16FED.CAS.—60

Case No. 9,190.

THE MARY.

[1 Spr. 204.][1]

District Court, D. Massachusetts. July, 1852.

SEAMEN'S WAGES—COASTING LICENSE—ILLEGAL VOYAGE—RIGHT TO RECOVER—KNOWLEDGE OF SHIP'S PAPERS.

1. Seamen on board of a small vessel, under a coasting license, employed in collecting and taking paving stones from Marshfield and Scituate beaches, and conveying them to Boston, the whole passage being within the ebb and flow of the tide, have a lien upon the vessel for their wages.

[Cited in The Buffalo, Case No. 2,111. Distinguished in Raft of Cypress Logs, Id. 11,527. Cited in The Minna, 11 Fed. 760.]

[See The Charles P. Perry, Case No. 2,616.]

2. If a vessel is engaged in the coasting trade, without a license, and that fact is not known to a seaman, it does not affect his right to wages. It is not incumbent upon a seaman to examine the vessel's papers, to see if the voyage be legal.

[Cited in The Norfolk, Case No. 10,297.]

This was a libel promoted by David Downing and others, of the crew of the schooner Mary, in a cause of subtraction of wages. It appeared that the vessel was employed in bringing paving-stones from Scituate and Marshfield beaches, to Boston, and the libellants were employed in loading the vessel with the stones, at the various places where they were obtained, navigating the vessel to Boston, and unloading her. The schooner had a coasting license, which expired on the 14th April, 1852; after which, and before the renewal of the license, she made one trip to Scituate. The claim of the libellants was for services on that trip. It was insisted in the defence, that the services of the libellants were not properly maritime, the compensation for which creates a lien upon the vessel; that the trip made after the expiration of the license, was illegal, and that no wages could be recovered for services on an illegal voyage.

H. C. Hutchins, for libellants.

R. H. Dana, Jr., for respondents.

SPRAGUE, District Judge. The first ground of defence is, that the services of the libellants were not maritime. In the supreme court of the United States, in the case of The Jefferson, 10 Wheat. [23 U. S.] 428, it was decided that the services must be rendered upon a vessel whose passages were upon the high seas, or within the ebb and flow of the tide. Judge Hopkinson, in the case of Thackarey v. The Farmer of Salem [Case No. 13,852], a vessel under fifty tons burden, the business of which consisted in going across the river, about two miles, for wood, the passage seldom occupying more than an hour, held that the admiralty had no jurisdiction. The same judge sustained the jurisdiction in the case of a vessel plying between Philadelphia and Smyrna, in Delaware, entirely a riv-

er navigation, but within the ebb and flow of the tide. Smith v. The Pekin {Id. 13,090}; Wilson v. The Ohio {Id. 17,825}. In Packard v. The Louisa {Id. 10,652} a small vessel carried stones from Quincy to Boston, and the men on board not only loaded and unloaded them, but assisted, also, in laying them into the wharves and other structures; and Judge Woodbury intimated that they had no lien upon the vessel. In my opinion, persons employed in navigating vessels, engaged in transporting goods upon tide-water, although within a harbor, are engaged in the maritime service, and have a lien upon the vessel for their wages, which may be enforced in the admiralty. If such service is merely incidental, and subsidiary to some other, as the quarrying of stone for the building of wharves, then the whole cannot be deemed maritime; but if the taking on board of the stones, and the discharging or laying them into the walls of the wharf, are merely incidental and subsidiary to the maritime employment of the vessel, then the whole contract service is maritime, and the suit thereon may be brought in the admiralty. In the present case, the vessel in her passage for the paving stones, went upon the high seas. After leaving the outer light, she was extra fauces terrse. While taking in her cargo, she was upon the high seas. It appeared, by the evidence, that the libellants were seamen, and that they signed shipping articles for a coasting voyage. Their contract, therefore, was maritime.

As to the objection of the illegality of the last trip or voyage, there is no evidence that the seamen were aware that the vessel had not the requisite papers. It is not incumbent

on the mariner to examine the vessel's papers, or to see whether the master has done his duty. If it should appear that the seamen knew of the illegality of a voyage, it might bar his claim. Such is not the present case.

Decree for libellants.

See The Canton {Case No. 2,388}; McCormick v. Ives {Id. 8,720}

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