

THE S. L. GOODAL.

District Court, D. Connecticut.

April 8, 1881.

1. MENHADEN OR WHITE-FISH
FISHERY—SEAMEN'S WAGES—CUSTOM*Andrew C. Lippitt*, for libellants.*Thomas M. Waller*, for owners.

SHIPMAN, D. J. This is a libel *in rem* to recover the amount alleged to be due the libellants for services as seamen on board the fishing steamer S. L. Goodal during the summer and fall of 1879. The controversy relates to the wages of seamen, by custom, in the menhaden or white-fish fishery. The menhaden fishery commenced along the coast of Connecticut and Rhode Island at least 35 years ago. Vessels which fish exclusively in the waters near Long Island, Connecticut, and Rhode Island are called the western fleet, and those waters are called western waters. Vessels which fish off the coast of Maine are called the eastern fleet, and are said to fish in eastern waters. The customs of the business respecting the wages of seamen differ in eastern and western fleets except that universally the crews pay for their board and the cooks' wages and board.

1. The custom of the business upon western vessels.

When the business started, some 35 or 40 years ago, it was carried on solely by sailing vessels, and the fish were sold to the farmers on the coast. Fish-oil factories, for the conversion of fish into fertilizers, were unknown. The uniform rule, in the absence of special contract, was that the owners were to receive one-third and the master and crew were to receive two-thirds of the catch; and this meant two-thirds of the price at which the fish were sold. The outfit of seines, barrels, salt, etc., was provided by the vessel.

In process of time fish-oil factories were erected by companies who also owned vessels, and these factories were the only consumers of the fish. Nearly all the sailing vessels were now owned or chartered by the factory owners. The owners of the vessels and of the factories being the same, there could 540 be no sale of the fish, so that the price of the fish, as between the owners and seamen, began to be established by an agreement, or by common consent among the leading factory owners. This price was not necessarily the same as the market value of the fish, but was what the owners thought they could afford to pay. In 1872 or 1873 the use of steamers commenced, and, in the absence of a special contract, the custom was that the owners were to receive one-half and the crew were to receive one-half of the price for which the fish were sold. The steamers were much more expensive than sailing vessels, and required an expensive outfit of coal. The owners found that if this rule of payment was literally obeyed the business would be a losing one. The factory owners, who also owned steam-vessels, continued to establish a price at which they settled with their crews, and after 1876, at the beginning of the season, both nominal and real prices were also established, at which the factories bought of the owners of steamers who were not interested in the factories. The nominal and lesser price was the pretended price of the fish, at which settlements were made with the crews. The real price included an addition of bonus for the captain and of a bonus for the owners. Thus, if the real price was 40 cents per barrel, the nominal price would be 25 cents, with a bonus of five cents to the captain, and of 10 cents to the owners, and the owners settled with the crew by the payment of 12½ cents per barrel. This practice has been common since 1876. This subterfuge is the cause of much of the confusion of testimony in this case. The custom of the business required that the crews

of steam-vessels should receive half the actual price of the fish. The fact is, they have been receiving half of the fictitious price of the fish. As the case of the libellants does not relate to the western fleet, I express no opinion upon the propriety or unreasonableness of this attempted alteration of the established custom, except to say that this plan of nominal and real prices tends to create misunderstanding, dissatisfaction, and litigation.

2. The custom of the business in the eastern fleet.

The well-established and universally-admitted custom of 541 the business has been that seamen on board steamers receive one-half of the catch at a tariff rate established, printed, and circulated in the winter before sailing by the Maine Oil & Guano Association. The following is the tariff which was established on January 14, 1879, for the season of 1879: "*Voted*, to pay the following prices for fish at factory: 30 cents per barrel to August 1st, 60 cents per barrel to September 20th, and 80 cents per barrel to the end of the season in Maine." The price of bait was fixed at \$1.25 per barrel to August 1st, and \$1.50 to the end of the season, to be equally divided between factory, steamer, and crew. The Maine fish are fatter and more valuable than the western fish, but do not come so early in the summer, and leave earlier in the fall, consequently there is an opportunity for the eastern fleet to fish in western waters early in the season, and to return and fish after the Maine fish have left the eastern coast. This system has gradually become prevalent, and for the last four or five years it is a universal practice for the eastern fleet to fish also in the spring, and in the fall, if practicable, in western waters, going to the east in June and staying as late as the success of the business permits. When the men are shipped, no special contract is in general made. For the Maine fishing, the rule of payment is in accordance with the tariff of the Maine Oil & Guano Association. The

western fishing was at first an incident and not a main part of the business, and the general understanding has been that the seamen should receive for their one-half of the spring western catch the "going price,"—that is to say, the established price which was being in fact paid in western waters,—and if they returned and fished in the fall they should receive what should be thereafter established by the general consent of the owners. This habit of settlement has grown up, partly because the eastern fishing was the best part of the business and the western fishing was not so much thought about, and partly because it had now got to be a habit among the owners of the eastern fleet to establish themselves the prices for the seamen.

I cannot find that the eastern crews, when they fished in 542 western waters, fell back upon the custom of the western fleet to have one-half of the catch at the selling price, but I am of opinion that as for Maine fishing they received a tariff rate established by the owners. So the general idea was that they were to receive for western fishing their half, at a tariff rate fixed by the owners. This, I think, was the general, not the universal, idea of the crews, although it is difficult to ascertain the exact idea which they had. The old custom in the western fishery, and the fact that crews of eastern fleets were shipped in or near New London, and fished now in one and now in the other fleet, and the recent change with respect to western fishing by eastern fishermen, have made this disputed question not easy of solution. Here again, as I have already said respecting the customs of the western fleet, the subterfuge in regard to nominal and real prices has confused the matter of wages, and has given strong occasion to some of the seamen to believe that they were being imposed upon. In some cases it was understood by the eastern sailors before they started what the contract price was and would be; and, in these cases, there was no misunderstanding.

The S. L. Goodal is a steam vessel, and has always belonged to the eastern fleet. Her owners live in Groton, Connecticut, but have a factory in Maine, to which the Goodal delivers her eastern fish. The crew were shipped under no special contract, but under the custom of the business. The vessel was employed in fishing, as usual, in western waters, during the last part of April and in May. Payn, Higgins & Co., of Long Island, bought most of the catch at 42 cents per barrel, and the men were paid at the rate of 25 cents per barrel, which was the established price for seamen during that spring. The vessel went to Maine in June, was absent two weeks, and, like all other vessels, caught no fish. There were no fish off the coast of Maine during that season. Like many other vessels of the eastern fleet, she returned to western waters about July 3d, and there fished till about the middle of November. The fish were sold to the same purchasers at the same price, and the libellants were paid at 543 the same rate of 25 cents. The crews of all other eastern vessels were paid at the same rate, which was, as between owners and crew, a fair division of the catch. The libellants, having lost the usual catch in Maine, while their expenses were not diminished, made a very poor summer's work, became much dissatisfied, refused to settle at the rate which was offered by the owners, and brought this libel, insisting upon their right to 21 cents per barrel.

The whole number of barrels which were caught was 12,285; 170 barrels were sold for bait. The libellants have not been paid in full, although the owners have been ready and willing to settle for 12½ cents per barrel. It is understood that the fish sold for bait are settled for at a special rate at 40 cents per barrel; that is to say, if a barrel sold for 80 cents; it is called two barrels, and if sold for 60 cents it is called 1½ barrels. I am not advised that objection is made by the libellants to this method of accounting for the

bait money. From the findings already made in regard to the custom of the business in the eastern fleet, it appears that the owners of the vessel pursued the generally-accepted understanding in regard to payment of the eastern crews, and which resulted in this case in a proper rate of compensation.

As an accounting is still to be had, in order to ascertain how much is due to each person, let there be a reference to a commissioner, in case of a disagreement between the parties, to ascertain the amount due to each libellant upon the rules heretofore stated.

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