

THE ROTHEMAY.<sup>1</sup>

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.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

BANK OF WINONA v. AVERY *et al.*

(District Court, N. D. Mississippi, W. D. December 27, 1887.)

COURTS—FEDERAL JURISDICTION—CITIZENSHIP—ACT OF MARCH 3, 1887.

Where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit may be brought in the district of the residence of either the plaintiff or defendant.

(*Syllabus by the Court.*)

On Motion to Dismiss.

*W. V. Sullivan*, for plaintiff.

*Calhoun & Green*, for defendants.

HILL, J. The question now presented for decision arises upon defendant's motion to dismiss the suit, for want of jurisdiction, as provided in the first section of the act of congress, approved March 3, 1887, amending the act of 1875, in relation to the jurisdiction of the circuit and district courts of the United States as to the district in which suits shall be brought, which section reads as follows as to where suits shall be brought: "No person shall be arrested in one district for trial in another, in any civil action before a circuit or district court, and no civil suit shall be brought before either of said courts, against any person, by any original process or proceeding, in any other district, than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of the plaintiff or defendant." The plaintiff in this action is a citizen and resident of this district, and the defendants are citizens and residents of the state of Louisiana, but sued in this district. This provision of this section has not yet been construed by the supreme court of the United States, which, when done, will settle the question for all the courts. I am not aware of but two decisions of the circuit courts of the United States, so far undertaking to construe this provision, of this section,—the first of which is, the case of *Yuba Co. v. Mining Co.*, 32 Fed. Rep. 183. The opinion in this case was delivered by Judge SAWYER, circuit judge, and concurred in by Justice FIELD, of the supreme court, and Judge SABIN, district judge of California, holding that under this provision of this section of the act of March 3, 1887, suit can only be brought in the district of the residence of the defendant. The other case is that of *Fules v. Railway Co.*, 32 Fed. Rep. 673, decided by Judge SHIRAS, district judge of Iowa, in the circuit court of the Northern district of Iowa. The high regard I entertain for the judicial opinions of the judges who decided the case in California, would cause me to hesitate long before coming to a conclusion differing from them, were it not that I am satisfied they overlooked the last clause of this portion of this section, which, it appears to me, contains an exception, or modification, of the first clause, where the jurisdiction is founded alone upon the fact that parties are citizens