

Case No. 4,327.

{1 Lowell, 289.}¹

THE EL DORADO.

District Court, D. Massachusetts.

Nov., 1868

LIBEL, FOR WAGES AND LOSS OF CLOTHES.

1. Where the first mate had been drunk two or three times on board the ship, and on the day the vessel was to go from London to Gravesend in his charge to begin her homeward voyage, got drunk and did not join her till the

The EL DORADO.

evening after she had arrived at Gravesend, the master was justified in discharging him.

{Cited in The Garnet, Case No. 5,244.}

2. But the master, having lawfully discharged the mate, was not justified in sending him on shore at night, with no responsible companion, when he was incapable of taking care of himself, if there was ample time to dismiss him in the morning; and must account for the mate's clothes that were lost thereby.

The case was tried in a summary way with no formal pleadings excepting the libel and claim, on the oral evidence of the libellant and the affidavits of the master and second mate. The evidence tended to show that the libellant had been a master of a vessel, but that his habits were not good and he had lost that position, and was taken as first officer on this voyage by a master who was his townsman, as a matter of friendship; and the relations of the parties were always harmonious. The libellant had been drunk on board the ship more than once, and on the day the ship was to go from London to Gravesend under his charge, though with a pilot to direct the navigation, he went on shore to go to the post-office, and did not appear again until the ship was at Gravesend, though the pilot had waited some hours for him. When he did come on board he was very drunk, and the master dismissed him and sent him on shore.

C. G. Thomas, for libellant.

Mr. Hunter, agent of the owners, for claimants.

LOWELL, District Judge. Courts of admiralty are not very severe with seamen who happen to get drunk once or twice, especially if they are off duty. But the first officer has a much higher responsibility than the crew, and must be proportionally careful in his conduct; and if he fails when left in command of the ship, the master is justified in visiting such an offence with a severe punishment. In this case, to discharge the libellant at a port where he could readily obtain employment, or a passage home, does not seem to me too harsh. The wages were paid in full, and no damages for the dismissal are to be recovered.

I hold the master to be wrong in sending the mate on shore at night in a condition in which he was wholly incapable of taking care of himself; for he was quiet, or at least was fully under control and could have been kept in his room, and the vessel was not to sail until the tide should serve in the morning. A master must exercise self-control and even forbearance, and must punish his men in a mode which will work them no unnecessary injury. So far as the clothes are concerned I consider him to have acted at his peril. Decree accordingly.

¹ {Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.}