

Case No. 5,037.
[1 Spr. 16.]¹

FRANCIS v. BASSETT.

District Court, D. Massachusetts.

Feb., 1842.

SEAMEN'S" WAGES—FORFEITURE—LEAVING VESSEL BEFORE DISCHARGE OF
CARGO—TIME OF FILING LIBEL.

1. No statute prohibits the filing of any libel within ten days after the discharge of the cargo.
2. Wages are not forfeited by leaving the vessel after the voyage is ended, and before the cargo is unladen.
3. Wages in such case allowed, up to the time of leaving by reason of illness.

In admiralty.

F. W. Sawyer, for libellant

B. F. Hallett, for respondent

SPRAGUE, District Judge.—This is a libel in personam for wages. The first objection by the respondent is,

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that the libel was filed within ten days from the discharge of the cargo. But the statute only prohibits the issuing of process against the vessel within ten days—not the filing of the libel. See *The William Jarvis* [Case No. 17,697].

It is next objected, that here was a desertion, and consequent forfeiture of wages. The vessel arrived in Boston, and was moored in safety on Friday the third day of December last; and sometime during the evening or night of the same day, the libellant left her, and did not return. But a desertion can only be in the course of the voyage, not after its termination. Here the voyage had been ended, by the vessel's being moored in safety in the usual place. *Cloutman v. Tunison* [Case No. 2,907].

It is further insisted, that if there be no forfeiture, there should be a deduction from the wages of the libellant, because he absented himself without leave. The evidence shows that he was suffering from disease, to that extent which should excuse him from the performance of a contract for personal service.

Decree for the libellant for his wages up to the time of leaving the vessel.

NOTE. Whether seamen are bound by the maritime law, in the absence of special stipulations, and of any custom of the port, to perform further duties, in unloading the cargo, after mooring the vessel in safety at her last port of destination, see *Swift v. The Happy Return* [Case No. 13,097]; *The Martha* [Id. 9,144]; *The Mary* [Id. 9,191]; *Granon v. Hartshorne* [Id. 5,689]; *The Eagle* [Id. 4,233]; *Cloutman v. Tunison* [Id. 2,907]. That the seaman's leaving the vessel when she is thus moored, or refusing to perform such duties, does not incur the statute forfeiture for desertion, see cases cited above, and *The Elizabeth Frith* [Id. 4,361].

¹ [Reported by F. B. Parker, Esq., assisted by Charles Francis Adams, Jr., Esq., and here reprinted by permission.]