

THE ACORN.

District Court, W. D. Pennsylvania. May Term, 1883.

SEAMEN'S WAGES—SHIPPING WITHOUT ARTICLES—VERBAL AGREEMENT.

If the master of a vessel dispenses with shipping articles and disputes arise as to the rate of wages to be paid the mariners, the court will incline to allow their claim to the rate paid by other like vessels leaving the same port at the same time on the like voyage. If the seamen can be held to a less rate, by reason of a verbal contract, such contract must be clearly established.

In Admiralty.

Geo. C. Wilson, for libelants.

D. T. Watson, for respondent.

ACHESON, J. The evidence shows, and, indeed, the answer admits, that when Duffy and Poe, two of the libelants, were shipped on the *Acorn*, no express agreement was entered into, and nothing was said as to the rate of compensation for their services. But, according to the clear weight of the evidence, on the first evening after the voyage commenced, Cavanaugh, the first mate, who had hired the hands, stated in the presence of all the libelants, in answer to an inquiry of another of the crew, that the boat would pay the deckhands the same wages as other boats going out on that rise did. It is established beyond dispute that other boats like the *Acorn*, on that rise, paid their deck hands the rate of wages claimed by the libelants, viz., at the rate of \$45 per month. This seems to have been the prevailing rate, and clearly Duffy and Poe are entitled to be paid at that rate.

It is, however, alleged, and Cavanaugh testifies, that Conway was expressly hired at the rate of \$40 a month. This the latter denies, and testifies that when he shipped nothing was said as to the rate of

compensation. It is certain that no express bargain was made with any other of the deck hands on that kip; and Cavanaugh is successfully contradicted as to what transpired, in respect to the rate of wages, between him and Roger Williams, in the presence of the other deck hands, the first evening the boat was out. Upon the whole I think the weight of evidence is on the side of Conway. Moreover, if the master of a vessels dispenses with shipping articles, and disputes arise as to the rate of wages to to be paid the mariners, the court will incline to allow their claim to payment at the rate paid by other like vessels leaving the same port at the same time on the like voyage. If the seamen can be held to a less rate by reason of a verbal contract, such contract must be clearly established.

Let a decree be drawn in favor of the libelants for the amount of their respective claims, with interest and costs.

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