

PLATT and others v. THE GEORGIA.¹

(District Court, E. D. New York. November 4, 1887.)

MARITIME LIEN—QUARANTINE COMMISSIONERS—CARE OF SICK SEAMEN.

The services of the quarantine commissioners, in the care and treatment of sick seamen in the quarantine hospitals, are maritime in their character, and the lien of the commissioners on the vessel, arising out of such services, required by state statute, can consequently be enforced by a proceeding in admiralty.

Goodrich, Deady & Goodrich, for libelants.

Sidney Chubb, for claimant.

R. D. Benedict, for libelant in another suit.

BENEDICT, J. This is a proceeding *in rem* against the brig *Georgia*, by certain officers of the state of New York, designated "commissioners of quarantine," to enforce a lien for the care and treatment of some sick members of the crew of that vessel, who, by direction of the health officers of the port of New York, were sent to one of the quarantine hospitals in New York harbor, and there treated and maintained; the vessel having arrived with contagious sickness on board. There is no question as to the facts, and upon the facts a lien upon the vessel in favor of the libelants is created by a provision in the statute of the state of New York. The only question in this case is whether a lien of the character in question, created by the state statute, can be enforced by a proceeding in the admiralty. It can be so enforced if the subject-matter—in this case the services rendered—are maritime in character; otherwise not. I see no reason to doubt the propriety of holding these services to be maritime. They are services rendered in the care and medical treatment of seamen attached to the vessel. The seamen were so cared for and treated by reason of sickness incurred in the course of the voyage. Their care and treatment, therefore, devolved on the vessel by the maritime law; and for that reason their cure by the libelants should be considered a maritime service. Moreover, these particular services were required by the quarantine laws of the state to be rendered before the vessel could be allowed to complete her voyage. Such charges might well be deemed port charges, necessarily incurred by the vessel in the due course of her voyage, and for that reason maritime in their character.

My opinion, therefore, is that the libelants have a lien upon the vessel which may be enforced by this proceeding.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.

THE ROTHEMAY.¹

MORTON v. THE ROTHEMAY.

(District Court, S. D. New York. February 6, 1888.)

SEAMEN—CLAIM FOR WAGES—DESSERTION—CRUEL TREATMENT.

As against libelant's claim for wages, the defense set up was desertion. Libelant claimed that he left the vessel on account of cruel treatment by the master. As the cruelty alleged by libelant rested solely on his own evidence, was denied by the master, mate, and steward, their evidence not being rebutted by libelant, and none of his shipmates being called to corroborate him, *held*, that his claim, resting on such testimony, was too uncertain, and too much open to suspicion as to his good faith, to be allowed, and the libel should be dismissed.

In Admiralty. Libel for wages.

Willis B. Dowd, for libelant.

J. R. Walker, for claimant.

BROWN, J. The libelant sues for a balance of wages due from the British vessel *Rothemay*, on board of which he shipped for three years. On arrival at New York, after being two months abroad, he left the ship, and most of the crew did the same. His wages by the articles were £2 10s., per month. The current rate at New York was \$30. The defense is desertion. The libelant was not regularly discharged. The excuse for leaving is alleged cruel treatment, viz., that he was triced up by the master for a comparatively trifling offense, his hands being handcuffed behind him, a rope rove through, and carried over some skids, and then lifted up so that he rested only upon his toes, causing great suffering.

If the punishment to the extent alleged by the seaman were proved, I should hesitate to regard the case as one of desertion. The captain, mate, and steward, however, all testify that the libelant was not at all lifted up, but stood firmly upon his feet. The steward testified that part of the time he was dancing a jig. The libelant was present when this testimony was given, and had opportunity to deny or rebut it, but did not do so; and his story is not confirmed by any other witnesses among his many companions, who must have been fully cognizant of the facts. After two or three weeks ashore he shipped on board another vessel, presumably at much higher wages. There is too much uncertainty as to the libelant's claim of excessive punishment, resting upon such uncorroborated statements of his own, and too much room for suspicion as to his good faith, in the various circumstances of the case, to warrant a decree in his favor, and the libel must, therefore, be dismissed.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.