JOHNSON v. HUCKINS.

Case No. 7,390.

{1 Spr. 67;[1] 6 Law Rep. 311.}

District Court, D. Massachusetts. Oct., 1843.

SEAMEN—WAGES—SICKNESS—SUBSTITUTE.

1. A seaman, during illness occasioned by his own fault, is not entitled to wages, and is liable for the expenses of his subsistence; but not for the wages paid another man in his place.

{Cited in The Ben Flint, Case No. 1,299.}

2. If the amount necessarily paid to a substitute during the seaman's illness, exceed the latter's wages for the same time, quaere, whether the excess can be charged to the seaman?

3. In such case a seaman cannot be charged with the detention of the vessel for want of his services, it being in the power of the master to obtain a substitute, and thus prevent delay.

{Cited in Patten v. Darling, Case No. 10,812.}

This was a libel for wages, promoted by a seaman of the bark Bevis against the owner. The main question was, what deduction should be made from the wages of a seaman, in consequence of an illness incurred by his own fault. The libellant admitted such an illness, and that he was not entitled to wages during the fourteen days he was off duty, on that account; claiming a balance of $71. He produced evidence to show that the medical expenses were paid by himself, that his diet during sickness was by preference mainly furnished by himself, and that he had no especial attendant. The respondent claimed, by way of set-off to the wages due, board and attendance on board the vessel; cash paid for services of an extra man hired during part of the fourteen days the libellant was off duty; loss of time by the vessel during the remainder of those days, and delay in consequence, estimated according to what would be the per diem of a substitute at Bordeaux, where the vessel then was; {thirty days' wages of an additional man shipped at Bordeaux on the ground that he was so shipped in apprehension of the libellant's continued inability to do duty; and that the libellant, after being put upon duty, was not in a condition to do it fully, for that length of time;}[2] making a balance of $46.69. He produced evidence to show that the libellant might have had his diet from the ship-stores, and sometimes did; that he received some attendance; that for about thirty days after he was again put on duty, full duty was not always required of him.

E. T. Dana, for libellant.

W. I. Bowditch, for respondent.

SPRAGUE, District Judge. In case of illness by his own fault, a seaman is not entitled to his wages during the time he does not do duty; and subsistence, during the same time, may be charged to him. The libellant has deducted the former. As to the subsistence, he was lodged on board, and was furnished with some attendance and diet, and it is admitted there was no disposition to withhold them. Something should be allowed therefor.

The money paid a substitute, during a part of the time the libellant was off duty, cannot be charged to him—his wages for the same period being already deducted. Neither can the claim for delay, by reason of the loss of his services, during the remainder of that time. No actual detention is shown, and it would be the duty of a master to prevent such delay, by a supply of the requisite services. If the cost of a substitute should amount to more than the deducted wages of the sick seaman, whether the excess could be charged to him, is a point not necessary to be decided.

{In regard to the charge to the libellant of the additional seaman's wages, (that is, deducting his own, in effect,) for the thirty days after he was again on duty, on the ground that this duty was not required of him to the full, the court is not prepared to sustain that charge. The evidence too, of the fact, does not go far, and there is counter evidence.}[2]

Decree for the libellant, $66.84 with costs.

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

[2] {From 6 Law Rep. 311.}