

The Squirrel.

mariner, who is once shipped on board, and is dismissed by the captain, without fault, before the voyage is ended, is entitled to his stipulated wages for the whole voyage; yet the residue of the crew can only claim to the extent of their contract; although, by the dismissal of such mariner, the risk and labor becomes proportionally greater.

But it is said, that after the dismissal of the libellants, new articles were executed by the captain and residue of the crew; by which their shares of prizes were augmented, in proportion to the lessening of the crew, by the libellants' dismissal: and that the libellants' claim affects their right under the subsequent articles. The captain and the residue of the crew could not cancel the original articles of agreement. When a contract is made, it can only be dissolved by the consent of all parties. The after-articles, therefore, cannot affect the original articles, nor authorise a departure from them. These articles, instead of militating against the libellants' claim, tend to establish it on another ground: for they show that the residue of the crew approved of the dismissal, and therefore, ought to be considered as *participes criminis*, and equally responsible with the captain.

But it is said, "that the libellants did not, by any personal service, contribute to the capture in the present case; that the prize was taken by the ship, the captain and officers, and residue of the crew; and that although the libellants had a right, under the commission, to make captures, yet the right was not exercised in the capture of the prize in question." The ship, captain, officers and crew were joint-tenants of the right to capture and make prizes conceded by the commission. Whatever was acquired in consequence of this joint right and interest, must be considered as common stock, and like the case of a joint partnership, not subject to survivorship. Where the right and interest is a joint concern, the question never can be material, which of the parties have been most active and alert: the only question that can arise must be—whether the joint concern and interest is fairly subsisting?

Upon the whole, we are of opinion, that the decree below be affirmed, with costs to the libellants.

MAY SESSION, 1783.

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*THE SQUIRREL.

STODDARD, appellant, *v.* REED, appellee, and THE SCHOONER SQUIRREL and Cargo.

Sale of perishing property.

Prize property, in a perishing condition, may be ordered to be sold, before appearance.

ON motion of the appellant's counsel, before an appearance filed on behalf of the appellee, stating that the prize schooner was in a perishing condition, it was ordered—

BY THE COURT.—That the schooner, her tackle, apparel and furniture be sold at public auction, to the highest bidder, for the use of those to whom the same shall be finally decreed.