

United States v. Carroll Towing (United States Court of Appeals, Second Circuit) 159 f.2d 169 (1947)

Hand, L., Circuit Judge. These appeals concern the sinking of the barge, “Anna C,” on January 4, 1944, off Pier 51, North River. The Conners Marine Co., Inc., was the owner of the barge, . . . the Grace Line, Inc., was the charterer of the tug, “Carroll,” of which the Carroll Towing Co., Inc., was the owner. . . .

The facts, as the judge found them, were as follows. [On June 20, 1943, the barge Anna C. was moored, along with several other barges, at a pier on the North River. The tugboat Carroll was sent by Grace Line to move one of the barges. In so doing, the crew readjusted the lines holding the other barges, including the Anna C. Shortly thereafter, the Anna C. and five other barges broke away from the pier and were set adrift until the Anna C. collided with a tanker, whose propeller tore open her side. Since no bargee had been left to attend the barge, it was not observed that she was leaking, and she sank along with her cargo of flour. The question concerns the allocation of liability for the resulting loss.]

. . .

It appears from the foregoing review 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 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 $B < PL$. Applied to the situation at bar, the likelihood that a barge will break from her fasts and the damage she will do, vary with time and place; 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. . . . 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 hustle and bustle, the work might not be done with adequate care. In such circumstances we hold. . . that it was a fair requirement that the Connors Company should have a bargee aboard. . . during the working hours of daylight. . . .