

CHAP. XXIX.—*An Act for the government and regulation of Seamen in the merchants service.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of December next, every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards, bound from a port in one state to a port in any other than an adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print, with every seaman or mariner on board such ship or vessel (except such as shall be apprentice or servant to himself or owners) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. (a) And if any master or commander of such ship or vessel shall carry out any seaman or mariner (except apprentices or servants as aforesaid) without such contract or agreement being first made and signed by the seamen and mariners, such master or commander shall pay to every such seaman or mariner the highest price or wages which shall have been given at the port or place where such seaman or mariner shall have been shipped, for a similar voyage, within three months next before the time of such shipping: *Provided* such seaman or mariner shall perform such voyage: or if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall moreover forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States: and such seaman or mariner, not having signed such contract, shall not be bound by the regulations, nor subject to the penalties and forfeitures contained in this act.

SEC. 2. *And be it [further] enacted,* That at the foot of every such contract, there shall be a memorandum in writing, of the day and the hour on which such seaman or mariner, who shall so ship and subscribe, shall render themselves on board, to begin the voyage agreed upon. And if any such seaman or mariner shall neglect to render himself on board the ship or vessel, for which he has shipped, at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel, shall, on the day on which such neglect happened, make an entry in the log-book of such ship or vessel, of the name of such seaman or mariner, and shall in like manner note the time that he so neglected to render himself (after the time appointed); every such seaman or mariner shall forfeit for every hour which he shall so neglect to render himself, one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages. (b) And if

(a) It seems that no stipulation contrary to the maritime law, to the injury of the seamen, will be allowed to stand, unless an adequate compensation be given to the seamen. *Harden v. Gordon et al.*, 2 Mason's C. C. R. 541. *The Lady Waterstoff*, 1 Adm. Decisions, 214.

The crew of a ship who have signed articles for the voyage under a particular master, without any clause providing for the change of master, are not discharged from the articles by the dismissal of the master by reason of sickness or any other reasonable cause, and the appointment of a new master. They are bound to obey the new master. *The United States v. Ruggles*, 5 Mason's C. C. R. 192.

If the shipping articles are to the final port of discharge, the voyage is not ended until the cargo is wholly unladen. The owner may order the vessel from port to port, until the whole cargo is discharged. *The United States v. Barker*, 5 Mason's C. C. R. 404.

In the shipping articles used in the United States, though wages are designated by the month, yet the contract is entire for the voyage. 1 Adm. Decisions, 142.

A seaman shipped for the voyage, without signing the articles, must be paid the highest rate of wages at the port within three months, and be subject to all the forfeitures imposed and fixed by the maritime law existing before the act of Congress. *The Regulus*, 1 Admiralty Decisions, 215.

The shipping articles must declare, explicitly, the ports at which the voyage is to commence and terminate. *Magee v. The Moss*, Gilpin's Rep. 219.

(b) To justify the forfeiture of a seaman's wages for absence, under the provisions of the act of 1790, the entry in the log-book is indispensable. *Wood v. The Nimrod*, Gilpin's Rep. 86, 212. *Brower v. The Maiden*, Gilpin's Rep. 296.

To receive mariners on board after desertion, is a waiver or pardon of the forfeitures incurred previously. 1 Adm. Decisions, 163.

STATUTE II.
July 20, 1790.

Master and seamen to execute a shipping agreement.

1792, ch. 24.
1796, ch. 36.
1798, ch. 77.
1799, ch. 36.

Exception as to apprentices, &c.

1802, ch. 51.
1805, ch. 28.

Penalties on the master for omission; the highest rate of wages at the place of shipping.

Proviso, as to performance of the voyage by the seaman.

1813, ch. 42.
1814, ch. 8.

Memorandum at the foot of the articles.

Penalty for a seaman neglecting to render himself on board at the time agreed upon.

- Desertion. any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner or consignee of the said ship or vessel, a sum equal to that which shall have been paid to him by advance at the time of signing the contract, over and besides the sum so advanced, both which sums shall be recoverable in any court, or before any justice of justices of any state, city, town or county within the United States, which, by the laws thereof, have cognizance of debts of equal value, against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed the voyage.
- Recovery of forfeitures. **Sec. 3. And be it [further] enacted,** That if the mate or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to any foreign port, shall, after the voyage is begun (and before the ship or vessel shall have left the land) discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master or commander shall, upon the request of the said mate (or other officer) and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or if not, to some justice of the peace of the city, town or place, taking with him two or more of the said crew who shall have made such request; and thereupon such judge or justice is hereby authorized and required to issue his precept directed to three persons in the neighbourhood, the most skilful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him the said judge or justice, in writing under their hands, or the hands of two of them, whether in any, or in what respect the said ship or vessel is unfit to proceed on the intended voyage, and what addition of men, provisions or stores, or what repairs or alterations in the body, tackle or apparel will be necessary; and upon such report the said judge or justice shall adjudge and determine, and shall endorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; and if not, whether such repairs can be made or deficiencies supplied where the ship or vessel then lays, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted; and the master and crew shall in all things conform to the said judgment; and the master or commander shall, in the first instance, pay all the costs of such view, report and judgment, to be taxed and allowed on a fair copy thereof, certified by the said judge or justice. But if the complaint of the said crew shall appear upon the said report and judgment, to have been without foundation, then the said master, or the owner or consignee of such ship or vessel, shall deduct the amount thereof, and of reasonable damages for the detention (to be ascertained by the said judge or justice) out of the wages growing due to the complaining seamen or mariners. And if after such judgment, such ship or vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs or alterations as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any justice of the peace to commit by warrant under his hand and
- Proceedings. Application by the master to the district judge, or some justice of the peace.
- Precept from the judge, &c.
- Master to pay costs in the first instance.
- If complaint groundless, costs to be charged to seamen.

As to the forfeiture of their wages by seamen, see *Brown v. Jones*, 2 Gallis. C. C. R. 477. *The Two Catherines*, 2 Mason's C. C. R. 319. *The Ship Mentor*, 4 Mason's C. C. R. 84. *Orne v. Townsend*, 4 Mason's C. C. R. 541. *The Phœbe*, 1 Wash. C. C. R. 48. *The Maria*, 1 Adm. Decisions, 186. *Sims v. Mariners*, 2 Adm. Decisions, 393. *Sprague v. Kain*, Bee's Rep. 134. *Peters' Digest*,—"Admiralty."

seal, every such seaman or mariner (who shall so refuse) to the common gaol of the county, there to remain without bail or main prize, until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said justice, and inserted in the said warrant, and the surety or sureties of such seaman or mariner (in case he or they shall have given any) shall remain liable for such payment; nor shall any such seaman or mariner be discharged upon any writ of habeas corpus or otherwise, until such sum be paid by him or them, or his or their surety or sureties, for want of any form of commitment, or other previous proceedings. *Provided*, That sufficient matter shall be made to appear, upon the return of such habeas corpus, and an examination then to be had, to detain him for the causes herein before assigned.

Sec. 4. *And be it [further] enacted*, That if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town or county where he, she or they may reside, shall forfeit and pay ten dollars for every day which he, she or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar, shall be recoverable from any seaman or mariner by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended.

Sec. 5. *And be it [further] enacted*, That if any seaman or mariner, who shall have subscribed such contract as is herein before described, shall absent himself from on board the ship or vessel in which he shall so have shipped, without leave of the master or officer commanding on board; (a) and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself, and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place, and such damages shall be recovered with costs, in any court or before any justice or justices having jurisdiction of the recovery of debts to the value of ten dollars or upwards.

Sec. 6. *And be it [further] enacted*, That every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong, one third part of the wages which shall be due to him at every port where such ship or vessel shall unlade and deliver her cargo before the voyage be ended, unless the contrary be expressly stipulated in the contract: and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due

Seamen refusing to proceed to sea, after proceedings, if vessel found sea worthy, to be imprisoned.

Not to be discharged on Habeas Corpus, until damages be paid.

Penalty for harboring runaway seamen.

No sum exceeding one dollar to be recoverable for any debt from seamen during the voyage.

Mariner absents himself from duty, penalty on, and how to be proceeded against.

Penalty.

Damages recoverable.

When, and at what port entitled to demand his wages.

(a) Desertion during the voyage, is, by the maritime law, a forfeiture of all the wages antecedently due. But a desertion to work this effect, must not be merely an absence without leave, or in disobedience of orders, but an intention to abandon the ship and the service. 1 Sumner's Rep. 373.

As to desertion, see the following cases. Emmerson v. Howland, 1 Mason's C. C. R. 45. Sims v. Mariners, 2 Adm. Decisions, 393. Wood v. The Nimrod, Gilpin's Rep. 86. Magee v. The Moss, Gilpin's Rep. 219.

How wages to be recovered if withheld.

according to his contract; (a) and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then, for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him, to show cause why process should not issue against such ship or vessel, her tackle, furniture and apparel, according to the course of admiralty courts, to answer for the said wages: and if the master shall neglect to appear, or appearing, shall not show that the wages are paid, or otherwise satisfied or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district, that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty courts in such cases used; and in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall be incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matters in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander; but nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or from immediate process out of any court having admiralty jurisdiction, wherever any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended, before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

All the seamen may join in the suit.

Contract to be produced by master.

Remedy at common law.

Mariner deserting at any port or place, how to be proceeded against and punished.

SEC. 7. *And be it [further] enacted*, That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall, at any port or place, desert, or shall absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of peace within the United States (upon the complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof, that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common gaol of the city, town or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the said master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman or mariner.

Proceedings.

1842, ch. 28.

Every ship or vessel outward bound, to be furnished with a medicine chest:

SEC. 8. *And be it [further] enacted*, That every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other

(a) Wages are payable in ten days from the end of the voyage, but in some cases fifteen days are allowed for the discharge of the cargo and payment of the freight. *Edwards v. The Susan*, 1 Adm. Decisions, 165.

The end of the voyage is the period when wages are due. *Ibid.*

apothecary, once at least in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.(a)

SEC. 9. *And be it [further] enacted*, That every ship or vessel, belonging as aforesaid, bound on a voyage across the Atlantic ocean, shall, at the time of leaving the last port from whence she sails, have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread, for every person on board such ship or vessel, over and besides such other provisions, stores and live-stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages; and in case the crew of any ship or vessel, which shall not have been so provided, shall be put upon short allowance in water, flesh or bread, during the voyage, the master or owner of such ship or vessel shall pay to each of the crew, one day's wages beyond the wages agreed on, for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages.(b)

APPROVED, July 20, 1790.

Penalty on the master for default.

Act of March 2, 1805, ch. 23. Ships, &c. bound across the Atlantic, what supply of provisions and water shall be laid in.

Penalty for short allowance of provisions and water.

STATUTE II.

July 20, 1790.

CHAP. XXX.—*An Act imposing duties on the tonnage of ships or vessels.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That upon all ships or vessels which after the first day of September next, shall be entered in the United States from any foreign port or place, there shall be paid the several and respective duties following, that is to say: On ships or vessels of the United States at the rate of six cents per ton: on ships or vessels built within the United States after the twentieth day of July last, but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton: on other ships or vessels at the rate of fifty cents per ton.(c)

SEC. 2. *And be it further enacted*, That the aforesaid duty of six cents per ton, shall be also paid upon every ship or vessel of the United States, which after the said first day of September next, shall be entered in a district in one state from a district in another state, other than an ad-

Tonnage duty on ships or vessels of U. States,

on those of foreigners;

on all others.

On ships or vessels of the U. States, trading between district and district.

(a) The act of Congress of July 20, 1790, for the government and regulation of seamen in the merchant service, has not changed the maritime law, except, perhaps, so far as respects medicines and medical advice, when there is a proper medicine chest, and medical directions on board the vessel. The charges for nursing and lodging are not affected by the act. *Harden v. Gordon et al.*, 2 Mason, 541.

The expense of curing a sick seaman, in the course of a voyage, is a charge on the ship by the maritime law. *Ibid.*

The onus probandi in respect to the sufficiency of the medicine chest, lies on the owner, in an action by the seamen for wages. *Ibid.*

A stipulation that the seamen shall pay for medical advice and medicine, without any condition that there shall be a suitable medicine chest, &c., is void as contrary to the act of Congress. *Ibid.*

When a seaman at a foreign port, contracts an ordinary disease, without any fault of his own, and remains on board a vessel which is properly provided with a medicine chest, the expense of a physician, if necessary for the safety of his life is to be deducted from his wages. *Holmes v. Hutchinson*, Gilpin's Rep. 448.

(b) In reference to the claims of seamen for "short allowance," it was decided that the navy rations furnish a rule by which the allowance to seamen shall be determined. That when the articles mentioned in the act of Congress can be procured, no substitute shall be allowed; but it is otherwise if they cannot be obtained. The ship *Washington*, 1 Adm. Decisions, 219.

The provisions of the act of Congress relative to short allowance, do not apply to seamen shipped while the ship is at a foreign port. *Ibid.*

(c) See act of March 3, 1815, obsolete; act of April 20, 1818, obsolete; act of March 3, 1819, obsolete.