

## MORAN v. BAUDIN.

[2 Pet Adm. 415.]<sup>1</sup>

District Court, D. Pennsylvania.

1788.

SEAMEN—VOYAGE CHANGED—DISCHARGE AND  
WAGES DEMANDED—FOREIGN  
SEAMEN—RIGHTS DETERMINED BY WHAT LAW.

1. A French seaman claimed his wages from a ship which had changed her voyage from that for which he originally entered. The court decreed his wages.

{Distinguished in *Thomson v. The Nanny*, Case No. 13,984. Cited in *The Saratoga*, Id. 12,355; *The Maria*, Id. 9,074; *Nevitt v. Clarke*, Id. 10,138; *Davis v. Leslie*, Id. 3,639; *Bucker v. Klorkgeter*, Id. 2,083; *The Becherdass Ambaidass*, Id. 1,203.}

{See *The Bee*, Case No. 1,219.}

2. The case of a French seaman to be determined by the marine law of France.
3. What deviation from the original voyage will justify mariners in demanding their discharge.

{Cited in *The Becherdass Ambaidass*, Case No. 1,203.}

The libel in this case states, that Charles Moran the libellant entered as a mariner on board the ship *L'Heureux* at Nantz, in France, on the twenty-third day of October, 1786, under an engagement for a voyage from the said port of Nantz to New Orleans in the Mississippi, from thence to go to Martinique, and from thence to return to France. That Alexander Baudin the captain, had totally altered this voyage by repeated deviations, whereby the contract was broken, and thereupon the libellant prays a discharge and the amount of wages due. The circumstances of this case appear from the testimony exhibited, to be as follows: That this vessel sailed from Nantz the twenty-third of October, 1786; that the mariners understood and were informed that this voyage was to be to New Orleans first, thence to the West Indies and thence

back to Nantz or to some port of France, and that it would continue from 10 to 15 or 16 months, and under this expectation the mariners were registered at the proper office at Nantz, according to the manner of registering seamen in France. That instead of pursuing this voyage, as designated to them, they were taken three times to New Orleans, twice to Martinico, thence to Aux Cayes, once to the Havannah and were now brought to Philadelphia. That in the course of these several voyages, the libellant and 722 others of the crew made frequent complaints of the deviation from and prolongation of the originally intended voyage, and had applied to the intendants of some of the ports they were at, demanding to be discharged, or taken back to France, but were detained in the service of the ship by repeated assurances of the captain, that from the then next intended port they should be taken back to France. That in particular, when they were at Martinico the second time, the whole crew complained and demanded their discharge, whereupon the captain threw the boatswain and another sailor into prison, and that the boatswain wrote to the commanding officer of a frigate there, who sent for him on board, obliged the captain to pay him his wages and discharged him.

To this libel and testimony, the respondent hath urged in reply: That no contract or articles between the captain and crew at Nantz hath been exhibited or proved; that the libel itself is deficient in form, and that, let the deviations from the original voyage be what they may, the libellant hath for his part justified the whole by signing a process verbal on board the ship on the 30th of April last, certifying that the ship L'Heureux had suffered damage by storm, and consenting to put into the pout of Philadelphia in distress, which verbal process, so signed, was exhibited in court. As there is no ordinance of the United States, or act of the legislature of Pennsylvania

touching the present point, the claim of the libellant, who is a French subject, and was shipped in France, will most properly be determined by the marine ordinances of the country to which he belongs, and under which he engaged in the service of this vessel. These ordinances strictly prohibit any captain or master of a vessel from receiving on board his ship any mariner, as such, who is not entered on his role d'equipage, made up in the commissary's office, or bureau de classes, of the port where the vessel shall be. See Ord. de Marine, vol. 1, pp. 422, 715. Now, as it has not been controverted but that the libellant has served on board this ship ever since she sailed from Nantz, it is in vain to call upon him for proof of the contract made at Nantz, since the role d'equipage, or a transcript of it, is in the captain's hands, and never in the mariner's. Had no such engagement taken place as mentioned in the libel, or should the libellant demand larger wages than had been agreed upon, the captain would have shewn the role d'equipage in proof against him. As he has not done this, although in his power, it follows that the allegation of the libellant must be admitted as true. Indeed it is in positive testimony that the libellant entered on board at Nantz, and was to receive 50 livres per month, wages; which is sufficient proof of a contract.

The next point is to consider the repeated deviations from the original voyage, and how far this should operate in releasing the mariner from his contract. To lay it down as a general rule that the least deviation from a designated voyage, should invalidate the articles and discharge the mariners in a foreign port, would perhaps be construing shipping articles too strictly, and certainly very injurious to commerce. Shipping articles are not to be construed by the same rules with a policy of insurance, their object and ground of reason being quite different. Yet gross and unnecessary deviation shall free a mariner from his

contract; but there is no occasion to fix a general rule now—this cause is to be determined by the positive laws of France, and there is an ordinance express to the purpose. Ord. de Marine, vol. 1, p. 548, art. 4. See 2 Pet. Adm. Append, p. 14. “If at any time after the arrival and discharge of the vessel at the port of her destination, the captain or master, instead of returning, shall freight or load his ship to go elsewhere, the mariner may leave her if he chuses, unless it has been otherwise determined by his special engagement.” And this rule is further enforced by Valin’s commentary on the article. There appears to me a strong presumption that the boatswain who was paid off and discharged at Martinico by order of the commander of a frigate there, claimed the benefit of this ordinance. It is said, indeed, that his mother was dead, and he had business in France: but this, I think, would hardly be admitted as a sufficient reason to discharge a mariner in the midst of a voyage. Such as it was, it is plain that Captain Baudin did not deem it sufficient, for he put the man in prison for demanding his wages and claiming his discharge.

The objections to the libel in point of form are not sufficient to exclude this cause from the notice of the court. It is indeed, not so precise as might be wished, but the substance of the complaint is alleged, viz. an engagement for a certain voyage, frequent deviations from the voyage proposed, and a citation prayed for, to shew cause why the wages accrued should not be paid, and the libellant discharged. The verbal process signed by the libellant on board the ship is the next circumstance relied on by the respondent; but this, I think, cannot have the operation expected. If the ship was really in distress as declared, there is no doubt but any mariner would sign his consent to put into a strange port, to avoid impending danger and refit the damaged rigging. But this deviation, occasioned, as it should seem, by necessity, cannot be deemed

a justification of former deviations, where no such necessity appears, or is even pretended.

I am clearly of opinion, that if this cause was tried before a French court of justice, the libellant could not be refused the benefit of the marine ordinances of France, so expressly in favour of his claim. Therefore, I adjudge and decree, that Charles Moran have and receive from the respondent in this cause, his wages at the rate of 50 livres per month, 723 from the 23d of October, 1786, to the date of the present libel, and that the respondent pay the costs of suit.

<sup>1</sup> [Reported by Richard Peters, Jr., Esq.]

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