

situation, we too often overlook the fundamental reasons for the creation or evolution of the court. It received no grant of express powers nor were express duties imposed upon it. The law courts were left to deal with the violation of all rights for which they could give an adequate remedy. The duty of relieving against any remaining wrongs was imposed upon the court of chancery."

We are of opinion that the infirmity in the Pennsylvania statute which was pointed out in *Ohio Valley Co. v. Ben Avon Borough* is not present in the New Jersey statutes.

Affirmed.

MR. JUSTICE McREYNOLDS is of opinion that the action of the Board of Public Utility Commissioners was unreasonable and arbitrary and should be set aside. To permit the Commissioners to impose a charge of \$100,000 upon the Railroad under the pretense of objection to a six per cent. curve in a country road is to uphold what he regards as plain abuse of power.

BOSTON SAND AND GRAVEL COMPANY v.
UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.

No. 15. Argued February 28, 29, 1928. Reargued October 18,
1928.—Decided November 19, 1928.

1. A special act empowering the District Court to determine a case arising from a collision between a warship and a private craft, and to decree for "the amount of the legal damages sustained by reason of said collision . . . upon the same principles and measure of liability with costs as in like cases in admiralty between private parties," should not be construed to allow interest in a recovery against the United States although interest is commonly included in collision cases where the Government is not a party. P. 46.

2. This and similar acts, considered with general legislation *in pari materia*, in the light of the rule exempting the United States from interest, shows a policy of Congress to distinguish between the damages caused by a collision and the later loss caused by delay in paying them. P. 47.
 3. The fact that if the United States had prevailed in the suit it could have claimed interest, does not signify that the statute accords a similar right to the private party, since the right of the United States to recover interest is independent of the statute. P. 49.
- 19 F. (2d) 744, affirmed.

CERTIORARI, 275 U. S. 519, to a decree of the Circuit Court of Appeals, refusing to allow interest against the United States in a collision case litigated under a Special Act of Congress. The District Court had ordered the damages divided, 7 F. (2d) 278, and the petitioner sought interest on its share.

Mr. John W. Davis, with whom *Mr. Foye M. Murphy* was on the brief, for petitioner.

The word "damages" in an enabling act is sufficient to give to the claimant interest against the Government, whenever interest would be allowed as damages in like circumstances between private persons. *U. S. ex rel. Angarica v. Bayard*, 127 U. S. 251; 7 Op. A. G. 523.

Interest as awarded in collision cases in admiralty between private parties is damages within the proper legal meaning of that term. Sedgwick on Damages, 9th ed., p. 552; Sutherland on Damages, 4th ed., pp. 939, 940; *Williams v. American Bank*, 4 Metc. 317; *Dana v. Fiedler*, 12 N. Y. 40; *Parrott v. Knickerbocker Ice Co.*, 46 N. Y. 361; 3 Op. A. G. 635; *Watts v. United States*, 129 Fed. 222; *The Umbria*, 166 U. S. 404; *The Scotland*, 118 U. S. 507; *The America*, 1 Fed. Cas. No. 284; *The Rhode Island*, 20 Fed. Cas. No. 11740a; *Guibert v. The George Bell*, 3 Fed. 581; *Fabre v. Cunard S. S. Co.*, 53 Fed. 288; *The Rabboni*, 53 Fed. 952; *The Reno*, 134 Fed. 555;

In re Great Lakes Dredge & Dock Co., 250 Fed. 916; *New York, etc. Co. v. United States*, 16 F. (2d) 945.

The rule is the same in England. *The Dundee* (1827) 2 Haggard, 137; *The Hebe* (1847) 2 W. Robinson, 530; *The Kate* (1899) Prob. Div. 165; *The Kong Magnus* (1891) Prob. Div. 223; Roscoe on Damages in Maritime Collisions, 2d ed. pp. 5, 39.

There undoubtedly are rare cases which recognize that there is an element of discretion in the allowance of interest in collision cases. Examples are *The Scotland*, 118 U. S. 507; *The Albert Dumois*, 177 U. S. 240; *The Maggie J. Smith*, 123 U. S. 349. But this discretion has so uniformly been exercised to allow interest that its allowance has become practically a rule of law in the absence of a showing of some extraordinary circumstance making it inequitable to allow it. But two circumstances are recognized as justifying the refusal of interest—laches in bringing suit, and vexatious appeals. Benedict on Admiralty, 5th ed., p. 495; Roscoe, op. cit., p. 41.

Admiralty Courts continually refer to the allowance of interest as the usual rule. *In re Great Lakes Dredge & Dock Co.*, 250 Fed. 916; *Straker v. Hartland*, 2 H. & M. 570; *Frazer v. Carpet Co.*, 141 Mass. 126; *Managua Navigation Co. v. Aktieselskabet Borgestad*, 7 F. (2d) 990; *The America*, 1 Fed. Cas. No. 284. See also *The J. J. Gilchrist*, 173 Fed. 666; *N. Y. & Cuba Mail S. S. Co. v. United States*, 16 F. (2d) 945, and cases cited *supra*.

Where a word has a judicially settled meaning, it must be presumed that Congress has used it in that sense where it appears in a statute. *The Abbotsford*, 98 U. S. 440; *Kepner v. United States*, 195 U. S. 100; *United States v. Merriam*, 263 U. S. 179.

If the argument of the Government be sustained and the rule of the *Angarica* case be held inapplicable to maritime torts because the admiralty court has discretion in

extreme cases to deny interest, then the rule of that case cannot logically be applied to any tort case; for under the decisions of this Court, the jury in non-maritime tort cases is possessed of the same discretion. *Lincoln v. Claflin*, 7 Wall. 132; *District of Columbia v. Robinson*, 180 U. S. 92; *Drumm-Floto Co. v. Edmisson*, 208 U. S. 534.

Doubt is resolved by the explicit provision that the "legal damages" shall be awarded "upon the same principle and measure of liability with costs in like cases between private parties." 1 Op. A. G. 268; *United States v. McKee*, 91 U. S. 442.

The provision in the present act for costs to the successful party still further fortifies the conclusion that full restitution was intended.

Out of ninety-six special acts passed since 1912 when they began to appear commonly, comparable in phraseology to that here in question, four include interest *eo nomine*. Eight explicitly exclude it and eighty-four make no mention of it *eo nomine*. It is easy for Congress to say so, if it is its intention to exclude it. *Tiger v. Western Investment Co.*, 221 U. S. 286. In other cases the merits have been considered, damages determined by the Committee and a stated sum has been reported out and voted by Congress directly as relief, sometimes with interest. The Suits in Admiralty Act provides for interest at 4%—by judicial construction, from the date of the collision. *Middleton v. United States*, 286 Fed. 548. But in *Comus v. Lake Frampton*, 1927 A. M. C. 1713, a libel brought under this Act, an owner was allowed by the Circuit Court of Appeals for the Second Circuit, 6% interest against the United States under the court's broad equity power because the Government in a cross-libel was recovering under the usual rule 6% per annum as a part of its own damages.

It must be clear that what Congress has done in one case is no guide to what it intends in another. The fact

is there is no ambiguity in the present case in the Act itself if the judicially settled meanings of the words used are given effect.

The weight of authority, dealing with similar statutes, supports the petitioner and not the Government. The only live and relevant judicial precedents for the decision herein are *Pennell v. United States*, 162 Fed. 75, and *Nantasket Beach S. S. Co. v. United States*, 297 Fed. 656. *Whitelaw v. United States*, 9 F. (2d) 103; *Watts v. United States*, 129 Fed. 222; and *Nippon Yusen, etc. v. United States*, 1926 A. M. C. 1008, distinguished.

See *Texas Co. v. United States*, 16 F. (2d) 945; *New York and Cuba S. S. Co. v. United States*, 16 F. (2d) 948, both here on certiorari; *The Commonwealth*, 297 Fed. 651; *The Friedrich der Grosse*, 1926 A. M. C. 361; *Alaska Commercial Co. v. United States*, 1925 A. M. C. 1269; *Commonwealth & Dominion Line v. United States*, 20 F. (2d) 729.

The allowance of interest will accord with the decisions of this Court in many similar situations and is necessary to a full and fair reparation for the Government's tort, as in prize cases. *The Charming Betsey*, 2 Cranch 64; *The Anna Maria*, 2 Wheat. 327; *The Amiable Nancy*, 3 Wheat. 546; *The Appollon*, 9 Wheat. 362; *The Nuestra Senora de Regla*, 108 U. S. 92; *The Paquete Habana*, 189 U. S. 453; *The Labuan*, Blatchf. Pr. Cas. 165; *The Sybil*, Blatchf. Pr. Cas. 615; 6 Moore, Dig. Int. L., 1029; Moore, Int. Arbitrations; Hague Court Reports, 228, 234, 297. And see *Erskine v. Van Arsdale*, 15 Wall. 75; *Miller v. Robertson*, 266 U. S. 243; *Banco Mexicano v. Deutsche Bank*, 262 U. S. 591; *Standard Oil Co. v. United States*, 267 U. S. 76; *Seaboard Air Line v. United States*, 261 U. S. 299; *Brooks-Scanlon Corp'n v. United States*, 265 U. S. 106; *Liggett & Myers Co. v. United States*, 274 U. S. 215; *Phelps v. United States*, 274 U. S. 341; *United States v. Rogers*, 255 U. S. 163; *Hull No. 5, etc. v. United States*,

1927 A. M. C. 485; *United States v. The Thekla*, 266 U. S. 328; *The Barendrecht*, 11 F. (2d) 377.

Assistant Attorney General Farnum, with whom *Solicitor General Mitchell* and *Mr. John T. Fowler, Jr.*, were on the brief, for the United States.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a libel in admiralty brought by the petitioner to recover for damages done to its steam lighter *Cornelia* by a collision with the United States destroyer *Bell*. It is brought against the United States by authority of a special Act of May 15, 1922, c. 192, 42 Stat. 1590. There has been a trial in which both vessels ultimately were found to have been in fault and it was ordered that the damages should be divided. 7 F. (2d) 278. Thereafter the damages were ascertained and the petitioner sought to be allowed interest upon its share. (There was no cross libel.) The Circuit Court of Appeals, going on the words of the statute, parallel legislation, and the general understanding with regard to the United States, held that no interest could be allowed. 19 F. (2d) 744. As there was a conflict of opinion with the Second Circuit dealing with similar language in a special act, *New York & Cuba Mail S. S. Co. v. United States*, 16 F. (2d) 945, a writ of certiorari was allowed by this Court, 275 U. S. 519.

The material words of the Act are that the District Court "shall have jurisdiction to hear and determine the whole controversy and to enter a judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability with costs as in like cases in admiralty between private parties with the same rights of appeal." On a hasty reading one might be led to believe that Con-

gress had put the United States on the footing of a private person in all respects. But we are of opinion that a scrutiny leads to a different result. It is at least possible that the words fixing the extent of the Government's liability were carefully chosen, and we are of opinion that they were. We start with the rule that the United States is not liable to interest except where it assumes the liability by contract or by the express words of a statute, or must pay it as part of the just compensation required by the Constitution. *Seaboard Air Line Ry. Co. v. United States*, 261 U. S. 299, 304, 306. Next we notice that when this special act was passed there was a recent general statute on the books, the Act of March 9, 1920, c. 95, § 3, 41 Stat. 525, 526, allowing suits in admiralty to be brought *in personam* against the United States, in which it was set forth specifically that interest was to be allowed upon money judgments and the rate was four per centum, not the six per centum that the petitioner expects to get. The later general statute passed as a substitute for special bills like the one before us, allows suits in admiralty for damages done by public vessels but excludes interest in terms. Act of March 3, 1925, c. 428, § 2, 43 Stat. 1112.

We are satisfied by the argument for the Government that the policy thus expressed in the Act of 1925 had been the policy of the United States for years before 1922, and that the many private acts like the present generally have been understood, before and since the act now in question, not to carry interest by the often repeated words now before us. This was stated by the Attorney General in a letter to the Chairman of the Senate Committee on Claims when the Act of 1925 was under consideration (Sen. Report 941, p. 12, 68th Cong., 2d Sess.) and the bill was amended so as to remove all doubt. The Act of March 2, 1901, c. 824, 31 Stat. 1789, believed to be the first of the private acts in the present

form, was passed after an amendment striking out an allowance of interest, thus showing that the words now relied upon then were understood not to allow it. The same thing has happened repeatedly with later acts, and when by exception interest has been allowed, it has been allowed by express words. Before 1901, since 1871, such cases had been referred to the Court of Claims, which was forbidden by statute to allow interest. Rev. Stats. § 1901. Code, Title 28, § 284. It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists. If Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to consider that fact when we come to interpret a statute. But, as we have said, the usage of Congress simply shows that it has spoken with careful precision, that its words mark the exact spot at which it stops, and that it distinguishes between the damages caused by the collision and the later loss caused by delay in paying for the first,—between damages and ‘the allowance of interest on damages’, as it is put by Mr. Justice Bradley in *The Scotland*, 118 U. S. 507.

What the Act authorizes the Court to ascertain and allow is the ‘amount of the legal damages sustained by reason of said collision.’ Of these, interest is no part. It might be in case of the detention of money. But this is not a claim for the detention of money, nor can any money be said to have been detained. When a jury finds a man guilty of a tort or a crime, it may determine not only the facts but also a standard of conduct that he is presumed to have known and was bound at his peril to follow. *Nash v. United States*, 229 U. S. 373, 377. But legal fiction never reached the height of holding a defendant bound

to know the estimate that a jury would put upon the damage that he had caused. As the cause of action is the damage, not the detention of the money to be paid for it, it could be argued in a respectable Court, as late as 1886, that at common law, even as a matter of discretion, interest could not be allowed. *Frazer v. Bigelow Carpet Co.*, 141 Mass. 126. And although it commonly is allowed in admiralty, still the element of discretion is not wholly absent there. As stated by Mr. Justice Bradley in *The Scotland*, 118 U. S. 507, "The allowance of interest on damages is not an absolute right." When the Government is concerned, there is no obligation until the statute is passed and the foregoing considerations gain new force.

It has been urged that the United States would claim interest, and that, as the statute speaks of 'damages due either for or against the United States' the claims on the two sides stand alike. But that is not true. The United States did not need the statute, and it has been held that, even in the adjustment of mutual claims between an individual and the Government, while the latter is entitled to interest on its credits, it is not liable for interest on the charges against it. *United States v. Verdier*, 164 U. S. 213, 218, 219. *United States v. North American Transportation & Trading Co.*, 253 U. S. 330, 336.

The mention of costs and the omission of interest again helps the conclusion to which we come. Compare Judicial Code, § 152, and the same, § 177. U. S. Code, Title 28, §§ 258, 284.

Decree affirmed.

MR. JUSTICE SUTHERLAND, dissenting.

In collision cases between private parties, interest, as a general rule, is allowed upon the amount of the loss sustained. That the allowance may be to some extent in the discretion of the court does not affect the question presented here, since the court below denied interest not as

a matter of discretion but upon the ground that it had no power to allow it against the United States. From an examination of the record, it fairly may be assumed that if the case had been one between private parties interest would have been allowed.

It is said that when interest is allowed it is no part of the damages. But, very clearly, I think, the settled rule is to the contrary. When the obligation to pay interest arises upon contract, it is recoverable thereon as damages for failure to perform; "and when recoverable in tort it is chargeable on general principles as an additional element of damage for the purpose of full indemnity to the injured party." 1 Sutherland on Damages (4th Ed.) § 300, p. 939. In *Wilson v. City of Troy*, 135 N. Y. 96, the New York Court of Appeals, holding that in certain actions sounding in tort interest is allowed "as a part of the damages" as matter of law, said (pp. 104, 105): "The reason given for the rule is that interest is as necessary a part of a complete indemnity to the owner of the property as the value itself, and in fixing the damages, is not any more in the discretion of the jury than the value . . . In an early case in this state the principle was recognized that interest might be allowed, by way of damages, upon the sum lost by the plaintiff in consequence of defendant's negligence. (*Thomas v. Weed*, 15 John. 255.)" These principles find abundant support in the decisions of this Court.

In *The "Atlas"*, 93 U. S. 302, 310, the general rule is laid down that satisfaction for the injury sustained is the true rule of damages, and that by this is meant that the measure of compensation shall be equal to the amount of injury received, to be calculated for the actual loss occasioned by the collision, upon the principle that the sufferer is entitled to complete indemnification for his loss. Complete recompense for the injury is required.

In *The "Wanata"*, 95 U. S. 600, 615, this Court, pointing out the essential difference between costs and interest,

said: "Interest is not costs in any sense, and, when allowed, it should be decreed as damages, and be added to the damages awarded in the District Court."

In *United States v. North Carolina*, 136 U. S. 211, 216, this Court said: "Interest, when not stipulated for by contract, or authorized by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled; . . ."

In *The "Santa Maria"*, 10 Wheat. 431, 445, Mr. Justice Story, speaking for the Court, said: "Damages are often given by way of interest for the illegal seizure and detention of property; and, indeed, in cases of tort, if given at all, interest partakes of the very nature of damages."

In *The "Umbria"*, 166 U. S. 404, 421, this Court recognized that the general rule was that in cases of total loss by collision damages are limited to the value of the vessel, with interest thereon, etc.

See, also, *Redfield v. Ystalyfera Iron Company*, 110 U. S. 174, 176; *The "Scotland"*, 105 U. S. 24, 35.

It does not seem necessary to cite the numerous decisions of the lower federal and state courts to the same effect. A very good statement is to be found in *Balano v. The Illinois*, 84 Fed. 697, where it was held that the value of the injury done to the vessel is to be ascertained, and then an amount equal to interest thereon to the time of the trial may be added, not strictly as interest, but as part of the damage compensation. The court said [p. 698]:

"The sum called interest added to the \$5,000 was necessary to make full compensation at this time. It is not strictly interest—which is due only for the withholding of a debt—but the compensation for the permanent injury to the vessel was due as of the time when it was inflicted, and the addition of what is called interest is justly added for withholding it . . . it is quite well settled that in ascertaining the amount of compensation to be

paid, it is justifiable to find the extent of the injury valued in money, and add a sum equal to interest to make compensation at the time of such finding."

This is in accordance with the general rule that for the wrongful sinking of a ship the owner is entitled to *restitutio in integrum*, that is, he is entitled "to be put in as good position pecuniarily as if his property had not been destroyed." *Standard Oil Co. v. So. Pacific Co.*, 268 U. S. 146, 155, 158.

In the light of the foregoing, I am unable to see any ground for differentiating the rule of damages applicable to the present case from that applicable to eminent domain cases, that is to say, the owner is entitled to the amount that would be *just compensation* if the ship had been taken by the power of eminent domain. Just compensation means "the full and perfect equivalent of the property taken . . . the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken . . . the owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added." *Seaboard Air Line Ry. v. United States*, 261 U. S. 299, 304, 306. See also, *Liggett & Myers v. United States*, 274 U. S. 215.

In *Miller v. Robertson*, 266 U. S. 243, 258, the rule is stated: "Generally, interest is not allowed upon unliquidated damages. *Mowry v. Whitney*, 14 Wall, 620, 653. But when necessary in order to arrive at fair compensation, the court in the exercise of a sound discretion may include interest or its equivalent as an element of damages."

It follows indubitably from these premises that interest is allowable against the United States by the words "legal damages" *ex vi termini*. If additional reason for this

conclusion be needed, it will be found in the definite determination of this Court that the obligation of the United States to pay interest may be imposed by the name of *damages* as well as by the name of *interest*. *Angarica v. Bayard*, 127 U. S. 251, 260, where it is said that one of the recognized exceptions to the rule that the United States is not liable to pay interest is "where interest is given expressly by an act of Congress, either by the name of interest or by that of damages."

For this conclusion, the Court cites a number of opinions of the Attorneys General of the United States, among them that of Attorney General Cushing reported in 7 Op. A. G. 523, from the head-note to which the language above quoted was taken. In the course of that opinion the Attorney General said (p. 531):

"There is another possible case of apparent, but not real, exception, if the case exists, and that is, of 'damages' provided by statute to be assessed against the Government. In one of the general acts above cited, a statute-interest on the detention of money is the established rendering of the term 'damages.' (1 Stat. at Large, p. 85.) If, therefore, any such case of claim on the Government can be shown, with color of demand for interest as 'damages,' it will be no departure from the rule never to allow interest except on express requirement of statute."

By the statute under consideration the United States is made liable for "legal damages" upon the same principle and measure of liability as in like cases between private parties. The authorities above reviewed put the meaning of these words beyond all reasonable doubt; and it is not permissible to attempt to vary that meaning by construction. The rule announced by Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat. 76, 95-96—"Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one

indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest."—has, ever since, been followed by this Court.

In *Hamilton v. Rathbone*, 175 U. S. 414, 419, it is said: "The general rule is perfectly well settled that, where a statute is of doubtful meaning and susceptible upon its face of two constructions, the court may look into prior and contemporaneous acts, the reasons which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it, to determine its proper construction. But where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it." (Citing cases.)

And the Court added (p. 421): "Indeed, the cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity, that an extended review of them is quite unnecessary. The whole doctrine applicable to the subject may be summed up in the single observation that prior acts may be resorted to, to *solve*, but not to *create* an ambiguity."

It was further said that if the section of law there under consideration were an original act there would be no room for construction, and that only by calling in the aid of a prior act was it possible to throw a doubt upon its proper interpretation.

The rule was tersely stated in *United States v. Hartwell*, 6 Wall. 385, 396: "If the language be clear it is conclusive. There can be no construction where there is nothing to construe."

This is also the recognized rule of the English courts. In one of the English decisions Lord Denman said the

court was bound to look to the language employed and construe it in its natural and obvious sense, even though that was to give the words of the act an effect probably never contemplated by those who obtained the act and very probably not intended by the legislature which enacted it. *The King v. The Commissioners*, 5 A. & E. 804, 816. See also, *United States v. Lexington Mill Co.*, 232 U. S. 399; *Caminetti v. United States*, 242 U. S. 470, 485; *Russell Co. v. United States*, 261 U. S. 514, 519.

The enforcement of the statute according to its plain terms results in no absurdity or injustice, for, as this Court recently said, in holding the United States liable for damages including interest in a collision case where the Government had come into court to assert a claim on its own behalf: "The absence of legal liability in a case where but for its sovereignty it would be liable does not destroy the justice of the claim against it." *United States v. The Thekla*, 266 U. S. 328, 340.

To refuse interest in this case, in my opinion, is completely to change the clear meaning of the words employed by Congress by invoking the aid of extrinsic circumstances to import into the statute an ambiguity which otherwise does not exist and thereby to set at naught the prior decisions of this Court and long established canons of statutory construction.

MR. JUSTICE BUTLER, MR. JUSTICE SANFORD and MR. JUSTICE STONE concur in this opinion.

UNITED STATES v. CAMBRIDGE LOAN AND BUILDING COMPANY.

CERTIORARI TO THE COURT OF CLAIMS.

No. 46. Argued October 23, 24, 1928.—Decided November 19, 1928.

1. A corporation which by the law of its State is a building and loan association, and the business of which is conducted in accordance with that law, is a "building and loan association" within the