

355 U. S.

October 21, 1957.

No. 12. The petitioner's alleged choice of a more dangerous route did not, under the proofs, operate to bar recovery as a matter of law. The jury was properly instructed that the petitioner's negligence, if any, was to be considered in mitigation of damages under the rule applicable in actions for personal injuries arising from maritime torts. *Pope & Talbot, Inc., v. Hawn*, 346 U. S. 406, 408-409; cf. *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424.

For reasons set forth in his opinion in *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500, 524, MR. JUSTICE FRANKFURTER is of the view that the writ of certiorari is improvidently granted.

[For memorandum of MR. JUSTICE HARLAN, joined by MR. JUSTICE BURTON and MR. JUSTICE WHITTAKER, see *ante*, p. 19.]

HOBART *v.* HOBART.

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 355. Decided October 21, 1957.

Appeal dismissed and certiorari denied.

Reported below: 166 Ohio St. 112, 141 N. E. 2d 470.

Baird Broomhall, William M. Harrelson and Richard Wilson for appellant.

C. V. Diedel and Frank E. Bazler for appellee.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.