

THE D. C. MURRAY.¹

(District Court, D. California. January 18, 1886.)

SHIPPING—CARRIAGE OF PASSENGERS—ACCOMMODATIONS.

Passengers on a sailing vessel testified that the food was of bad quality and the water brackish. A few other cabin and some steerage passengers stated that the food was "excellent," as did also the captain's wife. The latter testimony was contradicted by a witness who stated that during the voyage the captain's wife had said she would die if she did not get better food, and spoke of growing thin because of it, and that other witnesses for the claimant had frequently complained of the food. Complaints were made during the entire voyage, and all the cabin passengers left the boat at an intermediate port, but there was no survey then called on her remaining stores. There was evidence that most of the beef and pork was bad and the other stores inferior. The rice sometimes had weevils in it. *Held*, that this was sufficient, in the absence of a survey, to show that the food was unsuitable, in view of the payment of \$125 for passage when first-class passage by steamer was only \$200.

Charles Page, for libelants.

C. K. Bonestell, for claimants.

HOFFMAN, J. I have found it impossible to arrive at any certain conclusion as to the details of the grievances complained of by the passengers. The testimony is conflicting, not only as to the general quality of the food and water furnished to the passengers, but also on points as to which it is difficult to believe that an honest mistake has occurred. A notable instance of this is found in the conflicting statements of Mrs. Harrington and her daughters, and those of Mrs. Hesketh. The former testify that the food was excellent, and that they never complained of it. Mrs. Hesketh, who is a lady of some 70 years, says that the elder Miss Harrington used to complain to her that the food was very bad, except the clam soup. Mrs. Hesketh also testifies that Mrs. Berry (the captain's wife) frequently said she should die if she could not get better food, and spoke of growing thin in consequence of its bad quality. Mrs. Berry denies this emphatically, and maintains that the provisions were of excellent quality. If her statement be accepted as accurate, the passengers had no ground whatever for complaint. And yet that complaints were made constantly throughout the entire voyage appears from the testimony of Capt. Berry himself. One fact is clear. All the cabin passengers left the vessel at Honolulu; some of them even taking steerage passages in the steamer from that port. Their disgust with the ship does not seem to have been wholly caused by the bad quality of the water and provisions. A most unpleasant feeling appears to have grown up between the master and his wife, and all the passengers except Mrs. Hesketh. Evidence of that feeling is abundant in the testimony.

The master seems to have been of a taciturn and morose disposition,

¹ This case has been heretofore reported in 11 Sawy. 416, and is now published in this series, so as to include therein all circuit and district court cases elsewhere reported which have been inadvertently omitted from the Federal Reporter.

was frequently guilty of rudeness, and occasionally indulged in threats and profanity. How far his conduct may be excused on the ground of exasperation at the incessant and open expressions by the passengers of dissatisfaction and a disgust with their food depends upon how far those expressions were justified by its quality. I am inclined to think that the beef and pork were, for the most part, bad, the water dirty and brackish; but for how much of the time I have been unable to ascertain with certainty. That the rice had weevils in it occasionally cannot be doubted; but how often it is difficult to discover. Other articles of food, such as tripe, canned meats, the bread, oatmeal, etc., are condemned by the passengers in unmeasured terms. They are declared by the claimant's witnesses to have been very good. Both statements are probably exaggerated. It would be endless to examine the testimony in detail with respect to every article of food supplied to the passengers. The provisions which the steerage passengers called by the claimants pronounce "excellent" and "splendid" are in many instances spoken of by the cabin passengers as putrid, rotten, and offensive. In some cases the complaints of the latter seem frivolous or unfounded,—as, for example, the importance they seem desirous of attaching to the circumstance that a pig which had been slaughtered became tainted before it could be used, the vessel being at the time in the tropics; or Mrs. Hesketh's condemnation of the tea as "bad," because it was "too strong," and she had to dilute it with water before she could use it. But, on the whole, I am of opinion that the food of the passengers was in general of a very inferior quality, and by no means such as they were entitled to expect, when it is considered that they paid for their passage \$125 each, when the fare for a first-class passage by steamer from this port to Sydney is only \$200.

If, in reaching this conclusion, I err by giving too much credence to the statements, possibly exaggerated, of the libelants, the claimants have themselves chiefly to blame. It would have been easy on the vessel's arrival to have called a survey upon her remaining stores. Her precise condition and quality of the beef, ham, pork, flour, rice, oatmeal, etc., could have been unmistakably ascertained. I shall decree to Mr. Haley \$300 for himself and family; the sum of \$100 to each of the other libelants.

THE NEWFOUNDLAND.

(District Court, D. South Carolina. September 12, 1898.)

1. EVIDENCE—ENTRY IN SHIP'S LOG.

An entry made in a vessel's log with full knowledge, or opportunity for ascertaining the truth, must be accepted as the truth when it tells against the party making it.

2. WAR—BLOCKADE OF ENEMY'S PORTS—EVIDENCE OF VIOLATION BY PRIZE.

Proof that a neutral steam vessel approached a blockaded port in time of war, with knowledge of the blockade, and, after being warned away, loitered in the vicinity in the nighttime, where she would be enabled to watch for an opportunity to elude the blockade, and enter the port, is sufficient to condemn such vessel as prize, in the absence of positive evidence in her behalf showing that her presence there was innocent.

3. SAME—RIGHTS OF BLOCKADING POWER IN SURROUNDING WATERS.

The law of blockade can only be rendered effective by conceding to a belligerent maintaining a blockade of an enemy's port a certain dominion over the surrounding waters, though without strictly definable limits as to extent or character; and the seizure of a neutral vessel in the open sea, though 18 or 20 miles from the blockaded port, and steering in an opposite direction, is not a marine trespass, where a previous attempt on the part of the prize to violate the blockade is shown.

4. SAME—PRIZE—EVIDENCE CONSIDERED.

The Newfoundland, a neutral steam vessel clearing from Halifax, and laden with provisions, was brought to by one of the blockading fleet off Havana about 6 o'clock in the evening, and at a point 10 or 12 miles distant in a northeasterly direction from the port. She was warned away, and started on a course a little north of west. At 8:30, as shown by her log, she was off Havana, and 10 miles distant. At 10 she was captured by another vessel of the blockading fleet at a point to the northwest of the port, and from 17 to 21 miles distant, while steering to the west. At her usual rate of speed she should have been several miles further on her course. Her officers knew of the blockade, and the evidence in explanation of her presence near Havana was not consistent nor satisfactory, and it was left somewhat uncertain as to whether her lights were kept burning during the evening. *Held*, that she must be deemed to have been loitering near the port with intent to enter if an opportunity offered, and, with her cargo, was lawful prize, though she may have abandoned the attempt to run the blockade before her capture.

This was a proceeding by the United States for the condemnation of the steam vessel Newfoundland and her cargo as prize for having attempted to run the blockade of the port of Havana.

Abial Lathrop, U. S. Atty., Edward W. Hughes, Asst. U. S. Atty., and B. A. Hagood, Asst. U. S. Atty.

Theodore G. Barker, for respondent.

BRAWLEY, District Judge. The opinion filed August 17th, on the preliminary hearing (89 Fed. 99), based upon the testimony in preparatorio, sets forth the facts relating to the conduct of the Newfoundland up to the evening of July 19th, when she was captured off the port of Havana, and the cause is now before me upon an order for further proof. As was stated in that opinion, a mere suspicion of an intention to violate the blockade, however well founded, is not sufficient ground for condemnation. There must be some overt act de-