

THE PACIFIC.<sup>1</sup>

(District Court, W. D. Pennsylvania. February 20, 1885.)

## 1. SEAMEN'S WAGES—LEAVING VESSEL.

A seaman was hired without signing shipping articles on a vessel about to proceed on a voyage from a port in one state to a port in a state not adjoining. *Held*, that he could leave the vessel at any place.

## 2. SAME—REV. ST. §§ 4520, 4523.

Sections 4520 and 4523 of the Revised Statutes of the United States *held* to apply to the hiring of seamen on vessels navigating rivers of the interior states.

## 3. SAME—WAGES NOT FORFEITED.

A seaman left a vessel at a place where a substitute could easily be obtained, and the boat suffered no detriment by reason of his refusal to work. *Held*, not to be such misconduct as would forfeit his wages for the time he performed his duty.

## In Admiralty.

On March 14, 1884, Taylor Harlan, the libellant in this case, was hired by the mate of the steam tow-boat Pacific as a deck hand on said tow-boat while she was lying at the port of Pittsburgh, Pennsylvania, without any shipping articles being signed. The tow-boat Pacific was upwards of 50 tons in burden, and was engaged in navigating the Monongahela and Ohio rivers. At the time of the hiring of libellant nothing was said about the duration of the voyage of the Pacific or the port to which she intended going, but it was understood that Harlan should receive the same rate of pay that other deck hands were getting for similar services. The Pacific made up a tow of coal barges and proceeded down the river to Louisville, Kentucky, where she left her loaded barges, and the same day started back for her home port with three empties. On the twenty-second day of March, 1884, the Pacific arrived at a coaling station called Ludlow, a small town three miles below Covington. Here the mate ordered the watch on deck to carry coal from a flat into the tow-boat. Harlan, the libellant, having, as he testified, sprained his wrist by a fall some weeks previously, refused to obey the mate's order, and said he was going to quit work. The mate referred him to the captain, who told him unless he performed his duty he would forfeit his wages for the entire trip, and on his continued refusal to work ordered him ashore, and threatened to arrest him if he did not leave the boat. The libellant went ashore, and on his arrival at Pittsburgh libeled the Pacific for his wages for the eight days that he had worked on the steam tow-boat. It was admitted that the rate of wages for that trip for deck hands was \$35 a month.

*Albert York Smith*, for libellant, cites, *inter alia*:

Sec. 4520, Rev. St. Every master of any vessel of the burden of 50 tons or upwards, bound from a port in one state to a port in any other than an

<sup>1</sup>From the Pittsburgh Legal Journal.

adjoining state, except vessels of the burden of 75 tons or upward, bound from a port on the Atlantic to a port on the Pacific, or *vice versa*, shall, before he proceeds on such voyage, make an agreement in writing or in print, with every seaman on board such vessel except such as shall be apprentice or servant to himself or owners, declaring the voyage or term of time for which such seaman shall be shipped.

Sec. 4523. All shipments of seamen made contrary to the provisions of any act of congress shall be void; and any seaman so shipped may leave the service at any time, and shall be entitled to recover the highest rate of wages of the port from which the seaman was shipped, or the sum agreed to be given him at his shipment.

When seamen are shipped without signing articles they may leave the service at any time. Desty, Shipp. & Adm. § 184; *Graham v. The Exporter*, 21 Int. Rev. Rec. 110; *The Fremont*, 10 Amer. Law Reg. (N. S.) 340.

Every trivial act of disobedience will not work a forfeiture of wages.

Leaving in a place where the master could easily obtain a substitute is not desertion. Desty, Shipp. & Adm. §§ 181, 184; *The Crusader*, 1 Ware, 437.

*Geo. C. Wilson*, for respondent.

ACHESON, J. I do not see that it can be denied that this case comes within sections 4520 and 4523 of the Revised Statutes. *Graham v. The Exporter*, 21 Int. Rev. Rec. 110; *The City of Fremont*, 2 Biss. 415. Hence the libelant had the right to quit the boat without being chargeable with desertion. *Id.*; *The Crusader*, 1 Ware, 438. Having thus a right to leave the vessel, he is entitled to wages during the time of his actual service, unless he forfeited them by reason of his alleged misconduct. Now he swears that he had sprained his wrist, and that this was his reason for declining to aid in coaling the boat. He should have made this explanation to the mate at the time; but, still, I cannot say his failure to do so should deprive him of his wages. He did state the fact to Capt. Gould before he left finally. The boat suffered no detriment by reason of the libelant's refusal to assist the other hands on this occasion, or by his leaving the vessel at Ludlow; and, upon the whole, I do not perceive upon what just ground his claim for wages can be denied.

Let a decree in favor of the libelant be drawn.

THE CHASCA.<sup>1</sup>

(District Court, S. D. New York. February 11, 1885.)

## SUFFICIENCY OF DUNNAGE—PERIL OF THE SEA.

The bark C., laden with nitrate of soda, in bags, while on a voyage from Pisagua to Hampton Roads, under a charter of affreightment which exempted her from liability for losses from perils of the seas, encountered heavy weather, and was thrown on her beam ends, in which position she lay for about 48 hours. She was finally nearly righted. On arrival she was found badly strained and unseaworthy; and about 200 tons of the soda had been dissolved in washed-out spaces, 30 feet long by about 6 wide, along the bilges on each side, abreast of the main hatch. The dunnage was so placed as to be held in position by the bags only. On arrival, the dunnage along the washed-out places was found to have fallen down. In all the rest of the ship it was in proper place. No specific negligence in respect to the dunnage was alleged in the libel; and no evidence was given of any custom to fasten the side dunnage. The respondents proved that the vessel was dunnaged in the usual manner. *Held*, that the water was admitted through the straining of the vessel when thrown on her beam ends, which dissolved a portion of the cargo, by reason of which the dunnage fell before the pumps could be made effective; and the dissolving of the cargo, after the dunnage was down, continued for the rest of the voyage. *Held, also*, that the weight of proof showed that sufficient open spaces were left by the dunnage to conform to the custom, and that, as the bark was dunnaged in the usual manner at the place of shipment, the court had no right to assume that it was negligence on the part of the bark to rely upon the cargo to keep the dunnage in its place, there being no contrary evidence on that point; that the damage, therefore, resulted from a peril of the sea, and the vessel was not liable.

In Admiralty.

*Sidney Chubb*, for libelants.

*Owen & Gray*, for claimants.

BROWN, J. This libel was filed to recover damages for the non-delivery and loss of about 200 tons of nitrate of soda, part of a cargo of about 900 tons, or 6,546 bags, which were shipped at Pisagua, Chili, on board the bark Chasca, bound for Hampton Roads and orders, in June, 1883. The bark was chartered to the libelants under a charter of affreightment that exempted her from liability for losses by perils of the seas. The question litigated was whether the loss of the nitrate is to be ascribed to perils of the sea, or to insufficient or improper dunnage.

The bark sailed from Pisagua on June 21st. About the middle of July she met with very heavy weather, and a succession of gales, lasting about three weeks. On the nineteenth of July, in a very severe gale, she was thrown upon her beam ends, shifting her cargo between-decks to the port side. She lay in that condition for about 48 hours, in a high sea; after which she wore round so as to be upon her port tack. She was then partially righted by trimming the cargo between-decks, though still having a considerable list to port, which remained

<sup>1</sup> Reported by R. D. & Edward Benedict, Esqs., of the New York bar.