

The Amelie

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Appeal No. : 73 U.S. 18

Appellant : The Amelie

Judgement :

The Amelie - 73 U.S. 18 (1867)

U.S. Supreme Court The Amelie, 73 U.S. 6 Wall. 18 18 (1867)

The Amelie

73 U.S. (6 Wall.) 18

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

1. In order to justify the sale by the master of his vessel in a distant port in the course of her voyage, good faith in making the sale and a necessity for it must both concur, and the purchaser, in order to have a valid title, must show their concurrence. The question is not whether it is expedient to break up a voyage and sell the ship, but whether there was a legal necessity to do it. And this necessity is

a question of fact, to be determined in each case by the circumstances in which the master is placed and the perils to which the property is exposed.

2. Where the sale of a vessel owned in Amsterdam was made at Port au Prince after a careful survey by five persons -- one, the British Lloyd's agent, another, the agent of the American underwriters, and the remaining three captains of vessels temporarily detained in port -- the whole appointed by and acting under the authority of the consul of the country where the vessel was owned -- which five surveyors unanimously agreed that the vessel was not worth repairing and advised a sale of her, this was held to pass a valid title, no evidence being before the master that the report was erroneous, and this although the master did not consult his owners at Amsterdam and though the vessel afterwards at a great expense -- greater, as the court assumed, than her new value -- was repaired and went to her original port of destination, and thence abroad with another cargo.

3. A justifiable sale divests all liens.

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4. A bill of sale from the master is not required to pass title. The sale itself, followed by possession taken, does this.

Fitz, of Boston, was owner of goods to the value of \$8,300, shipped at Surinam on board the *Amelie*, a Dutch vessel owned in Amsterdam, and to be delivered to him in Boston. The vessel, when she left her port, was apparently seaworthy and well provided, but having been struck with lightning in the course of her voyage and encountering perils of the sea, was compelled to seek some harbor, and with difficulty she made Port au Prince. She was here surveyed by two masters of vessels appointed by the Dutch consul there. These examined the outside of the vessel and found damage upon it, which they reported. In an attempt to repair this, and after the outlay of \$800 or \$1,000, further damage, on removing part of the cargo, was discovered. On this, a second survey was held. Upon this new survey there were two masters of vessels, the head of the shipyard at Port au Prince, the agent of the New York underwriters, and Lloyd's agent. They reported the outside

of the vessel injured in the same manner that the first survey had reported, and reported other considerable injuries besides (which they specified), and recommended that new knees and planks should be put in, with other repairs, which they estimated would cost 10,000 Haytien dollars and take from twenty-five to thirty days. They said that permanent repairs could not be made at Port au Prince, but that the repairs recommended would be sufficient to take the vessel to Boston.

In making these temporary repairs, one of the sides of the vessel was uncovered, and the timbers of the vessel, which were then first made visible, were found to be broken on the larboard side. The damage was of so serious a character that a third survey was ordered by the Dutch consul. This third survey had upon it the agent of the New York underwriters, Lloyd's agent, who were also on the second survey, and three masters of vessels. These last-appointed surveyors

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made a report stating at length the damage which they were able to find, their belief that additional damage would be found when the vessel was further uncovered, what the vessel would require, that there were no docks, nor competent ship carpenters, nor requisite timber or materials at Port au Prince, and consequently that they were compelled to come to the conclusion that it would not be possible to make the necessary repairs in that port in a proper manner. They further reported that if materials could be obtained, the time taken would be not less than four months, and would cost more than the vessel would be worth after the repairs were made. The surveyors for this reason advised that the voyage should be broken up, the vessel sold for the interest of all concerned, and the cargo transhipped to Boston.

The vessel was accordingly put up at public auction, and, after full notice, knocked down for \$407 in gold, to one Riviere, who took possession.

The surveys seemed to have been carefully made, the second one having occupied two hours in the examination, and the third, or last, half a day. The

reports were full and particular.

After the purchase of the vessel by Riviere, he repaired her, at a cost in gold of \$1,695.31, and sent her to Boston.

At the time that the master sold the vessel at Port au Prince, he sold also a part of the cargo, the property, as already mentioned, of Fitz, for the proceeds of which (\$2,441) he never accounted.

On the arrival of the vessel at Boston, Fitz libeled her, asserting a lien and claiming damages for the nondelivery of the cargo. The vessel having been sold by order of court, the purchaser made repairs to the extent of about \$143, took off her copper, which he sold for \$1,157, and sent her to England with a full cargo. She was forty days on the passage, had a good deal of bad weather, showed no symptoms of weakness, and appeared staunch and strong.

On a claim made by Fitz to the proceeds of the vessel in the Registry, \$2,138, the district court dismissed the claim,

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and this decree was affirmed in the circuit court. The matter was now here for review.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

The principle of maritime law which governs this controversy is too well settled for dispute. Although the power of the master to sell his ship in any case without the express authority of the owner was formerly denied, yet it is now the received doctrine of the courts in this country as well as in England that the master has the right to sell in case of actual necessity.

We are not called upon to discuss the reasons for the rule, nor to cite authorities in its support, because it has repeatedly received the sanction of this Court. [

[Footnote 1 \]](#)

From the very nature of the case (the Court said), there must be this implied authority of the master to sell. The injury to the vessel may be so great and the necessity so urgent as to justify a sale, and under such circumstances the master becomes the agent of all concerned, and is required

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to act for their benefit. The sale of a ship becomes a necessity within the meaning of the commercial law when nothing better can be done for the owner or those concerned in the adventure. If the master, on his part, has an honest purpose to serve those who are interested in ship and cargo, and can clearly prove that the condition of his vessel required him to sell, then he is justified. As the power is liable to abuse, it must be exercised in the most perfect good faith, and it is the duty of courts and juries to watch with great care the conduct of the master. In order to justify the sale, good faith in making it and the necessity for it must both concur, and the purchaser, to protect his title, must be able to show their concurrence. The question is not whether it is expedient to break up a voyage and sell the ship, but whether there was a legal necessity to do it. If this can be shown, the master is justified; otherwise not. And this necessity is a question of fact, to be determined in each case by the circumstances in which the master is placed and the perils to which the property is exposed.

If the master can within a reasonable time consult the owners, he is required to do it, because they should have an opportunity to decide whether in their judgment a sale is necessary. And he should never sell, when in port with a disabled ship, without first calling to his aid disinterested persons of skill and experience who are competent to advise, after a full survey of the vessel and her injuries, whether she had better be repaired or sold. And although his authority to sell does not depend on their recommendation, yet if they advise a sale and he acts on their advice, he is in a condition to furnish the court or jury reviewing the proceedings strong evidence in justification of his conduct.

The facts of this case being it within these well settled principles of maritime law, and clearly show that the master was justified in terminating his voyage and selling his ship. When the voyage began, the ship was seaworthy and well provided, but after she had been at sea a short time, she became disabled during a violent storm, and with great difficulty

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was taken into the harbor of Port au Prince. The master at once entered his protest before the Dutch consul general (the ship being owned in Amsterdam), who caused three surveys to be made of the condition of the vessel. No action was taken on the first survey, but the result of the second was to incur an expense of one thousand Spanish dollars in partial repairs, decided by it to be practicable, and recommended, in order that the ship should be put in a proper condition to proceed on her voyage to Boston. In making these partial repairs, one of the sides of the vessel was uncovered, disclosing additional damages of a serious character not previously ascertainable, which caused the consul general to order a third survey. This third and final survey was thorough and complete. The men who made it were captains of vessels temporarily detained in port and the agents of American and English underwriters. No persons could be more competent to advise or from the nature of their employment better acquainted with the structure of vessels and the cost of repairing them.

Their report is full and explicit. After the advice given in it, the master, who was bound to look to the interest of all parties concerned in the adventure, had no alternative but to sell. In the face of it, had he proceeded to repair his vessel, he would have been culpable. Being in a distant port with a disabled vessel, seeking a solution of the difficulties surrounding him, at a great distance from his owners, with no direct means of communicating with them, and having good reason to believe the copper of his vessel was displaced and that worms would work her destruction, what course so proper to pursue as to obtain the advice "of that body of men, who by the usage of trade have been immemorially resorted to on such occasions?" [[Footnote 2](#)] No prudent man under the circumstances would have failed to follow their advice, and the state of things as proved in this case imposed

on the master a moral necessity to sell his vessel and reship his cargo.

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But it is said the fact that the vessel was repaired by the purchaser and sent to Boston disproves this necessity. Not so. It may tend to prove the surveyors were mistaken, but does not affect the question of the duty of the master to follow their advice, when given in such strong terms and with no evidence before him that it was erroneous. But in fact the surveyors did not err in their conclusion that the vessel was not worth the cost of repairs, as the amount in the registry of the court for which the vessel was sold in Boston, will fail to reimburse the claimant the money expended by him in purchasing and repairing her.

It is insisted, even if the circumstances were such as to justify the sale and pass a valid title to the vendee, he nevertheless took the title subject to all existing liens. If this position were sound, it would materially affect the interests of commerce, for as exigencies are constantly arising requiring the master to terminate the voyage as hopeless and sell the property in his charge for the highest price he can get, would any man of common prudence buy a ship sold under such circumstances if he took the title encumbered with secret liens about which, in the great majority of cases, he could not have the opportunity of learning anything? The ground on which the right to sell rests is that in case of disaster, the master, from necessity, becomes the agent of all the parties in interest and is bound to do the best for them that he can, in the condition in which he is placed, and therefore has the power to dispose of the property for their benefit. When nothing better can be done for the interest of those concerned in the property than to sell, it is a case of necessity, and as the master acts for all and is the agent of all, he sells as well for the lienholder as the owner. The very object of the sale, according to the uniform current of the decisions, is to save something for the benefit of all concerned, and if this is so, the proceeds of the ship necessarily, by operation of law, stand in place of the ship. If the ship can only be sold in case of necessity, where the good faith of the master is unquestioned, and if it

be the purpose of the sale to save something for the parties in interest, does not sound policy require a clean title to be given the purchaser in order that the property may bring its full value? If the sale is impeached, the law imposes on the purchaser the burden of showing the necessity for it, and this he is in a position to do, because the facts which constitute the legal necessity are within his reach; but he cannot know nor be expected to know, in the exercise of reasonable diligence, the nature and extent of the liens that have attached to the vessel. Without pursuing the subject further, we are clearly of the opinion, when the ship is lawfully sold, the purchaser takes an absolute title divested of all liens, and that the liens are transferred to the proceeds of the ship, which, in the sense of the admiralty law, becomes the substitute for the ship.

The title of Riviere, the claimant, was questioned at the bar because he did not prove the master executed to him a bill of sale of the vessel. We do not clearly see how this question is presented in the record, for there is no proof either way on the subject, but if it is, it is easily answered. A bill of sale was not necessary to transfer the title to the vessel. After it was sold and delivered, the property was changed, and no written instrument was needed to give effect to the title. The rule of the common law on this subject has not been altered by statute. The law of the United States, which requires the register to be inserted in the bill of sale on every transfer of a vessel, applies only to the character and privileges of the vessel as an American ship. It has no application to this vessel and this case. [[Footnote 3](#)]

Decree affirmed.

[[Footnote 1](#)]

[The Patapsco Ins. Co. v. Southgate](#), 5 Pet. 620; [The Sarah Ann](#), 13 Pet. 400; [Post v. Jones](#), 19 How. 157.

[[Footnote 2](#)]

Gordon v. Mass. Ins. Co., 2 Pickering 264.

[[Footnote 3](#)]

Wendover v. Hogeboom, 7 Johnson 308; *Sharp v. United States Insurance Co.*, 14 *id.* 201; *Weston v. Penniman*, 1 Mason 306.

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