United States et al. V. Carroll Towing Co., Inc., et al.

United States Circuit Court of Appeals, Second Circuit
159 F.2d 169 (1947)

[The tug, Carroll, needed to move one of the barges at a pier. To get to this barge the Carroll's crew had to adjust a line connecting another barge. Because the line was not properly adjusted, a group of barges broke away from the pier and drifted downriver striking a tanker. Since there was no crew on the barge, the Anna C, the tugs that came to the aid of the runaway barges did not realize that the propeller from the tanker had ripped a hole in the side of the Anna C. Given the damage, the Anna C. and a cargo of flour sank. Had anyone realized the condition of the barge, it could have been saved. Therefore, the sinking is the result of two concurrent causes, a misadjusted mooring line and an unattended barge. Who is responsible for the sinking of the Anna C? Is it Grace Line, the company that chartered the tug or barge owner who left the barge unattended? Judge Hand proposes a rule for determining whether the barge owner was negligent.

Hand finds that Grace Lines is responsible for not correctly adjusting the lines, and consequently the barges breaking away from the dock. Grace Lines is, therefore, liable for the damage to the Anna C from collision with the tanker. These are labeled collision damages and would presumably consist of the repairing the damaged hull. Whether the barge owner can collect for the sinking damages depends on whether a barge owner is negligent for leaving the barge unattended for an extended period of time. Hand proposes the following rule, where

P = probability of injury
L = cost of injury
B = cost of precaution

There is liability when $B < PL$ and there is no liability when $B \geq PL$.]

JUDGES: Before L. HAND, CHASE and FRANK, Circuit Judges.

OPINION BY: HAND…

The facts, as the judge found them, were as follows. On June 20, 1943, the Conners Company chartered the barge, 'Anna C.' to the Pennsylvania Railroad Company …which included the services of a bargee, apparently limited to the hours 8 A.M. to 4 P.M. On January 2, 1944, the barge, which had lifted the cargo of flour, was made fast off the end of Pier 58 …. On board the 'Carroll' at the time were not only her master, but a 'harbormaster' employed by the Grace Line. …. The captain of the 'Carroll' put a deckhand and the 'harbormaster' on the barges, told them to throw off the line which barred the entrance to the slip; but, before doing so, to make sure that the tier on Pier 52 was safely moored, as there was a strong northerly wind blowing down the river. The

'harbormaster' and the deckhand went aboard the barges and readjusted all the fasts to their satisfaction, including those from the 'Anna C.' to the pier.

After doing so, they threw off the line between the two tiers and again boarded the 'Carroll,' which backed away from the outside barge .... She had only got about seventy-five feet away when the tier off Pier 52 broke adrift because the fasts from the 'Anna C,' either rendered, or carried away. The tide and wind carried down the six barges, still holding together, until the 'Anna C' fetched up against a tanker, ...whose propeller broke a hole in her at or near her bottom. Shortly thereafter... she careened, dumped her cargo of flour and sank. The tug, 'Grace,' owned by the Grace Line, and the 'Carroll,' came to the help of the flotilla after it broke loose; and, as both had syphon pumps on board, they could have kept the 'Anna C' afloat, had they learned of her condition; but the bargee had left her on the evening before, and nobody was on board to observe that she was leaking. The Grace Line wishes to exonerate itself from all liability because the 'harbormaster' was not authorized to pass on the sufficiency of the fasts of the 'Anna C' which held the tier to Pier 52; the Carroll Company wishes to charge the Grace Line with the entire liability because the 'harbormaster' was given an over-all authority. Both wish to charge the 'Anna C' with a share of all her damages, or at least with so much as resulted from her sinking. The Pennsylvania Railroad Company also wishes to hold the barge liable. The Conners Company wishes the decrees to be affirmed.

The first question is whether the Grace Line should be held liable at all for any part of the damages. The answer depends first upon how far the 'harbormaster's' authority went, for concededly he was an employee of some sort. …. As to this the judge in his tenth finding said: 'The captain of the Carroll then put the deckhand of the tug and the harbor master aboard the boats at the end of Pier 52 to throw off the line between the two tiers of boats after first ascertaining if it would be safe to do so.' Whatever doubts the testimony of the 'harbormaster' might raise, this finding settles it for us that the master of the 'Carroll' deputed the deckhand and the 'harbormaster,' jointly to pass upon the sufficiency of the 'Anna C's' fasts to the pier. …. The fact that the deckhand shared in this decision, did not exonerate him, and there is no reason why both should not be held equally liable, as the judge held them.

We cannot, however, excuse the Conners Company for the bargee's failure to care for the barge, and we think that this prevents full recovery. First as to the facts. As we have said, the deckhand and the 'harbormaster' jointly undertook to pass upon the 'Anna C's' fasts to the pier; and even though we assume that the bargee was responsible for his fasts after the other barges were added outside, there is not the slightest ground for saying that the deckhand and the 'harbormaster' would have paid any attention to any protest which he might have made, had he been there. We do not therefore attribute it as in any degree a fault of the 'Anna C' that the flotilla broke adrift. Hence she may recover in full against the Carroll Company and the Grace Line for any injury she suffered from the contact with the tanker's propeller, which we shall speak of as the 'collision damages.' On the other hand, if the bargee had been on board, and had done his duty to his employer, he would have gone below at once, examined the injury, and called for help from the 'Carroll' and the Grace Line tug. Moreover, it is clear that these tugs could have kept the barge afloat, until they had safely beached her, and saved her cargo. This would have

avoided what we shall call the 'sinking damages.' Thus, if it was a failure in the Conner Company's proper care of its own barge, for the bargee to be absent, the company can recover only one third of the 'sinking' damages from the Carroll Company and one third from the Grace Line. For this reason the question arises whether a barge owner is slack in the care of his barge if the bargee is absent.

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It appears … that there is no general rule to determine when the absence of a bargee or other attendant will make the owner of the barge liable for injuries to other vessels if she breaks away from her moorings. However, in any cases where he would be so liable for injuries to others obviously he must reduce his damages proportionately, if the injury is to his own barge. It becomes apparent why there can be no such general rule, when we consider the grounds for such a liability. Since there are occasions when every vessel will break from her moorings, and since, if she does, she becomes a menace to those about her; the owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables:

(1) The probability that she will break away;

(2) the gravity of the resulting injury, if she does;

(3) the burden of adequate precautions.

Possibly it serves to bring this notion into relief to state it in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether B less than PL. Applied to the situation at bar, the likelihood that a barge will break from her fasts and the damage she will do, vary with the place and time; for example, if a storm threatens, the danger is greater; so it is, if she is in a crowded harbor where moored barges are constantly being shifted about. On the other hand, the barge must not be the bargee's prison, even though he lives aboard; he must go ashore at times. We need not say whether, even in such crowded waters as New York Harbor a bargee must be aboard at night at all; it may be that the custom is otherwise… and that, if so, the situation is one where custom should control. We leave that question open; but we hold that it is not in all cases a sufficient answer to a bargee's absence without excuse, during working hours, that he has properly made fast his barge to a pier, when he leaves her. In the case at bar the bargee left at five o'clock in the afternoon of January 3rd, and the flotilla broke away at about two o'clock in the afternoon of the following day, twenty-one hours afterwards. The bargee had been away all the time, and we hold that his fabricated story was affirmative evidence that he had no excuse for his absence. At the locus in quo- especially during the short January days and in the full tide of war activity- barges were being constantly 'drilled' in and out. Certainly it was not beyond reasonable expectation that, with the inevitable haste and bustle, the work might not be done with adequate care. In such circumstances we hold- and it is all that we do hold- that it was a fair requirement that the Conners Company should have a bargee aboard (unless he had some excuse for his absence), during the working hours of daylight.

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Questions

1. Does the Hand rule lead to an efficient result? Is the level of due care optimal?
2. Does it matter whether the Hand rule is stated in absolute terms or in marginal terms?
3. Does the court have enough information to apply the Hand rule? Does it matter whether or not they do?
4. Would custom produce a different result than the Hand rule? Is the Hand rule just a restatement of common sense decision making?