

# THE LEGAL IMPLICATIONS OF A STRIKE BY SEAMEN

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THE status, rights and obligations of seamen in the American Merchant Marine are governed by elaborate statutory regulations<sup>1</sup> adopted by Congress pursuant to its constitutional power to regulate commerce<sup>2</sup> and "to define and punish Piracies and Felonies committed on the high seas";<sup>3</sup> they are enforced by the federal courts pursuant to the jurisdiction vested in them by the constitution over "all cases of admiralty and maritime jurisdiction."<sup>4</sup> These regulations, to which seamen become subject upon the signing of articles of shipping,<sup>5</sup> cover a variety of details from the inception of the voyage to its termination and contain certain minimum requirements as to working conditions.

Thus, while at sea, the crew must be divided into at least two watches on deck and three watches below,<sup>6</sup> in order to reduce the amount of

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1. 38 STAT. 1164 (1915), 46 U. S. C. A. §§ 541-713 (1926). The present provisions for the protection of seamen were derived in large part from the La Follette, or Seamen's Act, of 1915. All seamen shipped in the United States on American vessels are entitled to the protection of these regulations, regardless of nationality. 17 STAT. 277 (1872), 46 U. S. C. A. § 713 (1926); *The Laura M. Lunt*, 170 Fed. 204 (E. D. La. 1909); cf. *In re Roess*, 140 U. S. 453, 455 (1891). Certain of the regulations also apply to foreign seamen on foreign vessels while in American harbors who invoke the jurisdiction of our admiralty courts. *Strathearn S. S. Co. v. Dillon*, 252 U. S. 348 (1920).

2. U. S. CONST. Art. I, § 8, clause 3.

3. U. S. CONST. Art. I, § 8, clause 10.

4. U. S. CONST. Art. III, § 2. Although this provision is found in a section relating solely to the judiciary, the court has found in it a source of Congressional power. *Crowell v. Benson*, 285 U. S. 22, 39 (1932) and cases there cited.

5. These articles are standard in a form prescribed by statute [17 STAT. 264, 265, 277 (1872); 46 U. S. C. A. §§ 564, 565, 713 (1926)] and may be signed before government agents known as shipping commissioners. 17 STAT. 262 (1872), 24 STAT. 80 (1886), 46 U. S. C. A. §§ 545-563 (1926). The purpose of these statutory requirements is simply to prevent shipping seamen against their will, and assigning them to different work than promised, and to insure the payment of the wages agreed upon. It does not prevent shipowners from otherwise controlling the hiring of men. *Street v. Shipowner's Association*, 299 Fed. 5 (C. C. A. 10th, 1924) cert. den. 266 U. S. 611 (1924).

A seaman, as a member of the crew, is probably entitled, as such, to the benefits of the statutory regulations, even though no articles of shipping are signed. 17 STAT. 277 (1872), 46 U. S. C. A. § 713 (1926); cf. *Jameson v. The Regulus*, 13 Fed. Cas. No. 7,193, p. 336 (D. Pa. 1800); *Tucker v. Alexandroff*, 183 U. S. 424, 424-5 (1902). A seaman shipped without such articles is entitled to the highest rate of wages paid at the port from which he is shipped. 1 STAT. 131 (1790), 46 U. S. C. A. § 575 (1926).

6. 38 STAT. 1164 (1915), 46 U. S. C. A. § 673 (1926). Several bills are now pending,

work required of each sailor at night.<sup>7</sup> Seamen cannot be required to work alternately on deck and in the fireroom.<sup>8</sup> When the ship is in a safe harbor, the men cannot be required to do any "unnecessary" work on Sundays or holidays or to work more than nine hours a day on other days.<sup>9</sup> A violation of any of these provisions entitles the seamen to their discharge together with payment of all wages earned.<sup>10</sup> In addition, the regulations specify in detail the food,<sup>11</sup> medicine,<sup>12</sup> heat,<sup>13</sup> clothing<sup>14</sup> and living quarters<sup>15</sup> to which seamen are entitled during the course of a voyage.<sup>16</sup>

The enforcement of these regulations, together with all regulations for the promotion of safety at sea,<sup>17</sup> is vested primarily in local steamship inspectors<sup>18</sup> appointed by the Secretary of Commerce.<sup>19</sup> These

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e.g. H. R. 6041, 74th Cong. 1st Sess. (1935), under which the requirement of three watches would be extended to the deck and the crew would be given at least six hours off duty in their twelve hours prior to sailing.

7. Cf. *O'Hara v. Luckenbach S. S. Co.*, 269 U. S. 364, 367 (1926).

8. 38 STAT. 1164 (1915), 46 U. S. C. A. § 673 (1926).

9. *Ibid.*

10. *Ibid.*; *O'Hara v. Luckenbach S. S. Co.*, 269 U. S. 364 (1926).

11. 17 STAT. 277 (1872), 46 U. S. C. A. § 713 (1926).

12. 17 STAT. 270 (1872), 46 U. S. C. A. § 666 (1926).

13. 17 STAT. 270 (1872), 23 STAT. 56 (1884), 46 U. S. C. A. §§ 669, 670 (1926).

14. 17 STAT. 270 (1872), 46 U. S. C. A. § 669 (1926).

15. 29 STAT. 688 (1897), 46 U. S. C. A. § 80 (1926). The space reserved for living quarters was not less than 120 cubic feet and 16 square feet, as provided for by statute enacted in 1897; and except for an amendment contained in the LaFollette Act, 38 STAT. 1164 (1916), 46 U. S. C. A. §§ 541-713 (1926), it has not been changed since 1897, despite the advent of the modern steamship. Consequently living quarters are totally inadequate. Not only has the original statute not been made to conform to modern conditions, but a measure sponsored by the Bureau of Navigation and Steamship Inspection which is now pending proposes to apply the present inadequate requirements to vessels under 100 tons now exempt. H. R. 6044, 74th Cong. 1st Sess. (1935).

16. Pending ship subsidy bills incorporate provisions for three watches on deck, continuous discharge books, and fixing of minimum manning and wage scales. SEN. 3500, 3501, and 4110, 74th Cong. 2d Sess. (1936). The first two place the fixing of manning and wage scales in the Department of Commerce; the third in the Department of Labor.

17. The department immediately in charge is the Bureau of Navigation and Steamboat Inspection of the Department of Commerce. 23 STAT. 118, 119 (1884), 16 STAT. 440 (1871), 46 U. S. C. A. §§ 1-5, 361-440 (1926). See U. S. Dept. of Commerce, Bureau of Navigation and Steamboat Inspection, LAWS GOVERNING STEAMBOAT INSPECTION, Nov. 16, 1933. The general rules and regulations issued cover details of construction. See FIFTY-SECOND SUPPLEMENT TO GENERAL RULES AND REGULATIONS, Bureau of Navigation and Steamboat Inspection, June, 1935. Pending ship subsidy bills incorporate further regulations for safety at sea. See note 16, *supra*. S. 3500 leaves more to administrative discretion than does S. 4110.

18. 16 STAT. 443, 448 (1871), 46 U. S. C. A. §§ 391, 435 (1926). There are two local inspectors for each of the collection districts enumerated in the statute, one known as the inspector of hulls, and the other, the inspector of boilers. 16 STAT. 457 (1871), 46 U. S. C. A. § 382 (1926).

19. 16 STAT. 443 (1871), 46 U. S. C. A. § 384 (1926).

inspectors are under the control of a supervising inspector who is appointed by the President, with the approval of the Senate, and to whom the local inspectors report.<sup>20</sup> The statute merely requires that inspection of each steam vessel shall be made at least once a year; more frequent inspections may be made in the discretion of the local inspectors.<sup>21</sup> If the inspectors find any violation of the statutory regulations, they may revoke the certificate of inspection required of every steam vessel and refuse to issue a new certificate until the regulations are complied with.<sup>22</sup> In addition, violation of certain of the statutory regulations may lead to penalties and forfeitures which are enforced through the Department of Commerce by means of the inspections.<sup>23</sup> The system of inspection thus established is the only administrative method by which the statutory regulations relating to safety at sea are enforced.

The woeful inadequacy of this system of inspection and the consequent failure to enforce observance of the statutory regulations recently aroused widespread public attention in connection with the Morro Castle disaster on September 8, 1934. The investigations following this and other disasters, such as in the case of the Lexington, the Mohawk, and the Havana, disclosed, among other things, evidence of the superficiality of the inspections, the insufficiency of the personnel conducting the inspections, the under-payment of inspectors, and in some cases the undue influence exerted over inspections by ship-owners.<sup>24</sup>

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20. 16 STAT. 445, 448, 449, 457 (1871), 46 U. S. C. A. §§ 373, 376, 378, 414 (1926).

21. 16 STAT. 443 (1871), 46 U. S. C. A. § 391 (1926).

22. *Ibid.* The decision of the local inspector may be appealed to the superior inspector who may review the decision of the local inspector of his own accord. 40 STAT. 603 (1918), 46 U. S. C. A. § 432 (1926). An appeal lies from the supervising inspector's decision to the Supervising Inspector General, whose decision, when approved by the Secretary of Commerce, is final. 40 STAT. 602 (1918), 46 U. S. C. A. § 431 (1926).

23. 16 STAT. 448 (1871), 46 U. S. C. A. § 436 (1926).

24. See *Morro Castle and Mohawk Report*, SEN. REP. NO. 776, 74th Cong., 1st Sess., Ser. No. 9884 (1935); *Report on the Morro Castle of Dickerson Hoover*, Bureau of Navigation and Steamboat Inspection to the Secretary of Commerce (1935); *Hearings before the Department of Commerce, June 17, 20, and 21, 1935*, 74th Cong. 1st Sess. (Alleged Irregularities in the Department of Commerce); *Hearings before Committee on Merchant Marine and Fisheries on H. R. 6189, 6202*, 74th Cong., 2nd Sess. (1936) (Extension of Steamboat Inspection Laws); *Hearings before Committee on Commerce on Sen. 3500, 4110, 4111*, 74th Cong., 2nd Sess. (1936) (Merchant Marine Act); *Hearings before Committee on Merchant Marine and Fisheries on H. R. 7040*, 74th Cong., 2nd Sess. (1936) (Safety of Life and Property at Sea). Progress Reports, National Committee on Safety at Sea to Hon. A. Harry Moore, chairman of the National Accident Prevention Conference of the Department of Commerce, April 24 and 29, 1936; Minutes of Public Hearing, National Committee for Safety at Sea, New York, N. Y., April 28, 1936; Memorandum submitted by Joseph Curran, Chairman of Striking Members of I. S. U. to Secretary of Commerce Daniel C. Roper, April 1936 (Read into record of Public Hearing, *supra*). But these abuses are of long standing. See *Hearings before Subcommittee of Committee on Commerce on S. 306, 314*, 71st Cong., 2nd Sess. (1930); SEN. DOC. NO. 177, 70th Cong. 2nd Sess., Ser. No. 9000 (1929) (Report on the

It must be apparent, however, that no matter how thorough or frequent the inspection, violations of regulations with respect to working conditions, such as division of the crew into watches, will rarely come to the attention of the inspectors unless they are reported, and it is naive to suppose that they will be reported. The evidence shows that complaints from seamen, even if made to officials of the steamship company, not only lead to prompt discharge but to blacklisting.<sup>25</sup> In the ordinary course of events, therefore, seamen must in large part depend upon their bargaining power to compel compliance with laws enacted for their benefit, and they must rely entirely upon their bargaining power to secure decent wages as well as other working conditions not specifically covered by statute.

The Supreme Court has acknowledged the connection between working conditions and safety at sea and has pointed out that the primary purpose of the statutory regulations is to promote safety at sea.<sup>26</sup> If safety at sea requires the maintenance of proper working conditions, and if enforcement of existing statutes governing working conditions (and the mobilization of any pressure to improve them) requires collective action by the seamen, it seems clear that recognition of a right of seamen to organize, and their corollary right to strike, is not only necessary for the protection of the rights of seamen, but is also a necessary step in assuring the promotion of safety at sea. But the Department of Commerce has taken the position that the interests of commerce require the maintenance of "discipline" at all costs, and that seamen therefore constitute a class of workers not entitled to organize to protect their rights under the law.

Such at least was the position of the Department of Commerce in connection with the strike in March of the crew of the steamship California, a Panama Pacific liner operated by the International Mercantile Marine Company.<sup>27</sup> The crew of the California had signed on in New

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Steamship Vestris by Frances A. O'Neill). See also testimony in *United States v. Warme*, S. D. N. Y. Jan. 25, 1936, Criminal Docket 97-133.

25. See documents note 24 *supra* and especially letters in the appendix to the April 24, 1936, Progress Report of the National Committee on Safety at Sea. A bill, having for its purpose, among other things, to "increase the efficiency in administration of the steambout inspection laws," which was passed by the House of Representatives and by the Senate, makes it an offense punishable by a fine of \$5000 or imprisonment for one year "to coerce any witnesses, or to induce them to testify falsely in connection with a shipping casualty." H. R. 8599 (1936), 74th Cong. 1st Sess., § 4(i).

26. *O'Hara v. Luckenbach S. S. Co.*, 269 U. S. 364 at 367-9 (1926); *McCrea v. United States*, 294 U. S. 23, 27 (1935).

27. See *N. Y. Times* Mar. 15, 1936, at 1, col. 4; cf. *N. Y. Times*, April 8, 1936, at 1, col. 6; April 9, 1936, at 12, col. 2. For a history of the case, see *N. Y. Times* Mar. 3, 1936, at 45, col. 1; Mar. 4, at 7, col. 7; Mar. 5, at 45, col. 1; Mar. 6, at 43, col. 7; Mar. 11, at 41, col. 1; Mar. 13, at 45, col. 1; Mar. 18, at 45, col. 1; Mar. 19, at 27, col. 5; Mar. 20,

York for a round trip to San Francisco. While the ship was moored to the pier in the harbor of San Pedro preparatory to returning to New York, the crew announced that it would not release the ship from the pier until its demand for a parity of wages on the Atlantic and Pacific coasts had been granted, a demand which the International Seamen's Union was negotiating with the Company.<sup>27a</sup> The crew's demand was made in the course of a voyage during which, it was claimed, the statutory prohibitions against overtime and the alternating of seamen from one department to another had been constantly violated.

All 374 members of the crew participated in the strike, with the result that the ship was detained in the harbor for three days, during which time the crew remained on board and performed all requisite duties except to release the ship from the pier. At no time was there violence of any sort and most of the passengers remained on board.

The crew finally returned to work through the efforts of Secretary of Labor Perkins, who pledged, among other things, that there would be no discrimination against the strikers as to future employment. Two weeks later, upon the arrival of the ship in New York, the crew was signed off, but about 60 of the men were "logged" from 2 to 6 days' pay; some, in addition, received discharge cards<sup>28</sup> marked "D. R.," signifying that they had declined to report, and amounting to blacklisting. Others were told not to return and, thereafter, were actually refused reemployment. Moreover, the International Mercantile Marine Company,<sup>29</sup> and subsequently the Department of Commerce, officially took the position

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at 29, col. 3; Mar. 21, at 19, col. 4; Mar. 23, at 39, col. 3; Mar. 26, at 32, col. 7; Mar. 31, at 45, col. 1.

The strike of rank-and-file seamen in New York City which grew out of this case and their union have been described in a series of articles. See *N. Y. Times*, May 13, 1936, at 2, col. 2, 3; May 14, 1936, at 19, col. 2, 3; May 15, 1936, at 4, col. 3, 4; May 16, 1936, at 5, col. 2, 3; May 17, 1936, at 29, col. 2, 3.

27a. At the time the wage scale on the Atlantic coast was \$57.50 a month for deck men and \$40 for stewards as opposed to \$62.50 for deck men and \$50 for stewards hired on the Pacific coast. See *N. Y. Times*, Mar. 3, 1936, at 45, col. 1; Mar. 6 at 43, col. 3.

28. Discharge cards are not required by law, although they are used by shipowners who thus seek to control the hiring of men. On the Great Lakes, for example, these cards, together with company-owned hiring halls became the chief method of breaking all attempts at unionization. See, *Employment System of Lake Carriers Association*, U. S. Bureau of Labor Statistics, Bull. 235 (1918). Proposals to subject the issuance of compulsory discharge cards to governmental regulation have resulted in bitter disagreement between the seamen and the shipowners on whether character ratings or other notations susceptible of providing a blacklisting system shall be placed on the cards. See *Hearings before Subcommittee of Committee on Commerce Sen. 306, 314, 71st Cong., 2nd Sess. (1930) (To Amend Certain Laws Relating to American Seamen)*. Such proposals have, however, been embodied in recent ship subsidy bills, as well as in specific bills. See e. g. 74th Cong. 2nd Sess., SEN. 3500, SEN. 4110 (1936).

29. See advertisement announcing cancelled sailing of the *S. S. California*, *N. Y. Times*, Mar. 21, 1936 at 2, col. 5, 6.

that the strike constituted mutiny for which the crew should be criminally prosecuted and so recommended to the Department of Justice.<sup>27</sup>

Although the Department of Justice has not yet attempted to prosecute,<sup>30</sup> the threat of prosecution and the action taken by the International Mercantile Marine Company against the leaders of the strike squarely present the question (1) whether a strike by seamen upon a ship moored to a pier in a safe harbor in and of itself constitutes mutiny and (2) whether the seamen participating in such a strike for that reason alone forfeit or lose their wages.

#### A STRIKE AS MUTINY

There are two criminal statutes relating to the subject of mutiny.<sup>31</sup> The first<sup>32</sup> makes it a crime punishable by a fine of not more than \$2,000 and imprisonment of not more than ten years for a member of the crew of any American vessel (a) to usurp command of the vessel or deprive the master of authority and command on board; (b) to resist or prevent the master "in the free and lawful exercise of his authority and command" on board, or (c) to transfer such authority and command to another not lawfully entitled thereto. The second and more comprehensive statute<sup>33</sup> makes it a crime punishable by a fine of \$1,000 and imprisonment for five years to incite revolt or mutiny "on shipboard" and defines the acts constituting this crime in very general terms.

Under these statutes both the crime of mutiny and the crime of inciting to mutiny can take place on a vessel which is either on the high seas "or on any other waters within the admiralty and maritime jurisdiction of the United States." A literal interpretation of the statutes might thus lead to the conclusion that the crime can be committed on board a vessel moored to a pier in a safe harbor,<sup>34</sup> which is the theory to which the Department of Commerce has apparently lent its support. The history and judicial construction of the statutes, however, makes such an interpretation clearly unreasonable.

*History of the Statutes.* The original statutes relating to mutiny

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30. The seamen have threatened to bring a suit for libel against the officials of the International Mercantile Marine Company who accused them of mutiny. *N. Y. Times*, Mar. 31, 1936, at 45, col. 1.

31. The statute prescribing disciplinary measures for "willful disobedience," 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926), is discussed below in the text.

32. 35 STAT. 1146 (1909), 18 U. S. C. A. § 484 (1926).

33. 35 STAT. 1146 (1909), 18 U. S. C. A. § 483 (1926).

34. Because of the use of a phrase "on shipboard" throughout both statutes, it would seem, without taking into consideration the history and judicial construction of the statutes, that if the acts alleged to constitute mutiny or inciting mutiny do not take place on shipboard, the crime has not been committed. Cf. *In re Simpson*, 119 Fed. 620, 622 (D. Mo. 1901). If the strikers leave the ship, however, they may become subject to a charge of desertion, a subject discussed below in the text.

were designed to suppress piracy. Thus, in England, an early statute on the subject, entitled "An Act for the more effectually Suppression of Piracy," provided that "any person [who] shall lay violent hands on his commander whereby to hinder him from fighting in defense of his ship and goods committed to his trust or that shall confine his master or make or endeavor to make a revolt in the ship shall be adjudged deemed and taken to be a pirate felon and robber."<sup>35</sup> The death penalty was prescribed for this offense.<sup>36</sup> As rebellion against the captain's authority came to be dissociated from taking over the ship for piratical purposes, the courts interpreted the statutory prohibition against "confining" the master to include constructive confinement through disobedience to the master's orders imperilling the ship's discipline<sup>37</sup> and it was held that the charge of "making a revolt" could be sustained even though the object was not to further acts of piracy but to compel the captain to redress grievances.<sup>38</sup> Although the early statute has not been repealed, insubordination in the British Merchant Marine is now prosecuted not as mutiny under that statute but under the Merchant Shipping Act of 1894, which defines offenses against discipline for which wages may be forfeited and, in extreme cases, a sentence of imprisonment imposed.<sup>39</sup>

The evolution of American statutes governing the position of seamen parallels the development of the English law, but has not proceeded so far toward assimilating maritime labor law into the general body of labor law, by eliminating the picturesque but archaic severity of the old piracy and mutiny statutes. In 1790 Congress passed a Crimes Act which included provisions to suppress piracy. Under these provisions, which were modelled after the British statute against piracy, any seaman who "shall make a revolt in the ship" was to suffer death as "a pirate and a felon"<sup>40</sup> and it was made a crime punishable by three years' imprisonment or a \$1,000 fine to confine the master of any ship or "endeavor to make a revolt in such ship."<sup>41</sup> The lack of definition of the word "revolt" gave the lower courts much trouble,<sup>42</sup> but the offense was

35. 11 & 12 WILL. III, c. 7, § 8 (1698-9).

36. The punishment was changed first in 1837 to transportation. 7 WILL. IV & 1 VICT. c. 88, § 3, and then in 1857 to penal servitude, 20 & 21 VICT. c. 3.

37. *Reg. v. Jones*, 11 Cox Crim. Cas. 393 (1870). The British understand mutiny primarily in the sense of insurrection in the royal forces, i. e. the army, navy or air forces, a subject covered by separate statute. 37 GEO. III, c. 70 (1797) (Incitement to Mutiny Act) and 24 & 25 GEO. V, c. 56 (1934) (Incitement to Disaffection Act).

38. *Reg. v. Hastings*, 1 Mood C. C. 82 (1825); *Reg. v. M'Gregor*, 1 Car. & K. 429 (1844).

39. 57 & 58 VICT. c. 60, § 225 (1894). The provisions of this statute are similar to our disciplinary statute, 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926), discussed below in the text.

40. Act 1790, c. 9, § 8; 1 STAT. 113.

41. Act 1790, c. 9, § 12; 1 STAT. 115.

42. Thus, Mr. Justice Washington at first refused to recommend to the jury conviction

finally defined by the United States Supreme Court as "the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person."<sup>43</sup> Although this definition was probably not intended to include all acts of mutiny,<sup>44</sup> it succinctly summarizes the essence of the crime<sup>45</sup> and was reflected in the acts passed in 1835<sup>46</sup> from which the present statutes have been derived by reenactment in 1909<sup>47</sup> without substantial change.

*Judicial Construction of the Statutes.* In the light of the history of these statutes, it seems clear that conduct punishable as mutiny must be such as to threaten or jeopardize the master's authority and endanger his ship.<sup>48</sup> Individual acts of disobedience or occasional unpremeditated insubordination, unaccompanied by aggression or threats of violence, obviously do not constitute such conduct even though the acts take place on the high seas.<sup>49</sup> Although no authority has been found upon the point, it would seem that, upon similar principles, concerted action, such as a demand for an improvement in working conditions, which recognizes the master's authority and does not directly interfere with its exercise so as to imperil the ship, cannot constitute mutiny. Such acts, if they are offenses, may be punished as acts of willful disobedience through disciplinary measures by

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on the charge of making a revolt "however strong the evidence" because he felt that the statute was not sufficiently explicit as to the nature of the crime and that the judiciary would therefore usurp a legislative function if it should attempt a definition. *United States v. Sharp*, 27 Fed. Cas. No. 16,264, p. 1041 (C. C. D. Pa. 1815); *United States v. Bladen*, 24 Fed. Cas. No. 14,606, p. 1161 (C. C. D. Pa. 1816). But cf. *United States v. Kelly*, 26 Fed. Cas. No. 15,516, p. 700 (C. C. E. D. Pa. 1825), following *United States v. Smith*, 27 Fed. Cas. No. 16,337, p. 1166 (C. C. D. Mass. 1816).

43. *United States v. Kelby*, 11 Wheat. 417, 419 (U. S. 1826).

44. See *United States v. Haines*, 26 Fed. Cas. No. 15,275, at p. 65 (C. C. D. Mass. 1829); cf. *United States v. Huff*, 13 Fed. 630, 637-8 (C. C. W. D. Tenn. 1882).

45. The Supreme Court's definition of mutiny was followed even after the enactment of the 1835 statutes. *United States v. Forbes*, 25 Fed. Cas. No. 15,129, p. 1141 (E. D. Pa. 1849).

46. 4 STAT. 776 (1835), 18 U. S. C. A. §§ 483, 484 (1926). Cf. *United States v. Almeida*, 24 Fed. Cas. No. 14,433 at p. 776 (E. D. Pa. 1847).

47. 35 STAT. 1146 (1909), 18 U. S. C. A. §§ 483, 484 (1926).

48. Cf. *United States v. Kraft*, 249 Fed. 919, 921 (C. C. A. 3rd, 1918) cert. denied 247 U. S. 520 (1918), in which the court, in a case involving incitement to mutiny in the United States military service, adopted the definition of mutiny of the Standard Dictionary as meaning "to rise against lawful or constituted authority, particularly in the naval or military service."

49. See *United States v. Kelly*, 26 Fed. Cas. No. 15,516, p. 700 (C. C. D. Pa. 1816) (mere insolent conduct, disobedience of orders or even violence, if no intention to subvert authority of master); *United States v. Smith*, 27 Fed. Cas. No. 16,337, p. 1166 (C. C. D. Mass. 1816); *United States v. Almeida*, 24 Fed. Cas. No. 14,433, p. 775 (E. D. Pa.



the master,<sup>50</sup> or, in extreme cases, by derating,<sup>51</sup> forfeiture of wages,<sup>52</sup> or discharge,<sup>53</sup> but they can not in any proper sense constitute the felonious conduct punishable as mutiny by imprisonment for ten years. Moreover, the crew may be justified in disobeying the captain's orders. Thus, the crew's reasonable belief that the vessel is unseaworthy will justify their refusal to obey the master's orders until he puts back to port.<sup>54</sup>

On the other hand, if there is concerted action effectually depriving or imminently threatening to deprive the master of authority and the ship is thereby endangered, the crew may be convicted of mutiny even though the ship at the time is not actually on the high seas. In *Hamilton v. United States*,<sup>55</sup> the merchant ship Poughkeepsie, while returning to New York, lost three propeller blades in succession and, in response to a wireless call for assistance, was towed for repairs to Granaway's Deep, which is about three miles from Hamilton, Bermuda, but is considered part of Hamilton harbor. Before the repairs had been completed, the term for which the crew had signed up expired. The crew, unaware of the law that seamen are not entitled to be discharged until a port of safety is reached even though their articles of shipping have expired, if the fault does not lie with the master or the owners of the ship<sup>56</sup> demanded their discharge with wages due them and free transportation to New York. The captain, supported by the American consul in

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1847) (unpremeditated conduct); cf. *Trent v. Gulf Pacific Lines*, 42 F. (2d) 903 (S. D. Tex. 1930) ("contumacious" conduct of cook in refusing to surrender keys to store-room); *Alaska S. S. Co. v. Gilbert*, 236 Fed. 715 (C. C. A. 9th, 1916).

50. Such as putting the offender on rations or in irons under 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926).

51. *United States v. Savage*, 27 Fed. Cas. No. 16,225, p. 966 (C. C. D. Mass. 1830); *Butler v. Pacific Mail S. S. Co.*, 290 Fed. 806 (C. C. A. 9th, 1923).

52. 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926).

53. The causes for which a seaman may be discharged prior to the termination of his contract, not being specified by statute, are based upon general maritime law. *The T. F. Oakes*, 36 Fed. 442, 445 (C. C. D. Ore. 1888); *The Donna Lane*, 299 Fed. 977, 982 (W. D. Wash. 1924). "The causes for which a seaman may be discharged are ordinarily such as amount to a disqualification, and show him to be an unsafe or an unfit man to have on board the vessel." *The Villa Y. Herman*, 101 Fed. 132, 133 (S. D. Ala. 1909). See *Smith v. Treat*, 22 Fed. Cas. No. 13,117 at p. 688 (D. Me. 1845).

54. *United States v. Ashton*, 24 Fed. Cas. No. 14,470, p. 373 (C. C. D. Mass. 1834). See *The Moslem*, 17 Fed. Cas. No. 9,875 at p. 896 (S. D. N. Y. 1846); *Dixon v. Cyrus*, 7 Fed. Cas. No. 3,930, p. 755 (D. Pa. 1789).

55. 268 Fed. 15 (C. C. A. 4th, 1920), cert. den. 254 U. S. 645 (1920).

56. *Fairchild v. The Aurelius*, 8 Fed. Cas. No. 4,609, p. 953 (D. Mass. 1841); *Shanley v. United States*, 294 Fed. 502 (C. C. A. 2nd, 1923); cf. *The Belvedere*, 100 Fed. 493 (N. D. Cal. 1900). In the *Shanley* case an increase in wages obtained as the result of a strike in a port of distress where there was no American consul was held void as having been obtained by duress, the court saying, however, that the result "might or might not have been different" if there had been an American consul in the port.

Bermuda,<sup>57</sup> informed the crew that they were mistaken as to their rights, but, despite warnings that their acts constituted mutiny, they refused to do any work from that point on, remaining on the vessel for food and shelter since they had no money to go ashore. Ultimately, the captain secured another crew and confined the original crew in the hold during the return voyage. The court held that although the crew had not usurped command of the vessel, their action in refusing to work had successfully deprived the master of authority and that the crew were therefore guilty of inciting mutiny.<sup>58</sup>

The question of the effect of the ship's being in harbor was not discussed by the court or pressed in argument, the court merely stating that the ship was in a harbor that was not closely landlocked.<sup>59</sup> The indictment, however, charged that the offense had been committed on the high seas<sup>60</sup> and the master testified that the ship was not at a dock and that Granaway's Deep, where the ship was anchored, "was in no sense landlocked."<sup>61</sup>

But regardless of this question, the decision can be justified upon the ground that the seamen in effect abandoned the vessel while in distress in a port of refuge.<sup>62</sup> The statute makes mutiny an offense not only on the

57. The American consul in foreign ports is virtually made arbitrator of the disputes between the master and his crew, and his decision is given much weight in the courts on the question of good faith and the reasonableness of the action taken by the parties. Cf. 2 Stat. 203 (1803), 46 U. S. C. A. § 684 (1926); *McCrea v. United States*, 294 U. S. 23 (1935); *Gold v. Matson Nav. Co.*, 73 F. (2d) 808 (C. C. A. 9th, 1934). See DIGEST OF CONSULAR REGULATIONS RELATING TO VESSELS AND SEAMEN, compiled in the Consular Bureau of the Department of State (1921).

58. The doubts raised by the *Hamilton* case led Senator La Follette to sponsor, as part of a bill covering governmental supervision of hiring and discharging (See note 28, *supra*), a provision amending the mutiny law so as expressly to exempt seamen who with or without cause leave a vessel "moored or at anchor in a safe harbor." *Hearings before Subcommittee of Committee on Commerce*, SEN. 314, 71st Cong., 2nd Sess., (1930). This provision is embodied in a bill now pending, H. R. 7290, 74th Cong. 1st Sess. (1935). On the other hand, a bill has been introduced, H. R. 8457, 74th Cong., 2nd Sess. (1936), which under the guise of regulating issuance of seamen's certificates would require photographing, finger printing and the taking of an oath to carry out master's orders while on shipboard, and would set up a body under the Department of Commerce to hear charges of breaches of discipline.

59. 268 Fed. 15 (C. C. A. 4th, 1920) at p. 17, cert. den. 254 U. S. 645 (1920).

60. *Hamilton et al v. The United States of America*, 268 Fed. 15 (C. C. A. 4th, 1920), cert. denied, 254 U. S. 645 (1920), Transcript of Record filed April 14, 1920 in the Circuit Court of Appeals for the Fourth Circuit, No. 1816, pp. 2-3.

61. Op. cit. *supra* note 60, at p. 11.

62. In the *Hamilton* case, the seamen's erroneous belief, based upon a misconstruction of the statute, that they were entitled to their discharge was held not to constitute a defense to a prosecution for a felony. Yet in *The Thomas Tracy*, 24 F. (2d) 372 (C. C. A. 2nd, 1928), cert. denied, 277 U. S. 595 (1928), the master's erroneous belief, based upon a misconstruction of the articles of shipping, that the seamen were not entitled to their discharge was held a good defense to an action by the seamen for unjustifiably withholding

high seas but "on any other waters within the admiralty or maritime jurisdiction of the United States"; and the provision contemplates exactly the type of situation presented in the *Hamilton* case where the ship was stranded in a temporary port of refuge. For mutiny may imperil a ship in a port of refuge or in a harbor, or upon an inland lake or river, exactly as the ship would be imperilled by mutiny on the high seas. The master is, under such circumstances, equally helpless and unable to assure safety to the passengers and property or to bring the ship to dock, resulting in the threat to safety which the mutiny statute was intended to prevent. And the conduct of the crew would nevertheless go unpunished in such a case if admiralty jurisdiction had not been extended to insurrection on waters others than the high seas.

Where, however, the ship is moored to a dock in a port of safety, as in the case of the steamship *California*, the master has at his command the assistance of the civil authorities and the ordinary process of the courts. Unlawful acts can be restrained or, if committed, immediately punished. There can be no justification for giving the master arbitrary authority and denying the right of seamen to strike under such circumstances. This was recognized in the recent case of *Weisthoff v. American-Hawaiian Steamship Company*.<sup>63</sup>

In that case the crew had signed on the steamship *Texan* at San Francisco for a voyage to Gulf and Atlantic ports and return. During the voyage, watches were broken and the men required to work overtime without pay, contrary to statutory regulations. While the vessel was in New York moored to a dock in the harbor, the entire deck crew and that of the engine-room prepared a list of demands which were presented to the master. These demands did not directly refer to the master's violations of statutory regulations but, instead, included requests for immediate settlement of the strike by longshoremen and seamen then taking place on the West Coast; payment of the 1929 wage scale set up by the Shipping Board; more and better food; no discrimination against any of the crew; no one to be discharged, and recognition of the Marine Workers' Industrial Union. The demands also included a request for a division into watches and payment for overtime, both statutory requirements. The crew refused to work until all these demands had been satisfied and refused to leave the ship until the police were summoned and came aboard. The crew then left but their demand for their wages was evaded by their master, who stated that he had no money at the time to pay them. The *Texan*, after some delay due to the strike, subsequently sailed with a new crew.

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their wages, the court saying (at p. 374): "Errors of judgment, made honestly, such as this should not penalize the ship."

63. 79 F. (2d) 124 (C. C. A. 2nd, 1935) cert. denied, 296 U. S. 619 (1936).

A suit by the members of the striking crew to recover their wages was met with the contention by the steamship company that under the *Hamilton* case,<sup>64</sup> the conduct of the crew constituted mutiny and that the crew had therefore forfeited their wages. The court dismissed this contention. It pointed out that it was impossible for the master to comply with some of the seamen's demands, but held that regardless of this fact, the conduct of the seamen was, at most, ill-advised and was not the "gross misconduct" resulting in a threat to safety which the mutiny statute was designed to punish.

Since mutiny entails a forfeiture of wages,<sup>65</sup> the court, by awarding the seamen their back wages, necessarily held that the strike conducted by the crew did not constitute mutiny. Thus, at the very least, the case decided that a crew may strike in a port of safety, such as a port of call, when statutory regulations have been violated, and the crew is therefore entitled to its discharge. This principle is supported by decisions that a crew cannot be compelled to board an unseaworthy vessel<sup>66</sup> and can strike if the vessel is undermanned.<sup>67</sup> There is every reason for the extension of the principle to entitle the crew to strike because of non-compliance with modern statutory regulations designed to make the vessel seaworthy, for the crew is in an effective position to observe whether these regulations are complied with and to supplement administrative inspections by compelling such compliance through refusal otherwise to work.

The case holds in addition that a strike is lawful even though it does not directly arise out of, and is not directly connected with, violations of the statute, for the court conceded that the master could not have complied with some of the strikers' demands and remarked that the strike was caused by "labor agitators" rather than by a violation of the

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64. The case was not cited by the court but was the principal case relied upon by the steamship company. By rule of the Supreme Court, a conflict between decisions of the Circuit Courts of Appeals is a reason for granting certiorari. U. S. Sup. Ct. Gen. Rule XXXVIII, 5 (b). The steamship company, in its petition for certiorari, relied heavily on an alleged conflict between the *Hamilton* and *Weisthoff* decisions, but the Supreme Court denied certiorari, 296 U. S. 619 (1936).

65. *The Mentor*, 17 Fed. Cas. No. 9,427, p. 15 (C. C. D. Mass. 1825).

66. Cf. *United States v. Ashton and The Moslem*, both *supra*, note 54. The statute provides that the first or second mate or a majority of the crew may cause surveyors to investigate the seaworthiness of the vessel if unseaworthiness is discovered before the vessel has left the harbor, but the cost of inspection and any damages occasioned by the delay must be borne by the crew if the complaint of the crew is found to have been "without foundation." 1 STAT. 132 (1790), 5 STAT. 396 (1840), 46 U. S. C. A. §§ 653-659 (1926). The superficiality of such inspections is well known. Cf. *The Jacob Luckenbach*, 36 F. (2d) 381 (E. D. La. 1928).

67. Cf. *O'Reilly v. Dryman*, 85 L. J. K. B. (N. S.) 492, 114 L. T. 613 (1915); *Hartly v. Posonby*, 26 L. J. Q. B. 322 (1857).

statutory regulations. *Weisthoff v. American-Hawaiian Steamship Company* thus supports the proposition that if statutory violations exist, a strike will not constitute mutiny even though the strikers' demands are not primarily directed to compelling the master to comply with the law. This principle was implicit in an earlier case in which it was held that if there has been a statutory violation entitling a member of the crew to his discharge, he may leave the vessel and is entitled to his wages even though he gives some reason other than the violation of the statute for his departure.<sup>68</sup>

But the case cannot properly be confined to a situation where the crew is entitled to its discharge because of violations of statutory regulations. If conduct is mutinous because the master is deprived of authority over the ship, the mere existence of circumstances entitling the seamen to their discharge will not of itself constitute a defense. This is manifest from dicta to the effect that the master's failure to observe statutory regulations on the high seas entitles the crew to complain to the nearest American consul,<sup>69</sup> renders the master or the owners of the vessel liable to the crew<sup>70</sup> and may subject them to criminal prosecution or penalties,<sup>71</sup> but does not justify direct action by the crew to remedy the situation through mutiny.<sup>72</sup> *Weisthoff v. American-Hawaiian Steamship Company* must therefore be taken as an unequivocal affirmance of the principle that a peaceful strike by seamen upon a vessel moored in a port of safety will not constitute the crime of mutiny, where the strike, though in derogation of the master's authority, does not carry with it the dangers to the ship resulting from "mutiny."<sup>73</sup>

68. *El Estero*, 14 F. (2d) 349, 350 (S. D. Tex. 1926); *aff'd in Southern Pac. Co. v. Hair*, 24 F. (2d) 94 (C. C. A. 5th, 1928).

69. 17 STAT. 269 (1872), 46 U. S. C. A. § 662 (1926) (provisions or water).

70. 17 STAT. 270 (1872), 46 U. S. C. A. § 665 (1926) (provisions). Both the ship and the owner of the vessel are liable. *United States Shipping Board Emergency Fleet Corporation v. Greenwald*, 16 F. (2d) 948 (C. C. A. 2nd, 1927).

71. 3 STAT. 513 (1819), 18 U. S. C. A. § 481 (1926); 46 U. S. C. A. § 667 (1926) (medicines), § 669 (clothing and heat), § 670 (slop chests).

72. *Cf. United States v. Reid*, 210 Fed. 486, 491 (D. Del. 1913).

73. *Cf. The South Portland*, 111 Fed. 767, 768 (D. Wash. 1901), in which the court said, in criticizing a master who had caused his crew to be arrested for refusing to work: "No matter how much inconvenience and loss shipowners and merchants and travelers may suffer by the detention of an American ship, caused by the refusal of the crew, when the vessel is in port, to proceed on a voyage, it is unlawful to use judicial process or force to coerce the crew."

In *The Blake*, 1 W. Rob. 73 (Adm. 1839), the refusal of an intoxicated crew to hoist anchor was held a serious offense but not sufficient to forfeit wages as mutiny, the court saying (at pp. 87-8): "The consequence was a gross disobedience of the master's authority, but there was no mutiny, and it is absurd to suppose that a concerted mutiny would have been planned in the presence of a Queen's ship stationed within a few yards of the vessel. It is also to be observed, that the occurrence took place in port, where the ship was exposed

## A STRIKE AS EFFECTING A FORFEITURE OF WAGES

The general maritime law punished offenses of seamen against discipline by the forfeiture, in whole or in part, of wages earned, depending upon the nature and gravity of the offense. The theory of such forfeitures was that, in offending against discipline, a seaman was guilty of a breach of his articles of shipping, which pledged him to good conduct, and that the owner of the vessel was therefore entitled to compensation.<sup>74</sup> As a practical matter, however, although it was open to the owner of the vessel to prove actual damages,<sup>75</sup> the court came to take upon itself the role of taskmaster and to forfeit wages more or less as a punitive or disciplinary measure.<sup>76</sup> The role which the court thus assumed has been recognized by statute,<sup>77</sup> which expressly vests in the court discretion to punish the offenses against discipline therein described by forfeiture of wages or even by short terms of imprisonment.

Offenses for which wages could be forfeited under general maritime law included mutiny<sup>78</sup> and desertion,<sup>79</sup> which were considered a total breach of contract calling for the forfeiture of all wages earned, and gross misconduct, such as habitual drunkenness or insubordination and continual neglect of duty,<sup>80</sup> for which all or only a portion of wages

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*to no hazard, and I draw a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas, where it might expose to destruction the ship, cargo and the lives of all on board.*" (Italics added).

The Act of 1790, 1 STAT. 113 (1790), did not specify where the offense of endeavoring to commit a revolt might take place and it was held that under this Act the offense could take place on a vessel moored in a harbor or on a river. *United States v. Hamilton*, 26 Fed. Cas. No. 15,291, p. 93 (C. C. D. Mass. 1818); *United States v. Haines*, 26 Fed. Cas. No. 15,275, p. 62 (C. C. D. Mass. 1829). In both cases the master was taken ill and the crew refused to put to sea with a new master. The court held that the substitution of a new master did not dissolve the articles of shipping and the crew's demand for a discharge was therefore illegal. The cases therefore have no application to strikes for a proper purpose, such as to enforce compliance with statutory regulations. In *United States v. Lynch*, 26 Fed. Cas. No. 15,648, p. 1033 (C. C. S. D. N. Y. 1843), two members of a crew were found guilty under the 1835 Act, 4 STAT. 776 (1835), 18 U. S. C. A. § 483, 484 (1926), of endeavoring to make a revolt upon a vessel in a harbor 50 or 60 yards from the dock. In that case, the vessel was not moored to a dock but on the contrary was proceeding to sea and had merely dropped anchor to take on the pilot. In any event it is to be doubted whether any of these cases represent the law today in view of the decision in the *Weisthoff* case and of the fact that at the time they were decided, the right to organize was not recognized and strikes were illegal. FRANKFURTER & GREENE, *THE LABOR INJUNCTION* (1930) pp. 2-4.

74. CURTIS, *MERCHANT SEAMEN* (1841), p. 303; *The Lima*, 3 Hagg. 346, 357 (Adm. 1837).

75. *The Mentor*, 17 Fed. Cas. No. 9,427, p. 15 (C. C. D. Mass. 1825).

76. See *The Florence*, 9 Fed. Cas. No. 4,881 at p. 296 (E. D. N. Y. 1866).

77. 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926).

78. *The Mentor*, 17 Fed. Cas. No. 9,427, p. 15 (C. C. D. Mass. 1825).

79. *Cloutman v. Tunison*, 5 Fed. Cas. No. 2,907, p. 1091 (C. C. D. Mass. 1833).

80. *The Mentor*, 17 Fed. Cas. No. 9,427, at pp. 17, 18 (C. C. D. Mass. 1825); *The Florence*, 9 Fed. Cas. No. 4,881, at p. 296 (E. D. N. Y. 1866).

could be forfeited, depending upon the circumstances. Certain of these offenses are now defined and the penalty limited by statute,<sup>81</sup> but since forfeiture under general maritime law is theoretically founded upon contract, it may be that wages can still be forfeited under general maritime law, at least where the statute does not define the offense for which forfeiture is sought.<sup>82</sup>

Thus, although there is nothing in the statute authorizing a forfeiture because of mutiny, nevertheless, since wages could be forfeited because of mutiny under the general maritime law, mutiny would in all probability still constitute a good defense to an action for wages.<sup>83</sup> Where, however, the statute defines a category of offenses broad enough to include in its terms what had been one of the offenses at general maritime law for which a forfeiture could be decreed, it would seem reasonable to suppose that the penalty prescribed by the statute would be held exclusive.<sup>84</sup>

Offenses other than mutiny with which striking seamen have been charged in an effort to withhold their wages are willful disobedience and desertion.

*Willful Disobedience.* The statute provides<sup>85</sup> that "willful disobedience to any lawful command at sea" may be punished by disciplinary measures by the master and, "upon arrival in port, by forfeiture of not more than 4 days' pay, or, in the discretion of the court, by imprisonment for not more than one month." The statute further provides<sup>86</sup> that "continued willful disobedience to any lawful command or continued willful neglect of duty at sea," may be punished likewise by disciplinary measures by the master and, upon arrival in port, by forfeiture of pay during the period of disobedience or neglect, or, in the court's discretion, by imprisonment for not more than 3 months.

The distinction between mutiny, which is a felony, and willful disobedience, which is at most a misdemeanor, is one of substance rather than of degree. Conduct constituting mutiny must in some way imperil the master's authority so as to endanger the ship, whereas willful disobedience is merely an infraction of discipline, the punishment of which in large part rests in the discretion of the master and the court. Since willful disobedience has been made a statutory offense, statutory

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81. 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926).

82. CURTIS, *op. cit. supra* note 74, at p. 305.

83. In *Weisthoff v. The American-Hawaiian Steamship Company*, *supra*, note 63, both the parties and the court appear to have assumed, without argument, that proof of the charge of mutiny would forfeit the seamen's wages.

84. Thus, habitual drunkenness might fall into the category of continued neglect of duty under the offense of willful disobedience.

85. 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926).

86. *Ibid.*

formalities, such as entry of the acts constituting the offense in the ship's log,<sup>87</sup> must be complied with. The failure to make such an entry at the time may constitute a defense to prosecution.<sup>88</sup>

The statute making willful disobedience an offense was designed primarily to punish acts of misconduct of individual seamen and the question whether all the members of a crew who participate in concerted action, such as a strike, can be jointly prosecuted for a conspiracy willfully to disobey and neglect their duty does not appear to have been decided.<sup>89</sup> However, each member of a crew participating in such concerted action could doubtless be found guilty of actual willful disobedience if all the other elements of the offense were present.

But it seems clear that members of a crew participating in a strike on board a vessel which is not on the high seas cannot be guilty of willful disobedience under the statute, for the statute only makes willful disobedience an offense "at sea."<sup>90</sup> Whether a strike at sea renders the crew guilty of the offense must depend upon the justification for the strike. Thus, where the vessel is found to be unseaworthy<sup>91</sup> or undermanned,<sup>92</sup> the crew may properly compel the master

87. 17 STAT. 274 (1872), 46 U. S. C. A. § 702 (1926).

88. "The evident purpose of the statute is to prevent prosecution for breaches of discipline on shipboard, except in those cases where the master shall deem the matter of sufficient importance, while the circumstances are all fresh in his memory, and before there is any temptation to make use of it as a means to some other end, to enter a charge against the offender, together with his reply, in the official log-book. If any difficulty arises between the crew and the master, a previous offense or dereliction, of which no entry was made, cannot be invoked or trumped up, as a make-weight in this subsequent controversy." *United States v. Brown*, 24 Fed. Cas. No. 14,672, at p. 1276 (D. Ore. 1876). In accord: *The Sonderborg*, 47 F. (2d) 723 (C. C. A. 4th, 1931), cert. denied, 284 U. S. 618 (1931); *The Ella Pierce Thurlow*, 18 F. (2d) 675 (E. D. Va. 1926), aff'd with modifications, sub nomine *Swanson v. Torry*, 25 F. (2d) 835 (C. C. A. 4th, 1928). But since the court is by statute vested with discretion as to whether it will receive the log-book in evidence, it has been held that the master's entry of the offense of desertion on the articles of shipping but not in the log was a sufficient compliance with the "true spirit" of the statute. *The Sharon*, 52 F. (2d) 481 (E. D. Va. 1931).

89. Although this question was raised in the *Hamilton* case, the court did not find it necessary to pass upon it.

The British Merchant Shipping Act of 1894 [57-58 Vict. c. 60, § 225 (1894)] makes it a distinct offense to "combine" with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or the progress of the voyage.

90. "The term 'high seas' includes waters on the sea coast without the boundaries of low-water mark. . ." In re *Ross*, 140 U. S. 453, 471 (1891). Quære, whether striking members of a crew on a vessel in a harbor can be found guilty of willful disobedience under the general maritime law.

91. *United States v. Ashton*, and *The Moslem*, both *supra* note 54.

92. The British statute (*supra* note 39) does not confine the offense of willful disobedience to willful disobedience at sea. In *O'Reilly v. Dryman*, 85 L. J. K. B. (N. S.) 492, (1915), the refusal of the crew to put to sea in a vessel on which there were insufficient seamen to man the lifeboats was held not to constitute the offense. Cf. *Hartly v. Posonby*,



to put back to port and the master's order to the contrary will not be considered "lawful." Upon similar principles, where the crew discovers other violations of statutory regulations, a refusal to comply with the master's orders until such violations are remedied should not constitute willful disobedience.

*Desertion.* Desertion, in certain European countries, was at one time a capital offense.<sup>93</sup> In the United States, a deserter could originally be imprisoned or captured and made to serve out the full term of his contract.<sup>94</sup> Today, however, a seaman is free to leave the ship without committing a crime,<sup>95</sup> except that he can be punished, under the statute, by forfeiture of all wages and all clothes and effects left on board.<sup>96</sup>

The essence of the offense of desertion is the quitting of the ship without leave and without intention to return.<sup>97</sup> It would seem clear, therefore, that where seamen taking part in a strike do not quit the vessel, their mere refusal to work does not constitute desertion.<sup>98</sup> Moreover, if

26 L. J. Q. B. 322 (1857). In *Dixon v. The Cyrus*, 7 Fed. Cas. No. 3,930, p. 755 (D. Pa. 1789), the crew refused to weigh anchor until the rigging was repaired. The court held that this action was not mutinous conduct requiring a forfeiture of wages.

93. For a history of the early statutes relating to desertion, see P. S. TAYLOR, *THE SAILORS' UNION OF THE PACIFIC* (1923) 4-7; *Robertson v. Baldwin*, 165 U. S. 275 (1897), and *The City of Norwich*, 279 Fed. 687 (C. C. A. 2nd, 1922).

94. Act 1790, c. 29, § 7, 1 STAT. 134, subsequently enacted as R. S. §§ 4598, and 4599. The Supreme Court held that the latter statutes were not in conflict with the Thirteenth Amendment to the Constitution prohibiting involuntary servitude, because "from the earliest period the contract of the sailor has been treated as an exceptional one" involving the surrender of personal liberty. *Roberts v. Baldwin*, 16 U. S. 275, 282-283 (1897). In addition, desertion was punishable by imprisonment for three months. 17 STAT. 273 (1872).

95. Section 19 of the Act of December 21, 1898, 30 STAT. 760, 46 U. S. C. A. § 701 (1926), amended R. S. § 4596 so as to eliminate compulsory imprisonment and to vest discretion in the court to punish deserters by imprisonment for not more than one month. The 1898 Act was interpreted as abolishing the authority to imprison a seaman for refusing to perform his contract while the ship was in port. *The South Portland*, 111 Fed. 767 (D. Wash. 1901); see *Johnston v. Mowatt*, 115 Fed. 844, 845 (E. D. Pa. 1902). But it was not until the *La Follette Act* of 1915 (*supra* note 1) that imprisonment for desertion was finally abolished. Cf. *The Italier*, 257 Fed. 712, 713 (C. C. A. 2nd, 1919).

96. 17 STAT. 273 (1872), 46 U. S. C. A. § 701 (1926). The statute also punishes conduct in the nature of, but not amounting to desertion, such as (1) absence without leave and without sufficient cause and absence without leave at any time within 24 hours of the vessel's sailing from any port, both punishable by forfeiture of not more than 2 days' pay or sufficient to defray the expenses of hiring a substitute, and (2) quitting the vessel upon her arrival in port but before she is placed in security, punishable by forfeiture of not more than one month's pay.

97. *The Italier*, 257 Fed. 712, 713 (C. C. A. 2nd, 1919); *The City of Norwich*, 279 Fed. 687 (C. C. A. 2nd, 1922).

98. In a few cases, of doubtful authority, in which seamen have been held guilty of desertion, it does not appear whether the seamen, after refusing to work, actually left the ship. *The Elswick Tower*, 241 Fed. 706 (S. D. Ga. 1917). None of these cases discuss the question whether refusal to work as such constitutes "constructive" desertion.

the shipowner compels seamen to leave because they strike, there is likewise no reason for finding that they have voluntarily quit the ship within the meaning of the offense of desertion. The desertion must be voluntary and it has therefore been held that imprisonment on land by civil authorities will not make the seaman a deserter.<sup>99</sup>

Even where the seamen leave the ship in the course of a strike but make it clear that they will return if their demands are met, they cannot properly be held guilty of desertion since that offense contemplates an unequivocal intention permanently to abandon the ship.<sup>100</sup> In any event it is clear that if the seamen are entitled to their discharge by reason of violation of statutory regulations, abandonment of the ship in the course of a strike is not desertion. This was decided in *Weisthoff v. American-Hawaiian S. S. Co.*, in which the steamship company, in addition to claiming that the seamen were guilty of mutiny in refusing to work and in leaving the ship while on strike, also contended that the seamen were guilty of desertion, a contention which the court disposed of in short order.<sup>101</sup>

The ground of the decision is that failure by the shipowner to comply with statutory regulations constituted a breach of the seamen's articles of shipping. A breach of these articles may likewise occur even though the statute does not specifically provide that it shall entitle seamen to their discharge. Thus, under general maritime law applicable today, a seaman will not be considered a deserter if his leaving the ship is found justified by unsatisfactory working conditions.<sup>102</sup> If this principle should

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But the concept and generally accepted definition of the offense would seem a clear answer.

99. *The Lizzie M. Dun*, 30 Fed. 927 (E. D. N. Y. 1887); *Costello v. American Steamship Co.*, 6 Fed. Cas. No. 3,263, p. 610 (E. D. Pa. 1875). Cf. *The Maria*, 16 Fed. Cas. No. 9,074, p. 725 (S. D. N. Y. 1832).

100. In a few cases, seamen have been held guilty of desertion for leaving the ship in the course of a strike. *United States v. Smith*, 12 F. (2d) 265 (C. C. A. 5th, 1926), cert. denied 271 U. S. 686 (1926); *The M. S. Elliott*, 277 Fed. 800 (C. C. A. 4th, 1921); *The Moonlight*, 125 Fed. 429 (S. D. N. Y. 1903). In all these cases, however, the seamen left unconditionally and without offering to return if their demands were complied with; the offense was therefore complete. Moreover, in none of these cases did it appear that there were violations of statutory regulations entitling the seamen to their discharge.

101. In accord: *The Mount Everest*, 17 F. (2d) 478 (C. C. A. 5th, 1927). If a violation of a statutory regulation exists entitling a seaman to his discharge, he will not be considered a deserter even though he leaves the ship for other reasons. *El Estero*, 14 F. (2d) 349, 350 (S. D. Tex. 1926), aff'd in *Southern Pac. Co. v. Hair*, 24 F. (2d) 94 (C. C. A. 5th, 1928).

102. *The Heroe*, 21 Fed. 525 (D. Del. 1884) (unseaworthiness); *Savary v. Clements*, 74 Mass. 155 (1857) (semble); *The Sirius*, 47 Fed. 825 (N. D. Cal. 1891) (excessive loading of British ship in violation of British statute). See *The City of Norwich*, 279 Fed. 687, at pp. 691-2 (C. C. A. 2nd, 1922); *The Childe Harold*, 5 Fed. Cas. No. 2,676, p. 619

be applied to all major safety regulations provided by statute so that the failure of the shipowner to remedy such violations would entitle the crew to leave as a body,<sup>103</sup> the possibility that a crew might justifiably leave the ship before the termination of the voyage would operate as a powerful measure for the enforcement of statutory regulations and for the promotion of safety at sea.

#### CONCLUSION

None of the penalties imposed by law upon seamen for mutinous conduct or infractions of discipline were intended to apply to a peaceful strike in a port of safety. The law was intended to confirm the master's supreme authority on the high seas when the master, single-handed, must enforce his orders, disobedience to which may lead to his overthrow and imperil the safety of ship, passengers and cargo. No such dangers are threatened while the ship is moored to the dock in a port of safety. At most, the shipowner suffers a pecuniary loss through the delayed sailing of the vessel—a loss which is a lawful incident to all strikes, which uniformly depend for their effectiveness upon the interruption of production.

Through the statute abolishing imprisonment as a penalty for desertion, which was enacted subsequent to the mutiny statute, seamen leaving a ship cannot be subjected to imprisonment in order to compel them to remain at work. Surely the mere fact that seamen, in the course of a strike, remain on board instead of leaving a ship moored in a port of safety cannot in itself make the difference between guilt or innocence of the crime of mutiny.

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(S. D. N. Y. 1846) (unwholesome or spoiled provisions); *The John L. Dimmick*, 13 Fed. Cas. No. 7355, p. 691 (D. Me. 1858); *The Karoo*, 49 Fed. 651 (D. Wash. 1892) (failure to supply medicine); *The Castilia*, 1 Hagg. 59 (1822) (want of sufficient provisions). Cf. *Hartley v. Posonby*, 26 L. J. Q. B. 322 (1857) (where some of the crew desert leaving the ship short-handed, the remaining seamen are thereupon entitled to their discharge and there is therefore sufficient consideration for contract with them for increased wages) with *Shanley v. United States*, 294 Fed. 502 (C. C. A. 2d, 1923). It has been held, however, that unseaworthiness does not constitute a breach of contract but merely entitles the crew to have a survey made under the statutes referred to in note 66, *supra*.

103. There is ground for an argument, upon the authorities cited in note 102, *supra*, that implied in every seaman's contract is an agreement by the owner of the vessel that the vessel will comply with all safety regulations and that the failure to observe these regulations will therefore entitle the seamen to leave the ship. Thus in *Dixon v. The Cyrus*, 7 Fed. Cas. No. 3,930, at p. 757 (D. Pa. 1789), the court stated that a term of the seaman's contract is that "the ship shall be furnished with all the necessary and customary requisites for navigation, or, as the term is, shall be found seaworthy." This statement was recently quoted with approval by Mr. Justice Stone in a footnote to a dictum that "unseaworthiness embraced defective appliances." *The Arizona v. Anelich*, U. S. Sup. Ct., April 27, 1936, 3 U. S. L. W. 830.

Most of the cases discussing the rights of seamen are antiquated by economic developments. But it is implicit even in these cases, decided at a time when the right to organize was denied and a strike by any class of workers was illegal, and when seamen quitting their ship could be imprisoned, that the unseaworthiness of a vessel was a grievance of which the crew might justifiably complain and which, if occasion required, they might properly combine to remedy.

For it is the crew, not the owner of a vessel or even its passengers, which is primarily concerned with the seaworthiness of a vessel and which is in the best position to know whether there has been compliance with the regulations designed to promote safety at sea. But since action by individual members of the crew is ineffectual, collective action is necessary. To deny the right of seamen to take collective action is to destroy a safeguard necessary to supplement even the most vigilant administrative enforcement of the law.

But safety at sea requires more than enforcement of safety regulations. It depends also upon a personnel made efficient not by "discipline" but by decent working conditions. Such conditions are most effectively secured through the bargaining power of the seamen themselves rather than through legislative or administrative action. It should be self-evident that the right of seamen to organize and to strike where the ship is not thereby imperilled is essential to enforce compliance with statutory regulations and to secure decent working conditions, without which there can be no safety at sea.

The law now acknowledges, and even favors the right to strike as essential to a satisfactory adjustment of industrial conflicts within the framework of a democratic society. Special circumstances of danger may deny seamen that privilege when at sea or in a port of refuge. But there can be no reason of policy, and no support in the doctrines of maritime law, for denial to seamen when in a port of safety of a right freely recognized in other classes of workers.<sup>104</sup>

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104. Seamen are at present organized in the International Seamen's Union of America, an A. F. of L. union, which is a federation of regional groups and sections of men engaged in the shipping industry. It has had a long history and was torn by internal dissension, and still varies in strength and attitude, with locals in each port. See Albrecht, *The International Seamen's Union of America*, Bulletin of U. S. Bureau of Labor Statistics, No. 342, Misc. Ser. (1923); P. S. TAYLOR, *SAILORS' UNION OF THE PACIFIC*; N. SPARKS, *THE STRUGGLE OF THE MARINE WORKERS*, International Pamphlets, No. 5, 44, ff. (1930). See also series of articles on the Seamen's Union cited note 27, *supra*.