The Jason

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Appellant : The Jason

Judgement :

The Jason - 225 U.S. 32 (1912)
U.S. Supreme Court The Jason, 225 U.S. 32 (1912)

The Jason *

No. 220

Argued April 18, 1912

Decided May 13, 1912

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT

OF APPEALS FOR THE SECOND CIRCUIT

SYLLABUS

A general average agreement inserted in bills of lading, providing that, if the owner of the ship shall have exercised due diligence to make the ship in all respects seaworthy and properly manned, equipped, and supplied, the cargo shall contribute in general average with the shipowner even if the loss resulted from negligence in the navigation of the ship, is valid under the Harter Act, and entitles the shipowner to collect a general average contribution from the cargo owners in respect to sacrifices made and extraordinary expenditures incurred by him for the common benefit and safety of ship, cargo, and freight subsequent to a negligent stranding.

Under 3 of the Harter Act, the cargo owners under the same circumstances have a right of contribution from the shipowner for sacrifices of cargo made subsequent to the stranding for the common benefit and safety of ship, cargo and freight.

Under the same circumstances the cargo owners cannot recover contribution from the shipowner in respect of general average sacrifices of cargo, without contributing to the general average sacrifices and expenditures of the shipowners made for the same purpose.

The essence of general average contribution is that extraordinary sacrifices made and expenses incurred for the common benefit are to be borne proportionately by all who are interested.

The Irrawaddy, 171 U. S. 187 , distinguished.

Questions certified in case reported in 162 F. 56 and 178 F. 414 answered.

Cross-libels were filed in the United States District Court for the Southern District of New York between the owner of the steamship *Jason* and the firm of Arbuckle Brothers, owners, and the Insurance Company of North

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America, insurers of part of that vessel's cargo, to recover general average contributions. The district court dismissed both libels. 162 F. 56. Upon appeal, the circuit court of appeals at first filed an opinion for affirmance (178 F. 414), but

afterwards granted a rehearing, as a result of which the questions of law at issue were certified to this Court as follows:

" *Statement of Facts* "

"The facts upon which the questions arise are these:"

"On July 30, 1904, the Norwegian Steamship *Jason* , while bound on a voyage from Cienfuegos, Cuba, to New York, with general cargo, including 12,000 bags of sugar, consigned to Arbuckle Brothers, and insured with the Insurance Company of North America, stranded off the south coast of Cuba through the negligence of her navigators. The steamship was seaworthy and was properly manned, equipped, and supplied."

"The vessel was relieved from the strand on August 9 as the result of sacrifices by jettison of 2,042 bags of sugar (1,657 bags being the property of Arbuckle Brothers), of sacrifices and extraordinary expenditures voluntarily made or incurred by the shipowner through the master, and of the services of salvors specially employed. Said sacrifices and expenditures were necessary to relieve ship, cargo, and freight from common peril. She then completed her voyage, and made delivery of the remainder of her cargo to the several consignees at New York on their executing an average bond for the payment of losses and expenses which should appear to be due from them, provided they were stated and apportioned by the adjusters 'in accordance with established usages and laws in similar cases.'"

"The bills of lading for all of the *Jason's* cargo contained the following provision:"

" General average payable according to York-Antwerp

rules, and as to matters not therein provided for, according to usages of port of New York."

" If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that, in case of danger, damage, or disaster resulting from fault or negligence of the pilot, master, or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in general average, or for any special charges incurred, but, with the shipowner, shall contribute in general average, and shall pay such special charges, as if such danger, damage, or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness."

"Both parties pleaded the bills of lading as constituting the contract of carriage."

"A general average adjustment was afterwards made in New York by Johnson & Higgins, adjusters appointed in the average bond. Both parties presented their claims to the adjusters for sacrifices made by them respectively for the common benefit and safety of the adventure. The adjusters allowed in the general average account the compensation of the salvors, the sacrifices of cargo, and the sacrifices and extraordinary expenditures of the shipowner, and each of the interests was credited with such amounts as had been paid by it for the common benefit."

"The adjustment was prepared in accordance with York-Antwerp rules, as provided for in the bill of lading, and otherwise in accordance with established usages and laws."

"The adjustment and apportionment of general average, so made, showed a balance due from Arbuckle

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Brothers of $5,060.24, which the latter refused to pay. The grounds of such refusal were that the stranding resulted from the ship's negligence, and that the general average clause, above quoted, contained in the bills of lading, is invalid."

"The original libel was filed by the owner of the *Jason* against Arbuckle Brothers and its guarantor, the Insurance Company of North America, to recover this amount."

"Arbuckle Brothers and the Insurance Company of North America filed a cross-libel to recover the sum of $3,506.50, which they alleged would be due them on an adjustment of the general average losses, if the shipowner's losses and sacrifices were excluded from the general average account by reason of the fact that the stranding was caused by negligence of the ship's navigators. They claimed that the shipowner's sacrifices and extraordinary expenditures, made for the common benefit and safety of the adventure after the stranding, should not be allowed in the adjustment. If said sacrifices and expenditures should be excluded from the adjustment, and the value of the ship should be taken account of as a contributory interest, the adjustment would show a balance in favor of Arbuckle Brothers."

"The district court made a decree dismissing both libels, from which decree both parties duly appealed to this Court."

" *Questions Certified* "

"Upon the facts above set forth, the questions of law concerning which this Court desires the instruction of the Supreme Court are:"

"1. Whether the general average agreement above quoted from the bills of lading is valid, and entitles the shipowner to collect a general average contribution from the cargo owners, under the circumstances above stated, in respect of sacrifices made and extraordinary expenditures

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incurred by it subsequent to the stranding, for the common benefit and safety of ship, cargo, and freight."

"2. Whether, in view of the provisions of the third section of the Harter Act, the cargo owners, under the circumstances above stated, have a right to contribution from the shipowner for sacrifices of cargo made subsequent to the stranding, for

the common benefit and safety of ship, cargo, and freight?"

"3. Whether the cargo owners, under the circumstances above stated, can recover contribution from the shipowner in respect of general average sacrifices of cargo without contributing to the general average sacrifices and expenditures of the shipowner made for the same purpose."

"In accordance with the provisions of Section 6 of the Act of March 3, 1891, establishing courts of appeals, the foregoing questions of law are by the Circuit Court of Appeals of the United States for the Second Circuit, hereby certified to the Supreme Court. "

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MR. JUSTICE PITNEY, after stating the case as above, delivered the opinion of the Court.

That the facts present a case of general average within the meaning of the clause embodied in the bills of lading is entirely clear. There was a common, imminent peril

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involving ship and cargo, followed by a voluntary and extraordinary sacrifice of property (including extraordinary expenses), necessarily made to avert the peril, and a resulting common benefit to the adventure. *McAndrews v. Thatcher,* 3 Wall. 347, 70 U. S. 365 ; *The Star of Hope,* 9 Wall. 203, 76 U. S. 228 ; *Ralli v. Troop,* 157 U. S. 386 , 157 U. S. 394 .

The principal controversy is upon the question of the validity of the agreement that, if the shipowner "shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped, and supplied," then, in case of danger, damage, or disaster resulting from (*inter alia*) negligent navigation, the cargo owners shall not be exempted from liability for contribution in general average, but, with the shipowner, shall contribute as if such danger, damage, or disaster had not resulted from negligent navigation. The facts show that the

shipowner had fulfilled the condition imposed upon him by this clause -- that is, he had "exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped, and supplied." The question presented for solution turns upon the effect of the third section of the Act of Congress approved February 13, 1893, c. 105, 27 Stat. 445, known as the Harter Act, and of the decision of this Court in the case of *The Irrawaddy,* 171 U. S. 187 .

Prior to the Harter Act, it was established that a common carrier by sea could not, by any agreement in the bill of lading, exempt himself from responding to the owner of cargo for damages arising from the negligence of the master or crew of the vessel. *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.,* 129 U. S. 398 , 129 U. S. 438 , following *New York C. Railroad Co. v. Lockwood,* 17 Wall. 357.

But, of course, the responsibilities of the carrier were subject to modification by law, and, with respect to vessels transporting merchandise from or between ports of the United States and foreign ports, they were substantially

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modified by the Harter Act. The first three sections of this enactment are pertinent to the present discussion, and are set forth in full in the margin. *

Section 1 deals with the shipowner's responsibility for the proper loading, stowage, custody, care, and delivery of the cargo, prohibits the insertion in any bill of lading of an agreement relieving him from responsibility for negligence in respect of these duties, and declares such agreements null and void. Section 2 prohibits the insertion in any bill of lading of an agreement lessening or avoiding the obligation of the shipowner to "exercise due diligence [to] properly equip, man, provision, and outfit said vessel and to make said vessel seaworthy." etc. Section 3 proceeds to limit the responsibility of a shipowner who shall have exercised due diligence to make his vessel seaworthy and properly manned, equipped, and supplied. Instead of merely sanctioning covenants and agreements limiting his liability, Congress went further

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and rendered such agreements unnecessary by repealing the liability itself, declaring that, if the shipowner should exercise due diligence to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, etc., should be responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel, etc., etc. The antithesis is worth noting. Congress says to the shipowner:

"In certain respects, you shall not be relieved from the responsibilities incident to your public occupation as a common carrier, although the cargo owners agree that you shall be relieved; in certain other respects (provided you fulfill conditions specified), you shall be relieved from responsibility even without a stipulation from the owners of cargo."

In the case now before us, it is argued in behalf of the shipowner that, since, by the third section of the Harter Act, he is absolved from responsibility for the negligence

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of his master and crew under the circumstances existing, there is nothing in the policy of the law to debar him from bargaining with the owners of cargo for a participation in the general average contribution. In behalf of the cargo owners, it is insisted that the construction placed upon the legislation in question by this Court in *The Irrawaddy, supra,* leaves the shipowner still disabled from making an agreement with the cargo owners for a participation with them in general average contributions resulting from negligent navigation or management of the ship by its master and crew.

The latter view was adopted by the district court in *New York & C. Mail S.S. Co. v. Ansonia Clock Co.,* 139 F. 894, where a clause identical with the one now under consideration was held invalid. This decision was apparently followed, although not cited, by the same court (162 F. 56) and by the circuit court of appeals (178 F. 414, 416) in the case now under review. In reaching this result, the courts below have, as we think, misconceived the effect of the language used by Mr. Justice

Shiras, speaking for this Court in *The Irrawaddy,* and have given to that decision an import quite beyond its legitimate scope. In that case, there was no agreement between shipowner and cargo owner respecting general average, nor respecting the consequences of a stranding or other peril that might result from the negligence of the master or crew of the vessel. On familiar grounds, all of the expressions employed in the opinion are to be construed in the light of the facts of the case and the question actually presented for decision. This was whether 3 of the Harter Act, *proprio vigore,* gave to the shipowner, under the circumstances, a right to general average contribution for sacrifices made by him subsequent to the stranding of the vessel in successful efforts to save her and her freight and cargo. It was pointed out in the opinion that, previous to that enactment, in the

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case of a loss arising from the ship's fault, the shipowner was excluded from contribution by way of general average, and was also legally responsible to the owner of the cargo for loss and damage so occasioned, and that it was against the policy of the law to allow stipulations that would relieve a carrier from such liability. It was, however, recognized that it was "competent for Congress to make a change in the standard of duty." It was remarked that, by the first and second sections of the Harter Act, shipowners were prohibited from inserting in their bills of lading agreements limiting their liability in certain respects, and that the third section, by its own terms, limited their liability in other respects. The opinion, after stating that, as the law stood before the passage of the act, the shipowner could not contract against his liability and that of his vessel for loss occasioned by negligence or fault in officers and crew, and that, in this particular, the owners of American vessels were at a disadvantage as compared with the owners of foreign vessels who might so contract, proceeded to say that

"Congress thought fit to remove the disadvantage not by declaring that it should be competent for the owners of vessels to exempt themselves from liability for the faults of the master and crew by stipulations to that effect contained in bills of lading, but by enacting that, if the owners exercised due diligence in making their ships seaworthy and in duly manning and equipping them, there should be no

liability for the navigation and management of the ships, however faulty."

This language is laid hold of as indicating that the decision proceeded upon the ground that Congress thought it improper to permit owners of vessels to contract for exemption from liability. What it really means, as will be observed, is that Congress went further, and by its own enactment exempted them from liability, under given conditions, for the consequences of faulty navigation.

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The point of the decision in *The Irrawaddy* (and, as an authority, the case goes no further) is, that, while the Harter Act relieved the shipowner from liability for his servant's negligence, it did not, of its own force, entitle him to share in a general average rendered necessary by such negligence.

It is, however, further insisted in behalf of the cargo owners that the agreement in question is contrary to public policy in another respect -- namely, in that it attempts to relieve the shipowner from one of the essential duties arising out of the relation of carrier and shipper, and from which the Harter Act has not relieved him. The argument is that, although that act exempts him from the consequences of the negligent stranding, it leaves him still under the duty and obligation of caring for and preserving the cargo after the stranding; that, whenever the safety of the property entrusted to the shipowner is menaced, whether the peril be occasioned by *vis major* or by fault, and whether such fault be or be not of such character as to fall within the third section of the Harter Act,

"the master is nevertheless bound to exert every effort to save the property, and if he fail in his duty, his owners are liable to the cargo for the resulting loss."

If by "every effort" is meant every reasonable effort, we see no occasion to question the soundness of the reasoning. But it is further insisted that the duty of the master to save the imperiled property extends so far as to call for a sacrifice of a part of the owner's property if necessary to save the cargo. In our opinion, the master's duty as agent of the owner is not so extensive. If it were, there would be

an end at once of all contribution in general average for ship's sacrifices, for such sacrifices could not be deemed voluntary and extraordinary if made in performance of the owner's general duty to his cargo.

The cases cited do not support the contention of counsel

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for the cargo owners in this behalf. *The Niagara v. Cordes,* 21 How. 7, 62 U. S. 28 , holds that, although the vessel be stranded,

"the master is bound to the utmost exertions in his power to save the goods from the impending peril, as it is no more than a prudent man would do under like circumstances."

The Maggie Hammond, 9 Wall. 435, 76 U. S. 458 , holds that, when the vessel is wrecked or otherwise disabled in the course of the voyage and cannot be repaired without too great delay and expense, it is the duty of the master to transship the goods and send them forward, if another vessel can be had in the same or a contiguous port or within a reasonable distance, and that, upon so doing, he is entitled to charge the goods with the increased freight arising from the hire of the vessel so procured. In *The Star of Hope,* 9 Wall. 203, 76 U. S. 230 , it is pointed out that the duty imposed upon the master, in case of a peril arising to the common adventure, is

"to judge and determine at the time whether the circumstances of danger in such a case are or are not so great and pressing as to render a sacrifice of a portion of the associated interests indispensable for the common safety of the remainder."

The duty to make a sacrifice of such portion of the associated interests as, in the judgment of the master, will save the common adventure is obviously inconsistent with the suggested duty to first sacrifice the owner's property for the safety of the cargo. The other cases cited upon this point require no mention.

In our opinion, so far as the Harter Act has relieved the shipowner from responsibility for the negligence of his master and crew, it is no longer against the

policy of the law for him to contract with the cargo owners for a participation in general average contribution growing out of such negligence, and since the clause contained in the bills of lading of the *Jason's* cargo admits the shipowner to share in the general average only under circumstances where by the act he is relieved from responsibility, the

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provision in question is valid, and entitles him to contribution under the circumstances stated.

The second question is whether, under the like circumstances, the cargo owners can recover contribution from the shipowner for sacrifices of cargo made subsequent to the stranding, for the common benefit and safety of ship, cargo, and freight.

This question was dealt with in *The Strathdon,* 94 F. 206, 101 F. 600; where, however, there seems to have been no general average clause such as we have in the case before us, and by the same courts in this case, 162 F. 56, 178 F. 414, where the general average clause was dealt with as invalid, and therefore, of course, was given no influence in the determination of the present point. The circuit court of appeals expressed the view that, if the cargo owner were allowed to obtain indirectly through a general average adjustment, compensation for losses attributable to the faulty navigation of the ship, and which therefore he could not recover directly because of 3 of the Harter Act, the result would be a judicial repeal of that section, and that therefore the cargo owner could not bring the shipowner as a contributing interest into a general average adjustment that might result in a claim which the Harter Act disallows. With this view we have no present concern, because it seems to us that the response we are to make to the second question certified must depend upon the construction of the agreement between the parties. Having already held that the general average clause contained in the bill of lading is valid as against the cargo owner, it follows *ex necessitate* that it is valid in his favor; indeed, no ground is suggested for disabling the shipowner from voluntarily subjecting himself or his ship to liability to respond to the cargo in an action or in a

general average adjustment, for the consequences of the negligence of his master or crew, even

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though, by the Harter Act, he is relieved from responsibility for such negligence. Therefore we have only to determine whether, by the language of the general average clause, the cargo owners are entitled to contribution from the ship for sacrifices of cargo made subsequent to the stranding for the common benefit and safety. The language is that, in the circumstances presented,

"the consignee or owners of the cargo shall not be exempted from liability for contributions in general average, or for any special charges incurred, but, with the shipowner, shall contribute in general average, and shall pay such special charges, as if such danger, damage, or disaster had not resulted from such default, negligence,"

etc. This language clearly imports an agreement that the shipowner shall contribute in general average. The opposite view would render the clause inconsistent with the principles of equity and reciprocity upon which the entire law of general average is founded.

The foregoing considerations compel a negative answer to the third question. In view of the valid stipulations contained in the bill of lading, it would be a contradiction of terms to permit the cargo owners to recover contribution from the ship in respect of general average sacrifices of cargo, without on their part contributing to the general average sacrifices and expenditures of the shipowner made for the same purpose. This would not be general average contribution, the essence of which is that extraordinary sacrifices made and expenses incurred for the common benefit and safety are to be borne proportionately be all who are interested.

Our conclusion, accordingly, is that, of the questions certified to us by the circuit court of appeals, the first question should be answered in the affirmative, the second question should be answered in the affirmative, and the third question

should be answered in the negative, and it is

So ordered

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* The docket title of the case is *Actieselskabet Jason v. John Arbuckle et al.*

* The title and first three sections of the Harter Act are as follows:

"An Act Relating to Navigation of Vessels, Bills of Lading, and to Certain Obligations, Duties, and Rights in Connection with the Carriage of Property."

" *Be it enacted,* etc., that it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

"SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servant to carefully handle and stow her cargo, and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided."

"SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port of the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and

supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service."