FIVE SEAMEN v. THE FAIR AMERICAN.

Case No. 4,846.
{Bee, 134.}[1]

District Court, D. South Carolina. Jan., 1799.

SEAMEN ABSENT FROM VESSEL.

Seamen absent from a ship without any fault of their own, are nevertheless entitled to full wages.

{Cited in Hichland v. The Harriet. C. Kerlin, 41 Fed. 224.}

{See Antone v. Hicks, Case No. 493.}

{This was a libel for wages by five seamen of the Fair American against the ship Fair American and her captain.} It appeared in evidence that these seamen shipped on board this vessel on the 3d of September last, in the port of Philadelphia, to go from thence to the Havanna and back. They all received a month's wages in advance. On the 8th of October, they were captured by a French privateer: these men were taken on board, and the captain and two other of the crew left in the prize. The latter, after some time, recovered possession of the Fair American, and brought her into Charleston. {See

Case No. 1,847.} The five seamen were put on board an American vessel, and arrived here in December last. They immediately went to their ship, and have been there ever since, in the regular performance of their duty, as part of the original crew. The voyage having been defeated by the capture, the cargo has been landed here, and the vessel is taking in freight for another voyage.

The question is whether these men are entitled to wages for the time they were absent from the vessel. It is contended that as this vessel was taken before she arrived at her first port of delivery, the seamen lose their wages. Lex Merc. 100. On the other hand the same book has been quoted to show that if a ship be taken, retaken, restored, and afterwards proceed on her voyage, the contract is not determined, and the entire freight becomes due: that wages follow freight and are also due. This is the first case of the kind which I have been called upon to decide, and I have considered it fully. It will not be contended that these seamen are to blame. They were taken from their ship by superior force, returned to it as soon as they could, and have discharged their duty faithfully since. Molloy says (page 240) "that, if a vessel perishes, or is prevented by an enemy from returning, wages are lost; but if she unlades, they are due." No such loss has occurred here. The marine laws of the Hanse Towns declare that if a mariner fall sick and be left on shore, he shall receive his wages as if he had served out the entire voyage: and this appears just, for he was not in fault. Yet in such a case, additional expense is generally incurred by the hire of a substitute. Here, there was none, for all the duty was done by that part of the original crew that was left on board. In Mahoon v. The Glocester {Case No. 8,970} it is decided that seamen of an armed vessel, who were on shore by the captain's order, should, nevertheless, receive a full share of prize-money, though they were on shore when the prize was made; because they were not in fault. The case was fully argued, and the decision confirmed on appeal. That decision seems to conclude the case before me. I am of opinion, however, that as the first voyage was defeated, these seamen are bound to continue with the vessel till the one now in contemplation be ended; and at the same rate of wages. Let them, therefore, receive two thirds of what is due to them; and let the remainder be paid at the next port of delivery.

{NOTE. See Crammer v. The Fair American, Case No. 3,347.}

[1] {Reported by Hon. Thomas Bee, District Judge.}