JAY v. ALLEN et al.

Case No. 7,235.
{1 Spr. 130.}[1]

District Court, D. Massachusetts. March 13, 1846.[2]

SEAMEN—LIMITATIONS IN ADMIRALTY—EMBEZZLEMENT BY MASTER—LIABILITY OF OWNERS—INTEREST—"WHALING" SHIP.

1. Statute of limitations, or stale claim in the admiralty.

{Cited in Smith v. Sturgis, Case No. 13,111; Southard v. Brady, 36 Fed. 562.}

2. In the whaling business, the owner is bound to provide a suitable vessel to bring home the oil.

3. If a whaling ship be condemned, and sold abroad, and the master sells the oil and embezzles the proceeds the owners are liable to the seamen for their lay.

{Cited in The Antelope, Case No. 484.}

4. From what time interest will be allowed.

This was a libel promoted by the mate of the ship Victoria, against her owners, claiming $2,103.37 as his lay or share of the earnings of a whaling voyage. It appeared that the Victoria sailed from New Bedford in 1836; in July, 1838, she had taken 1700 barrels of oil, and at that date was condemned and sold at the island of Tahiti. The master shipped home to the respondents, 15,235 gallons of oil, which they sold for $15,749.10. The proceeds of the remainder of the cargo were fraudulently converted by the master to his own use. The libellant was discharged on the 19th of January, 1838, at which time, as he alleged, the vessel had taken 1250 barrels of oil, and he now claimed his full lay up to the time of his discharge; amounting to one twenty-eighth of the whole amount then taken. The respondents insisted that more than six years had elapsed since the claim accrued; that the libellant had not been discharged, but had deserted; and that they were responsible only for the proceeds of the oil which came to their hands. There was evidence, however, of a correspondence between the parties on the subject of the claim, in the year 1837; and the allegation of desertion was not supported by evidence.

F. C. Crowningshield, for libellant.

T. G. Coffin, for respondents.

SPRAGUE, District Judge. The first question is, whether this is a stale claim. The last communication proved to have taken place between the owners and the libellant, in relation thereto, was in October, 1839. This libel was filed within six years therefrom, viz., in May, 1845. The last letter from the respondents' attorney requests the libellant to wait for the adjustment of his share, until the insurance had been settled. At what time the insurance was settled, or abandoned, does not appear.

It is generally true, that "courts of admiralty, like courts of equity, govern themselves in the maintenance of suits, by the analogy of common law limitations." The acknowledg-

ment made by the correspondence would be sufficient to take the case out of the statute at common law. Brown v. Jones [Case No. 2,017]; Willard v. Dorr [Id. 17,679]; The Rebecca, 5 C. Rob. Adm. 102; The Sarah Ann [Case No. 12,342].

It is further urged, that the delay of the libellant in enforcing his claim, may have deprived the respondents of the means of proving that he was incompetent, or had deserted; it is not, however, even alleged that he was incompetent, and it is not proved that he deserted; and no such presumption of desertion can arise, any more than of payment.

It is not, therefore, to be deemed a stale claim. In regard to the other defence set up by the respondents, it appears that 1250 barrels of oil had been taken before the libellant was discharged, and the ship was afterwards condemned at Tahiti, as unseaworthy. A small part of the oil was sent home by another vessel, the residue sold by the captain, and the proceeds fraudulently appropriated to his own use.

The question is, whether the owners are responsible to the libellant, for his share of the oil sold by the captain. By the shipping articles, the contract is made between the libellant, as one party, and the master and owners. The seaman never had any ownership of the oil. The amount of his compensation was to depend upon the quantity taken; and payment was to be made as soon after the arrival of the vessel at her home-port, as the oil could be sold, and an adjustment made.

The respondents were bound to furnish a seaworthy ship to take and bring home the oil, and they were in default in not doing so. Upon the condemnation of the vessel, the custody and care of the oil devolved upon the master, who must be deemed the agent

of the owners; the seamen having had no power to appoint, or remove a master, or to prevent his disposing of the oil. It was the duty of the master, as agent of the owners, to send it home, free of expense to the mariners, and as this was not done, the libellant is entitled to recover the same share, as if it had been. Baxter v. Rodman, 3 Pick. 439; Bishop v. Shepherd, 23 Pick. 494; Abb. Shipp. 606, note; The Frederick, 5 C. Rob. Adm. 8; Wilkinson v. Frasier, 4 Esp. 182.

A superficial view of the shipping articles, has sometimes created the impression, that there is a partnership between the mariners and owners; but that notion has long since been corrected by the courts. The contract clearly gives no ownership of the oil to the seamen. It is to be brought home, delivered to the owner, sold by him, the accounts adjusted, and then the seaman has a right to a certain share of the money, as compensation for his services. In this mode, the amount of his wages is ascertained. It is true, his right to them is contingent upon success, and so also it is in the merchant service, to the true extent of the maxim, "that freight is the mother of wages." The relation in which the crew stand to the owners in the whaling business, is that of seamen to their employers. They have no voice in the appointment of their officers, or the conduct of the voyage, and are bound to implicit obedience. They are liable for desertion, or other neglect or violation of duty, to the same punishment and penalties as other seamen. This being the relation which has been established between them and the owners, while they are subjected to its evils, they ought to be entitled to its benefits; and the master should no more be deemed their agent, when he sells the oil which they have taken, and squanders the proceeds, than when he embezzles the freight-money, which he has received in the merchant service. His neglect to preserve and send home the oil is the neglect of the owner, so far, at least, as the mariners are concerned.

As to interest, it is to be allowed after sufficient time had elapsed for the arrival of the oil and sale thereof, and adjustment of the voyage, and after demand made by the libellant Decree for the libellant with costs.

{This decree was affirmed by the circuit court on appeal. Case No. 7,552.}

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

[2] {Affirmed in Case No. 7,552.}