

Sylvester A. Ploof v. Henry W. Putnam

Supreme Court of Vermont
81 Vt. 471 (1908)

[The plaintiff was sailing his sloop on the lake when a sudden storm arose. Seeking safe shelter from the storm, the plaintiff attempted to moor his boat to the defendant's dock. The defendant's agent unmoored the boat and cast it off into the storm. The ship was wrecked and the passengers injured. Was the plaintiff's trespass on the defendant's property justified by the storm? Did the defendant have an obligation to provide shelter?]

JUDGES: Present: ROWELL, C. J., TYLER, MUNSON, and WATSON, JJ.

OPINION BY: MUNSON

The count in trespass contains the allegation: "Yet the said defendant, by his said agent and servant, with force and arms, willfully and designedly cast off and unmoored the said sloop from the said wharf or dock." And the corresponding allegation of the count in case is: "Yet the said defendant, by his said agent and servant, disregarding his duty in this behalf, negligently, carelessly, and wrongfully cast off," etc. The opinion states the other material allegations.

It is alleged ... the defendant was the owner of a certain island in Lake Champlain, and of a certain dock attached thereto, which island and dock were then in charge of the defendant's servant; that the plaintiff was then possessed of and sailing upon said lake a certain loaded sloop, on which were the plaintiff and his wife and two minor children; that there then arose a sudden and violent tempest, whereby the sloop and the property and persons therein were placed in great danger of destruction; that to save these from destruction or injury the plaintiff was compelled to, and did, moor the sloop to defendant's dock; that the defendant by his servant unmoored the sloop, whereupon it was driven upon the shore by the tempest, without the plaintiff's fault; and that the sloop and its contents were thereby destroyed, and the plaintiff and his wife and children cast into the lake and upon the shore, receiving injuries.

This claim is set forth in two counts; one in trespass, charging that the defendant by his servant with force and arms willfully and designedly unmoored the sloop; the other in case, alleging that it was the duty of the defendant by his servant to permit the plaintiff to moor his sloop to the dock, and to permit it to remain so moored during the continuance of the tempest, but that the defendant by his servant, in disregard of this duty, negligently, carelessly and wrongfully unmoored the sloop. Both counts are demurred to generally.

There are many cases in the books which hold that necessity, and an inability to control movements inaugurated in the proper exercise of a strict right, will justify entries upon

land and interferences with personal property that would otherwise have been trespasses. A reference to a few of these will be sufficient to illustrate the doctrine.

...

A traveller on a highway, who finds it obstructed from a sudden and temporary cause, may pass upon the adjoining land without becoming a trespasser, because of the necessity. ...

An entry upon land to save goods which are in danger of being lost or destroyed by water or fire is not a trespass. ... In *Proctor v. Adams*, 113 Mass. 376, ..., the defendant went upon the plaintiff's beach for the purpose of saving and restoring to the lawful owner a boat which had been driven ashore and was in danger of being carried off by the sea; and it was held no trespass. ...

This doctrine of necessity applies with special force to the preservation of human life. One assaulted and in peril of his life may run through the close of another to escape from his assailant. One may sacrifice the personal property of another to save his life or the lives of his fellows. In *Mouse's Case*, 12 Coke 63, the defendant was sued for taking and carrying away the plaintiff's casket and its contents. It appeared that the ferryman of Gravesend took forty-seven passengers into his barge to pass to London, among whom were the plaintiff and defendant; and the barge being upon the water a great tempest happened, and a strong wind, so that the barge and all the passengers were in danger of being lost if certain ponderous things were not cast out, and the defendant thereupon cast out the plaintiff's casket. It was resolved that in case of necessity, to save the lives of the passengers, it was lawful for the defendant, being a passenger, to cast the plaintiff's casket out of the barge; that if the ferryman surcharge the barge the owner shall have his remedy upon the surcharge against the ferryman, but that if there be no surcharge, and the danger accrue only by the act of God, as by tempest, without fault of the ferryman, every one ought to bear his loss, to safeguard the life of a man.

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Postscript

The historical context surrounding this dispute is nicely reviewed by Joan Vogel, "Cases in Context: Lake Champlain Wars, Gentrification, and *Ploof v. Putnam*." *St. Louis Law Journal* 45 no. 3 (Summer, 2001) 791-815. Putnam was a millionaire who owned the island with the dock. According to Vogel the Ploofs may have earned their living by transporting firewood on the lake and by stealing from lake front properties. This may explain why the caretaker cast them off the dock.

The Ploofs eventually collected \$650 for damage to their boat and property. The Ploofs purchased another boat and continued to work on the lake. Putnam attempted to have the case retried based upon newly discovered witnesses that disputed the Ploofs

version of events. However, the petition was denied. The Ploofs were eventually part of a eugenics study meant to demonstrate why the poor should not be allowed to procreate.

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Questions

1. Necessity may negate the need to contract. Normally the boat owner could contract with the dock owner for the right to moor his boat. In a storm a preexisting contract is not needed. Explain this in terms of the Coase Theorem. Discuss contracting costs and the most efficient use of the resource.