

RUSSELL ET AL. V. THE TWILIGHT

*District Court, W. D. Pennsylvania.*

July 19, 1890.

SEAMEN—DISCHARGE—FORFEITURE OF WAGES.

Libelants, deck-hands on an Ohio river tow-boat, were ordered by the mate, during a voyage, to draw ashes from the furnace. They refused, on the ground that it was a fireman's work. Persisting in the refusal, they were put ashore at the next port. *Held*, that the master of the boat was justified in discharging them, but that the libelants had not incurred a forfeiture of their wages for past services rendered on the trip.

In Admiralty.

Suit for wages, etc. Libelants, deck-hands on a tow-boat on the Ohio river, when ordered by the mate to draw ashes from the furnace refused, alleging it was a fireman's work. After warning, they were, put ashore at the next port. There was evidence that on that boat it was work to be done by deck-hands, but when hired nothing was said to the libelants on the subject. There was evidence also that this was not the customary work of deck-hands on tow-boats generally.

*Barton & Barton*, for libelants.

*Knox & Reed*, for respondents.

ACHESON, J. 1. In any view that can be taken of the case under the proofs, the master of the Twilight was justified in discharging the libelants upon their refusal to "pull ashes" from the furnace when ordered to do so by their superior officer. The service was not an onerous one, and, even if usually, on this class of vessels, it is the work of the firemen, and does not come strictly within the scope of a deck-hand's employment, still the master here, under the circumstances, was well warranted in dismissing the libelants.

2. But I am not prepared to say that the libelants forfeited their wages for past services on the trip. This was not a case of insubordination pure and simple, but the refusal of the libelants to perform this particular work was based, avowedly, upon their supposed rights under the contract of hiring. Moreover, the Twilight sustained no loss or, detriment by reason of the conduct of the libelants, and to enforce a forfeiture of wages already earned would be harsh.

3. I am, however, of the opinion that the decree in favor of the libelants should be without an allowance of any costs to them. Their behavior in this matter was not commendable, and, besides, they have sued for more than they are justly entitled to. As the respondents never offered to pay anything, they ought to be charged with the fees of the marshal and clerk. No other costs will be allowed. Let a decree be drawn in accordance with these views.