JOHNSON v. SIMS.

Case No. 7,413.
{1 Pet. Adm. 215.}[1]

District Court, D. Pennsylvania. 1800.

WAGES—SHIPPING ARTICLES—CONSTRUCTION.

Construction of an agreement in the shipping articles that no wages shall be paid to the seamen until the return of the vessel to the port of outfit

{Cited in Bronde v. Haven, Case No. 1,924; Pitman v. Hooper, Id. 11,186; The Rajah, Id. 11,538; The General Chamberlain, Id. 5,310.}

The libellant {Daniel Johnson} claimed wages as a mariner on board the brigantine Lady Walterstorff[2] {Joseph Sims, owner}. The vessel sailed from Philadelphia for Surinam, but was prevented from entering her port of destination, it being blockaded. She proceeded to Demarara, and unloaded a great part of her cargo. With the residue she was returning to the port of Philadelphia, and was captured by the French. The libellant signed articles to go a voyage to "Surinam and at and from thence back to the port of Philadelphia, or to any port in Europe," etc. In these articles it was agreed, "that no officer or seaman belonging to the said ship shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above mentioned port of discharge in Philadelphia." It appeared that the articles were read to the libellant, who was left to put his own interpretation upon them; though the captain said, he understood them so, that if the ship did not arrive in Philadelphia, no wages were to be paid. What was the understanding of the mariner on this subject, did not appear. It was therefore left to be gathered from the clause, how far it affected his present claim. It was contended, on the one part, that the mariner was entitled to his wages to the port of delivery at Demarara, and for half the time the ship stayed there—That this is settled law in common cases. But the question made on the other side was,—Whether the clause before recited

did not take this out of the common cases, and defeat his claim entirely, as the ship never arrived at Philadelphia.

PETERS, District Judge. There is no doubt but that the agreement of parties may control the general operation of law. But this agreement must be clear, and incapable of doubtful import. I will never decree a forfeiture, or loss of wages, unless the law or agreement of parties is fully and clearly, both in expression and import, against the claim. It does not appear in this case that more than the usual wages were agreed to be paid to the mariner, though the clause in question is out of the common course. There is no dispute, in this cause about the wages accruing after the vessel departed for Demarara. The capture occasioned the loss to the mariner of such wages. In the act of congress "for the government and regulation of seamen in the merchant's service" [1 Stat, 131], printed at large on the back of the articles signed by the mariner, the libellant in this cause (section 6), it is enacted "that every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong, one-third part of the wages which shall be due to him, at every port where such ship or vessel shall unlade and deliver her cargo, before the voyage be ended, unless the contrary be expressly stipulated in the contract."

In this case it is stipulated to the contrary: but I am of opinion that the clause in the articles relied on by the counsel for the owner of the ship, ought not to be extended farther than a stipulation, not to be entitled to demand or to receive the wages, or any part thereof, at the foreign port of delivery. The amount of the wages due at Demarara, must be considered to be, "debitum in presenti, solvendum in futuro." The stipulation does not alter the substance of the contract,[3] or the operation of law, but merely as it regards the time and place of payment. I do not consider the agreement, not to demand or receive wages until the arrival of the ship at Philadelphia, to be a contract that the risk shall be insured, or the arrival guaranteed, by the mariner. It is an agreement that such wages, as were legally due at a foreign port, should be paid only in Philadelphia. The period of payment was to be fixed by the arrival and discharge at Philadelphia, in a common course of events. But the arrival at that place was prevented by a casualty, not under the control of the mariner. It is no matter whether this casualty had been wreck, or what it was, capture. I am, under all the circumstances of this case, of opinion, and I adjudge, order and decree, that the owner of the brigantine Lady Walterstorff, pay to the libellant the wages due at the port of Demarara, and for half the time the vessel stayed at that port. And I do order and direct, that the clerk of this court adjust and report the quantum of wages, to the end that the amount of wages so adjusted and reported, be paid to the mariner, the libellant in this cause, with costs.

[1] {Reported by Richard Peters, Jr., Esq.}

[2] When this and several other cases were determined, capture by the French and condemnation were synonymous. The one and the other, in effect, were the same.

[3] See 2 Vern. 727.