



Marilyn Raia  
San Francisco,  
Shareholder

Direct Dial: 415.352.2721  
Fax: 415.352.2701  
Email Attorney

## Golden Oldies

By Marilyn Raia

Most non-maritime lawyers like to direct the court's attention to the most recent case on a point of law. Most maritime lawyers like to take a different approach. They prefer to direct the court's attention to old cases establishing a point of law that has remained unchanged for decades if not centuries. The suggestion to the court, of course, is to not buck tradition. Maritime case law in the United States includes many "golden oldies" that remain well-cited by maritime attorneys and courts.

### The *Amiable Nancy* and Punitive Damages

Nearly two hundred years ago, in the *Amiable Nancy*, 16 US 546 (1818), the United States Supreme Court first raised the possibility of recovering punitive damages in a maritime case. The *Amiable Nancy* was a Haitian schooner that departed Port Au Prince with a cargo of corn destined to Bermuda. On the way, the vessel encountered weather conditions necessitating a course change to Antigua for refitting. While en route to Antigua, the vessel was boarded and plundered by an armed crew from a private American brig, aptly named *Scourge*. Although the captain of the *Amiable Nancy* displayed papers indicating the vessel was not an enemy vessel, the captain of the *Scourge* took no steps to stop the plundering or the physical harm caused to the *Amiable Nancy's* crew. After several hours of plunder, the *Amiable Nancy* was allowed to proceed to Antigua but without her papers, which had been taken by *Scourge's* crew. When the vessel arrived in Antigua, it was seized and detained because of the lack of papers. Eventually, the owner of the *Amiable Nancy* paid a ransom for the vessel and cargo.

The owner of the *Amiable Nancy* sued the owner of the *Scourge* in federal court. The court awarded damages to the owner of the *Amiable Nancy* as well as to the crew members for their losses and expenses. The court of appeal reversed the judgment on damages issues and re-assessed the recoverable damages. The United States Supreme Court agreed with the court of appeal but added additional items of recoverable damages. The most-cited part of the case however, is the court's comment regarding punitive damages. The court characterized the case as one of "gross and wanton outrage, without any just provocation or excuse." It recognized the owners of the *Scourge* were not to blame because they did not direct or participate in the plunder. However, the court warned that if the action had been against the crew of the *Scourge*, "it might be proper to go yet farther, and visit upon them in the shape of exemplary [punitive] damages, the proper punishment which belongs to such lawless misconduct." Since then, the *Amiable Nancy* has often been relied on as justification for an award of punitive damages in some types of maritime cases.

### The *Pennsylvania* and Presumption of Fault

A presumption of fault arising from the violation of a navigational statute resulting in a collision was fashioned by the United States Supreme Court in the *Pennsylvania*, 86 US 125 (1873). The British sailing vessel *Mary Troop* and the British steamer *Pennsylvania* collided in dense fog on the high seas approximately 200 miles from Sandy Hook, New Jersey. At the time of the collision, the *Mary Troop* was sounding a bell instead of a foghorn, a violation of the rules governing fog signals. Those rules required a sailing ship to use a foghorn when underway in fog, and a bell when not underway in fog. The *Pennsylvania* was traveling in the fog at a speed of 7 knots. Upon hearing the bell from the *Mary Troop*, the *Pennsylvania* made multiple contradictory course changes and collided with the *Mary Troop*, cutting her in two. The *Mary Troop* sank and six crewmembers drowned.



The *Mary Troop's* owner filed a federal court action against the *Pennsylvania* for the loss of the *Mary Troop*. The district court held the *Pennsylvania* solely liable, despite the violation of the navigational rule by the *Mary Troop* based on: 1) evidence the bell could have been heard at a farther distance than the foghorn; and 2) the *Pennsylvania's* speed in the fog. The judgment was affirmed on appeal.

The United States Supreme Court reversed. It held the *Pennsylvania* at fault for its excessive speed in the fog, especially in an area only 200 miles from Sandy Hook where inbound and outbound vessels could reasonably have been expected to be. It also held the *Mary Troop* to have been at fault when ringing a bell instead of blowing a foghorn, which gave a false signal. It held if a vessel at the time of a collision is in violation of a statutory rule intended to prevent collisions, a rebuttable presumption is raised that the violation was at least a contributory, if not the sole cause, of the collision. The burden is then on the violator to show not only the violation might not have been or probably was not a cause of the collision but also the violation could not have been a cause of the collision. It is a difficult, but not impossible, burden.

### **Robins Dry Dock and Economic Damages**

In *Robins Dry Dock & Repair Co. v Flint, et al*, 275 U.S. 303 (1927), the United States Supreme Court fashioned an admiralty rule precluding a person from recovering damages for economic loss due to negligence in the absence of physical damage to his property.

The vessel *Bjornefjord* was under charter to Flint. The vessel was withdrawn from the charter for two weeks to have her bottom cleaned and painted by Robins Dry Dock. During the painting process, a crack was discovered in the propeller. The vessel owner hired Robins Dry Dock to install the spare propeller. During the installation, the spare propeller was negligently dropped. A new propeller had to be cast which took another two weeks.

Flint did not pay charter hire for any of the time the *Bjornefjord* was at Robins Dry Dock. However, he sued the vessel in rem for \$33,069, the estimated loss he incurred from not being able to use the vessel while the new propeller was being cast. The case was dismissed. The court held the vessel owner was not liable to Flint under the charter for the consequences of the negligence of Robins Dry Dock. The vessel owner then entered into a settlement with Robins Dry Dock for its damages and released all other claims.

Flint sued Robins Dry Dock for its loss of use of the vessel for two weeks pending the casting of a new propeller. The district court entered an award in Flint's favor finding it had a property right in the vessel that was affected by Robins Dry Dock's negligence. The Second Circuit affirmed. It reasoned if there had been no charter, the vessel owner would have suffered the entire loss of use and could have recovered that amount from Robins Dry Dock. It further reasoned because Robins Dry Dock had no interest in the charter, it should not benefit from its existence.

The U.S. Supreme Court reversed. It considered whether Flint, as the vessel's charterer, had an interest in the vessel protected by the law against damage caused to it by third parties who had no knowledge of the charter's existence. It concluded Flint did not have such an interest. The court found the contract between the vessel owner and Robins Dry Dock did not impose any obligation on Robins Dry Dock with respect to third parties like Flint. It held the failure of Robins Dry Dock to properly perform its contract was a matter only between it and the vessel owner. It also held a wrong to the property of one man does not make the wrongdoer liable to a third party merely because the injured party was under contract with the third party.



The court rejected the theory that the whole loss resulting from the vessel being out of service for two additional weeks should be split between Flint and the vessel owner. It held "justice does not permit" Robins Dry Dock to be charged with the full loss of use of the vessel unless there is someone who has a claim to that loss of use against Robins Dry Dock. The vessel owner had the claim but had settled with Robins Dry Dock. Under the Robins Dry Dock rule, a person cannot recover for economic losses, such as loss of use of a vessel, unless those damages result from physical damage to property in which he has a proprietary interest.

In more recent times, the Robins Dry Dock rule was applied in *American Petroleum and Transport Inc. v. City of New York*, 737 F.3d 185 (2d Cir. 2013). In that case, the operator of a tug and barge sued the City of New York when a mechanical malfunction on a drawbridge owned by the City, did not allow it to be opened. The tug and barge, which were not damaged, were delayed two and one half days resulting in economic damages of \$28,828.

The District Court dismissed the case based on the Robins Dry Dock rule, i.e. economic losses are not recoverable absent physical damage to property. The Second Circuit affirmed and stated about the Robins Dry Dock rule: "we believe the rule has been so consistently applied in admiralty that it should continue to be applied unless and until altered by Congress or the Supreme Court."

Admiralty lawyers love to cite old cases for a point of law in order to persuade the court to follow a "well-established" rule. Lucky for us, there are many such cases to choose from.