

613 3 2 1 Barratry is any unlawful, fraudulent, or dishonest act of the master or mariners, and every violation of duty by them which arises from gross and culpable negligence contrary to their duty to the vessel owner and which might work loss or injury to him in the course of the voyage insured. Barratry is a covered peril under many marine insurance policies. Smuggling by the crew without the owner's knowledge resulting in arrest of the vessel may be barratry and may be covered by insurance.

In the 1804 case of Suckley v Delafield, the master of the ship, without the owner's knowledge, privately loaded her with 10 barrels of gunpowder and the ship was confiscated by the French government in St. Domingo for importing powder. The court found the conduct of the master was certainly barratry.

In the 1835 case of American Insurance Co v Dunham & Wadsworth, barratry was found as the cause that a vessel and cargo were seized in South America for smuggling. At that time it appears that the customs laws of Colombia absolutely prohibited the importation of tobacco or cigars, both of which were found secreted aboard the vessel. Compare this to the flow of contraband smoking materials between the United States and Colombia in recent times.

In the 1835 case of Mariatiqui, Knight & Co. v Louisiana Ins. Co., a brig was seized and forfeited in New Orleans after acts of barratry were committed by the master or mariners in attempting to smuggle rum and "segars" into New Orleans in violation of the revenue laws of the United States. However, the court ruled that the insurance contract had expired at the time of the seizure and condemnation. The policy provided that the vessel was insured until

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moored for 24 hours in good safety. Although the rum and "segars" were seized by officers immediately on the arrival of the brig, the vessel was not seized until 3 days later. The barratry produced no effect which might be considered as resulting in loss until after the vessel had been moored for more than 24 hours.

In a more recent case, the Court in Whorton v Home Ins. Co. focused upon whether the vessel was insured when the barratry was committed, not whether the vessel was insured when the loss later occurred. If barratry caused the loss, this seems the better rule.

More next week on The Admiralty Docket. Until then, remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing. 613

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