

Case No. 7,225.  
[Bee, 248.]<sup>1</sup>

JARVIS V. THE CLAIBORNE.

District Court, D. South Carolina.

Jan. 11, 1808.

CORRECTION OF SEAMAN BY CAPTAIN—USE OF DEADLY WEAPONS.

1. Moderate correction on board ship is justifiable; but deadly weapons, such as a cutlass, should only be used when a mutiny exists, or is threatened.

[Cited in *Butler v. McLellan*, Case No. 2,242; *Fuller v. Colby*, Id. 5,149.]

2. A captain who encourages disorderly behaviour in his ship is the less excusable for inflicting unusual punishment for conduct arising, in some measure, out of that disorder.

In admiralty.

BEE, District Judge. Upon a careful consideration of the evidence in this case, there appear to have been great faults on both sides. At the time the fray happened, the whole ship's company seems to have been more or less intoxicated; nothing else could have occasioned the captain and mate to make a ring on board, and permit two men to fight a battle on deck. Such a circumstance is sufficient to account for the insubordination of the crew, who ought rather to have been put in irons until they recovered their sober senses. At any rate nothing could justify Captain. Sherwood in drawing a cutlass; much less in using it to inflict a severe wound upon the actor [John Jarvis], especially as he was then in irons. The law justifies moderate correction, and more than that had previously been inflicted by the mate, with his fist: from his apparent

JARVIS v. The CLAIBORNE.

strength, the blows must have been severe. But the use of a weapon so deadly as a cutlass can be justified only by reasonable apprehension, or the actual existence of mutiny. Nothing of the sort appears here; the actor is charged only with disobedience of the captain's order to go forward; and the tumultuous scene that had so lately occurred on board, under the sanction of the captain himself, might, in a degree, excuse the sailor's inattention, and noncompliance. An attempt was made to prove that the wound was received by an effort to seize the cutlass; but the whole account of the transaction renders this highly improbable; and the confinement in irons of the actor makes it almost impossible. It appears, indeed, both from the evidence and a view of the wounded hand, that the actor will lose three of his fingers.

Upon the whole, I consider the captain as highly blamable in every stage of the business, and I decree accordingly that he pay this sailor one hundred and fifty dollars, with all the expenses of the suit. As to the mate, I shall not adjudge damages against him, as he punished only with his fist. Moderate correction is often necessary towards seamen; the fist is generally used for the purpose of inflicting it; and bad consequences seldom follow. I have however, known one instance in which a blow with the fist occasioned death.

<sup>1</sup> [Reported by Hon. Thomas Bee, District Judge.]