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Recommended Citation

Joseph Sweeney, *Rumpelheimer v. Haddock: Port to Port*, 31 J. Mar. L. & Com. 551 (2000)

Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/808

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Rumpelheimer v. Haddock: Port to Port

JOSEPH C. SWEENEY*

I INTRODUCTION

Legend has it that the first mid-air collision of aircraft occurred on the London-Paris (or Paris-Londres) Commercial Service, begun in 1919. As was the custom, pilots followed railroad tracks at a sufficiently low level so as not to lose their way. A London-Paris pilot kept to the left of the tracks going southeasterly, while a Paris-Londres pilot kept to the right of the tracks going northwesterly. The ensuing collision may have been the spark that ignited the imagination of A. P. Herbert and led him to write the amusing judicial "opinion" *Rumpelheimer v. Haddock: Port to Port*.¹ Let him set the scene:

On the 21st March last Mr. Rumpelheimer was driving his motor-car along the thoroughfare known as Chiswick Mall, which runs beside the north bank of the River Thames. Now, it appears that during the high spring tides, particularly those of the equinoctial seasons, the waters of the Thames overflow the banks and cover the highway to a depth of from two feet on the river side of the road to a few inches on the landward side. Such was the condition of affairs a little before high water on the date in question, when Mr. Rumpelheimer, who had an important business appointment in the City, began his voyage along the Mall. His evidence is that he was keeping carefully to the left or landward side of the road, where it was still possible to drive through the shallow water without fear of damage. While thus engaged he was startled, he says, to see ahead of him, and coming towards him on the same side of the road, the defendant, Mr. Haddock, who was navigating with a paddle a small boat of shallow draught. The plaintiff blew his horn vigorously, but the defendant held his course. Mr. Rumpelheimer shouted courteously, 'Out of the road, you fool!' and Mr. Haddock replied, as he admitted under cross-

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¹*Rumpelheimer v. Haddock: Port to Port*, in A. Herbert, *Uncommon Law: Being Sixty-Six Misleading Cases Revised and Collected in One Volume* 237 (1935).

examination, 'Port to port, you foxy beetle! Are you not acquainted with the Regulations for Prevention of Collision at Sea? I am going to starboard.'²

The plaintiff, driver of a flashy Italian motor car, swerved to the right to avoid the defendant's canoe, thereby going into deeper water and flooding his motor, which then stopped. Due to a nasty exchange of views, he was forced to sit in his water-logged vehicle until towed ignominiously to a garage because the defendant Haddock, "in gross breach of the customs of the sea, declined to convey [Rumpelheimer] to the shore or pavement. . . ."³

Rumpleheimer suffered financial loss, for which he brought an action at law, but the King's Bench referred the case to Admiralty (the Division of the High Court then known as "Probate, Divorce and Admiralty," or, more colloquially, "Hex, Sex, and Wrecks"). The Admiralty judge heard the case with a nautical assessor (i.e., one of the Elder Brethren of Trinity House).

II

A. P. HERBERT: BARRISTER-AT-SEA

The author of our tale, Sir Alan Patrick Herbert,⁴ was the quintessential raconteur of legal folly in the tradition of judicial humorist earlier represented by William S. Gilbert (of Gilbert & Sullivan fame) and today by John Mortimer (creator of Rumpole of the Bailey). In addition, he was devoted to the sea and knew its law.

²Id. at 237-38.

³Id. at 238.

⁴Alan Patrick Herbert (1890-1971), known to the readers of *Punch* magazine as Albert Haddock, was Irish and English. His Irish (County Kerry) father, Patrick Herbert Coghlan Herbert, was a colonial administrator in the India Office. His English mother, Beatrice Selwyn, was the daughter of Sir Charles Jasper Selwyn, Lord Justice of Appeal.

A. P. Herbert, who was born September 24, 1890 at Ashted Lodge in Surrey, attended Winchester and then New College, Oxford (1910-14), where he achieved first class honors in Jurisprudence. He began to submit light verse and stories to *Punch* as an undergraduate and joined the staff in 1924. He married Beatrice Quilter in January 1915 during his naval service. They were the parents of one son and three daughters. He lived most of his married life along the Thames in Hammersmith Terrace and died, at age 81, on November 11, 1971.

Herbert's political career was strictly independent of both Labor and the Tories. In 1935, he was elected to Parliament as an independent member for the University of Oxford and held that seat for the next 15 years, until the university seats were eliminated in 1950. In 1945, he was knighted for his political and public services.

Herbert published more than 70 books: novels, whimsy, tracts, and light verse. He also wrote a dozen plays and books for musical comedy. In 1958, he was awarded a D.C.L. by Oxford University.

Reform of the divorce laws was one of his main legislative goals, and Herbert both introduced and pushed the Matrimonial Causes Act, 1937. He also urged reform of the law of libel and the tax law. His autobiography, *A.P.H.: His Life and Times*, was published in 1970. A full biography by Reginald Pound, *A.P. Herbert: A Biography*, appeared in 1976. Herbert satirized the law, gently but sometimes unmercifully, beginning with "Misleading Cases" for *Punch* in 1927.

On graduation from Oxford in 1914, he and his generation were soon confronted with the long-awaited war with Germany.⁵ He immediately joined the Royal Naval Reserve as an ordinary seaman. Commissioned in 1915 and sent to Gallipoli⁶ with the naval contingent, he survived that disaster but was sent home because of fever.⁷ He was next ordered to France, where he served on the Western Front in 1917, and on convoy duty in the Mediterranean in 1918.

Twenty-two years later, Herbert, then aged almost 50, enlisted in the Naval Auxiliary, serving as a petty officer in the Thames River Emergency Services, and using his converted canal boat, *Water Gipsy*, to patrol the Thames when the Nazi invasion was thought to be imminent.⁸ He refused a

⁵Europe in the summer of 1914 was armed to the teeth with expensive armaments and criss-crossed with military alliances. The heir to the throne of Austria-Hungary, Archduke Francis Ferdinand, and his wife were assassinated on June 28, 1914 at Sarajevo, Bosnia—by a Serb. (Bosnia, although coveted by Serbia, had been wrested away from Turkish control by Austria in 1908). Austria sent an ultimatum to Serbia demanding changes in its policy and propaganda, to which Serbia made an evasive response. This was followed by Austria's declaration of war on Serbia on July 28, 1914. Russia, in support of Serbia, mobilized its forces on July 29th, to which Germany replied with an ultimatum on July 31st, then a general mobilization, and finally a declaration of war on Russia. France, Russia's ally, mobilized on August 1st. Britain supported its ally, France, on August 2nd, and on August 3rd Germany declared war on France, followed on August 4th by the British Declaration of War on Germany after Germany declared war on Belgium because of Belgium's refusal to allow Germany to cross its territory to attack France. Invasion and counter-invasion followed in mid-August, but bloody stalemate resulted by mid-December 1914, and the war of attrition in the trenches that would ultimately cost 10,000,000 lives was underway. See generally J. Keegan, *The First World War 48–70* (1999).

⁶The Gallipoli Project was the dream of the then First Lord of the Admiralty, Winston Churchill, to attack the Central Powers (Austria-Hungary, Germany, and Turkey) through the "soft underbelly" of Europe in the Dardanelles Straits between the Aegean and Black Seas, a mere 110 miles from the Turkish capital, Istanbul. One purpose was to open a route to supply Russia while knocking Turkey out of the war.

British naval operations began in February 1915, followed by landings of Australian, British, and French forces at the southern tip of the Gallipoli Peninsula alongside the Dardanelles Strait on April 25, 1915. These troops could not dislodge the effective Turkish forces on the heights, so a second landing at Suvla Bay in greater force took place on August 6, 1915. This also failed and the allies soon had 14 divisions in trenches opposed by 14 Turkish divisions. The allies could not overcome Turkish resistance without draining forces from France, and accordingly withdrew from Gallipoli beginning on December 19, 1915 (a task that was not completed until January 9, 1916). The cost in allied lives was 265,000 dead; estimates of Turkish dead are 300,000. By holding their ground, the Turks prevented allied aid to Russia, thereby hastening its withdrawal from the war. See Keegan, *supra* note 5, at 234–49.

⁷Herbert's elder brother, an Army officer, was killed in 1914. His younger brother, a career naval officer, was killed in 1941.

⁸The Second World War began with the deliberate invasion of Poland by Nazi Germany on September 1, 1939. Both France and Great Britain had guaranteed Polish independence; thus, on the refusal of Germany to withdraw from Poland, the two declared war on Germany on September 2, 1939.

Great Britain landed a force of 215,000 in support of France during the fall of 1939. Following the defeat of the French armies before the Nazi "blitzkrieg" of May 1940, the remaining British and French forces were concentrated in the area of Dunkirk. A total of 338,226 troops were evacuated May 28–June 4, 1940 by a flotilla of 400 small English pleasure boats and 460 military and naval vessels. (Of the 860 vessels involved, 243 were sunk by enemy attack.) 2 W. Churchill, *The Second World War (Their Finest Hour)* 100 (1949).

commission in the Second World War, but continued to serve in Parliament. Herbert was a long-time member, and president, of the Corinthian Sailing Club, the Inland Waterways Association, and the Thames Conservancy, as well as a Trustee of the National Maritime Museums in Greenwich.

Even though he never practiced as a proctor or advocate, Herbert cannot have avoided contact with admiralty law. Following his 1918 call to the bar at the Inner Temple, he joined the chambers of Sir Leslie Scott⁹ as private secretary. Sir Leslie was one of the founders (in 1897) of the Comité Maritime International, along with Louis Franck and Giorgio Berlingieri; he served as the British delegate to maritime law conferences in 1909, 1910, 1922, and 1926.

III

THE LAW OF COLLISION IN RUMPELHEIMER'S CASE

In Rumpelheimer's case, the learned admiralty judge (Herbert did not give him a name), having taken the bench with the Silver Oar prominent, stated the essential question:¹⁰

The defendant is clearly one who insufficiently appreciates the value of the motor-car to the human race. But we must not allow our natural detestation for such an individual to cloud our judgment. The meanest citizen, impelled by the meanest motives, is entitled to insist upon the enforcement of the law. The question is, 'What is the law?'—a question which frequently arises in our Courts and sometimes receives a satisfactory answer.¹¹

The judge summarized the plaintiff's case as follows: "since the highroad was only covered with water by an exceptional inundation of short duration,

⁹Like Herbert, Leslie Scott (1869–1950) also attended New College (Oxford). An M.P. for Liverpool, he was knighted in 1922 and became Lord Justice of Appeal in 1935.

¹⁰A real life American version of the fictitious *Rumpelheimer v. Haddock* might be *Chicago, Burlington & Quincy R. Co. v. W.C. Harms*, 134 F. Supp. 636, 1955 AMC 1423 (S.D. Tex. 1954), in which the plaintiff's train was operating along tracks on the west side of the Mississippi River when it struck the bow of a barge protruding over the tracks after the barge and its tug had gone aground. The resulting collision caused personal injuries and property damage. The court found the train to be seaworthy and held tug and barge negligent.

Another Texas decision found that when a truck collided with a railroad bridge, the carrier had established the defense of negligent navigation under COGSA. See *Vistar, S.A. v. M/V Sea Land Express*, 792 F.2d 469, 1986 AMC 2382 (5th Cir. 1986), reversing the district court in the cargo damage claim of the shipper of a tall wooden case under a bill of lading for carriage from Le Havre to Nuevo Laredo by way of Houston. On remand, the district court rejected deviation and limited the plaintiff's recovery to \$500 for the \$90,446 loss. See 680 F. Supp. 855, 1987 AMC 2881 (S.D. Tex. 1987).

¹¹Herbert, *supra* note 1, at 239.

it cannot be held to have lost the character of a highroad.”¹² The judge then added a “floodgate” argument:

Suppose that large sections of our southern counties were covered for a long period by exceptional floods, so that the inhabitants were compelled to cross them regularly in steam- or motor-vessels, can it be doubted that the regulations of the water, as to the avoidance of collisions, the carrying of lights, sound signals in case of fog, and so forth, would be observed and enforced in that area? Yet in principle the two cases are the same; and differences of degree cannot be allowed to derogate from principle.¹³

The judge also summarized the case for the defendant:

Now, the law or custom of the road is that when two vehicles meet each shall keep to the left. But the law or custom of the sea is that when two vessels meet they shall go to starboard and pass port to port, that is to say, each shall keep to the right. It is the contention of Mr. Haddock that when the tide covers the road that road becomes a part of the tideway, that traffic upon it is thenceforth governed by the regulations and customs of the sea, and that he did right, therefore, to steer so as to pass Mr. Rumpelheimer on his port hand. Further, it is the duty of a steam-vessel to keep out of the way of a rowing-boat; and Mr. Haddock argues that the plaintiff’s motor-car when navigating the tideway has the status of a steam-vessel, and that plaintiff has nobody but himself to blame.¹⁴

Without citing the principles of the Statutes of Richard II,¹⁵ the curse of American admiralty lawyers until Chief Justice Taney set it right,¹⁶ the judge reasoned to preserve his jurisdiction, while betraying a slight nautical prejudice:

With considerable reluctance we find that there is some substance in these contentions. The law of the land says one thing; the law of the water says the contrary; and it seems elementary that (upon navigable waters) the law of the water must prevail. It is idle to say that Chiswick Mall was not at the time of the accident navigable water. Mr. Haddock was, in fact, navigating it, and if

¹²Id. at 241.

¹³Id.

¹⁴Id. at 240.

¹⁵13 Rich. 2 ch. 5 (1389) and 15 Rich. 2 ch. 3 (1391).

These statutes were probably forced on England’s weakest king just after he came of age in order to draw lines between two sets of royal courts. Richard II (1367–1400) became king at age 10, but was controlled by regents until 1389. He was captured by Henry of Lancaster (later, Henry IV), deposed by Parliament in 1399, and murdered by his jailers in 1400.

¹⁶The Propeller *Genesee Chief v. Fitzhugh*, 53 (12 How.) U.S. 443, 1999 AMC 2092 (1851). Rejecting earlier limitations on the application of admiralty jurisdiction to tidal waters, Chief Justice Taney held that their character as public navigable waters permitted the admiralty courts to try a case arising out of a collision on Lake Ontario, notwithstanding the recent legislation imposing admiralty jurisdiction (with trial by jury) on the Great Lakes (Act of Feb. 26, 1845, ch. 20, 5 Stat. 726–27).

Mr. Rumpelheimer chooses to navigate it at the same time he must be bound by the appropriate regulations and should make himself familiar with them.¹⁷

The judge was not to be dissuaded by logic:

Mr. Rumpelheimer makes the rather childish objection that his motor-car is not a vessel and ought not to be treated as such. I find no difficulty there. Recent developments of the internal-combustion engine, and in particular the outboard motor, have produced a type of water-conveyance which in aspect and dignity is little more than a floating automobile; and though Mr. Rumpelheimer's motor-car appears to be unseaworthy it is otherwise as much a boat as many motor-boats. The point is that, boat or not, it was navigating the tideway.¹⁸

The conclusion, not surprisingly, was ineluctable:

The fact that a certain area of water was once dry land and is expected to be dry land again is unimportant. Much of what we now know as land was once covered by the ocean, and *vice versa*; but a motorist would not be allowed to appeal to the customs of the sea because he was crossing the Romney Marshes, on the ground that that land used to be sea. In the same way it is idle for the plaintiff to urge that Chiswick Mall used to be dry land. The question in every case must be a question of fact—Was this area at the material dates water or dry land? And neither geographical size nor extent of time is a relevant consideration. We find in this case that the scene of the mishap was water, and tidal water.¹⁹

The judge could not, however, forget the international nature of the rules he was interpreting:

Now, tidal waters lead to the ocean and are navigated by the vessels of every maritime country. The regulations upon which Mr. Haddock relies are not of British origin or sanction only; they govern the movements and secure the safety of the ships of the world. The nations rely upon each other to observe them faithfully and defend them jealously. It will be easily seen what international complications might ensue if it were to go forth that the Admiralty Court of Great Britain was prepared to play fast and loose with them for the benefit of a motorist, however small the issues at stake. The defendant is no gentleman, but that is neither here nor there. We find for the defendant, much as we dislike him.²⁰

¹⁷Herbert, *supra* note 1, at 240.

¹⁸*Id.* at 240–41.

¹⁹*Id.* at 241. In *The Genessee Chief*, Chief Justice Taney wrote, "In England, undoubtedly the writers upon the subject, and the decisions in its courts of admiralty, always speak of the jurisdiction as confined to tide-water. And this definition in England was a sound and reasonable one, because there was no navigable stream in the country beyond the ebb and flow of the tide. . . ." 53 U.S. at 454.

²⁰Herbert, *supra* note 1, at 241–42.

IV
CONCLUSION

A. P. Herbert knew better than to versify the learned judge's opinion. I do not, and shall brief the case in the style of its author:

And so, if you drive on the left
You must not be bereft
Should the river overflow
it's to starboard you must go
because the road is a tideway
and port to port is the safe way.
You'll avoid a collision
and old Haddock's derision.

