

Simonds Vs. Union Ins Co

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 4 U.S. 417

Appellant : Simonds

Respondent : Union Ins Co

Judgement :

SIMONDS v. UNION INS CO - 4 U.S. 417 (1806)

U.S. Supreme Court SIMONDS v. UNION INS CO, 4 U.S. 417 (1806)

4 U.S. 417 (Dall.)

Symonds

v.

The Union Insurance Company.

Circuit Court, Pennsylvania District.

April Term, 1806

THE plaintiff had effected, at the office of the defendants, three policies of insurance, dated the 12th of September 1803. The first on the schooner Diana, Nicholas master, valued at 4500 dollars; the second on the freight of the schooner, valued at 1500 dollars, and the third on her cargo, valued at 4000 dollars; on a

voyage, 'at and from New-York to Cape Francois with liberty to proceed to another port, should Cape Francois be blockaded, and the vessel prevented entering that port, from that, or any other, cause, and at and from thence back to New-York.' The order for the insurance, declared 'that the assured is not to abandon, if she cannot enter the Cape from blockade or other cause, but liberty is given to proceed to some other port.'

The schooner sailed from New-York, on the 19th of September 1803, with instructions 'to proceed to Cape Francois; and, if she could not enter, from blockade or other cause, to steer towards the Bite of Leogane, and enter either into Port-au-Prince, or some other port in the bite.' On the 8th of October, she was boarded, off the island of St. Domingo, by an officer from the *Blanche*, a British frigate, who sent her papers on board the *Bellerophon*, another British ship of war. On the next day capt. Nicholas was taken on board the *Bellerophon*, and was informed, 'that the island of St. Domingo was blockaded by an English squadron, in consequence of which no vessel would be permitted to enter any port or harbour, in the said island;' and, to that effect, the register and papers of the schooner were indorsed. It appeared, also, from the captain's testimony, 'that he was told he was not permitted to proceed on his intended voyage, nor to go to Cuba; but should proceed down to Kingston, Jamaica; that he was ordered to keep near the frigate *Desire*, until they had cleared the island of St. Domingo; that on his arrival at Kingston, he was, also, told by the custom-house officers, that he could not

Page 4 U.S. 417, 418

clear out for Cuba, whither he was still desirous of going; and that, finally, the cargo was landed and sold at Kingston.' The proceeds were then vested in another cargo, with which the ship, returned to New-York. On her arrival there, about the 17th of December 1803, the plaintiff abandoned the cargo and freight to the defendants, and claimed as for a total loss; to recover which (deducting the proceeds of the cargo, and accounting for the profits on the investment homeward) the present action was instituted.

On the trial of the cause these grounds of defence were taken: 1st. That upon the specific terms of the contract, the assured had not a right to abandon. The consequence of being turned aside by a blockading force was contemplated by the parties, but not insured against; for, the voyage insured was to the Cape, or to another unblockaded port of Hispaniola. The whole island being blockaded, another port must be sought at the risque of the assured; the conduct of the British being neither capture, nor arrest; but, simply, precaution, to prevent a breach of blockade. 2d. That on general principles, it is not a case of abandonment, for a total loss. The cargo was not prevented from arriving at its place of destination, by any risque insured against, acting upon the subject insured immediately, and not circuitously. There has been no capture, with a view to condemnation; no arrest, for the purpose of an embargo, in the service of a foreign prince; the cargo remains specifically the same; the ship has returned; wages have been paid, and of course freight has been earned; nothing, in short, has affected the voyage insured, but the act of preventing a breach of blockade, and the low state of the Kingston market, and for neither of these is the underwriter liable. 2 Marsh. 434. 2 Burr. 1198. 1 T. Rep. 187. 2 Marsh. 482. 2 Burr. 696. 3 Atk. 195. 2 Stra. 849. 2 Marsh. 496. Doug. 219. 1 Esp. N. P. Rep. 237. 3 Bos. and Pull. 388. 5 Esp. N. P. Rep. 50. Mill. 305, 6. 5 East, 388.

The answer, for the plaintiff, was, in general, that the voyage insured had been destroyed, by the superior force of a foreign power; and that, independent of the means taken to prevent a breach of the blockade, the vessel had been constrained, against the express desire of the captain, to proceed to a particular port, in exclusion of every other.

THE COURT.

And the COURT, in the charge to the jury, declared the law to be clearly with the plaintiff; on which a verdict was found in his favour for the goods and freight, at the value insured, subject to a deduction of the proceeds of the homeward investment.

Rawle, for the plaintiff.

Dallas, for the defendant.

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