a tug having control of a vessel in tow was solely responsible to a lighter upset by the vessel through the fault of the tug alone. (For the opinion of Judge Betts below, see note to *The Express*, 46 F. 864.) We see no reason why the decision should not stand. No doubt the fiction that a vessel may be a wrongdoer and may be held, although the owners are not personally responsible, on principles of agency or otherwise, is carried further here than in England. [*The China*](#), 7 Wall. 53; *The Barnstable*, [181 U. S. 464](#) , [181 U. S. 467](#) , [181 U. S. 468](#) ; *Homer-Ramsdell Transportation Co. v. La Compagnie Generale Transatlantique*, [182 U. S. 406](#) , [182 U. S. 413](#) -414. See *The Blackheath*, [195 U. S. 361](#) , [195 U. S. 366](#) . Possibly the survival of the fiction has been helped by the convenient security that it furnishes, just as no doubt the responsibility of a master for a servant's torts that he has done his best to prevent has been helped by the feeling that it was desirable to have someone who was able to pay. See *Williamson v. Price*, 4 Martin, N.S. 399, 401; *Williams v. Jones*, 3 H. & C. 256, 263. But, after all, a fiction is not a satisfactory ground for taking one man's property to satisfy another man's wrong, and it should not be extended. There is a practical line and a difference in degree between the case where the harm is done by the mismanagement of the offending vessel and that where it is done by the

mismanagement of another vessel to which the immediate but innocent instrument of harm is attached. See [*The Clarita and The Clara*, 23 Wall. 1](#); *The Alabama*, [92 U. S. 695](#) , [92 U. S. 697](#) ; *The Atlas*, [93 U. S. 302](#) , [93 U. S. 318](#) .

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The fact that the vessels composing each flotilla were bound together is not sufficient ground for treating each flotilla as a unit. This follows pretty closely from the considerations that we have urged. If the attachment of the car float to the *Matthews* did not make the car float responsible to *15 D*, or affect the extent or principles of its recovery for damage to itself, there seems to be no reason why a similar attachment should affect the distribution of liability among the vessels that were in fault. Their faults were several. The failure of one scow to show a light was distinct in fact and as a cause from the failure of the others to do the same thing, and from the faults of navigation of the *Moran*. In this case, at least, the attachment ought to have no more effect in diminishing liability for the guilty than in creating it for those free from blame. See *The Express*, 44 F. 392, 46 F. 860; *The Lyndhurst*, 92 F. 681; *The Maling*, 110 F. 227, s.c., 116 F. 107; *The Nettie L. Tice*, 110 F. 461.

On the other hand, although not to be regarded as a unit simply because they were tied together, the offenders severally are subject to a lien by the established principles of the proceeding *in rem*. It is said truly enough that, if each scow has to pay a quarter, the amount with which the owners will be charged will be greater than in a personal suit where the owners all are solvent and pay each his share. But, without invoking on the other side the characteristic vicissitudes of personal suits in tort, we may say that there is no injustice. Although even the admiralty does not attempt to go far in the quantification of damages, it is not an unreasonable supposition that, on an average, the owner of two vessels, each concurring in a wrongful result, will contribute twice as much toward producing it as if he had owned only one. If the second scow had been owned by another, it would have had to pay its share. It is contrary to the theory of these proceedings to allow ownership to affect the case. We are of opinion that the district court was

right in dividing the damages equally among the guilty vessels

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in the first suit. There is nothing stated sufficient to reopen the question, if there is one, as to changing the apportionment when there are different degrees of blame. *The Atlas*, [93 U. S. 302](#) ; *The Max Morris*, [137 U. S. 1](#) . The fact that *18 D* is not a party to the second suit does not matter so far as the question of partially exonerating those before the court is concerned.

We have discussed the question on the assumptions upon which it is presented; but there is one point that seems to us to deserve further consideration from the circuit court of appeals. The only fault on the part of *18 D* that is set out in the statement is the absence of a light, and it is said that "therefore" it was party to a common fault. We doubt whether the conclusion follows from the premises. When a duty is imposed for the purpose of preventing a certain consequence, a breach of it that does not lead to that consequence does not make a defendant liable for the tort of a third person merely because the observance of the duty might have prevented that tort. See *Gorris v. Scott*, L.R. 9 Exch. 125; *Ward v. Hobbs*, L.R., 4 App.Cas. 13, 33. The question arises, therefore, whether the duty to give warning by a light was imposed upon *18 D* for any other purpose than to prevent collision with itself. If not, then, as the boats are dealt with as individuals, and not as parts of a single whole, we do not see how the absence of a light on *18 D* can be said to have contributed to the loss. Pilot Rule 11, under the Act of June 7, 1897, c. 4, 2, 30 Stat. 96, 102, requiring the light, is quoted in *The Komuk*, 120 F. 841, 842. A duty of wider scope has been thought to exist in a somewhat different case. *The Lyndhurst*, 92 F. 681, 682.

On the second question also, subject to the doubt just suggested, it appears to us that the course of the district judge was right in principle as well as in result. As observed in *The Maling*, 110 F. 227, the quantum of liability ought not to be affected by the position of the party concerned as codefendant or plaintiff, and the rule of equal division among the guilty vessels has prevailed, in some cases at least, as well when one of them was the libellant as when they were all on the

same side.

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The Brothers, 2 Biss. 104. See s.c. on appeal, Fed.Cas. No. 9,322; *Peshtigo*, 26 F. 488.

We answer the question in the first case, No. 87: Equally.

We answer the question in the second case: Equally, the offending vessel or vessels of the libellant bearing their proportion of the loss.

* Docket titles, No. 87, The Steam Tug " *Eugene F. Moran*, " Michael *Moran*, Claimant, and the Scows " *15 D* " and " *18 D*, " the Henry Dubois Sons Co., Claimant v. The New York Central and Hudson River Railroad Company and the Steam Tug "Charles D. *Matthews*, " John D. Daily *et al.*, Claimants; No. 88, The Henry Dubois Sons Company and the Steam Tug " *Eugene F. Moran*, " Michael *Moran*, Claimant v. the Steam Tug "Charles E. *Matthews*, " John D. Daily *et al.*, Claimants.

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