

Phile Vs. the Anna

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Decided On : 1787

Appeal No. : 1 U.S. 197

Appellant : Phile

Respondent : The Anna

Judgement :

PHILE v. THE ANNA - 1 U.S. 197 (1787)

U.S. Supreme Court PHILE v. THE ANNA, 1 U.S. 197 (1787)

1 U.S. 197 (Dall.)

Phile qui tam

v.

The Ship Anna

Court of Common Pleas, of

Philadelphia County.

June Term, 1787

This was an information filed by the Naval Officer of the port of Philadelphia, against the ship Anna, lately arrived from Bristol upon the discovery of Peter

Cooper, that forty two hampers of porter, part of her cargo, had been landed, without being first duly entered at the Collector's office, conformably to a law of this State, passed the fifteenth day of March, one thousand seven hundred and eighty seven, which enacts, among other things, 'That every vessel or boat, from which any goods, wares, or merchandize, shall be unladed before due entry thereof, at the office of the Collector, of the port of Philadelphia, and every carriage into which any such goods shall be first put or loaded, after removal from such vessel or boat, together with the horse, horses, or cattle drawing the said carriage at the time of seizure, shall be forfeited, and seized by the Collector last aforesaid, or the Naval Officer, or any of his or their deputies, &c.:' It appeared in evidence to the Jury, upon the part of the informants, that the Captain of the Anna, had only exhibited twenty hampers of porter in his official manifest, whereas a much greater quantity was found on board the ship, besides forty two hampers landed and deposited in the store of one Smith, and twenty four hampers actually delivered on shore to the captain himself, agreeably to his orders given for that purpose in the store of the claimants. It was proved, likewise, that a considerable number of hampers of porter, had, during the passage, been removed from the

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hold, and stowed away in the state-rooms, filling from the floor to the ceiling, so that any person who was in the least attentive, must have observed them upon entering the cabin; and it appeared, that the owners and their agent had been several times on board before the seizure, and before the removal of the hampers from that situation. The customary privilege of a captain in the Bristol trade was described to be limited to one ton, and the gross number of the hampers of porter discovered by the informants, was computed to amount to a little more than eighteen tons. The mate, who, the claimants alledged was the delinquent on this occasion, had been retained in their service, on board the ship, for two or three weeks after the seizure; but he had lately absconded, under the apprehension of a prosecution for the penalty of L. 500.

For the claimants, it was given in evidence by a passenger, that he was told by the mate of the Anna (who it seems was a man of some property) that he had

clandestinely shipped a quantity of porter, which he intended to dispose of here, without paying the freight to the owners, or the duties to the state, and which he had an opportunity of doing, even without the captain's knowledge, as it was the custom for mates to superintend the loading and unloading of the vessel. The witness had likewise during the passage, purchased about a dozen of porter from the mate, who then solicitously requested that the circumstance might not be communicated to the captain; and who (as several witnesses proved) after his arrival at Philadelphia, had treated with several persons for the sale of porter, repeatedly informing them that it was his private adventure, and that the owners of the vessel had not a bottle on board. When the hampers were removed at sea, from the hold into the cabin, the captain, who had long been indisposed, was then particularly sick, owing to his exertions during a storm that had happened the preceding night; and the father of one of the owners who had taken charge of the vessel upon her arrival, affirmed that he did not, while in the cabin, observe the hampers that were stowed away in the staterooms; that he had been very cautious in directing the manifest to be made out according to the invoices and bills of lading, and that he had personally enjoined all the officers of the ship, not to land a single article without a regular permit from the collector. It was in proof, likewise, that a hamper of porter which the sailors were hoisting out of the hold, was hastily let down again upon the appearance of one of the owners.

The evidence on both sides being stated, the counsel for the claimants argued, that the present question was of the greatest importance to the commercial interests of the country, as it was now to be determined, whether an innocent owner of a ship, was responsible for all the unwarrantable actions of her officers and crew? A rigid construction of the law, upon which this prosecution is grounded, cannot fail indeed, to counteract the object of the legislature in framing it: as the attempt to secure our revenues by indiscriminately

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inflicting upon the unoffending merchant, the penalties resulting from the illicit practices of his captain, will so multiply the risques of commerce, that the hope of gain, and the ardor of enterprise must cease to operate, and in the eventual loss of

trade, will be involved the total dissolution of the impost system. We should, therefore, be particularly cautious what principles we establish at this crisis of our commerce, and, in imitation of the wise precedents transmitted to us by our ancestors; we should so interpret the letter of the law, as to render its operation reasonable and just, the source of punishment to the guilty, but of certain acquittal to the innocent. In the present case it has been fully demonstrated that the claimants were not interested in the commodity which has been surreptitiously introduced into this city, and that so far from knowing and consenting to the fraud, the utmost vigilance and circumspection were exercised on their behalf to prevent it. The questions then, to be now considered, may be fairly comprehended in an enquiry How far the property of the owners is liable to confiscation for the misconduct of their officers and crew; and whether, by a liberal construction of the acts of assembly, the ship itself, under all the circumstances appearing in evidence, is a subject of forfeiture?

1st. It must be admitted as a general rule, that the master is responsible for the agency of his servant, while acting in that capacity; but, on the other hand, the moment he steps aside from the line of his duty, this relative responsibility is at an end. Thus, if a drayman in drawing a pipe of wine, staves it, his master must certainly indemnify the owner to the value of the wine that is lost; but if he leaves his dray, engages in a quarrel, and does an injury to his antagonist, neither law nor justice will transfer the damages to his master. So, likewise, if a farrier's journeyman lames a horse in shoeing it, an action lies against the master, not against the servant; but still in this, and in every similar instance, the damage must be done while he is actually employed in the master's service, otherwise the servant answers for his own misbehaviour. It is, therefore, readily agreed by analogy to the principles thus established, that the claimants are responsible for the conduct of their officers, as far as it respects the business of navigation, and the cargo of the ship; but in no other view can the captain be considered as their agent, and consequently on no other account can they be affected by his transactions. What then is understood by the term cargo? The privileges allowed to the mariners are not surely to be comprehended in the description; and if a captain or a mate clandestinely exceeds his privilege, this ought not in justice to be

a ground for altering the case. The meaning of the word cargo must therefore be restricted to such goods, wares, and merchandize, as belong immediately to the owners of the ship, or such as yield them a profit upon freight. Now, it is in evidence, that the porter, landed from the Anna, did not belong to the owners, and that they were not to receive any profit upon the freight of that article: it was consequently no part

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of her cargo, it had not been entrusted by the claimants to the superintendency of the captain or any other person on board; and therefore it cannot be said, that the entry was neglected by 'them, their agents, factors, or consignees,' which is expressly required by an act of assembly, (and all the laws upon the subject must be taken together) in order to work a forfeiture. If this discrimination is disregarded, what vigilance, what precaution, can protect the property of the most upright merchant from confiscation? The tobacco pouch of a sailor, or the secret till of a passenger's chest, (for, according to the construction urged by the informants, the most trifling article is sufficient for their purpose) may contain the instrument of ruin, and it would be in vain to show, that the sufferer was ignorant of the fraud, and diligent to prevent it, while *ita lex scripta est* furnishes the ready, but harsh answer to the sincerity of his plea. With respect to the cargo then, it is admitted, that, however improper the captain's conduct may be, it will affect his owners, even without their knowledge or connivance: but for anything beyond the cargo, and such we alledge is the commodity which gives rise to the present litigation, their knowledge is, at least, requisite, in reason, justice, and in law too, before they can be condemned to make atonement for his offences.

2ndly. It has been already said, that laws should be so construed as to prevent an injury being done to the innocent; and accordingly a multitude of cases are to be found in which the force of the expression has been rejected, when evidently contrary to reason and justice. There was a law, that those who in a storm fortook the ship, should forfeit all property therein; and the ship and lading should belong entirely to those who staid in it. In a dangerous tempest all the mariners fortook the ship except only one sick passenger, who, by reason of his disease, was unable to

get out and escape. By chance the ship came to port: the sick man kept possession and claimed the benefit of the law. Now, here, all the learned agree, that the sick man is not within the reason of the law; for the reason of making it was, to give encouragement to such as should venture their lives to save the vessel: but this is a merit which he could never pretend to, who neither staid in the ship upon that account, nor contributed any thing to its preservation. Again, there was an edict which condemned any man to death who should scale the walls of a certain city. One who had discovered the approach of an enemy, got over the wall at night in order to give the alarm. He was afterwards tried under this law, and, though the case came manifestly within the words, his judges pronounced, that it could not be the intention of the legislature to punish an action that proceeded from such meritorious motives; and therefore they acquitted him. But we have a memorable instance of a more recent date, arising from an ordinance of Congress, which declared, that any vessel conveying goods, &c.; to the enemy, should be subject to capture and condemnation. A Dutch vessel, called 'the Golden

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Rose,' had been taken by a British cruizer, and while her captors were carrying her into New York, she was retaken by an American privateer. It was seriously contended upon that occasion, that the Dutch vessel was a lawful prize according to the words of the ordinance; but the court would not allow so extravagant a claim, grafted upon the strict letter, to pervert the politic but equitable meaning of the act of Congress. Let us then try whether the acts of assembly, on the subject in discussion, may not by a liberal interpretation, operate so as to relieve the claimants from the injury with which they are threatened, and at the same time promote the rational views of the legislature. In the section upon which the informants proceed, it is said, 'that every vessel or boat, from which any goods, wares, or merchandize shall be unloaded, before due entry thereof, &c.; shall be forfeited.' Here then, if we understand the word thereof to refer to the entry of the vessel, though it may produce a slight deviation from the grammatical relation to the next immediate antecedent, we shall certainly give a more reasonable and benevolent explanation to the law, than by making the vessel liable to forfeiture for

the non-entry of the goods, wares, and merchandize. By the first construction, a duty is imposed upon the owners, with which it is in their power to comply; by the second they are exposed to loss and ruin for the negligence or malversation of others, which they could not foresee, and cannot prevent. The ship, and its contents, are indeed distinct things in their nature, and may thus be rendered (as they ought to be) distinctly responsible for the management of those to whom they are entrusted. If the ship is not entered, let the penalty fall there; and if the cargo is not entered, let that be doomed to confiscation; but the idea of making them reciprocally responsible is contrary to natural justice, and must be incompatible with sound policy. No foreign merchant will trust his vessel in our ports, and no citizen of Pennsylvania will be hardy enough to engage in commerce upon such precarious terms. But it is to be farther observed in this place, that the legislature having changed the expression; we may justly infer that the object of the law was likewise changed. In the preceeding act relative to the impost, the words 'ship or vessel' are employed, and not 'vessel or boat' as in the section above cited: it is therefore to be presumed that it was only in contemplation to destroy the petty fleets of smugglers which infest our creeks and rivers; and as it is a maxim in law, that 'a statute treating of things or persons of an inferior rank, cannot by any general words be extended to those of a superior,' a ship, which in maritime affairs is of the highest order, cannot be designated by the subordinate title of a vessel.

There is, however, an additional and very forcible argument, to show that the informants are not entitled to a verdict of condemnation against the Anna, which is drawn from the regularity of the entry that has been made. By the act of assembly, in which this

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cause originates, no form of entry is prescribed; we must therefore apply for instruction to the preceding impost law, which directs 'the master of any ship or other vessel to exhibit to the collector a true manifest, signed by him, of all the goods, wares, and merchandize, imported in such ship or vessel;' and, after sundry other regulations, calls upon him to make oath, 'that the manifest faithfully states the respective goods, wares, and merchandize therein mentioned, and that

no other is laden or imported in his vessel to the best of his knowledge or belief.' Has any of the requisites to constitute a formal entry been neglected by the master of the Anna? It appears that he has, in due season, exhibited an official manifest, and that he has sworn to the truth of its contents. This is surely all the law exacts, at least for the discharge of the ship; and though the omission of any article may be a cause for forfeiting that article (as it has already happened with the porter upon this occasion) and may likewise be a proper foundation for a charge of perjury, it cannot be extended to divest the property of an owner who has not practised any deceit himself, and who could not derive any advantage from the deceit practised by another.

The Counsel for the informants, in reply to the preceding arguments, stated: that the determination of this cause would certainly produce consequences of an important nature, and either render the act of assembly upon which it is founded, a dead letter, or a productive instrument of public revenue. In governments differently constituted, where regal pageantry, or military force, can invite or compel respect and obedience to the law, little danger is to be apprehended from the occasional indulgence of learned men in their ingenious and novel comments upon the sense and expressions of the legislature; but under a democratical constitution such as ours, should the people acquire a habit of yielding to logical subtleties and specious declamation, there is no power to controul the evil that must ensue; the principles of jurisprudence would become weak and fluctuating, and the virtue and dignity of the commonwealth would be contaminated and eventually destroyed. Instead therefore of considering how to escape from the strong expression of the act before us, it is our duty to give it the fullest operation that is necessary for suppressing the mischief to which the legislative attention was originally directed: and here we cordially embrace the position of our antagonists, that the meaning of those who framed the law is the best guide to direct us in carrying it into execution. What then was the evil complained of at the time that this act was made' The atrocious frauds committed upon the revenue. What was the remedy provided' It could not be merely the forfeiture of the smuggled goods, as the claimants insinuate, for that was imposed by an antecedent law; but the truth is, that every other penalty having proved ineffectual,

this statute was enacted expressly to suppradd the forfeiture of the vessel or boat from which the goods should be clandestinely unladed. But here it is remarked, that the

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legislature has changed its language, and therefore it has changed its object It would be idle indeed, to attempt by argument to prove that a vessel is a term sufficiently comprehensive to describe a ship but surely the sequel of the same law must remove every doubt, when it enacts, that 'where forfeiture of the ship, vessel, boat, &c.; shall have been incurred, the naval-officer and his deputies may seize the same.' Again, it is said, that by dispensing with a rule in grammar, it will appear, that the neglect to enter the vessel herself, is the sole circumstance which exposes her to forfeiture. But if this construction is allowed, it follows, that every boat, as well as every ship, must be duly entered at the collector's office, for the sentence will then run in this way, 'every vessel or boat, which, before due entry thereof, shall unlade, &c.;' a position that is necessarily defeated by its own absurdity. The claimants pursuing this curious system of defence, have not only endeavoured to persuade us that the porter was no part of the cargo, but likewise that one hundred and thirty-two hampers (which was the gross quantity contained in the ship) make a mere trifle, too insignificant to produce a forfeiture. To these ideas how is it possible to oppose a serious refutation? The understanding of mankind is not at this day to be deceived by a distorted definition of words, nor will mere assertion be allowed to overthrow the strong evidence of the senses. Confine the meaning of the term cargo, according to their suggestion, to such goods, wares, and merchandize as belong immediately to the owners, or such as yield them a profit upon freight, and it may happen, that the ship shall be deeply laden, and yet it will be said, that she has no cargo on board a paradox not readily to be comprehended! But whence is derived this gigantic notion of things, through the medium of which the quantity of eighteen tons is considered as a trifle? No, this is not an insignificant article easily to be secreted; it cannot be squeezed into a sailor's tobacco-pouch, or stowed in the private till of a passenger's chest. We find that it occupied a considerable space in the hold of the

ship, that it filled the state-rooms from the floor to the ceiling; and, besides the amount of the freight and tonnage, it ought to have contributed more than eighty pounds to the revenues of the state. It is boldly said, likewise, that such an entry has been made, as is sufficient to satisfy the law, and to prevent a forfeiture of the ship: The master of the Anna has exhibited a manifest it is true but is it not a partial statement? and can the accuracy of the form compensate for the fraudulent omission of a substantial item? But the captain has sworn to the truth of the manifest and can his perjury cure the evil, which his malversation has introduced? This naturally calls for some observation upon the leading principle used on behalf of the claimants, to wit, their innocence, and total ignorance of the transaction, which has involved them in this prosecution. It is not necessary, and therefore it will not be attempted, to press the circumstances which raise a presumption, that the

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claimants were either acquainted with the conduct of their officers, or were guilty of the grossest negligence: but it should be remembered, that they might have seen the porter on board the ship, if, as their own witness expressed it, they had chosen to look that the contraband unlading took place at their wharf, and but a few yards distant from their counting- house, that it was a matter known to every sailor on board the ship, and that the mate, who is supposed to have done them so severe an injury, was retained in their service for two or three weeks after the seizure. Still however, the innocence of the claimants, has no connection with the present question, which depends upon this single issue, whether the allegation contained in the information is, or is not true? in other words whether 42 hampers of porter have been unladed from the ship Anna, before they were duly entered at the collector's office? Much declamation indeed has been exercised upon this proposition, 'that the innocent ought not to suffer for the guilty:' but, however just it may be in the abstract, the state of society necessarily introduces many striking exceptions. Thus, if a carrier is attacked by robbers, and after a brave defence is overpowered, notwithstanding his innocence and his misfortune, he is still answerable for the goods of which he was plundered; nay, if his master, on whom

no shadow of blame could possibly be reflected, is called upon he must render to the owner a full indemnification. Again; if a man lends a piece of furniture to another, which is distrained with the goods of the borrower for arrearages of rent, is there any thing culpable in his conduct? and yet the law works a forfeiture of his property, to satisfy the demands of the landlord. How many virtuous wives suffer for the depravity of their husbands how many inoffensive children for the dissipation of their parents? In short, the relative obligations of social life are such, that we may trace the fortunes and happiness of mankind to a dependence upon the actions of each other, in almost every sublunary station but in none is it more observable than in the important connection between master and servant. From every book that treats upon the subject, as well as from daily experience, we find that the master is responsible for the actions of his servant, the owner for the agency of his captain; but we shall readily concur with our antagonists in acknowledging, that this responsibility continues only while the servant or captain is engaged in the business of the master or owner.

What then is the present case? The law requires the master of any ship or other vessel to exhibit a true manifest, upon oath, to the collector of the port does it not consequently become his duty to do so? and is not his neglect or evasion in this respect, a neglect or evasion committed, while in the actual transaction of the owner's business? Upon their own construction, therefore, the claimants are liable; and it is unnecessary for us to prove, as we could do, that had the fraud been perpetrated even by the sailors, a forfeiture of the vessel would have ensued. In England, the owners to the utmost

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extent of their fortunes, were likewise amenable for the conduct of the mariners they employed, 'till an act of parliament interfered, and limited their responsibility to the value of the ship and cargo. In Pennsylvania a late determination has recognised the doctrine for which we contend;* and capt. Angus and the owners of the vessel which he commanded, have in vain pleaded their innocence and ignorance of the malpractice of others, to excuse them from the resulting damages. Such, after all, is the law and it can be no ground for counteracting the

evident intentions of the legislature, that the claimants have been deceived by the persons to whom they have, perhaps, too implicitly confided their interests. The President delivered the following charge to the jury:

Shippen, President. This is an information exhibited against the ship Anna, as being a vessel from which 42 hampers of porter were unladed, without a previous entry at the collector's office. The evidence on the part of the informants, proceeds from several witnesses, one of whom discovered the drays going from Clifford's alley, and pursued them to Smith's, where the porter was lodged. Two porters have proved the unlading, and the seizure; and by the manifest it appears, that only twenty hampers were entered, tho' 42 hampers were carried to Smith's, 24 to the captain's store, and above 50 remained on board the ship: so, the evidence is full and clear, that more goods have been unladed, than were entered with the collector. The claimants, on the other hand, have filed their claim, and say that no act has been done, which under the laws of Pennsylvania, incurs a forfeiture This, therefore, is the province of the jury to try and determine. The words of the act of assembly, upon which this prosecution is grounded, have been the subject of animadversion on both sides; but as they are few, we will repeat them. 'Every vessel or boat, from which any goods, wares, or merchandize shall be unladed, before due entry thereof at the office of the collector of the port of Philadelphia, &c.; shall be forfeited.' Some doubts have been raised with respect to the thing meant to be entered; but the subject matter of the act, plainly refers to 'goods, wares, and merchandize' and it would be highly absurd if taken otherwise, as boats are never entered. This act does not say what shall be a due entry, but the next preceding one requires, that 'the master of any ship or vessel shall exhibit to the collector a true manifest of the goods, wares and merchandize imported in such ship or vessel, & c. and swear that there are no other on board to the best of his knowledge and belief.' It has been suggested, that the captain having delivered in a manifest, and sworn to it, this duty is done, and that in case of an omission, only the goods omitted are to be forfeited: But if the captain is obliged by law to deliver in a manifest, he does not comply, unless he exhibits a true and accurate one: and his committing perjury upon the occasion, so far from saving the vessel, must greatly encrease the offence. This has been repeatedly called a hard law: but

the truth

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is, that revenue laws are of a harsher nature than any others, and necessarily so; for, the devices of ingenious men, render it indispensable for the legislature to meet their illicit practices with severer penalties.

Thus, if the Sheriff has a writ against any man, he cannot break open his door to execute it but if liquor is smuggled into a cellar, the law says it is better that an individual should suffer in his personal privileges, than that the public should be cheated of its duties; and therefore allows the officer to force locks, &c.; in order to make a seizure; in the first case, between citizen and citizen, a man's house is considered as his castle; in the second, between the public and the private character, it is no longer regarded in that sacred light. We do not mean, however, to reflect on laws of this description we know they are necessary, as every society stands in need of assistance from its members. If the end can be accomplished without infringing the private rights of the subject, it is so much the better; but, at all events, the exigencies of government must be satisfied. It has been said, that, if the law is enforced as the informants contend for, the merchants will not be safe, no foreign vessels will be sent to our ports, and, eventually, the revenue must fail, But, nevertheless it is requisite that such laws should be strictly worded, though, undoubtedly, there are cases where the construction of the words must be such, as to prevent more injury being done than was intended. The navigation act of England says, that goods imported as merchandize shall be forfeited, if they do not pay a certain duty; and the case in *Strange* 943. is a seizure of shirts, nightgowns, and caps under this law. It was there argued that the word 'goods,' would certainly include those articles, but the Judges were of opinion that it could not be the meaning of the Legislature to make wearing apparel subject to forfeiture. The case in *Bunbury* is the single one that reaches the point before us. There the question arises whether goods put on board secretly, and unladed without the knowledge of the captain, would occasion a confiscation; and the Judges agreed that if it was a small matter, and no part of the cargo, it would not. The claimants therefore to have the benefit of this case should show, 1st. That the

subject of the present prosecution, is a small matter. 2ndly. That it was no part of the cargo, and 3rdly, that it was smuggled without the knowledge of the captain.

1st. Then, a small matter is an indefinite phrase, not to be ascertained by mere words, but by the evident meaning of the Judges who used it; and from that criterion it should seem to be a trifling thing, easily concealed, and which might fairly escape the notice of the captain; but it cannot be extended to large and weighty goods, deposited in the hold of the vessel, and which then constitute a part of her cargo. 2ndly, The counsel for the informants have suggested, that only such goods as belong to the owners, or yield them a profit upon freight can be called a cargo; whereas, in truth, the cargo is the lading of the vessel, and, though by bribery, or craft, some articles

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might be introduced into the hold without the knowledge of the owners or the captain, yet every thing which is put on board the vessel, is, in general, comprehended in that description. But, 3rdly, the knowledge of the captain is here proved by strong presumption. The quantity of porter that was put on board, the removal of it at sea, the evidence of the delivery of 24 hampers at his store, and by his order, are circumstances from which, we suppose, the claimants themselves, did not think his ignorance of the transaction tenable.

Then there remains only the great point upon which the counsel for the claimants seem chiefly to rely, to wit, their innocence and ignorance, with respect to the fraud that has been committed. There is no evidence, indeed, that tends to show, that the owners of the ship meant to do any thing unfairly; but, on the contrary, that the mate brought the goods hither with the avowed intention to defraud them, as well as the state. The question then recurs, what difference does it make, whether they knew of it, or not? Here is a positive law that directs a due entry of all goods, wares, and merchandize imported into this state, under certain penalties, and one of them is the forfeiture of the vessel or boat from which they are unladed. It does not speak of the knowledge of any person, but seems to be studiously worded to avoid that construction. It is not a novel law, though perhaps it is stricter now than

formerly: For, in England it has long existed, and before the revolution it was known in Pennsylvania. The Legislature has thought that nothing else would answer, and the Judges and the Jurors are equally bound to obedience. If indeed the law was doubtful or latitudinal, admitting one interpretation, which would be just, and another which would be unjust, it would become us to prefer the former. But if the policy of the Legislature seems to bear hard on the subject, we are not to judge, and determine upon its propriety that is a matter for the deliberation of those who made the law and however unjust it seems, we must acquiesce, or there must be a dissolution of society. It must certainly affect every humane man to see the innocent suffer; but in society this is not strange or uncommon; and the distinction may properly be taken between criminal and civil cases. The law never punishes any man criminally but for his own act, yet it frequently punishes him in his pocket, for the act of another. Thus, if a wife commits an offence, the husband is not liable to the penalties; but if she obtains the property of another by any means not felonious, he must make the payment and amends. There are a variety of other instances, in which men are responsible for one another, in consequence of their connection in society. The drayman, if he drives over and kills a child, must himself suffer the judgment of the law but if he staves a pipe of wine, his master must make the compensation. Upon the whole, it is neither a hard nor a novel case, since men must occasionally employ others to act for them, and ought to answer for those in whom they confide. If the Legislature has thought proper to subject the owners to this forfeiture, we must submit. With the Jury, therefore, the power is happily lodged,

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which was formerly exercised by a single Judge, and it is their duty, finally to acquit or condemn the ship, as in their consciences they think ought to be done.

The Jury, after a short adjournment, returned a verdict in favour of the informants.

Footnotes

[[Footnote *](#)] See Ant. 180.

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