

Case No. 8,468.
[6 Ben. 142.]¹

THE LOLA.

District Court, E. D. New York.

June, 1872.

SEAMAN'S WAGES—AGREEMENT OUTSIDE THE SHIPPING ARTICLES—DURESS.

1. The shipping articles are not conclusive evidence of the contract of a sailor with the ship.
2. Effect must be given to an agreement by the shipping agent, made at the time the sailor signed the articles, and understood by the sailor to form part of the agreement, but not embraced in the articles.
3. A seaman signed articles in New York, on board a British vessel, for a voyage to Dunkirk, at \$40 a month. At the time, it was stated to him that the voyage would end in New York. On the arrival of the vessel at Dunkirk, the seaman was discharged and reshipped at \$20 a month. On the return of the vessel to New York, he left her, and brought suit for his wages: *Held*, that the agreement by the seaman was that the voyage should end in New York; that the subsequent agreements made by him, were made under duress, and were not binding on him; that he had the right to leave the vessel on her return to New York, and was entitled to be paid at the rate of \$40 a month.

The libellant in this case alleged that he shipped on board the *Lola*, in New York, at the rate of \$40 a month, for a voyage to a port in Great Britain, thence to a port in the Mediterranean, and back to New York; that the vessel sailed from New York to Dunkirk, in France, where the master wrongfully discharged him, but offered to reship him for \$20 a month, which he accepted under duress; that the vessel sailed from Dunkirk to Swansea, where he signed articles at \$20 a month, and after he had signed them learned that they were articles for a voyage to New York, and back to a

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port in Europe; and that the vessel then came to New York, and there the libellant left her, the voyage for which he originally shipped being completed. And the libellant claimed to recover wages at \$40 a month, for the voyage. The owners of the ship denied the agreement first alleged, and set up that the libellant shipped in New York, and signed articles for a voyage to Dunkirk only, and was there paid off, and discharged, and re-shipped and made the other agreements alleged by him, and that his leaving the ship in New York, where he did, was a desertion, which forfeited all wages due him.

Henry Morris, for libellant.

Goodrich & Wheeler, for claimants.

BENEDICT, District Judge. I have no doubt as to the proper decision to render in this case. The question to be determined first, is, what was the contract made by the libellant, when he shipped in New York. The shipping articles are not the sole evidence of that contract, for effect must be given to an agreement by the shipping agent, made at the time when the articles were signed, and understood by the seamen to form part of the contract, where such agreement is clearly proved. Statements, representations and agreements made with seamen by shipping notaries, when the articles are signed, bind the ship, and that without reference to the instructions which the captain has given the notary. When the ship owner allows a shipping agent to employ a crew for him, he holds out to the seamen, that the shipping agent has authority to bind the ship by the contract which he makes. So, whatever was the bargain made in this case, between Ferris, the shipping agent, and this man, at the time of the shipment in New York, that binds the ship.

Now that bargain is proved not only by the libellant, but also by the landlord. They both say that the bargain was that he should go on a voyage, which they describe, which voyage was to end in New York, and at \$40 a month wages. I see no reason to doubt this evidence. The landlord has been examined in court, and appears reliable, and says that he asked the shipping agent himself what the voyage was, and was told that it ended in New York, in which the landlord simply did his duty by the sailor. This contract is not denied by Ferris, the shipping master, who gave his evidence with very proper frankness. He says that he don't recollect what he did say, and cannot swear that he didn't make the contract which the libellant swears to. There is no improbability in the statement of such a contract, because Ferris says such understandings were common in this class of vessels. There would be improbability in any other understanding, because this man had a family here, and he had shipped several times out of this port, and would not be very likely to make a contract to be left in a foreign and strange port. The rate of wages is consistent with the libellant's story, for although cooks were shipped at thirty-five dollars a month, yet it is quite clear from Ferris' statement that they were shipped at from \$35 to \$40, and this man got \$40. That the agreement was as the libellant states, is further clearly indicat-

ed by the way the man acted when the captain proposed to discharge him in France. He was quite excited about it, and cried, and applied to the mate to induce the captain not to leave him there. It is manifest that when he shipped he never thought of being left in that place.

The talk about incompetency in the case amounts to nothing. The captain took the man through the whole voyage as cook and steward, and offers no proof of any neglect of his duties. The captain says he did not like him—and quite likely he did not like him as well at \$40 a month as he would have at \$20. He was satisfied with him at that rate. It is said the man expressed himself as thankful to continue in the ship at the reduced wages. Of course he was, because the captain had threatened to use the power which he possessed, to leave him behind in a strange place, and he, of course, made no subsequent complaint, and when asked, signed new articles at \$20 a month, without objection.

But these subsequent articles amount to nothing. They were all executed under duress in law, and do not bind the seaman. The contract which he made when he shipped for the voyage which he performed is the only contract binding upon him; and when he completed that voyage in New York he had a right to leave the ship and demand his wages, at the rate which I find upon the evidence the ship agreed to pay him, namely, \$40 a month.

Let there be a decree for the libellant for the wages at \$40 a month, less any payments made to him.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]