

Case No. 7,497. JONES ET AL. V. SMITH ET AL.
[Brunner, Col. Cas. 255;¹ 4 Hall, Law J. 276; 5 Hughes, 40.]

Circuit Court, D. Maryland.

May Term, 1812.

SHIPPING ARTICLES—CONSTRUCTION OF CONTRACT—CAPTURE OF
VESSEL—SEAMEN'S RIGHTS TO WAGES.

1. Where shipping articles provided that a vessel should proceed to Batavia, and thence

if required to ports beyond the Cape of Good Hope, *held*, that an extension of the voyage to Japan does not violate those articles.

2. Where a vessel after unloading at one port proceeds thence and is captured, the seamen are entitled to wages to the time of unloading at such port.

[Cited in *Bronde v. Haven*, Case No. 1,924; *Pitman v. Hooper*, Id. 11,186.]

Libel for seamen's wages. The libelants were shipped in December, 1807, on board the ship *Rebecca*, for a voyage from Baltimore to Batavia, and thence, if required, to one or more ports beyond the Cape of Good Hope, and back to Baltimore. On the 18th of May, 1808, the vessel arrived at Batavia, and completed her unloading 3d June. On the 27th April, 1809, she sailed thence for Japan, in the employment of the Dutch government. On the 24th May she was captured by the British and sent to Bombay, where she was condemned, on the 3d January, 1810, as being Dutch property, and as infringing the orders in council for the prevention of trade in enemies' ports. There were three descriptions of claimants: 1st. The administrators of seamen who died at Batavia. 2d. Those who died after leaving Japan and before the capture. 3d. Those who returned to Baltimore.

Scott, Brice, and Harper, for libelants.

It is true that where a voyage is broken up the seamen lose their wages; but this is a principle of law which should apply to them with as little rigor as possible. When a voyage is divisible into many parts, the seamen are entitled to each part as soon as it is performed. That part is an entire voyage, though a loss may happen afterwards. This is a mitigation of the former rule, by which seamen were made insurers of the voyage. In contracts of freight, if the charterer does any act by which the goods or vessel are lost, he must nevertheless pay the whole freight. So in insurance, if a deviation be committed the insurer is discharged. In this case, the long delay at Batavia was a deviation, and consequently a termination of the first voyage. What reason was there for such a delay? If the seamen could be kept there one year, their articles would hold them there half a century, or any indefinite term. Batavia was held out as the chief port, the terminus ad quem; and the ports "from thence" were to be visited in continuation of that voyage. The voyage to Japan was a new voyage, and entirely out of the usual course of business. The taking on board a Dutch governor and Dutch property was an increase of the peril, because it subjected the vessel to suspicion and condemnation, and it would be very unreasonable to make the seamen incur a hazard which was never communicated to them.

Purviance & Pinkney, for respondents.

The whole contract respecting bills of exchange arises from legal implication; not a word is inserted by legal implication. So it is in the mariner's contract; every seaman knows what his contract binds him to do. It is immaterial if he is ignorant of his duty, for the law will not believe him. What benefit has the owner derived if the mariner perform but a part of the voyage. Here the owners lost the whole voyage, and the court is called upon to apportion the contract. The vessel was at Batavia during the operation of the em-

bargo, and the seamen subsisted at the expense of the owners. If the seamen had been brought home they would have been idle. The law of insurance may safely be allowed to apply to this case. The stay at Batavia was not only reasonable but absolutely necessary, by reason of the embargo. It is absurd to contend that seamen are entitled to know what shall be the operations of a voyage. Such a doctrine is practically pernicious to the state, and destructive of all commercial enterprise. If the sailing from Batavia be a new contract, where is it? Whether that new contract arise from implication or record is immaterial; for that voyage, if it be called a new voyage, was entirely broken up by the capture.

DUVAL, Circuit Justice. This is a case depending on the terms of the shipping article. The voyage was to commence at Baltimore, and proceed to Batavia; thence, if required, to one or more ports beyond the Cape of Good Hope, and back to Baltimore. The terms of the articles are plain, and must have been clearly understood by the parties. There is a difference of opinion as to the effect of the voyage from Baltimore to Batavia; the difference commences there. On the one hand, it has been contended that the extension of the voyage to Japan was not justified by the articles, and that the ship was engaged in an unlawful commerce; on the other, that it was in pursuance of the terms of the articles, and that that commerce was lawful. The court have no doubt on this point. It appears to them to be within the letter and spirit of the shipping articles, and that there was nothing in the voyage repugnant to the principles of neutral rights. The condemnation at Bombay under the orders in council cannot be regarded by this court. This court denies the legality of the orders in council, which are founded on the prostration of the principles of neutral rights and in their decisions they will respect only the general law of nations.

The only question about which a doubt can arise is, as to the time when the claim of the mariners for wages, whilst at Batavia, shall cease. The court think it a case in which they ought to exercise a discretion, more particularly as the vessel waited at Batavia for some time for instructions. They are of opinion, and so order, adjudge, and decree, that the mariners be paid to an

intermediate day between the 3d day of June, 1808, the time when the vessel was unladen, and the 27th April, 1809, the time of her sailing from Batavia, that is to say, until the 15th November, 1808. That the representatives of the mariners who died before that day receive wages until the time of their decease; and of them who died afterwards, receive in common with the survivors, until the 15th November, 1808.

NOTE. Seamen's Wages—When Deemed to be Earned. See *Pitman v. Hooper* [Case No. 11,186], approving above case; and *Bronde v. Haven* [Id. 1,924], criticising the same.

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]