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The Amiable Nancy

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Decided On : 1818

Appeal No. : 16 U.S. 546

Appellant : The Amiable Nancy

Judgement :

The Amiable Nancy - 16 U.S. 546 (1818)
U.S. Supreme Court The Amiable Nancy, 16 U.S. 3 Wheat. 546 546 (1818)

The Amiable Nancy

16 U.S. (3 Wheat.) 546

ERROR TO THE DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The district courts of the United States have jurisdiction of questions of prize, and its incidents, independent of the special provisions of the Prize Act of 26 June, 1812, ch. 430.

On an illegal seizure, the original wrongdoers may be made responsible beyond the loss actually sustained in a case of gross and wanton outrage, but the owners of the privateer, who are only constructively liable, are not bound to the extent of vindictive damages.

While the government of the country shall choose to authorize the employment of privateers in its public wars, with the knowledge that such employment cannot be exempt from occasional irregularities and improper conduct, it cannot be the duty of courts of justice to defeat the policy of the government by burdening the service with a responsibility for unliquidated damages, resting in mere discretion, and intended to punish offenders.

An item for loss by deterioration of the cargo not occasioned by the improper conduct of the captors rejected.

The probable or possible profits of an unfinished voyage afford no rule to estimate the damages in a case of marine trespass.

The prime cost or value of the property lost, and, in case of injury, the diminution in value by reason of the injury, with interest thereon, affords the true measure for estimating damages in such a case.

An item for the ransom of the vessel and cargo which had been subsequently seized by another belligerent, as alleged for want of papers, of which the vessel had been deprived by the first captors, rejected under the particular circumstances of the case.

Supercargo's commissions not allowed.

This was a suit for a marine trespass commenced in the District Court for the Southern District of New York, by the libellants and appellants, who were the owner, master, supercargo, and crew of the Haitian Schooner *Amiable Nancy,* against the defendants, who were the owners of the private armed American vessel *Scourge.*

The libel states that the *Amiable Nancy* and her cargo belonged to be libellant, Peter Joseph Mirault, of Port-au-Prince, in the Island of Haiti, or St. Domingo;

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that the vessel, with a cargo of corn, sailed from Port-au-Prince about 7 October, 1814, on a voyage to Bermuda, and in the prosecution thereof, about the twenty-fourth day after sailing, in latitude 25 degrees north, was obliged by stress of weather to bear away for Antigua, there to refit and again proceed on the said voyage; that whilst proceeding toward Antigua, about 4 November in the same year, in latitude 17 degrees 54 minutes north, and in longitude 62 degrees 42 minutes west, the said Haitian schooner was boarded by an armed boat's crew from the private armed American brig *Scourge,* commanded by Samuel Eames, and owned by the defendants; that Jeremy C. Dickenson, the first lieutenant of the said brig, with the said armed boat's crew, then and there took possession of the *Amiable Nancy,* and robbed and plundered the libellants, respectively, of divers articles of wearing apparel, money, and other valuable effects of a great value, being all that the libellants, at the time of the boarding as aforesaid, were possessed of, and also robbed and plundered the said schooner of her papers, notwithstanding that Samuel C. Lathrop, the officer commanding the marines of the aforesaid private armed brig, and who accompanied the said armed boat's crew, had reported to the said Jeremy C. Dickenson that he had examined the said papers; that they were perfectly in order, and that the said schooner was a Haitian schooner as aforesaid; that the said armed boat's crew also robbed and plundered the said schooner of divers articles belonging to her tackle and apparel, to-wit, of a log reel and line,

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lines and cordage, and also of poultry, and greatly ill treated the libellants, and in particular knocked down and greatly bruised the libellant, Frederick Roux, and put the libellants in bodily fear and danger of their lives; that about twelve o'clock of the same night, the armed boat's crew aforesaid left the *Amiable Nancy,* and the said schooner was permitted to proceed on her course as aforesaid, and did so

proceed, but her papers were not restored, nor any other article of apparel, money, nor any of the valuable effects of which the said schooner and libellants had been robbed and plundered, although the said captain and supercargo did frequently and urgently remonstrate with the boarding officer upon the impropriety of such conduct as aforesaid, and did then and there state, that the said schooner could not proceed without her said papers, but, notwithstanding the remonstrances of the said libellants, nothing whatever which had been taken from the said schooner, and from the libellants, was restored.

That the libellant, Galien Amie, was not permitted to go on board of the said private armed brig, although he earnestly requested permission so to do, with the intent to complain to the commander of the said private armed brig, of the conduct of his said armed boat's crew, and of requesting him to cause the papers and articles taken as aforesaid, to be restored to the libellants and the said schooner. That the said schooner continued on her course as aforesaid, and on or about the morning of 9 November, in the year aforesaid, arrived at the entrance of the harbor of St. John's, in the Island of Antigua, when she was seized and detained by his Britannic Majesty's

guard-brig *Spider,* on account of the want of her papers; and both the vessel and cargo were, for the same reason, libeled and proceeded against in the vice admiralty prize court in the said island. That the *Amiable Nancy* was detained in the possession of the said guard-brig *Spider* until 24 November, and in consequence of an agreement previously made between the captors aforesaid and the said supercargo, which he was advised to make, in order to avoid the further detention, deterioration of the cargo, and total loss of the same, as of the said schooner, the schooner and her cargo were condemned as good and lawful prize, and were immediately delivered up to the libellant, the supercargo aforesaid, on the engagement to pay to the said captors the sum of $1,000, and all law and court charges, to a great amount, to-wit, to the amount of about $542.21, which said compromise, law and court charges together, amounted to the sum of $1,542.21, which the libellant, Frederick Roux, was obliged to pay, and did actually

pay, in order to procure the liberation of the said vessel and cargo. And in order to pay the same, the said last mentioned libellant was obliged to pay, and did pay the further sum of $536.44 by selling bills to procure specie to make the said payment; besides which, the said cargo of corn sustained a loss of $1,200, by its detention in port as foresaid, deterioration and fall in price, and the owner of said schooner did sustain further loss by the breaking up of his voyage, and the said schooner being obliged to leave Antigua in ballast, although a full freight was offered to him. That in consequence of

the robbery and plunder of the said schooner, and the ill treatment of the libellants, and the capture and detention, as aforesaid, heavy loss and damage accrued to the libellants, respectively, amounting in the whole to $15,000.

The libel then prays that the defendants, as the owners of the *Scourge,* may be decreed to pay to the libellants the damages respectively sustained by them by the illegal conduct of the said boat's crew, with all other charges and expenses thereby incurred, and losses therefrom accruing, and for such other relief as may be suited to the case.

The defendants, by their answer and plea, admit that they were, at the time mentioned in the libel, the owners of the *Scourge,* which was regularly commissioned as a private armed vessel during the late war, and that whilst cruising on the high seas, she met with the said Haitian schooner, but they do not admit that the plundering, outrages, and other unlawful acts mentioned in the libel, were committed as therein charged; they do, however, admit that the said schooner was boarded by a crew from the scourge, under the belief that she was an enemy, and that some improper acts were committed by some of the said crew, but they deny their responsibility therefor, especially as the said crew, or some of them, were punished for their improper conduct.

Samuel C. Lathrop, captain of marines on board the *Scourge,* proved, that whilst the said vessel was on a cruise they fell in with the *Amiable Nancy,* about 4 or 5

November, 1814, and boarded her; that Lieutenant Dickenson and himself, with twelve

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or thirteen of the crew, went in the boarding boat, under the command of Lieut. Dickenson, and that as soon as the boat came alongside of the schooner, Dickenson and himself went on board of her, and all the men but one followed; that the men immediately commenced plundering the vessel, which Dickenson saw, and took no measures to prevent; that the witness examined her papers and found her to be a Haitian Schooner, and that they were all regular, and so reported to Lieut. Dickenson. That the boat's crew ought not to have gone on board of the schooner at all, but Dickenson did not order them back, and permitted them to proceed in breaking into the cabin, breaking open the trunks of the captain and supercargo, plundering their contents, and the schooner's crew of their clothes and effects, and throwing them in bundles into the boat along side the schooner; that the captain and supercargo complained to Dickenson of the conduct of his crew, and especially of their destruction of the schooner's papers; and the supercargo also complained of being knocked down, but Dickenson took no notice of their complaints, and suffered the boat's crew to continue their plundering two hours on board of the schooner, though he had examined the schooner's papers, and made his report, as before stated, in ten minutes after going on board.

Commissions were issued to Antigua and Port-au-Prince to take testimony on the part of the libellants. Under the Antigua commission, it was proved that the *Amiable Nancy* and her cargo were seized, libeled, and condemned at Antigua on account of her

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want of papers. That the supercargo compromised with the captors for $1,000, and court charges $542,21, which he was advised to do, as most for the interest of the owner. That it was necessary to pay this amount in specie, which could only by raised by a sale of the bills for which the cargo was sold, and was done at a loss of

$536.44; that other sums were disbursed for the vessel, making in the whole $2,127.60. During the detention of the vessel, the price of corn fell a dollar a bushel, and the cargo was injured by the search of the schooner made by the Spider's crew, which occasioned a loss of $1,200. The expenses of the schooner at Antigua were proved to be $414. The value of the articles plundered from the vessel, captain, supercargo, and crew was proved by one of the witnesses, and by the protest; also the ill treatment and personal violence complained of.

Under the commission to Port-au-Prince, it was proved that the libellant, Peter Joseph Mirault, was the owner of both the schooner and cargo and that the schooner was a Haitian vessel, regularly documented as such. The detention and plunder of the schooner by the boat's crew of the *Scourge* is fully and particularly proved by one of the seamen on board of the schooner. The object of the voyage to Bermuda and the loss sustained in consequence of its being broken up are also proved.

On the hearing of the cause in the district court, it was referred to the clerk, or his deputy, to associate with him two merchants, and report the damages sustained by the libellants. The deputy clerk accordingly

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associated with him two respectable merchants, one chosen by each of the parties, who reported to be allowed to the libellants under different items.

Among the items of damages, were the following:

Loss sustained on sales of the cargo of corn at Antigua in consequence of the capture, $1,200. Loss sustained in consequence of the expenses occasioned by the seizure and condemnation in Antigua, growing out of the *Amiable Nancy* having been deprived of her papers by the acts of the officers and crew of the *Scourge,* as proved by the deposition of Samuel Dawson, and F. Lavaud, of Port-au-Prince, $3,500.

Allowance for M. Roux's expenses to and from Port-au-Prince, Antigua, Boston, &c.;, detention in New York, loss of time, and other incidental expenses, procuring evidence, and attending the trial, $1,500.

And that the defendants should pay to the libellants $1,000 for the commission claimed by the supercargo, Frederick Roux, $750 dollars for counsel fees, the proctor's costs, and the costs of court.

The defendants appealed from the decision of the district court to the Circuit Court for the Southern District of New York, where it was heard in September term, 1815, and the following decree made:

"This appeal having been argued, &c.; this court, after mature deliberation thereon, does order, adjudge, and decree that the sentence of the district court which has been appealed from be reversed, and this court, proceeding to assess the damages in this cause, makes the following allowances -- that is to say:"

To the owner of the schooner, for expenses during detention at Antigua, $300; for expenses of mate and supercargo while there, $70; for articles plundered there, $28; interest $103.94. To the master of the schooner for articles taken from him, $100; interest on this sum at ten per cent, $26.66; for personal injuries, $100. To the supercargo, for articles plundered, $470; interest $114.32; for personal wrongs, $500; expenses in collecting testimony at Antigua, &c.; $750. To the mate, two $201.32. To a sailor for property robbed, interest, and injury to his person, $118.40. Total, $2,879.64.

It is therefore further ordered and directed that there be paid by the appellants to the respondents and libellants the said sum of $2,879.64, in the manner and proportions following -- that is to say, to the libellant, Peter Joseph Mirault, owner of the schooner and cargo, the sum of $498.94; to the libellant, Galien Amie, master of the schooner, the sum of $226.66; to the libellant, Frederick Roux, the supercargo, the sum of $1,834.32; to the libellant, Anthony Morisset, the mate, the sum of $201.32; to the libellant, Elie Lenau, one of the mariners, the sum of $118.40.

And it is further ordered, adjudged, and decreed that the appellants pay the further sum of $750 for counsel fees in the district court, and that they also pay the proctor's costs in the said court, and the costs of that court, to be taxed.

And it is further ordered and decreed that each party pay his own costs in this court.

From this decree the libellants appealed to this court. The respondents did not appear.

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MR. JUSTICE STORY delivered the opinion of the Court.

The jurisdiction of the district court to entertain

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this suit, by virtue of its general admiralty and maritime jurisdiction, and independent of the special provisions of the Prize Act of 26 June 1812, ch. 107, has been so repeatedly decided by this Court that it cannot be permitted again to be judicially brought into doubt. Upon the facts disclosed in the evidence, this must be pronounced a case of gross and wanton outrage, without any just provocation or excuse. Under such circumstances, the honor of the country, and the duty of the court, equally require that a just compensation should be made to the unoffending neutrals, for all the injuries and losses actually sustained by them. And if this were a suit against the original wrongdoers, it might be proper to go yet further and visit upon them in the shape of exemplary damages, the proper punishment which belongs to such lawless misconduct. But it is to be considered that this is a suit against the owners of the privateer, upon whom the law has, from motives of policy, devolved a responsibility for the conduct of the officers and crew employed by them, and yet, from the nature of the service, they can scarcely ever be able to secure to themselves an

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adequate indemnity in cases of loss. They are innocent of the demerit of this transaction, having neither directed it nor countenanced it nor participated in it in the slightest degree. Under such circumstances, we are of opinion that they are bound to repair all the real injuries and personal wrongs sustained by the libellants, but they are not bound to the extent of vindictive damages. While the government of the country shall choose to authorize the employment of privateers in its public wars, with the knowledge that such employment cannot be exempt from occasional irregularities and improper conduct, it cannot be the duty of courts of justice to defeat the policy of the government by burdening the service with a responsibility beyond what justice requires with a responsibility for unliquidated damages resting in mere discretion and intended to punish offenders.

As the respondents have not appealed from the decree of the circuit court, that decree, so far as it allows damages against them, is not reexaminable here. And the only inquiry will be whether any of the items allowed by the district court were improperly rejected by the circuit court.

And first, as to the item of $1,200, for losses sustained in the sale of the cargo at Antigua. This loss is said to have been occasioned partly by the deterioration of the corn by sea damage, the mixing of the damaged with the sound corn by the improper conduct of the crew of the *Spider* brig of war, and partly by a fall of the price of corn during the detention of the vessel at Antigua. We are of opinion that this item was properly rejected. The injury to

the corn was in no degree attributable to the improper conduct of the officers and crew of the privateer. The vessel was actually bound to Antigua at the time when she was met by the privateer, under a necessity occasioned by stress of weather, and the fall of the market there is precisely what would have arisen upon the arrival of the vessel under ordinary circumstances. Unless, therefore, the sale of the corn was compelled at Antigua solely by the misconduct of the privateer (which, in our opinion, was the case), the claim for such loss cannot be sustained.

Another item is $3,500, for the loss of the supposed profits of the voyage on which the *Amiable Nancy* was originally bound. In the opinion of the Court, this item also was properly rejected. The probable or possible benefits of a voyage as yet *in fieri* can never afford a safe rule by which to estimate damages in cases of a marine trespass. There is so much uncertainty in the rule itself, so many contingencies which may vary or extinguish its application, and so many difficulties in sustaining its legal correctness that the Court cannot believe it proper to entertain it. In several cases in this Court, the claim for profits has been expressly overruled, and in *Del Col v. Arnold,* 3 Dall. 333, and *The Anna Maria,* 2 Wheat. 327, it was, after strict consideration, held that the prime cost or value of the property lost at the time of the loss, and in the case of injury the diminution in value by reason of the injury, with interest upon such valuation, afforded the true measure for assessing damages. This rule may not secure a complete

indemnity for all possible injuries, but it has certainty and general applicability to recommend it, and in almost all cases will give a fair and just recompense.

The next item is $2,127.60 for the ransom of the vessel and cargo and the payment of the costs of court. The evidence upon this head is not very satisfactory in its details. It is asserted that the vessel was seized for the want of papers, but whether as prize of war or to enforce a municipal forfeiture is not distinctly stated, and no copy of the proceedings of the court is produced to clear up a single doubt or obscurity. Nor does it appear whether the compromise was made before or after the libel was filed, and it is admitted that it was made without taking the advice of counsel upon the mere opinion of a merchant at Antigua, who supposed that a condemnation would certainly ensue. Upon what legal grounds this opinion could be reasonably entertained it is extremely difficult to perceive. Assuming that the vessel and cargo were seized as prize of war, it cannot for a moment be admitted that the mere want of papers could afford a just cause of condemnation. It might be a circumstance of suspicion, but explained (as it must have been) by the preparatory examinations of the officers and crew and by the fact of a voluntary arrival, it is difficult to suppose that there could be any judicial hesitation in

immediately acquitting the property. And the farthest that any prize court could by the utmost straining be presumed to go would be to order further proof of the proprietary interest. It would be

the highest injustice to the British courts to suppose that the mere want of papers under such circumstances could draw after it the penalty of confiscation. We do not, therefore, think that the ransom was justifiable or reasonable. The utmost extent of loss to which the owner was liable was the payment of the costs and expenses of bringing the property to adjudication, and for such costs and expenses, as far as they were incurred and paid, the owner is now entitled to receive a recompense. In this respect the decree of the circuit court ought to be amended.

The item for the supercargo's commission was also properly rejected. It does not appear with certainty to what sum he was entitled, and under the circumstances, if lost (which is not satisfactorily shown), the commissions were not lost by any act for which the respondents are liable. The sum allowed for the travel, attendance, and expenses of the supercargo in procuring testimony by the circuit court is in our judgment an adequate compensation.

The sum of $44 was (probably by mistake) deducted by the circuit court from the expenses at Antigua. This sum is to be reinstated.

To the decree of the circuit court there are consequently to be added the following sums:

For expenses and costs of court at Antigua, $542.21.

The loss on the exchange to pay that sum (say) $188.

The short allowance of expenses, $44.

In the whole amounting to the sum of $774.21, on which interest at the rate of 6 percent

is to be allowed from the time of payment up to the time of this judgment. And the decree of the circuit court is to be reformed accordingly.

Decree reformed.

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