

the claimant in the cargo as a carrier; that the insurance therefore insured to the claimant's benefit as well as to that of Morse & Co. and Armour, Plankinton & Co., and protected him to the extent of his liability as carrier for the delivery of the cargo to the owner; and that payment to the owner was, in legal effect, payment to him, and concluded the insurers from maintaining the suit without affirmative allegations and proof that the payment was made upon a mistake of facts.

If Morse & Co. were the only parties insured, the libel was properly dismissed, if for no other reason, because it does not proceed upon the theory that the libelants have succeeded to any rights by subrogation except to those of Armour, Plankinton & Co. But the conclusion that Morse & Co. were the only parties to the contract can only be reached by refusing to give any effect to the phrase in the policy "for whom it may concern." That phrase is meaningless if it does not mean that an insurance effected in their names is to extend to all for whom they are authorized to insure. If the policy were to be interpreted as intended to insure only those persons whose names and interests should be indorsed upon it, then it would read as though the phrase "on account of Morse & Co., for whom it may concern," were altogether omitted. With the phrase inserted, it is unnecessary to indorse the name subsequently upon the policy, but all become parties, "for whom it may concern," to any insurance which may be effected upon their application. Upon any other construction of the policy it would have been useless to insert the name of Morse & Co. in the policy at all.

If the libelants were attempting to enforce a cause of action against the claimant for a breach of his obligations as a carrier, and if they had insured him as carrier, as well as Morse & Co. and Armour, Plankinton & Co., it would seem very clear that they could not succeed. In such a case they would be attempting to reclaim moneys which they had agreed to appropriate in part for his indemnity against the very loss which had arisen,—a fund which became his to an extent commensurate with his obligations as a carrier as soon as the loss took place. But they do not seek to recover back money which they have paid him, or paid to some one else in part for him, in discharge of their contract of indemnity. They seek to charge him for negligence in destroying the property which has become theirs by an equitable assignment from the owner.

The proofs do not show that the interest of the carrier was intended to be insured by Morse & Co. when they applied for the insurance and procured the certificate. If, as was thought to be the fact by the district judge, the premium was paid for the insurance by the claimant, that circumstance would be quite controlling to indicate an understanding between Morse and himself that his interest should be protected by the insurance. The evidence is that he agreed, through Morse & Co., with the agent of Armour, Plankinton

& Co., to pay the premium as a part of the consideration of the contract for transportation. In other words, he agreed for \$395 to transport the cargo to New York, and pay the premium for insurance. He paid it out of the \$395 received from Morse and Co., and in no other way. The owners paid the premium when Morse & Co. were paid by them.

Considerable evidence was elicited from the witnesses for the purpose of showing usage among shippers, insurers, and boatmen, at Buffalo, to the effect that insurance procured under circumstances similar to those in this case is understood to protect the carrier as well as all other persons interested in the safe transportation of the cargo. The evidence falls short of establishing such a usage. It is loose, conflicting, conjectural, and equivocal. See *Donnell v. Columbian Ins. Co.*, 2 Sum. 366; *The Eddy*, 5 Wall. 481; *Bolton v. Colder*, 1 Watts, 360; *U. S. v. Buchanan*, 8 How. 83, 102. So far as this evidence tends to show that Morse & Co., when they procured the insurance, intended to obtain it for the benefit of the carrier as well as for the owners and themselves, it is legitimate; but it is not persuasive in view of the fact that the insurance was procured at the request of the owners, and as a condition of the contract for transportation, and the further fact that there was no conversation between Morse & Co. and the master of the Worden.

Those considerations lead to a reversal of the decree of the district court. The apostles indicate that the question whether the claimant was guilty of negligence in the navigation of the boats has not been fully litigated, and that the claimant has mistakenly relied upon the theory that the facts proved did not make out a *prima facie* case against him. It is therefore deemed proper to permit the claimant to apply for leave to introduce further evidence upon the question whether the loss arose from the want of ordinary care and skill in the navigation of the boats. Unless such an application is made within 20 days a decree will be entered for the libelants in the sum of \$6,175.89, with interest from May 28, 1883, with costs in this court and in the district court.

THE CLARION.

(*District Court, E. D. Michigan. January 23, 1886.*)

1. COLLISION—NEGLIGENT NAVIGATION—STEAMER STARBOARDING AND ATTEMPTING TO CROSS BOWS OF ANOTHER STEAMER.

A steamer which starboards, and attempts to cross the bows of another steamer which has the right of way, does so at her peril, and will be held answerable for the consequences.

2. SAME—MUTUAL FAULT—DIVISION OF DAMAGES.

Where one vessel is clearly shown to have been in fault, there should also be clear evidence of a contributing fault on the part of the other vessel to justify a division of damages.

This was a libel for a collision between the railway transfer steamer Lansdowne and the propeller Clarion, which occurred early in the morning of July 15, 1885, in the Detroit river, opposite the premises of the Michigan Central Railroad Company, in the city of Detroit. The libel averred that the Lansdowne left her slip on the American side of the river about half-past 1 in the morning, laden with a train of passenger cars, and took her course diagonally across the river for her slip upon the Canada side, nearly two miles above her point of departure. When about the middle of the river, and somewhat on the Canadian side, and a little below the Canada Southern Railway slip, she made the Clarion coming down the river exhibiting her white and red lights. The Lansdowne blew one blast of her whistle, and ported. The Clarion did not reply at once, but kept on showing her red light until within a short distance of the Lansdowne, when she blew two blasts of her whistle, and suddenly changed her course, exhibiting her green light, heading apparently for the bow of the Lansdowne. It was then too late for the Lansdowne to change her course, but she immediately blew another signal whistle, and reversed her engines. The Clarion came on, however, showing both colored lights, and struck the Lansdowne upon her port wheel-house, doing damage to a large amount. The case of the Clarion was that after passing Belle isle, above the city on the Canada side, she ported, and drew over to the American side of the river, within five or six hundred feet of the docks along the front of the city, for the purpose of calling the attention of her Detroit agents to the fact that she was passing the city, as was the usual custom with that line of boats; that having given her signal of four long and four short whistles opposite the office of the company, she starboarded for the purpose of clearing the "middle ground" opposite the Michigan Central Railroad freight-house and resuming her course down the river on the Canadian side; that about this time she heard a single whistle from the Lansdowne, which was coming up the river on her starboard bow, showing both her colored lights, the Clarion then showing her white and green lights to the Lansdowne; that deeming it impossible to port and pass the Lansdowne on the port side on account of the proximity of the middle