

Case No. 5,023.  
[1 Spr. 210.]<sup>1</sup>

FOYE v. LECKIE.

District Court, D. Massachusetts.

Jan. 1853.

SEAMEN—PUNISHMENT OF SECOND MATE—IMPRISONMENT.

1. Where a master orders a second mate to slush the masts, or to take in light sails, as a punishment, when no offence has been committed that would justify it, the second mate has a right to refuse obedience.
2. The master has no right to imprison him, for such refusal.

This was a libel for damages, by the second mate, against the master of the bark Ithona.

It appeared that the libellant shipped for a voyage, from Boston to the Mediterranean and back; that when a few days out, the master found fault with the manner in which, he had sewed a rope upon an old sail, and ordered him as punishment, to slush the mast. This order he refused to obey; the master gave him time to reflect, telling him that if he did not obey, he should be put in irons. He then ordered him to go aloft, and take in the top-gallant studding-sail, and furl the royal. This order he also refused to obey. At the time he told the master, that if he would put him forward, he would obey these orders. The master then put him in irons, and he remained in irons, until the arrival of the vessel at Trieste, when he applied for his discharge, and was discharged before the consul, but without wages. While in irons, he was allowed the use of his state-room, and of the quarter-deck, and was set free at meal

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times, and whenever else it was necessary. It was also understood between him and the master, that he could come out of irons, whenever he would promise to perform any seaman's duty that the master might order. These terms he refused to comply with, but was willing to be turned forward.

A number of ship-masters were examined, as experts, as to the extent of the duties of a second mate, in vessels of this size.

J. H. Prince, for libellant.

R. H. Dana, Jr., for respondent.

SPEAGUE, District Judge. It is not necessary to lay down any general rule, fixing the limits of a second mate's duty. Slushing masts and taking in light sails, are parts of a seaman's duty, but not usually assigned to able seamen, if there are light hands on board, and never to a second mate, unless in an exigency, and when all the men are otherwise employed. The experts agree in this. It is argued, that the second mate is a workman on board, and must, at the discretion of the master, do any part of the duty of a seaman, when not in command of a watch. I do not deem it necessary to go into the inquiry, how far the second mate is bound to slush the masts and take in light sails, when ordered to do so, in the fair exercise of the discretion of the master; for in this case, it is plain, that the order was given, not for the performance of a necessary duty, but as a punishment, when there had been no offence which could justify it. The officer had a right to protect himself and his rank. He did not do so by formidable resistance. He submitted quietly to the penalty of his refusal.

I am of opinion, that his imprisonment was wrongful, and that he is entitled to compensation. It appears that the libellant has also instituted criminal proceedings against the master, which are still pending. I shall give no damages beyond the mere indemnity for the wrong done.

Decree for \$100 and costs.

See [Smith v. Jordan](#) [Case No. 13,068]; *The Sarah*, Stu. Adm. 88, 89.

<sup>1</sup> [Reported by F. E. Parker, Esq., assisted by Charles Francis Adams, Jr., Esq., and here reprinted by permission.]