

Case No. 618.

ATKYNS v. BURROWS.

{1 Pet Adm. 244.}<sup>1</sup>

District Court, D. Pennsylvania.

1804.

SEAMEN—WAGES—AUTHORITY OF MASTER TO DISPLACE MATE—ADMIRALTY JURISDICTION—MASTER AS WITNESS.

1. When and for what causes a mate may be displaced by the master.

{Cited in *Sherwood v. McIntosh*, Case No. 12,778; *The Exchange*, Id. 4,594.}

2. Accounts for traffic and dealing between master and mate, not subjects of admiralty jurisdiction.

3. The master is answerable to the owners for damages accruing from the illegal discharge of mariners, and also for extravagant wages given.

{Cited in *The Fortitude*, Case No. 4,953.}

4. Mate may sue for wages in the admiralty court, {and} all rules operating on mariners apply to him.

{Cited in *The Leonidas*, Case No. 8,262.}

5. Master may displace the mate for just and lawful cause; but this cause may be enquired into.

{Cited in *Thompson v. Busch*, Case No. 13,944; *Sherwood v. McIntosh*, Id. 12,778; *Wood v. The Nimrod*, Id. 17,959; *The Exchange*, Id. 4,594.}

6. Mate not being lawfully displaced, and offering to do his proper duty, should have been received; {and,} if a loss accrues when the mate is unlawfully displaced, the master must answer.

{Cited in *Thompson v. Busch*, Case No. 13,944; *Sherwood v. McIntosh*, Id. 12,778; *The Exchange*, Id. 4,594.}

7. Master offered as a witness, and refused. {Cited in *The Trial*, Case No. 14,170.}

In admiralty. The dispute, between the master and the mate, in this cause, was concerning the mate's wages. Process, or a citation was issued against the master and owner. There were accounts of monies and articles of traffic and dealing between the captain and mate, but they were not considered within the jurisdiction of the admiralty, except so far as they were connected with the claim for wages. The master had, a short time before the arrival of the vessel at Philadelphia, the last port of delivery, turned the mate before the mast. The mate insisted on his wages, agreeably to contract. He went on shore at Philadelphia, where the voyage ended, against the captain's orders, to take advice. He returned in a few hours (far under forty-eight) and tendered himself ready to assist in unlading the cargo, as mate. The captain refused to reinstate him in the capacity of mate, and he would not labour as a mariner, in delivering the cargo.

The forfeiture of wages was insisted on—First Because the captain had displaced the mate at sea, for causes of which he was competent to judge, and having legal authority so to do. Second. The mate had gone on shore without the captain's orders and against his directions—He had not assisted to unlade the cargo; and had left the ship before she was unladen, thereby incurring a forfeiture of all his wages, as he was absent without

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leave, and did not return on board, within forty-eight hours, as the act of congress directs. On the first point The causes assigned for displacing were—First. The mate having been found asleep during his watch—the proof was, that the mate, who was lame in one of his feet, was found during the watch, lying for a few minutes on a hencoop. One witness said he was asleep; the other could not be positive, and spoke doubtfully. Second. The mate had disobeyed the orders of the captain at sea; in neglecting to have the jib hauled down, on the approach of a squall, whereby the jib was split The proof on this point was not satisfactory; it appeared that the mate had at first ordered the jib down—afterwards he conceived there would be no necessity for it—but on the squall encreasing he repeated, too late, the orders to haul it down: all this happened in the course of a few minutes.

The captain was offered as a witness, to prove these and other facts, which the mate denied. The judge refused to permit the captain to be sworn; alleging it to have been his practice not to admit such testimony. In this case there appeared much personal animosity; and the contest seemed to lay entirely between the master and mate. The master is answerable to the owners for damages accruing to them by his improper and illegal discharge of mariners, as well as for extravagant wages given to, or injurious contracts made with them. This, he said, was among the reasons inducing him to refuse permitting the master to be examined as a witness, in such controversies. The mate is permitted to sue in the admiralty, as a mariner. All general rules in cases of mariners apply to him. On the several points, the judge declared his opinion, and determined as follows.

BY THE COURT. When I first came into this court, I found it taken for granted, that the captain had a legal right to displace the mate, for just cause. I have seen repeated instances, where the exercise of this power was necessary for the safety of the ship; and I have examined into many cases, wherein it had been executed from arbitrary, capricious, and improper motives. It is established by the maritime laws, and so it ought to be, that the captain must be supreme in the ship. His lawful orders must be obeyed. But when a contract is in question, the law, by its proper courts, will see that it is not vacated, for any other than legal, reasonable and necessary causes. The courts will control and examine the powers and conduct of the master. He is authorized to give all commands for the navigating, government and Safety of the ship; but he has

no authority to nullify a contract at his will, or for light and trifling causes. A contract is a solemn engagement, not to be vacated without the consent of all parties, or on considerations, on which the law must decide through the tribunals established to make such decisions. The mate is a respectable officer in the ship, and generally chosen with the consent of the owners; he is under the orders of the master, in his ordinary duty; but his contract is not subject to arbitrary control. He may forfeit his right to command and wages, by fraudulent, unfaithful, and illegal practices; by gross and repeated negligence, or flagrant, wilful and unjustifiable disobedience; by incapacity, brought on him by his own fault, to perform his duty, or palpable want of skill in his profession. These are very different from the charges alleged, but not satisfactorily proved, in this cause. I do not therefore think that the captain was justifiable in displacing the mate for the causes assigned. The safety of the ship often depends on this officer, who is sometimes more trustworthy and capable than the master; and commonly placed by the owners to encrease the security of their property. In case of the absence, incapacity or death of the captain, the command and responsibility devolve on the mate. [See note at end of case.] The causes of removal should, on all these considerations, be evident, strong and legally important.

The second point depends on the first—the mate tendered himself ready to perform his duty as mate, but the master refused to receive him in that capacity: he was not bound to act in any other station. If any loss accrued to the owners hereby, the master, and not the mate, is responsible. If a common mariner even rebels, disobeys and refuses to do his duty, but repents in time and offers amends, and a return to, and faithful discharge of his duty, the master is bound to receive him. If the master will not so receive and reinstate him, but discharges him, the maritime laws declare that he may follow the ship, and recover his wages for the whole voyage.

I do not think it necessary to determine the point made in this cause, “Whether the mate is, or is not, bound when the voyage is ended, to assist in unlading the cargo?” The mate seems peculiarly charged with this duty (however it may be with the mariners) and he offered to perform the service. I have on many occasions, given my opinion on the subject of the duty of mariners, under similar circumstances with the mate. On the whole, I think wages must be paid agreeably to the contract in the shipping articles.

[NOTE. The footnote (1 Pet. Adm. 247) cites a case in the district court for the district of Pennsylvania to the point that the command and responsibility necessarily fall upon the mate in the absence of the captain. This case is the same as *Anonymous*, Case No. 467a.]

<sup>1</sup> [Reported by Richard Peters, Jr., Esq.]