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JETTISONING "CARGO" OR AN INSURANCE SCAM?

The "saga" of the ship Zong and the slaves on board as insurable cargo, in the time of slave trading in the eighteenth century.

In the month of November 1781, the ship "Zong" which belonged to a syndicate of traders from Liverpool, known as the Gresons Syndicate set sail from West Africa bound for Jamaica, carrying a negotiable and valuable cargo – 380 slaves. The Zong was no different or exceptional in the trade which existed at that time. Ships sailed from Western Europe destined for West Africa, carrying mainly ammunition and horses. After the discharge of the cargo, they loaded a further cargo, "fresh" slaves, "harvested" from the fields of Africa. The slave carrying ships then sailed to the shores of America where the cargo of slaves was discharged and cargoes of tobacco, coffee rum, cotton (produced with slave labour) were loaded. These cargoes were then carried on the return voyages to West Africa.

The ships Master (who was "experienced in carrying" cargoes of slaves) and the crew (numbering 39) erred in calculating the direction of the ships voyage to American shores with the result that at end November, and the beginning of December 1781 the Zong was weeks away from the shores of America and the ship was short of both food and water. This meant that the ship's crew had to contend with a situation of 380 hungry and thirsty slaves as a result of which the ships crew decided to contend with the dangers threatening the ship by disposing of part of the cargo, namely by throwing slaves overboard whilst they were bound and shackled.

This was done in stages – the first, on 29 November (26 slaves) the second, on 1 December (42 slaves), the third a few days later (26 slaves). In addition, shortly thereafter, as an act of suicide 10 further slaves jumped into the sea.

The ship eventually reached Jamaica on 22 December 1781 where the remaining 208 slaves were disembarked and sold. The ships name was changed to "Recharde" and sailed for England. On 26 October 1782, the ship's owners, Greson, filed a claim claiming compensation of 30 sterling for each slave who had perished, against the Insurance company which had insured the "cargo". In the Kings Bench Court the presiding Judge instructed the Jury as follows. Was the throwing overboard of the slaves to their deaths a matter of necessity, (in the same manner as horses would have been thrown overboard) and that compensation is not payable if the slaves had died from natural causes, in the same manner that no compensation would be payable for a horse dying of "natural causes" and not from "perils of the sea". In the court of first instance, namely the court preceding the King Bench, the court held in favour of the shipowners and ordered the Insurance Company to pay 3660 – sterling as compensation for the slaves thrown into the sea.

At this stage we shall take a broader look at the "insurance of slaves" in the above era.

At this time "Marine Insurance" had developed so as to cover, "bottomry" or "sea loans" which were given at high interest to cover the financing of a maritime venture where the risk was on the lender and "General Average" where loss was caused in order to save or preserve the ship during the voyage and the loss was borne by the participants in the sea voyage and thirdly, "Perils of the Sea" which is the oldest of the risks covered in a "marine adventure".¹

For example, under a contract of marine insurance, in consideration for the payment of a premium, compensation is provided to the insured for loss occasioned by perils incident to a marine adventure.²

differed in that it allowed for the insurance of human life by another person, to the extent that there was an "economic interest" in preserving life.

Under the Ordonnance de la Marine of 1681, which is regarded as the source of modern maritime law, crew members and passengers were entitled to insure their freedom for purposes of receiving funds in the event of capture and the payment of ransom and the expenses of obtaining their release.

The insurance did not cover life itself, but rather the costs of securing the "release" of the captured person. Accordingly, there was no insurance for loss of life except in the case of slaves.³

death to slaves resulting from illness or shortages of water or food were not insurable, as would also be the case of death caused by a prolongation of the voyage as a consequence of insufficient wind or errors in navigation as insofar as slaves were concerned, their lives were not insured as "goods in transit", as marine insurance does not cover loss resulting from "inherent vice" of the "goods" carried.

The slave trade and their carriage by sea between continents were characterized by substantial risks. In addition to the normal risks of "market changes", the costs of loading and discharging, the need to rely on the crew's ability to "control the cargo" and the special risks relating to slave cargoes, such as resistance and revolt all contributed to the need to insure the "slave cargoes" carried. To illustrate the foregoing, between the 16 and 19 centuries 12.5 million African residents were transferred to the "new" country for the slave trade.

The peak was at the end of the 18 century with Britain dominating the slave trade, having control of 40% thereof between 1761 and 1807 until this trade was banned under English Law.

In 1731, 42% of marine insurance sold by the London Assurance Corporation were described as "cross risks" insurances being those insurances involved in providing cover for the slave trade. It is believed that amongst "Private" insurers the share was far greater take for example the records of a Liverpool trader, William Davenport disclose that 74 "slave voyages" performed between 1757 and 1784 were insured⁴, indicating that the slave trade and the insurance industry



A depiction of the Massacre on the *Zong*

However, insurance cover for loss of life is a relatively new concept. The European approach was to regard human life as a "God Given prerogative". Monetary compensation for the taking of human life or the endangering of human life was regarded as contrary to the philosophy of Roman Law ("hominis libera nulla estimatio"). The English approach

The possibility of insuring the lives of slaves was simply because they had a commercial value and not for any humanitarian reasons.

The legal concept which "accompanied" the "slave trade" was that "slave" ships could be insured for example, against piracy, detention, revolts of slaves, all of which were regarded as "Perils of the Sea", whilst

"fed" each other and contributed to each others growth.

Having regard to the foregoing, it is possible to understand that the judgement in the "Zong" case was not an exception in the slave trade of that time. For example, in the case of Jones vs. Schmol of 1785 the insurers were ordered to pay insurance proceeds for slaves killed in an insurrection on board a ship albeit that the compensation was only for slaves killed or injured directly as a result of the insurrection so that no compensation was payable for those slaves who died as a consequence of drinking sea water or those who hanged themselves or for those who died from mental distress.

In the matter of Rohl v. Parr of 1796, the insurance company was ordered to pay compensation for 49 slaves killed in subduing an insurrection as this number was in excess of 5% of the "insured" cargo and the insurance cover existed under the general average clause in the policy conferring "cover" for the loss of cargo or damage to the ship in order to enable completion of the voyage. The Court recognized "insurrection" as a continuing danger of the slave trade, the concept being that insurrection was an inherent danger to ships engaged in the slave trade in that some 10% of ships engaged in the slave trade experienced uprisings resulting in the loss of some 1% of the cargo and the resulting increased costs of the trade. The ship's crew were under constant threat of insurrection and did their utmost to prevent this from happening. For example, the male

slaves were separated from the women and children, and were held in shackles under deck, as far distant as possible, from the ships armory .

An interesting argument was raised by Judah P. Benjamin, initially a young barrister representing the Merchant insurance company (who subsequently became one of the foremost barristers in England) in a case of 1841. An argument presented by Judah P. Benjamin on behalf of an insurance company he represented



The Slave Ship (1840) by JMW Turner

concerning the voyage of a ship named "Creole" which, was overloaded, departed from its course and experienced an insurrection of its salve cargo and as a consequence "suffered" "a loss of goods".

Benjamin argued (as Shylock did in "The Merchant of Venice") "who is a slave? He is a human being. He has feelings, desires, and an intellect. His heart is like that of a white person, full of love, driven by jealousy, pain and sadness, existing under arrest and indignity, consumed by revenge and never relinquishing the will to be free..., the slave, as a matter of the natural forces of existence – is bound to revolt" ⁵ .

Accordingly, Benjamin further argued that the revolt on the ship was a "natural" consequence, deriving from the "inherent qualities of the slaves themselves" and a slave rebellion is not insured unless it is expressly stated to be so in the insurance policy.

It therefore becomes apparent that the slaves lives as such, were not insured under a marine insurance policy at that time but rather their value as "commodities" and that If there was an insurrection this was the product of their human qualities which was not insured unless specific insurance cover was stated in the insurance policy.

Accordingly, under the marine insurance policies of the time, the lives of the slaves were not insured, but rather their value as "commodities."

Under the marine insurance law of the time, it would have been possible to award compensation to the owners of the slaves who died in an insurrection.

However, in the matter of the "Zong" there was no insurrection. Accordingly, the argument of the Gregsons Syndicate was that in casting the slaves into the sea, the crew were acting to prevent an insurrection during which all crew members would have been killed and this was a "sacrifice" intended to preserve the ship during it's voyage from a "peril" which was a "general average" event covered by insurance. From the crew's perspective as of 29 November, the crew has every reason to suspect an insurrection, having regard to the fact the voyage had already exceeded the time of the intended complete voyage by some three weeks and they were still 10 sailing days away from Jamaica with sufficient

water for only 4 more days and with leaking water tanks. At this time the crew numbered 19 and the slaves 380 namely 34.5 slaves for each crew member.

In the premises, prima facie, the decision of the English court of first instance which "recognized" the "necessity of casting" some of the slaves overboard (in the same manner as if they were horses) for the purposes of preventing a foreseeable hardship (the insurrection of the slaves) could be regarded as being justified and binding on the Insurance Company to honour the insurance policy under which, each item of "cargo" was insured for 30 English pounds.

However, a closer examination of the events gave a different picture. Firstly, the crew did not have to throw the slaves overboard. The crew could have locked up the slaves and left them to their fate until arrival at Jamaica.

Even if the water and food supplies had been consumed. However, if the slaves had died from lack of food, water, illness and depression, as stated above, these were not "insurable" events for which no compensation was payable by the insurers. Those slaves who survived the journey physical condition would have been such that they would not have obtained a reasonable price at the slave market, taking into consideration that the final 10 days of a voyage were intended to improve their physical condition and appearance by providing increased food and oiling their bodies thereby increasing their value. Secondly, it transpired that at the beginning of December between days 6 and 9, rain fell on the ship in a sufficient quantity to replenish the drinking water

supply. Yet nevertheless, the crew threw additional slaves overboard. Thirdly, on 29 November the crew threw 54 women and children into the sea (and not one male as might have been anticipated if there was a threat of insurrection).

Which means that prior to arriving at the discharge port and the intended slave market, the crew "disposed of the women and children who had a lesser value, leaving the men who constituted a greater threat of an insurrection and had a higher commercial value on board. Fourthly, it appears that the ship's "cargo" was in an acceptable condition as the 380 slaves on board were "in good health and condition".

The slaves were cast into the sea without any "selection" or "sorting" process and the picture which emerged was that it was not because of an impending insurrection that the slaves were cast into the sea but an insurance fraud in order to receive a higher insurance payment for those who were murdered as compared to their potential value at the Jamaica slave market.

The most significant fact influencing the change in the Court's decision was the rainfall which occurred at the beginning of December after which the crew cast further slaves into the sea after the danger of insurrection, to the extent that such a danger (if the same existed at all), no longer existed. The jury at the first instance was not aware of the rainfall. Only at the hearing of the

Court of higher instance, the Kings Bench, was the rainfall accepted as a fact. In these circumstances the Insurers contended that the proceedings should be discontinued and a pretrial be ordered in order to ascertain why slaves were cast into the sea on a third occasion one week after the second occasion.

The lack of justification opened the door to the contention that an "insurance scam" was involved. Accordingly, Lord Mansfield ordered a retrial which as far as is known did not take place at all, the result being that the ship owners, the insured, did not



A replica of the ship "Zong" near the London Bridge, 2007

receive payment of any insurance proceeds⁶.

Accordingly, only the greed of crew in casting the slaves into the sea for the third time established the attempt to defraud the insurance company. However, in relation to the first two instances (prior to the rainfall) according to the applicable law at the time, and lacking evidence to prove the fraud in the first two instances, the insurance company would have been obligated to compensate for the 92 slaves cast into the sea in the first two instances.

The matter of the "Zong", the legal proceedings relating thereto and the pointless deaths of the slaves, for the purposes of an insurance fraud, created a public outcry. Opponents of the slave trade demanded the trial of the ship's crew for murder.

However, the Solicitor General opposed this, stating. Is this an instance of human beings being thrown from the ship? This is an instance of livestock or goods. Blacks are goods and property. It would be madness to accuse and to indict honourable providers of services of murder.

This event is similar to a situation where wood has been thrown from the ship⁷.

However, the matter led to the British Parliament enacting laws between 1788 and 1833 which abolished the slave trade in the British Empire and slavery itself.

These Laws included the Regulated Slave Trade act of 1788 (which did not abrogate the slave trade but only limited the number of slaves who could be "loaded" on a ship, depending on its size, the abolition of the Slave trade Act of 1807 (this law abolished slave trading throughout the British Empire and the Slavery Abolition Act, of 1833, which abolished slavery completely.

It is interesting to note that with the abolition of slavery in 1833 in Britain, the British Government established a fund, which at present day values is worth 16-17 Billion Pounds, in order to compensate slave owners on their loss of "property"⁸.

After a number of years slavery was also abolished in the U.S.A. however, the existence and consequences of slavery continue until the present time.

¹ Tim Armstrong, "Slavery, Insurance, and Sacrifice in the Black Atlantic", January 2004.

² E. R. Hardy Ivamy, "Marine Insurance", Second Edition, 1974.

³ Tim Armstrong, "Slavery, Insurance, and Sacrifice in the Black Atlantic", January 2004.

⁴ Robin Person, David Richardson, "Insuring the Transatlantic Slave Trade", The Journal of Economic History", Volume 79, Issue 2, June 2019, pp. 417-446;

⁵ Tim Armstrong, "Slavery, Insurance, and Sacrifice in the Black Atlantic", January 2004.

⁶ Trevor Burnard, "A New Look at the Zong Case of 1783", Crimes et criminels,76/2019, www.journals.openedition.org

⁷ Sean Crossan's Scots Law, a companion blog to Introductory Scots Law (3rd Edition) "When Black lives didn't matter", www.seancrossansscotland.com

⁸ Sean Crossan's Scots Law, a companion blog to Introductory Scots Law (3rd Edition) "When Black lives didn't matter", www.seancrossansscotland.com;

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Contents of the article are only for general information and do not constitute a legal opinion.

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