

Case No. 7,358.

THE JOHN MARTIN.

{Brown, Adm. 149.}<sup>1</sup>

District Court, E. D. Michigan.

May, 1866.

WAGES—AUTHORITY OF ENGINEER—FORFEITURE.

The engineer of a steamboat has no authority to make any alteration in the engine at the home port without the consent of the owner, and his conduct in so doing will work a forfeiture of his wages.

{See *The Almatia*, Case No. 254.}

Libel in personam for wages as engineer upon the tug *John Martin*, then employed in towing vessels upon Detroit and St. Clair rivers. Answer that libellant, without the knowledge or consent of the master or owner, removed certain portions of the engine and machinery from the tug, and greatly damaged the same, whereby the tug was delayed at Detroit for two days, and respondent suffered damage to a greater amount than the wages claimed to be due. It appeared upon the trial that libellant, who was an experienced engineer, was dissatisfied with the construction of the engine in some minor particulars, and suggested to the master a change in the cut-off quadrant, and reversing lever that would render the engine safer and more manageable. The master did not give an express assent to the alteration, but made an evasive answer which libellant construed as an acquiescence. On arriving at Detroit, the home port of the tug and the residence of respondent, the boiler was found to need some slight repairs, and libellant, without consulting the owner, seized the occasion to make the alterations he had suggested, took apart certain portions of the engine, carried them to a founder, and was superintending the work when he was discovered by the owner and discharged. The tug was delayed more than a day, and lost a valuable tow.

H. B. Brown, for libellant, contended that if the alteration was made in good faith, with the design of improving the engine, and libellant used reasonable skill, he ought not to be subjected to a forfeiture of his wages because he had failed to obtain the authority of the owner; citing 2 Hil. Torts, 473; Story, Bailm. §§ 429, 431, 433, 440.

W. A. Moore, for respondent.

WILKINS, District Judge. I was satisfied at the close of the proofs that this libel ought to be dismissed, but the lucid argument of the proctor for libellant induced me to withhold a decree until further deliberation. I believe fully the testimony of the respondent Pridgeon as to the rate at which libellant was employed as engineer of his tug, and also as to his loss incurred by libellant's unauthorized conduct in disabling the vessel by undertaking to remodel the engine at the

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home port, without the consent of the owner, who was personally present when the vessel reached the wharf. The engineer's conduct was unexcusable, and at the season and under the circumstances occasioned damage more than the amount of wages due.

In navigating a steamboat, the engineer commands and controls his own department, but this power cannot be extended beyond the voyage. When that terminates his power ceases, except so far as is necessary for repairing the engine and making ready for another voyage. He has no authority to remodel the engine without the consent of the owner. That consent was not obtained in this case, and the act of the engineer was one of gross insubordination—working a forfeiture of his wages. Libel dismissed.

{See Case No. 7,357.}

<sup>1</sup> {Reported by Hon. Henry B. Brown, District Judge, and here reprinted by permission.}