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Wildenhus' Case - 120 U.S. 1 (1887)

U.S. Supreme Court Wildenhus' Case, 120 U.S. 1 (1887)

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Argued December 7, 1886

Decided January 10, 1887

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEW JERSEY

SYLLABUS

A circuit court of the United States has jurisdiction to issue a writ of habeas corpus to determine whether one of the crew of a foreign vessel in a port of the United States, who is in the custody of the state authorities charged with the commission of a crime within the port against the laws of the state, is exempt from local jurisdiction under the provisions of a treaty between the United States and the foreign nation to which the vessel belongs.

Unless exempted by treaty, a foreign merchant vessel entering a port of the United States for purposes of trade is subject to the local law, and the local courts may punish for crimes committed upon the vessel within the port by one foreigner upon another foreigner.

Article XI of the Convention between Belgium and the United States of March 9, 1880, 21 Stat. 181, conferring power upon Belgian consuls in the United States to take cognizance of differences between captains, officers, and crews of Belgian merchant vessels which are in parts of the United States, and providing that the local authorities shall not interfere except when a disorder arises of such a nature as to disturb tranquility or public order on shore or in the port, does not apply to a case of

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felonious homicide committed on board of a Belgian merchant vessel in a port of the United States, and does not deprive the local authorities of the port of jurisdiction over such a crime so committed by one Belgian upon the person of another Belgian, both belonging to the crew of the vessel.

This appeal brings up an application made to the Circuit Court of the United States for the District of New Jersey, by Charles Mali, the "Consul of his Majesty the King of the Belgians for the States of New York and New Jersey in the United States," for himself as such consul "and in behalf of one Joseph Wildenhus, one Gionviennie Gobnbosich, and John J. Ostenmeyer," for the release, upon a writ of habeas corpus, of Wildenhus, Gobnbosich, and Ostenmeyer from the custody of the keeper of the common jail of Hudson County, New Jersey, and their delivery to

the consul, "to be dealt with according to the law of Belgium." The facts on which the application rests are thus stated in the petition for the writ:

" *Second.* That on or about the sixth day of October, 1886, on board the Belgian steamship *Noordland* there occurred an affray between the said Joseph Wildenhuis and one Fijens wherein and whereby it is charged that the said Wildenhuis stabbed with a knife and inflicted upon the said Fijens a mortal wound of which he afterwards died."

" *Third.* That the said Wildenhuis is a subject of the Kingdom of Belgium, and has his domicile therein, and is one of the crew of the said steamship *Noordland*, and was such when the said affray occurred."

" *Fourth.* That the said Fijens was also a subject of Belgium, and had his domicile and residence therein, and at the time of the said affray, as well as at the time of his subsequent death, was one of the crew of the said steamship."

" *Fifth.* That at the time said affray occurred, the said steamship *Noordland* was lying moored at the dock of the port of Jersey City in said State of New Jersey."

" *Sixth.* That the said affray occurred and ended wholly below the deck of the said steamship, and that the tranquility of the said port of Jersey City was in nowise disturbed or endangered thereby. "

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" *Seventh.* That said affray occurred in the presence of several witnesses, all of whom were and still are of the crew of the said vessel, and that no other person or persons except those of the crew of said vessel were present or near by."

" *Eighth.* Your petitioner therefore respectfully shows unto this Honorable Court that the said affray occurred outside of the jurisdiction of the said State of New Jersey."

" *Ninth.* But notwithstanding the foregoing facts, your petitioner respectfully further shows that the police authorities of Jersey City, in said State of New

Jersey, have arrested the said Joseph Wildenhus, and also the said Gionviennie Gobnbosich and John J. Ostenmeyer, of the crew of the said vessel (one of whom is a quartermaster thereof), and that said Joseph Wildenhus has been committed by a police magistrate, acting under the authority of the said state, to the common jail of the County of Hudson on a charge of an indictable offense under the laws of the said State of New Jersey, and is now held in confinement by the keeper of the said jail, and that the others of the said crew, arrested as aforesaid, are also detained in custody and confinement as witnesses to testify in such proceedings as may hereafter be had against the said Wildenhus."

Articles 8, 9, and 10 of a royal decree of the King of the Belgians, made on the 11th of March, 1857, relating to consuls and consular jurisdiction, are as follows:

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"ART. 8. Our consuls have the right of discipline on Belgian merchant vessels in all the ports and harbors of their district. In matters of offenses or crimes, they are to make the examination conformably to the instructions of the disciplinary and penal code of the merchant service."

"They are to claim, according to the terms of the conventions and laws in force, the assistance of the local authorities for the arrest and taking on board of deserting seamen."

"ART. 9. Except in the case where the peace of the port shall have been compromised by the occurrence, the consul shall protest against every attempt that the local authority may make to take cognizance of crimes or offenses committed on board of a Belgian vessel by one of the ship's company toward one either of the same company or of the company of another Belgian vessel."

"He shall take the proper steps to have the cognizance of the case turned over to him in order that it be ultimately tried according to Belgian laws."

"ART. 10. When men belonging to the company to a Belgian vessel shall be guilty of offenses or crimes out of the ship, or even on board the ship, but against

persons not of the company, the consul shall, if the local authority arrests or prosecutes them, take the necessary steps to have the Belgians so arrested treated with humanity, defended, and tried impartially."

The application in this case was made under the authority of these articles.

Article XI of a convention between the United States and Belgium "concerning the rights, privileges, and immunities of consular officers," concluded March 9, 1880, and proclaimed by the President of the United States, March 1, 1881, 21 Stat. 776, 781, is as follows:

"The respective consuls general, consuls, vice-consuls, and

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consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of all differences which may arise either at sea or in port between the captains, officers, and crews without exception, particularly with reference to the adjustment of wages and the execution of contracts. The local authorities shall not interfere except when the disorder that has arisen is of such a nature as to disturb tranquility and public order on shore or in the port or when a person of the country or not belonging to the crew shall be concerned therein. In all other cases, the aforesaid authorities shall confine themselves to lending aid to the consuls and vice-consuls or consular agents, if they are requested by them to do so, in causing the arrest and imprisonment of any person whose name is inscribed on the crew list whenever for any cause the said officers shall think proper."

The claim of the consul is that by the law of nations and the provisions of this treaty, the offense with which Wildenhuis has been charged is "solely cognizable by the authority of the laws of the Kingdom of Belgium," and that the State of New Jersey is without jurisdiction in the premises. The circuit court refused to deliver the prisoners to the consul, and remanded them to the custody of the jailer. 28 F. 924. To reverse that decision this appeal was taken.

MR. CHIEF JUSTICE WAITE, after stating the case as above reported, delivered the opinion of the Court.

By 751 and 753 of the Revised Statutes, the courts of the United States have power to issue writs of habeas corpus which shall extend to prisoners in jail when they are in "custody in violation of the Constitution or a law or treaty of the United States," and the question we have to consider is whether these prisoners are held in violation of the provisions of the existing treaty between the United States and Belgium.

It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes unless, by treaty or otherwise, the two countries have come to some different understanding or agreement, for, as was said by Chief Justice Marshall in [The Exchange](#), 7 Cranch 144:

"It would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction and the government to degradation if such . . . merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country."

United States v. Diekelman, [92 U. S. 520](#) ; 1 Phillimore's Int.Law, 3d ed., 483, 351; Twiss' Law of Nations

in Time of Peace 229, 159; Creasy's Int.Law, 167, 176; Halleck's Int.Law, 1st ed. 171. And the English judges have uniformly recognized the rights of the courts of the country of which the port is part to punish crimes committed by one foreigner on another in a foreign merchant ship. *Regina v. Cunningham*, Bell C.C. 72; 8 Cox C.C. 104; *Regina v. Anderson*, 11 Cox C.C. 198, 204; L.R. 1 Cr.Cas. 161, 165; *Regina v. Keyn*, 13 Cox C.C. 403, 486, 525; 2 Ex.Div. 63, 161, 213. As the owner has voluntarily taken his vessel, for his own private purposes, to a place

within the dominion of a government other than his own and from which he seeks protection during his stay, he owes that government such allegiance, for the time being, as is due for the protection to which he becomes entitled.

From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship and the general regulation of the rights and duties of the officers and crew toward the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never, by comity or usage, been entitled to any exemption from the operation of the local laws for their punishment if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse the purpose of which was to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions.

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The first of these conventions entered into by the United States after the adoption of the Constitution was with France on the 14th of November, 1788, 8 Stat. 106, "for the purpose of defining and establishing the functions and privileges of their respective consuls and vice-consuls," Art. VIII of which is as follows:

"The consuls or vice-consuls shall exercise police over all the vessels of their respective nations, and shall have on board the said vessels all power and

jurisdiction in civil matters in all the disputes which may there arise. They shall have entire inspection over the said vessels, their crew, and the changes and substitutions there to be made, for which purpose they may go on board the said vessels whenever they may judge it necessary. Well understood that the functions hereby allowed shall be confined to the interior of the vessels, and that they shall not take place in any case which shall have any interference with the police of the ports where the said vessels shall be."

It was when this convention was in force that the cases of *The Sally* and *The Newton* arose, an account of which is given in Wheaton's Elements of International Law (3d ed.) 153, and in 1 Phillimore's International Law (3d ed.) 484, and (2d ed.) 407. *The Sally* was an American merchant vessel in the port of Marseilles, and *The Newton* a vessel of a similar character in the port of Antwerp, then under the dominion of France. In the case of *The Sally*, the mate, in the alleged exercise of discipline over the crew, had inflicted a severe wound on one of the seamen, and in that of *The Newton*, one seaman had made an assault on another seaman in the vessel's boat. In each case, the proper consul of the United States claimed exclusive jurisdiction of the offense, and so did the local authorities of the port, but the Council of State, a branch of the political department of the government of France to which the matter was referred, pronounced against the local tribunals,

"considering that one of these cases was that of an assault committed in the boat of the American ship *Newton* by one of the crew upon another, and the other was that of a severe wound inflicted by the mate of the American ship *Sally* upon

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one of the seamen for having made use of the boat without leave."

This was clearly because the things done were not such as to disturb "the peace or tranquility of the port." Wheaton's Elements Int.Law, 3d ed., 154. The case of *The Sally* was simply a quarrel between certain of the crew while constructively on board the vessel, and that of *The Newton* grew out of a punishment inflicted

by an officer on one of the crew for disobedience of orders. Both were evidently of a character to affect only the police of the vessel, and thus within the authority expressly granted to the consul by the treaty.

No other treaty or convention bearing on this subject to which our attention has been called was entered into by the United States until a treaty with Sweden and Norway on the 4th of September, 1816, 8 Stat. 232, where it was agreed, by Art. 5, that

"The consuls and their deputies shall have the right, as such, to act as judges and arbitrators in the differences which may arise between the captains and crews of the vessels of the nation whose affairs are entrusted to their care. The respective governments shall have no right to interfere in matters of this kind except the conduct of the captain or crew shall disturb the peace and tranquility of the country in which the vessel may be or the consul of the place shall feel himself obliged to resort to the interposition and support of the executive authority to cause his decision to be respected and maintained, it being nevertheless understood that this kind of judgment or award shall not deprive the contending parties of the right which they have, on their return, to recur to the judicial authorities of their own country."

Substantially the same provision is found in treaties or conventions concluded with Prussia in 1828, Art. X, 8 Stat. 382; with Russia in 1832, Art. VIII, 8 Stat. 448; with Greece in 1837, Art. 12, 8 Stat. 504; with Hanover in 1840, Art. VI, 8 Stat. 556; with Portugal, also in 1840, Art. S, 8 Stat. 564; with the Grand Duchy of Mecklenburg-Schwerin in 1847, Art. IX, 9 Stat. 916; with Oldenburg in 1847, 9 Stat. 868; with Austria in 1848, Art. IV, 9 Stat. 946; with the Hanseatic republics in 1852, Art. I, 10 Stat. 961; with the Two Sicilies in 1855, Art. XIX, 11 Stat.

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650; with Denmark in 1861, Art. I, 13 Stat. 605; and with the Dominican Republic in 1867, Art. XXVI, 15 Stat. 487.

In a convention with New Grenada concluded in 1850, the provision was this:

"They [the consuls, etc.] may cause proper order to be maintained on board vessels of their nation, and may decide on disputes arising between the captains, the officers, and the members of the crew unless the disorders taking place on board should disturb the public tranquility, or persons not belonging to the crew or the nation in whose service the consul is employed, in which case the local authorities may interfere."

Art. III, clause 8, 10 Stat. 903.

Following this was a convention with France, concluded in 1853, 10 Stat. 996, Art. VIII of which is as follows:

"The respective consuls general, consuls, vice-consuls, or consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of differences which may arise, either at sea or in port, between the captain, officers, and crew, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not on any pretext interfere in these differences, but shall lend forcible aid to the consuls, when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authority and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port at the disposal of the consuls. Their release shall be granted at the mere request of the consuls made in writing. The expenses of the arrest and detention of those persons shall be paid by the consuls."

The same provision in substantially the same language was embraced in a convention with Italy in 1868, Art. XI, 15 Stat. 609, and in another with Belgium, also in 1868, Art. XI, 16 Stat. 761. This convention with Belgium continued in force until superseded by that of 1880-1881, under which the present controversy arose.

The form of the provision found in the present convention with Belgium first appeared in a convention with Austria concluded in 1870, Art. XI, 17 Stat. 827, and it is found now in substantially the same language in all the treaties and conventions which have since been entered into by the United States on the same subject. See the conventions with the German Empire in 1871, Art. XIII, 17 Stat. 928; with the Netherlands in 1878, Art. XI, 21 Stat. 10; with Italy in 1881, Art. I, 22 Stat. 18; with Belgium in 1881, as stated above, and with Roumania, the same year, Art. XI, 23 Stat. 3.

It thus appears that at first provision was made only for giving consuls police authority over the interior of the ship, and jurisdiction in civil matters arising out of disputes or differences on board -- that is to say, between those belonging to the vessel. Under this police authority, the duties of the consuls were evidently confined to the maintenance of order and discipline on board. This gave them no power to punish for crimes against the peace of the country. In fact, they were expressly prohibited from interfering with the local police in matters of that kind. The cases of *The Sally* and *The Newton* are illustrative of this position. That of *The Sally* related to the discipline of the ship, and that of *The Newton* to the maintenance of order on board. In neither case was the disturbance of a character to affect the peace or the dignity of the country.

In the next conventions, consuls were simply made judges and arbitrators to settle and adjust differences between those on board. This clearly related to such differences between those belonging to the vessel as are capable of adjustment and settlement by judicial decision or by arbitration, for it simply made the consuls judges or arbitrators in such matters. That would of itself exclude all idea of punishment for crimes against the state which affected the peace and tranquility of the port, but, to prevent all doubt on this subject, it was expressly provided that it should not apply to differences of that character.

Next came a form of convention which in terms gave the consuls authority to cause proper order to be maintained on

board, and to decide disputes between the officers and crew, but allowed the local authorities to interfere if the disorders taking place on board were of such a nature as to disturb the public tranquility, and that is substantially all there is in the convention with Belgium which we have now to consider. This treaty is the law which now governs the conduct of the United States and Belgium toward each other in this particular. Each nation has granted to the other such local jurisdiction within its own dominion as may be necessary to maintain order on board a merchant vessel, but has reserved to itself the right to interfere if the disorder on board is of a nature to disturb the public tranquility.

The treaty is part of the supreme law of the United States, and has the same force and effect in New Jersey that it is entitled to elsewhere. If it gives the consul of Belgium exclusive jurisdiction over the offense which it is alleged has been committed within the territory of New Jersey, we see no reason why he may not enforce his rights under the treaty by writ of habeas corpus in any proper court of the United States. This being the case, the only important question left for our determination is whether the thing which has been done -- the disorder that has arisen -- on board this vessel is of a nature to disturb the public peace, or, as some writers term it, the "public repose," of the people who look to the State of New Jersey for their protection. If the thing done -- "the disorder," as it is called in the treaty -- is of a character to affect those on shore or in the port when it becomes known, the fact that only those on the ship saw it when it was done is a matter of no moment. Those who are not on the vessel pay no special attention to the mere disputes or quarrels of the seamen while on board, whether they occur under deck or above. Neither do they as a rule care for anything done on board which relates only to the discipline of the ship or to the preservation of order and authority. Not so, however, with crimes which from their gravity awaken a public interest as soon as they become known, and especially those of a character which every civilized nation considers itself bound to provide a severe punishment for when committed

within its own jurisdiction. In such cases, inquiry is certain to be instituted at once to ascertain how or why the thing was done, and the popular excitement rises or falls as the news spreads and the facts become known. It is not alone the publicity of the act or the noise and clamor which attends it that fixes the nature of the crime, but the act itself. If that is of a character to awaken public interest when it becomes known, it is a "disorder," the nature of which is to affect the community at large, and consequently to invoke the power of the local government whose people have been disturbed by what was done. The very nature of such an act is to disturb the quiet of a peaceful community and to create, in the language of the treaty, a "disorder" which will "disturb tranquility and public order on shore or in the port." The principle which governs the whole matter is this: disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished, by the proper authorities of the local jurisdiction. It may not be easy at all times to determine to which of the two jurisdictions a particular act of disorder belongs. Much will undoubtedly depend on the attending circumstances of the particular case, but all must concede that felonious homicide is a subject for the local jurisdiction, and that if the proper authorities are proceeding with the case in a regular way, the consul has no right to interfere to prevent it. That, according to the petition for the habeas corpus, is this case.

This is fully in accord with the practice in France, where the government has been quite as liberal toward foreign nations in this particular as any other, and where, as we have seen in the cases of *The Sally* and *The Newton*, by a decree of the council of state, representing the political department of the government, the French courts were prevented from exercising jurisdiction. But afterwards, in 1859, in the case of *Jally*, the mate of an American merchantman, who had killed one of the crew and severely wounded another on board the ship in the port of Havre, the Court of Cassation, the highest judicial

tribunal of France, upon full consideration, held, while the convention of 1853 was in force, that the French courts had rightful jurisdiction, for reasons which sufficiently appear in the following extract from its judgment:

"Considering that it is a principle of the law of nations that every state has jurisdiction throughout its territory;"

"Considering that, by the terms of article 3 of the Code Napoleon, the laws of police and safety bind all those who inhabit French territory, and that consequently foreigners, even *transeuntes*, find themselves subject to those laws;"

"Considering that merchant vessels entering the port of a nation other than that to which they belong cannot be withdrawn from the territorial jurisdiction, in any case in which the interest of the state of which that port forms part finds itself concerned, without danger to the good order and to the dignity of the government;"

"Considering that every state is interested in the repression of crimes and offenses that may be committed in the ports of its territory, not only by the men of the ship's company of a foreign merchant vessel toward men not forming part of that company, but even by men of the ship's company among themselves whenever the act is of a nature to compromise the tranquility of the port, or the intervention of the local authority is invoked, or the act constitutes a crime by common law (*droit commun*, the law common to all civilized nations), the gravity of which does not permit any nation to leave it unpunished, without impugning its rights of jurisdictional and territorial sovereignty, because that crime is in itself the most manifest as well as the most flagrant violation of the laws which it is the duty of every nation to cause to be respected in all parts of its territory."

1 Ortolan *Diplomatie de la Mer* (4th ed.) 455, 456; Sirey (N.S.) 1859, p. 189.

The judgment of the circuit court is affirmed.