

sight or mistake, before the tobacco was delivered to the steamer. Their position upon the record is a ratification of the conduct of their agents, because they do not attempt to repudiate their acts, but seek to excuse them by a falsehood.

The libelants are entitled to a decree, with costs of this court, and of the district court. Their loss seems to have been estimated in the sum of \$4,669, upon an appraisal made by the underwriters. If a decree for this sum, with interest, is not satisfactory to either party, there will be a reference to a commissioner to assess damages.

---

THE CITY OF MEXICO. (CURTIS and others, intervening, etc.)

(District Court, D. Florida. April 19, 1886.)

1. SEAMEN—WAGES—LEAVING VESSEL—FORFEITURE.

Wages are not liable to forfeiture for leaving a vessel, by direction of a consular agent, on account of a report made by them as to the character of the voyage, and protest against proceeding.

2. SAME—ACTS OF CONSUL.

Seamen cannot be held responsible for the action of a consul when they have truly reported the facts of a case, although the final decision may not sustain his action.

3. SAME—ILLEGAL VOYAGE—KNOWLEDGE OF SEAMEN.

Where seamen have been ignorant of the character of an illegal voyage, and innocent of knowingly participating in the wrong, their wages will be paid, although the vessel may be forfeited.

Forfeiture. Petitioners in person.

*G. Bowne Patterson*, for the City of Mexico.

*L. W. Bethel*, Dist. Atty., for the United States.

LOCKE, J. This vessel being libeled for forfeiture, and in charge of the marshal, and the time for which the crew had shipped having expired, they have intervened by petition for their wages; and, although the main case has not been heard, it is deemed important that the question should be determined without delay.

It is admitted that the petitioners shipped at the dates and the rates of wages alleged, but it is claimed, in defense, that the vessel was proceeding upon a legitimate voyage, and it was but the unfounded timidity and suspicions of the crew that caused them to make such representations to the consul at St. Andrews and give such evidence, as led to the seizure of the vessel. It is also charged that they deserted the ship, and refused to proceed after she had cleared for Kingston, and was about to continue the voyage; that since they left the ship they have rendered no beneficial service to the owners, nor has it been in their power to discharge them, as the master has been under arrest, and the ship in charge of officers of the government.

The evidence shows that the crew, being satisfied by the declarations, conversations, and conduct of the passengers on board, and the control they had over the vessel, that they were engaged in an illegal voyage, made a formal protest to the consular agent at St. Andrews against proceeding, who ordered them ashore, and an investigation was had, under oath, before the consul, which resulted in the crew's being sent on board again, and his advising the seizure of the vessel, which was made, and she brought into port, and libeled for forfeiture. Upon her arrival she was placed in quarantine, where she was detained some time, since which the petitioners have remained on board attending to their regular duties.

The ancient maxim that "freight is the mother of wages" does not hold good to the extent that the pay of the seamen should depend upon the profits of the voyage, nor the benefits arising to the owners. Where the contract of shipment and performance of the service is proven, it is for the claimants of the vessel to show that the wages were never earned, or were forfeited. A desertion, to forfeit wages, must be unjustifiable and inexcusable. It must be a voluntary, intentional abandonment of the vessel, and so adjudged by the master, and entered in the log-book. There appears no such desertion in this case; the leaving of the vessel was upon the advice, and by the direction or order, of the consul. It is the duty of consuls and consular agents to listen to complaints of seamen, and, when they appear reasonable, investigate them, and take such action as the case may demand. After the matter has been fairly submitted to a consul, and the facts truthfully stated, public policy forbids that a seaman should be held responsible by the forfeiture of his wages if, upon a final hearing, the decision of the consul should not be sustained; especially where the vessel is charged with a violation of law in proceeding on an illegal voyage. In order to justify the granting of wages as against a forfeiture, in such a case, the seaman must be ignorant of the character of the voyage, and innocent of any participation in the wrong; and he cannot be held accountable for the positive correctness of his surmises or suspicions before he can make them known to the officer whom it is his duty to inform. In this case the seamen's wages can neither depend upon the earnings of the voyage, nor upon the propriety of the action of the consul and seizing officer, even if the facts should be considered insufficient to justify a forfeiture. The payment of wages must be considered as a portion of the damages necessarily attendant upon the seizure, the settlement of which will depend upon the final determination of the main case. When the seamen are ignorant of the character of the voyage, and innocent of any illegal participation in it, although the vessel may be liable to forfeiture, their wages will be paid in preference to the claim of the government.

Let judgment be entered for the amounts proven.

LEVY, JR., v. CITY OF SHREVEPORT. HACKETT v. SAME. LEONARD v. SAME. HORAN v. SAME. MCWILLIAMS v. SAME. HEROLD v. SAME. BUCKNER v. SAME. GRAGARD v. SAME. FORD v. SAME. CARTER v. SAME. PARSONS v. SAME. ROBINSON v. SAME. HOLMES v. SAME. RIGGS v. SAME. HARRIS v. SAME. HICKS v. SAME.

(Circuit Court, W. D. Louisiana. February 10, 1886.)

1. COURTS—UNITED STATES CIRCUIT COURTS—JURISDICTION—OBLIGATION OF CONTRACTS—CONSTITUTION OF LOUISIANA, ART. 209.

Where the complainants brought suit in the United States circuit court, alleging that article 209 of the Louisiana constitution, limiting municipal taxation for all purposes to 10 mills on the dollar of valuation, rendered it impossible for a city to raise sufficient money by taxation, beyond its alimony, to pay the indebtedness on certain bonds issued before the adoption of said article, and asked the court, therefore, to declare said article null and void, as conflicting with that provision of the constitution of the United States which forbids states from passing laws impairing the obligation of contracts, *held*, that the United States circuit court had not jurisdiction of the case until it had been judicially determined that the complainants had demands which they were entitled to enforce against the city, and that article 209 of the constitution of Louisiana stood in the way of such enforcement.

2. JUDGMENT—METHOD OF ENFORCING FIXED BY LAW—UNITED STATES COURTS.

The methods and remedies for the enforcement of judgments rendered in suits at law in the courts of the United States are fixed by law, and cannot be affected by the opinion of a judge and jury injected into a judgment.

3. UNITED STATES COURTS—JURISDICTION—QUESTION OF.

Where a suit is brought in the circuit court of the United States between citizens of the same state, as a suit "arising under the constitution or laws of the United States," the case must show a question that does arise, or will necessarily arise, under the constitution or laws of the United States, and not one that may or may not arise.

The above cases are submitted to the circuit judge as alike in all particulars, the judgment in one to be the judgment in all, and exceptions and answers and agreed statement of facts are the same in all.

The following is a sample petition, to-wit:

The petition of Simon Levy, a resident of Caddo parish, Louisiana, with respect, represents that the city of Shreveport, a municipal corporation, created by the state of Louisiana, situated in the parish of Caddo, in said state of Louisiana, in the Western district of Louisiana, and within the jurisdiction of this court, is justly indebted to him in the sum of \$1,000, with 8 per cent. per annum interest thereon, from the first day of October, A. D. 1869, until paid, for this, viz.:

On the third day of June, A. D. 1869, the said city, in order to raise means for making improvements upon its streets, wharves, etc., through its council, enacted an ordinance providing for the issuance of 200 bonds of said city, each for the sum of \$1,000, bearing interest at the rate of 8 per cent. per annum, payable to bearer, 10 years after date; and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds; and also for a sinking fund out of which to pay said bonds as they matured,—all of which will be seen, by reference to an authentic copy of said ordinance hereto annexed as part hereof, marked "A." Petitioner avers that thereupon said bonds were engraved, prepared, and signed by officers of said city, in accordance with the requirements of said ordinance.

Petitioner avers, further, that subsequently, and by various ordinances of