

Discontinued
No. 3614

~~1281~~ United States

1282

Circuit Court of Appeals

For the Ninth Circuit.

T. S. VINCENT, A. RAMSTED, J. M. JOHANSEN,
A. B. EKLOV, K. J. LINDSTROM, V. KUKUS-
KIN, G. REIN, PHILIP NORRISON, A. H. RAY-
MILLER, L. DEPPMAN, W. B. RICHARDS, C. W.
INGEBRETSEN, W. CLAY, A. KRISHLAUK, J.
BIGGINS, E. V. KAJASLAMPI, ANTONIO
MULET, J. ANDERSEN, JAMES W. OREF and
GEORGE WILLIAMS,

Appellants and Cross-Appellees,

vs.

THE UNITED STATES OF AMERICA, and PACIFIC
MAIL STEAMSHIP COMPANY, a Corporation,
Appellees and Cross-Appellants.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

JAN 21 1921

F. D. MONGKTON,
CLERK.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer to Libel.....	10
Answers to Interrogatories Propounded to Defendants.	15
Assignment of Errors (Respondents).....	60
Assignments of Error (Libelants).....	57
Certificate of Clerk U. S. District Court to Apostles on Appeal.....	63
Decree	53
DEPOSITIONS ON BEHALF OF LIBELANTS:	
RAMSTAD, ANDREW G.	23
Cross-examination	33
Redirect Examination	45
EXHIBITS:	
Libelants' Exhibit No. 1—Letter Dated May 3, 1920, Pacific Mail Steamship Company to H. W. Hutton.....	65
Libelants' Exhibit No. 2—Letter Dated March 24, 1920, from Acting American Consul at Manila.....	66
Interrogatories Propounded to Defendants to be Answered Under Oath.....	10

	Index.	Page
Judgment		53
Libel		3
Memorandum Opinion and Order to Enter a Decree in Accordance With Opinion.....		48
Minutes of Hearing of Issues and Order Sub- mitting Cause		17
Notice of Appeal by Libelants.....		56
Notice of Appeal by Respondents.....		58
Stipulation and Order Re Consolidation of Ap- peals		62
Stipulation as to Certain Facts.....		61
Stipulation as to Parts of Record to be Printed		1
Supplemental Memorandum Re Form of Final Decree		51
Transcript of Proceedings in Court.....		18

In the United States Circuit Court of Appeals for the
Ninth Circuit.

T. S. VINCENT et al.,

Libelants, Appellants and Appellees,

vs.

UNITED STATES OF AMERICA and PACIFIC
MAIL STEAMSHIP COMPANY,

Defendants, Appellants and Appellees.

Stipulation as to Parts of Record to be Printed.

It is hereby stipulated that the following parts of the record shall be printed for the consideration of the above court on the appeals:

1. The libel and interrogatories.
2. The answer and answers to interrogatories.
3. The deposition of Ramstad.
4. The transcript of proceedings in lower court.
5. The stipulation as to a certain fact.
6. The minutes of hearing of issues and order submitting cause in lower court.
7. The memorandums of opinion (two).
8. The decree.
9. The notices of appeal (two).
10. The assignments of error (two).
11. The certificate to the apostles on appeal.
12. Print Libelant's Exhibits Nos. 1 and 2.
13. Print the full title and caption in the first paper printed; omit in all others and insert (Title of Court and Cause).
14. Where verifications appear omit, and insert (Duly Verified).

15. The Stipulation and order consolidating appeals.

Dated January 17, 1921.

H. W. HUTTON,
Proctor for Libellants, and Appellants, and
Appellees T. S. Vincent et al.

FRANK M. SILVA,
U. S. Atty.,

E. M. LEONARD,
Asst. U. S. Atty.

Proctors for United States of America.

CHAS. J. HEGGERTY,
Proctor for Pacific Mail Steamship Company,
Defendant, Appellee and—

[Endorsed]: No. 3614. In the Southern Division of the District Court of the United States for the Northern District of California, First Division. In Admiralty. T. S. Vincent et al., Libellants, etc., vs. United States of America et al. Stipulation as to Parts of Record to be Printed. Filed Jan. 17, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the Southern Division of the District Court of the
United States, Northern District of California,
First Division.

IN ADMIRALTY—(No. 16,845).

T. S. VINCENT, A. RAMSTED, J. M. JOHAN-
SEN, A. B. EKLOV, K. J. LINDSTROM, V.
KUKUSKIN, G. REIN, PHILIP NORRI-
SON, A. H. RAYMILLER, L. DEPPMAN,
W. B. RICHARDS, C. W. INGEBRETSEN,
W. CLAY, A. KRISHLAUK, J. BIGGINS,
E. V. KAJASLAMPI, ANTONIO MULET,
J. ANDERSEN, JAMES W. OREE and
GEORGE WILLIAMS,

Libelants,

vs.

THE UNITED STATES OF AMERICA and PA-
CIFIC MAIL STEAMSHIP COMPANY,
Defendants.

(Libel.)

To the Honorable M. T. DOOLING, Judge of the
Above-entitled Court.

The libel of the libelants in the caption hereof
named, seamen, against The United States of Amer-
ica, a nation and owner of capital stock and against
Pacific Mail Steamship Company, agent and ship
owner and operator, in a cause of wages, civil and
maritime alleges as follows:

I.

That United States Shipping Board, and Emer-

agency Fleet Corporation, are both corporations organized and existing under and by virtue of Acts of the Congress of the United States, and are both capital stock corporations, and on all of said dates and times the United States of America owned all of the capital stock of each of said corporations, and now owns the same.

II.

That Pacific Mail Steamship Company, on all of said dates and times, was and now is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, and on all of said dates and times it had and now has a general agent in the city and [5*] County of San Francisco, State of California, and a general Office therein located.

III.

That on all of the dates and times herein mentioned, the steam vessel "Jacox" was and now is an American vessel and engaged in the Merchant service of the United States of America, and was owned by one of the corporations named in paragraph I hereof, and jointly operated by the said corporation so owning the same and defendant Pacific Mail Steamship Company, that which of said corporation named in paragraph I owned and so jointly operated said vessel neither of the libelants know.

IV.

That heretofore and on the 13th day of December, 1919, libelants were hired and employed by the said

*Page-number appearing at foot of page of original certified Apostles on Appeal.

corporations so operating said vessel, at the port of San Francisco, State of California, to serve as seamen on said vessel "Jacox," on a voyage from said San Francisco described in Shipping Articles signed by the master of said vessel and each of libelants before the United States Shipping Commissioner at said Port of San Francisco, as follows: "From the Port of San Francisco, California to Manila P. I. for final discharge, for a term of time not exceeding six (6) calendar months." That said Shipping Articles were upon a printed blank, and *and* the above underscored portions of the description of said voyage was written in, and the remaining portion thereof was upon the said shipping articles as printed by the printer who printed said blanks.

V.

That attached to said shipping articles and forming a part thereof was the following:

"Officers, including steward and radio operator, shall receive first-class transportation, and wages, remainder of crew second-class transportation, and wages, to San Francisco, upon [6] termination of the voyage."

VI.

That libelants so shipped in the following capacities, and at the following rates of wages:

Philip Morrison as boatswain, at the wages of \$95.00 per month.

Libelants A. Ramsted, J. M. Johansen, A. B. Eklov, E. J. Lindstrom, C. W. Ingebretsen and E. V. Kagaslampi as able seamen, at the wages of \$90.00 per month.

Libelants A. Krishlaur, L. Deppman and Antonio Mulet as firemen, at the wages of \$90.00 per month.

Libelants V. Kukuskin, J. Biggins and G. Rein as oilers, at the wages of \$90.00 per month.

Libelants W. Clay and J. Andersen as wipers, at the wages of \$90.00 per month, and T. S. Vincent as messman, at the wages of \$80.00 monthly.

Libelants A. H. Raymiller and W. B. Richards as ordinary seamen, at the wages of \$65.00 per month, and George Williams as cook, at the wages of \$110.00 per month, and James W. Oree as second cook, at the wages of \$90.00 per month.

VII.

That each of the libelants went on board and into the service of said vessel in the capacities aforesaid on said 13th day of December, 1919, and in due course said vessel proceeded to sea with each so on board, and first went to Honolulu, Hawaiian Islands, and from there to Sydney and from there to Newcastle, Australia, all in violation of said Shipping Articles, and from said Newcastle to said Manila, where she arrived on the 28th day of February, 1920, and on the 29th day of said February, their term of service having expired, libelants each left said vessel and demanded each of their wages up to that time; that said vessel was then in a position of safety, but the master thereof refused to pay said wages, and the operators also refused to pay the same, but thereafter and on the 3d day of March, 1920, they paid each of the libelants sums which with what had theretofore been paid equalled one-half of what each had earned up to the 29th day [7] of February, 1920, and

thereupon demanded of each of the libelants that he proceed in said vessel in said capacities from said Manila to Hongkong, in China, which each refused to do, and no other or further sum was paid to any of said libelants at said Manila, or at all, until the 26th day of April, 1920, at San Francisco, California, where libelants proceeded in the manner hereinafter shown. That the said operators of said vessel hired and employed other men to take libelants' places on said vessel on the 4th day of March, 1920, and with such other men said vessel left Manila for Hongkong on the 6th day of March, 1920.

XI.

That the master and said operators of said vessel refused to furnish transportation for any of the libelants from said Manila to said San Francisco, the cost of which was \$244.00 for each of said libelants, and libelants were sent from said Manila to said San Francisco by the customs authorities at said Manila to said San Francisco, as destitute seamen upon the United States Army Transport "Thomas," but each was compelled to work as a seaman on such passage, they so arriving in said San Francisco on the 21st day of April, 1920, and by agreement the said operators of said vessel were to pay libelants \$2.75 per day each for board and lodging at Manila, where libelants were 23 days prior to starting for said San Francisco, but the operators of said vessel refused to pay any of said sum, and on the voyage of said vessel from said Newcastle to Manila, no potatoes were furnished to any of the libelants for 12 days because there was none on board of said vessel and no

sift bread was furnished for ten days and no substitutes were given therefor.

X.

That at said Manila libelants were each compelled to purchase their own food and pay for a place of abode for a further period of three days, to wit, on the 29th day of February, and the 1st and 2d days of March, 1920, which [8] at the time of said hiring it was agreed should be paid for in the event of the same not being furnished on said vessel at the rate of \$2.75 per day for each libelant, none of which has been paid, and that during said voyage libelant George Williams worked 29 hours' overtime on said vessel by order of her steward, his superior officer thereon, for which the operators of said vessel agreed to pay at the rate of sixty cents per hour, but none has been paid, and at said Manila the master and said operators of said vessel refused to either discharge or pay any of the libelants except as aforesaid.

XI.

By reason of the premises, libelants each claim to be entitled to have and receive of defendants herein wages for two days at the rates aforesaid for each of the days from the 4th day of March to the 26th day of April, 1920, to wit, 52 days at double pay for failure to pay them their wages on said 4th day of March, 1920, and also the sum of \$244.00 each for failure to furnish transportation as aforesaid, and the further sum of \$71.50 each for food and lodging as aforesaid, and one dollar per day each for each of the days they were short of potatoes and bread as aforesaid, and libelant George Wallace claims the additional amount aforesaid for overtime worked, to wit, \$17.40, none

of which sums having been paid.

XII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE libelants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against defendant Pacific Mail Steamship Company, and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid, and that the defendants herein may each be required to so answer the premises [9] aforesaid, and that this Honorable Court may be pleased to decree the payment of the amounts aforesaid with costs and interest, and that each of the libelants may have such other and further relief as the court is competent to give in the premises.

JAMES W. OREE.	T. S. VINCENT.
A. H. RAYMILLER.	A. RAMSTED.
G. REIN.	C. W. INGREBRETSEN.
V. KUKUSKIN.	W. CLAY.
J. ANDRESEN.	PHILLIP MORRISON.
B. EKLOV.	K. J. LINDSTROM.
J. M. JOHANSEN.	E. V. KAJASLAMPI.
A. KRISHLAUK.	GEORGE WILLIAMS.
J. BIGGINS.	W. B. RICHARDS and
A. MULET.	L. DEPPMAN,
	By H. W. HUTTON,
	Their Proctor.

H. W. HUTTON,
Proctor for Libelants.

[Duly verified.] [10]

Interrogatories Propounded to Defendants to be Answered Under Oath.

1. Why were libelants not paid their wages in Manila?

2. Did not the "Jacox" carry a cargo of coal from Newcastle, New South Wales, to Manila, consigned to Macondry and Company at Manila?

3. On what day did a crew go on board of the "Jacox" at Manila to supersede libelants?

4. Why was not transportation furnished libelants from Manila to San Francisco?

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed Apr. 30, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [11]

[Title of Court and Cause.]

Answer to Libel.

To the Honorable M. T. DOOLING, Judge of the United States District Court in and for the Southern Division of the Northern District of California, First Division, in Admiralty:

The United States of America, owner of the steamship "Jacox," in answer to the libel of T. S. Vincent et al. on file in the above-entitled proceedings, represented herein by Annette Abbott Adams, United States Attorney for the Northern District of California, comes now by and through E. M. Leonard, Assistant United States Attorney, who states that he has information and belief regarding said libel, and upon such information and belief,

and making answer thereto, denies and alleges as follows: [12]

I.

Answering Article I: Alleges that the United States of America is and was the owner of said SS. "Jacox" on all of the times mentioned in said libel said SS. "Jacox" was being operated and managed by the Pacific Mail Steamship Company as agent at all of said times.

II.

Answering Article II of said Libel: Denies that the Pacific Mail Steamship Company is a corporation organized and existing under and by virtue of the laws of New Jersey.

III.

Answering Article III: Denies that on all of the dates and times in the said libel mentioned that the said SS. "Jacox" was owned and jointly operated by the United States of America or any corporation organized under and by virtue of acts of Congress of the United States of America, and defendant Pacific Mail Steamship Company, and alleges that said vessel at all of said times was owned by the United States of America and operated by Pacific Mail Steamship Company as agent.

IV.

Answering Article IV: Alleges that notwithstanding the contents of shipping articles of said SS. "Jacox" as set forth in said libel, it was contemplated by all parties concerned, including libelants herein, that the voyage of said vessel was for a period not to exceed six months, and included the

ports of Sidney, Australia, Hongkong, China; and that the crew of said vessel were to be finally discharged at Manila, Philippine Islands.

V.

Answering Article V: Alleges that the provision of said shipping articles referred to in said article of said libel contemplated a return of said crew from Manila, P. Is., [13] to San Francisco after final discharge and after voyage to Hongkong had been completed.

VII.

Answering Article VII: Denies that said vessel first went to Honolulu, Hawaiian Islands, and from there to Sidney and from there to Newcastle, Australia, or in any manner in violation of said shipping articles, or that the voyage of said vessel from said Newcastle to said Manila was in any manner in violation of said shipping articles; denies that the term of service of said libelants had expired on the 29th day of February, or that said term of service did expire or it would or did expire until June 13, 1920.

VIII.

Answering Article IX: Alleges that if said voyage had been completed as contemplated by all parties concerned, the master and operators of said vessel would have furnished transportation for said libelants in accordance with said shipping articles, and denies that the cost for transportation for said libelants from Manila to San Francisco was \$244 for each of said libelants. As to whether or not each of said libelants as a destitute seaman aboard

the United States Army Transport "Thomas" was compelled to work as a seaman on such passage from Manila, Philippine Islands, to San Francisco, this affiant has not sufficient information, either to affirm or deny, and basing his denial upon said ground, denies said allegations and demands that full proof thereof be made; denies that by agreement said operators of said vessel agreed to pay libelants for board amounting to 23 days prior to starting for San Francisco from Manila; denies that on the voyage of said vessel from Newcastle to Manila no potatoes were furnished to any of said libelants for 12 days or for any time except when substitute therefor was provided as by law required; [14] denies that no sift bread was furnished for 10 days or for any time except when substitute thereof was provided as by law required.

X.

Answering Article X: As to whether or not at Manila libelants were each compelled to purchase their own food and/or pay for a place of abode for a further period of three days, to wit, on the 29th day of February, and/or the first and/or second days of March, 1920, as to whether or not libelant George Williams worked 29 hours' overtime on said vessel by order of her steward, this affiant has not sufficient information or belief whether to affirm or deny, and basing his denial upon that ground, denies each and all of said allegations, demands full proof thereof.

XI.

Answering Article XI: Denies that by reason of

the premises in said libel set forth or at all that libelants or any of them are entitled to have and/or receive of defendants wages for two days for each of the days from the 4th day of March to the 26th day of April, 1920, to wit, 52 days at double pay for failure to pay their wages on the 4th day of March, 1920, and denies that they are entitled to any double pay whatsoever for failure to pay their wages; denies that each or any of said libelants is entitled to \$244 or any sum for failure to furnish transportation or otherwise; denies that each or any of said libelants is entitled to \$71.50 or any other sum, for food and/or lodging, and denies that each or any of said libelants is entitled to one dollar per day or any days for being short of potatoes or bread, and denies that libelant George Williams is entitled to \$17.40 or any other sum for overtime work while in the employ of this defendant. [15]

XII.

As separate answer and defense to said libel on file herein, alleges that all of said libelants did on the 21st day of April, 1920, before the United States Shipping Commissioner at San Francisco, California, each for himself, by his own signature, release the owner of said vessel from all claims whatsoever by signing a mutual release in words and figures as follows, to wit:

MUTUAL RELEASE.

Form 713.

Dept. of Commerce,
Bureau of Navigation.
Shipping Service.

We, the undersigned, seamen on board the SS.

“Jacox” on her late voyage from San Francisco to ———, do hereby, each one for himself, by our signatures herewith given, in consideration of settlements made before the Shipping Commissioner at this port, release the master and owners of said vessel from all claims for wages in respect of the said past voyage or engagement, and I, master of said vessel, do also release each of the seamen signing said release from all claims, in consideration of this release signed by them.

Dated April 21, 1920.

PACIFIC MAIL S. S. CO.

By W. E. STANTON,

~~Master.~~

Attest as to said master and the ———, whose signatures appear below.

(Signed) S. W. TIBBS,

Deputy Shipping Commissioner.

—and further alleges that at the time of signing said Mutual Release each of said libelants were paid full compensation for services rendered by him up to and including the date of said signing.

Answers to Interrogatories Propounded to Defendants.

Answer to Interrogatory 1: Libelants were not paid their wages in Manila for the reason that they had been declared deserters by the United States Shipping Commissioner at Manila.

2.

Answer to Interrogatory 2: The “Jacox” did carry cargo of coal from Newcastle, New South

Wales, to Manila, consigned [16] to Macondray and Company at Manila.

3.

Answer to Interrogatory 3: As to interrogatory three, affiant has not at this time sufficient information to enable him to answer.

4.

Answer to Interrogatory 4: Transportation was not furnished libelants from Manila to San Francisco, for the reason that libelants had been declared deserters by the United States Shipping Commissioner at Manila and therefore not entitled to such transportation.

WHEREFORE this defendant prays that said libelant take nothing by the above-entitled cause, that said libel be dismissed, and that this defendant recover his costs and charges herein incurred, with such other relief as may be just.

ANNETTE ABBOTT ADAMS,

United States Attorney.

E. M. LEONARD,

Asst. United States Attorney. [17]

[Duly verified.]

[Endorsed]: Filed Jun. 21, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Monday, the ninth day of August, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable FRANK H. RUDKIN, Judge.

No. 16,845.

T. S. VINCENT et al.

vs.

UNITED STATES OF AMERICA.

(Minutes of Hearing of Issues and Order Submitting Cause.)

This cause came on regularly this day for hearing of the issues joined herein. H. W. Hutton, Esq., was present as proctor for libelant. E. M. Leonard, Esq., Asst. U. S. Atty., was present on behalf of the United States. Charles J. Heggerty, Esq., was present as proctor for Pacific Mail S. S. Co. Mr. Hutton introduced and filed deposition of Andrew G. Ramstad, and certain letters, which letters were marked Libelant's Exhibits 1 and 2, and thereupon rested cause on behalf of libelant. Mr. Leonard introduced in evidence and filed list of Commissary stores *re* S. S. "Jacox," which was marked Respondent's Exhibit "A," and thereupon rested cause on behalf of respondent and claimant. The cause

was then argued by the respective proctors and ordered submitted. [20]

[Title of Court and Cause.]

(Transcript of Proceedings in Court.)

Friday, August 6, 1920.

Counsel Appearing:

For the Libelants: H. W. HUTTON, Esq.

For the Respondents: E. M. LEONARD, Esq.,
Asst. U. S. Atty., CHARLES J. HEGGERTY,
Esq.

Mr. HUTTON.—This is an action brought by twenty seamen who shipped on the “Jacox” in San Francisco, on December 13th, last, for a voyage from San Francisco to Manila for final discharge. The vessel, instead of going to Manila, went to Honolulu, and then to Sydney, and then from Sydney to Newcastle and took a load of coal; from Newcastle she went to Brisbane, and from Brisbane to two other ports in succession, and finally reached Manila on the 28th of February of this year. The shipping articles contain a provision that at Manila the men were to receive their wages, and they were to receive a second-class [21] passage home. Upon arrival at Manila, the master of the ship, although their voyage was completed, insisted upon them going to Hongkong. The men declined to go unless he would enter into a new contract with them, which they had a right to do; it would be unlawful to take them out of Manila

otherwise. The master refused to do that. The result was that he declared them all to be deserters, paid them half their money, and left them to the tender mercy of the Consul there. After staying there until the 26th of March, they were sent back to San Francisco as destitute seamen, on the transport "Thomas." This action is for the statutory amount given to men when they are not paid in accordance with law, \$2 pay from the time they ought to have been paid to the time they were paid, and also for the value of second-class passage home—that was to be furnished to them but it was not furnished, and they had to work their way home; and also for some small minor amount for a shortage of potatoes for ten days, and also a shortage of bread for ten days; and also overtime, in the sum of \$17.50, for one of the men. The documents are on file. The answer to the libel practically sets up the same facts.

We have a deposition and some exhibits which I will offer in evidence.

The COURT.—What is the real issue in the case?

Mr. HUTTON.—The only issue in the case is that it was contemplated when these men signed these papers that they were to go anywhere. The Court of Appeals has passed upon that question.

They contend that the men signed a release when they got what money they could get after arriving in San Francisco. The Shipping Commissioner interested himself the best he knew how [22] and got what money he could and left it to them to sue for the rest. My contention is that the

release cuts no figure in this case.

I notified the Pacific Mail to produce a letter which I wrote; have you got it?

Mr. HEGGERTY.—No, but you have a copy.

Mr. HUTTON.—The Pacific Mail was the operator of the vessel under some agreement with the Shipping Board. It filed no answer. It is stipulated that the answer of the United States can stand as the answer of the Pacific Mail.

I offer this letter in evidence.

(The letter was here marked “Libelant’s Exhibit 1,” and is as follows:)

“May 3, 1920.

“Mr. H. W. Hutton,
Attorney-at-law,
527 Pacific Building,
San Francisco, Calif.

Subject: SS. “Jacox.”

Dear Sir:

Replying to your letter of the 27th instant on above subject, beg to advise that, in respect of this crew, that you are probably aware that we made a partial settlement and we now have the matter up with the Shipping Board, the owners of the vessel, regarding the points mentioned in your letter, and hope to hear from them in a day or so, when we will immediately advise you.

Very truly yours,

PACIFIC MAIL STEAMSHIP COMPANY,

By W. A. RAILTON,
Auditor and Assistant Secretary.”

I offer in evidence also a letter dated March 24, 1920, signed by some gentleman whose name I am unable to read, Acting American Consul at Manila, showing what was done in Manila about [23] the crew. It is dated some 24 days after the crew left.

(The letter was here marked "Libelant's Exhibit 2.")

There is an allegation in the libel that the Pacific Mail Steamship Company was a corporation organized under the laws of New Jersey. There is a denial that it was organized under the laws of New Jersey, but there is no denial that it is a corporation.

Mr. HEGGERTY.—It was organized under the laws of New York.

Mr. HUTTON.—Then it is conceded that it is a corporation organized under the laws of New York?

Mr. HEGGERTY.—Yes, it is conceded that it was organized as a corporation under the laws of New York.

Mr. HUTTON.—We rest now, so far as the testimony is concerned.

Mr. LEONARD.—If your Honor please, the defense has a witness with reference to the shortage of food proposition. We are prepared to show that the vessel was fully stocked in those commodities, bread and potatoes, when she left San Francisco. I understand that Mr. Hutton is willing to stipulate that that is so, that she was stocked considerably over the amount. I think, however, though, for the complete consideration of the case, your Honor ought to know what she did have, in order

to determine whether or not these complaints of the crew are worthy of consideration. I think it would be better to put the witness on and let him testify to that.

Mr. HUTTON.—I am willing to concede that she had an abundance of food on board when she left San Francisco, but the testimony shows that the potatoes gave out at Sydney, and that there was an opportunity to buy some potatoes at the [24] Island of Batavia, and the master refused to take any because the potatoes were too small.

Mr. LEONARD.—Will you stipulate that this is a list of the food put aboard her when she left San Francisco?

Mr. HUTTON.—Oh, yes, I am willing to stipulate to that.

Mr. LEONARD.—We will introduce this list, showing what she had on board. It is made by the Pacific Mail Steamship Company from the original papers.

The COURT.—Very well.

(The document was here marked “Respondent’s Exhibit ‘A.’”)

Mr. LEONARD.—I think it would be well, before counsel argues his side of the case, for us to state the points of the defense.

The COURT.—You have no further testimony?

Mr. LEONARD.—No, we have no further testimony.

(Thereupon the cause was argued and submitted for consideration.)

[Endorsed]: Filed Dec. 20, 1920. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [25]

[Title of Court and Cause.]

Deposition of Andrew G. Ramstad, for Libelants.

BE IT REMEMBERED: That on Friday, July 30, 1920, pursuant to notice and stipulation of counsel hereunto annexed, at my office, Room 308 United States Postoffice and Courthouse Building, in the City and County of San Francisco, State of California, personally appeared before me Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Andrew G. Ramstad, a witness called on behalf of the libelants.

H. W. Hutton, Esq., appeared as proctor for the libelants, and Charles T. Heggerty, Esq., appeared as proctor for the respondents, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelants at the office of Francis Krull, Room 208, [26] United States Post Office and Courthouse Building, in the

(Deposition of Andrew G. Ramstad.)

City and County of San Francisco, State of California, on Friday, July 30, 1920, before Francis Krull, a United States Commissioner for the Northern District of California and in shorthand by Charles R. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [27]

ANDREW G. RAMSTAD, called for the libelants, sworn.

Mr. HUTTON.—Q. Your name appears in the proceedings here as “A. Ramstad”; you are the same man, are you? A. Yes, sir.

Q. What is your occupation? A. Seaman.

Q. How long have you been a seaman?

A. Seven years.

Q. What ship were you on last?

A. The “Mayfair.”

Q. When did you leave her?

A. I left her two days ago, the 27th.

Q. Are you expecting to go to sea again?

A. Yes, sir.

(Deposition of Andrew G. Ramstad.)

Q. Were you on the "Jacox"? A. Yes, sir.

Q. As a sailor? A. Yes, sir.

Q. After the "Jacox" left San Francisco where did she go? A. Honolulu.

Q. From there where did she go?

A. Sydney, Australia.

Q. And from there? A. Newcastle, Australia.

Q. And from there? A. To Brisbane.

Q. From Brisbane, where did she go?

A. Thursday Islands.

Q. Where did she go from there?

A. To Balak Papen, Batavia.

Q. And then? A. To Manila.

Q. Did she take any cargo on board at Newcastle? A. Yes, she took a full load of coal.

Q. I show you a paper. Is that the forecastle card of the "Jacox" on that voyage?

A. Yes, sir.

Mr. HUTTON.—I offer that in evidence.

(The document was here marked "Libelant's Exhibit, Ramstad, #1.")

Q. When you got to Manila, did the ship anchor or go alongside the dock at all?

A. She anchored in the harbor. [28]

Q. What did the captain say to you men, if anything?

A. The captain came forward and told me and another fellow that we would have to stay on the ship until she got to Hongkong, we could not get paid off there. I went aft and told the crew what the skipper had told me. We all went up to the

(Deposition of Andrew G. Ramstad.)

skipper and told him we wanted to get paid off, as the agreement was fulfilled. He said it was the order from the company, and so he could not do anything with it. Some of the sailors went ashore Saturday night, and a few went ashore on Sunday, as there was nothing to eat on board, and the balance of the crew went ashore on Monday and Tuesday.

Q. Do you remember what dates those were?

A. We arrived there the 28th of February.

Q. And it was the Saturday, Sunday, Monday and Tuesday closest to the 28th of February that these things happened; that is, some of them went ashore on the 28th, and some of them on the 29th, etc.?

A. Yes, sir.

Q. When you got ashore, did you see the captain again?

A. We went to the Shipping Commissioner, and we put the matter before him, and he didn't seem to understand it; he didn't seem to have the power to do anything.

Q. What did he say?

A. He called the captain and the agent of the company the next day. The crew was also there. We had a conference. We were willing to take the ship to Hongkong if they put a new agreement up, if they changed the articles. The captain said he could not do that; that we had to go on the same articles. We told him that if we were going on the same articles, we would have no right to claim our transportation back, as Manila was the final

(Deposition of Andrew G. Ramstad.)

port of discharge. There was a whole lot of dispute there, and we went to a few lawyers [29] there, but they all seemed to be employed by the Pacific Mail, and we—

Mr. HEGGERTY.—I object to that.

Mr. HUTTON.—Never mind about that.

Q. What else did the Shipping Commissioner tell you, if anything?

A. He didn't tell us anything. He didn't know what to do. He went to the Collector of Customs, and I and the delegate from the firemen were called to the Collector of Customs, and the Collector of Customs told me and this fireman that—

Mr. HEGGERTY.—We object to anything that was told him by the Collector of Customs, on the ground that it is hearsay.

Mr. HUTTON.—You have the right to object to that in court, Mr. Heggerty. Let him go on.

A. The Collector of Customs told us that if we did not take the ship to Hongkong we would be put in jail as deserters. We answered that if he thought he could put us in jail he could go ahead and do it, because we had fulfilled our contract by taking the ship to Manila. With that, he told us to leave the office. We never spoke to him again.

Q. Did you speak to the Shipping Commissioner again?

A. He was the Collector of Customs; the Shipping Commissioner was a Filipino under the Collector of Customs.

Q. There was some other Shipping Commissioner

(Deposition of Andrew G. Ramstad.)

there, though, wasn't there? A. Yes.

Q. What did he say about it?

A. He didn't have no power.

Q. What did he tell you?

A. He only asked us the reason why we could not take the ship to Hongkong, and we said that we could not very well do it, because the contract was fulfilled. They would not give us any money before the 3d of March; [30] then we got half of our wages. We signed off—no, we didn't sign off, we just had the pay bills for the money we received. Finally, we got the Shipping Commissioner to get us a hotel to stay in and provide us with subsistence. He paid for that. We have receipts to show for that.

Q. How did you get away from Manila?

A. We were there for 24 days, I believe, when we got orders to appear before the Shipping Commissioner; he told us we had to go back as deserters in the transport "Thomas." We objected to that, but we didn't see any other way to get out of Manila, but to do as he told us.

Q. I show you a paper. Did you ever see that paper before? A. Yes, sir.

Q. Did the different libelants sign that paper?

A. Yes, all the libelants signed that paper.

Q. What was done with the original of it? Did you give that to the Collector of Customs?

A. Yes, I believe it was given to him.

Q. Those signatures on there, are they the signatures of the libelants? A. Yes, sir.

(Deposition of Andrew G. Ramstad.)

Mr. HUTTON.—I offer that and ask to have it marked exhibit 2.

(The document was marked “Libelant’s Exhibit, Ramstad, #2.”)

Q. I show you another paper. Where did you get that?

A. We got that from the Shipping Commissioner to go up to the hospital and pass an examination to leave the port.

Q. Did you all go? A. Yes, sir.

Mr. HUTTON.—I offer this paper in evidence.

(The document was marked “Libelants’ Exhibit, Ramstad #3.”) [31]

Q. You came home on the “Thomas”?

A. Yes, sir.

Q. I show you these cards. Look at this paper. Where did you get that?

A. I got that aboard the transport “Thomas.” That is an identification card.

Q. Did each one of the crew get a similar card?

A. Yes, sir.

Mr. HUTTON.—I have a bunch of these, Mr. Heggerty.

Mr. HEGGERTY.—Are they identification cards on the transport “Thomas”?

Mr. HUTTON.—Yes. I offer these as one exhibit.

(The cards were here marked “Libelants’ Exhibit, Ramstad, #4”—4 cards.)

Q. How did you come home?

(Deposition of Andrew G. Ramstad.)

A. We were sent home as deserters, destitute seamen.

Q. Did you work on the way home?

A. Yes, we had to do one hour's work every second day.

Q. Did all of you work?

A. Yes. We also had to dish out food to the soldiers.

Q. When you got to San Francisco did you go to the Shipping Commissioner? A. Yes, sir.

Q. Just state what happened there.

A. We had a letter from a lawyer in Manila to the Shipping Commissioner in San Francisco about the case; we went to see the Shipping Commissioner in San Francisco; he said he was going to look into the matter. The only thing he did was to give us straight time from the time we left there until we got to San Francisco.

Q. Did you sign a receipt for that?

A. We signed a receipt for the pay we received.

Q. Did the Shipping Commissioner tell you anything before you signed it?

A. We asked him if this was the final discharge, [32] and he said, "No, you have a right to sue for anything you think you are liable to get, for anything you think you have against the company." There were five of us there when he said that.

Q. On the whole voyage, what kind of food did you get on the ship?

A. On the 2d day out from San Francisco I was complaining to the skipper about the bread; we

(Deposition of Andrew G. Ramstad.)

didn't get no bread for a day or two. He told me that if I didn't like the ship I could go ashore at Honolulu. So far as the steward was concerned, he said he had nothing to say, the skipper was running that part of the ship. We had a few complaints to the skipper going down to Sydney. After leaving Sydney we were short of bread and potatoes for about ten days altogether on the trip from Sydney to Manila.

Q. How was it about the potatoes?

A. He pulled into Balak Papen, Batavia, for provisions, and he also took some oil there. He got some potatoes and bread, and he sent them ashore again, because he said they were too small to eat. He got about a basketful from some American ship lying there. We were without potatoes for about ten days between Sydney and Manila. And the same with bread, we didn't have bread for ten days, either.

Q. Do you know what the name of the steward was? A. No, I don't remember.

Q. Do you know what these are?

A. McDonald—that is the name.

Q. What are these papers?

A. The Steward's Department papers; overtime of the stewards.

Q. Are those what the men get on those ships when they work overtime?

A. I don't know anything about those.

Q. With respect to going to Hongkong, your belief was that [33] if you got to Hongkong they

(Deposition of Andrew G. Ramstad.)

could not send you from Hongkong, but that they had to send you from Manila—I mean send you home; is that correct?

A. Well, I don't know. We were supposed to go to Manila. We got there. We thought if we left Manila we would not have any claim for transportation after leaving Manila.

Mr. HUTTON.—I offer these for what they are worth; they are signed, apparently, by the steward; they are overtime sheets for George Williams, chief cook.

(The documents were marked "Libelants' Exhibit, Ramstad, #5." Two sheets.)

Q. What is this?

A. That is the receipt from the hotel we were staying at. That is my own. Each individual had his own receipt.

Q. What was to be paid for your hotel in Manila—your board?

A. They paid 4 pesos a day for us; that is \$2 American money. Our agreements with the ship owners—between the Sailors' Union and the ship owners—is that we shall have \$2.75 for subsistence money; so we claim 75 cents extra for the time we were in Manila, because they did not pay more than 4 pesos.

Q. What position did you hold on board with reference to the crew?

A. I was representing the sailors; I was the delegate of the sailors.

(Deposition of Andrew G. Ramstad.)

Q. The sailors usually pick out one man for that purpose, do they?

A. The members of the deck department pick out their delegate on board the ship to handle the overtime, and if there is any complaint he shall go and see the man in charge about it.

Cross-examination.

Mr. HEGGERTY.—Q. Where did you get this forecastle card, [34] Exhibit 1, Mr. Ramstad?

A. That is put up in the forecastle when we are leaving port, when we sign on.

Q. And where did you get it?

A. We took it from the forecastle, as we thought it might come in handy for us, because our contract was fulfilled, and we were entitled to that forecastle card.

Q. This is posted in the forecastle by the ship, is it? A. Yes, sir.

Q. And is the card required by law to be posted and remain posted there?

A. It is not to remain there after the trip is finished.

Q. But it belongs to the ship. It is required by law to be posted in the forecastle?

A. Yes; it was in the forecastle until we left it.

Q. And when you left the ship you tore this card off and took it with you, did you? A. Yes, sir.

Q. Who tore it off?

A. I don't know exactly who tore it off.

Q. Some of the sailors?

(Deposition of Andrew G. Ramstad.)

A. Some of the crew did, yes.

Q. Where did you get it?

A. It was delivered to me to bring it up to the lawyers.

Q. Who gave it to you, what member of the crew?

A. We had it lying around in the fore-castle and I picked it up in the mess-room.

Q. Don't you know what member of the crew took it down?

A. No, I could not say that for certain.

Q. And you have had it ever since, have you?

A. Yes. We gave it to the lawyer here in San Francisco on our arrival here.

Q. You said that the crew was willing to go from Manila to Hongkong if they would give them new articles.

A. That is what we explained to the skipper in Manila.

Q. What kind of articles did you ask for?

A. They have to sign a contract; they have to put up new articles, because that article was already fulfilled. [35]

Q. I mean what kind of articles. Was it just only to Hongkong for final discharge?

A. No, they would not give us any agreement at all what it was going to be; the skipper said he wanted to take us to Hongkong and then take us back to Manila again.

Q. You said that the sailors were willing to sign new articles to go to Hongkong and come back to

(Deposition of Andrew G. Ramstad.)

Manila again, provided that you had the transportation back to San Francisco and provided in the original articles. Was that your arrangement?

A. If we can arrange to take the ship to Hongkong and then get transportation back to Manila and then to San Francisco, it would not make any difference to us.

Q. And you told him you would be willing to do that?

A. Yes, the whole crew told him they would be willing to do that.

Q. And he told you he had no power to do that?

A. He was not willing to do it; he said he could not do that.

Q. And that was the reason why you didn't go on to Hongkong, was it, because you believed that you thereby forfeited your right to transportation back to San Francisco as agreed in the original articles?

A. Yes.

Q. You were paid at Manila how much money?

A. We got half of the wages we had earned up to that day.

Q. That was the 28th of February, wasn't it?

A. Yes.

Q. Anything else?

A. No; we only got that. The Shipping Commissioner stood good for our subsistence money.

Q. In other words, you got the subsistence and you didn't pay for it; the Shipping Commissioner paid for it; he stood good for it, did he?

(Deposition of Andrew G. Ramstad.)

A. Yes, because he said we were there as desert-ers.

Q. What I mean is this: You didn't pay anything for subsistence in Manila, did you?

A. No. [36]

Q. Then you went on the transport "Thomas" under the conditions you have stated?

A. Yes; we expected to get a fairer trial here in San Francisco in the case than we could get down there. We went to a couple of lawyers down there, but they were all employed by the Pacific Mail.

Q. I didn't ask you that. I ask that that be stricken out. Didn't the Shipping Commissioner tell you that it was your duty to stay by the ship and go to Hongkong?

A. No, he didn't tell us that. He told us that so far as he could see we had the right to get paid off there.

Q. Did the master tell you that if you went to Hongkong he would bring you back to Manila for final discharge, or send you back there?

A. Well, I guess he did say that, yes. He said that, but we claimed that after leaving Manila we had no right to anything in the contract previously put up between the master and the crew.

Q. And did the Commissioner advise you on that, or did the master, saying you would not forfeit your rights in any way going to Hongkong?

A. No, they didn't say anything about that.

Q. Do you know anything about the Shipping Commissioner having certified at Manila that you

(Deposition of Andrew G. Ramstad.)

were deserters from the ship when you left?

A. No; he gave us a statement in Manila.

Q. In writing? A. Yes. Haven't you got that?

Mr. HUTTON.—I haven't got it here.

Mr. HEGGERTY.—Q. And the Shipping Commissioner gave you a statement in writing?

A. Yes.

Q. Do you remember in substance what that was?

Mr. HUTTON.—I will get it for you.

Mr. HEGGERTY.—All right. We will ask for that.

Q. You gave that to Mr. Hutton, did you?

A. Yes. [37]

Q. And that is the statement you refer to?

A. Yes, I believe it is.

Q. When you came to San Francisco, you say you had this letter from a lawyer in Manila to the Shipping Commissioner? A. Yes.

Q. Do you remember the name of that lawyer in Manila?

A. Farrell, I believe, is the name. You have that letter.

Mr. HUTTON.—I have the letter.

Q. Is that the letter?

A. Yes, that is the letter.

Mr. HEGGERTY.—It is Williams & Ferrier, by J. W. Ferrier.

Q. And you presented this to the Shipping Commissioner at San Francisco—this letter?

A. That was the copy of it; the original letter was sent to the Shipping Commissioner himself.

(Deposition of Andrew G. Ramstad.)

Q. To the United States Shipping Commissioner. And the United States Shipping Commissioner has it, so far as you know? A. Yes.

Mr. HEGGERTY.—We introduce this in evidence as a part of the cross-examination.

(The document was here marked “Respondents’ Exhibit ‘A.’”)

Q. When you arrived in San Francisco, the sailors were all paid off before the United States Shipping Commissioner here, as I understand you, straight pay from Manila to San Francisco?

A. Yes; we got whatever we had coming, straight pay from the time we left until we arrived here in San Francisco.

Q. And then you signed the mutual release in the Shipping Commissioner’s book, did you?

A. No, we only signed for the money we received. We did not sign no release whatsoever, either in Manila or in San Francisco.

Q. Didn’t you sign in the United States Commissioner’s book?

A. No, I don’t believe we did. We only signed the pay-roll for the Pacific Mail. [38]

Q. Didn’t you also sign in the Shipping Commissioner’s office what they call the mutual release?

A. No, we did not.

Q. Just try and see if you cannot remember that.

A. I can go up to the Shipping Commissioner and find out, but I am positive we did not sign anything except the pay-roll of the Pacific Mail, because I, myself, asked the Shipping Commissioner if we

(Deposition of Andrew G. Ramstad.)

signed this pay-roll if that stopped us from suing the company for the fare money, and he said, "No." There was present one fireman and myself and the boatswain and the chief cook.

Q. When you signed the articles here in San Francisco for this trip, did you know where the ship was bound for?

A. Not except the rumor about it, that she was going to Sydney. Our understanding was this, that she was running for the Oceanic Steamship Company to Sydney. The Oceanic Steamship Company had the ship before. Some of the members of the crew had made one trip before. It was our understanding that when she got to Sydney the Pacific Mail was going to take her over. That is the understanding we had.

Q. And bring her from there to what port?

A. To Manila, her final port of discharge. That is what the articles read to.

Q. And did you know, when you left here, that the ship was not to return to San Francisco, that she was going to remain over there?

A. Yes, we knew that.

Q. And did you know that Hongkong was the place where she was to remain?

A. No, we never heard about Hongkong before we got to Manila.

Q. Was the cargo of coal taken to Manila, or do you know whether it was taken for discharge at Hongkong? [39]

A. It was taken for discharge at Manila.

(Deposition of Andrew G. Ramstad.)

Q. And was it discharged there?

A. They discharged every bit of it right in Manila.

Q. Did you know, at the time, that this was a United States Shipping Board ship—I mean when you signed the articles here?

A. Yes, we knew it was a Shipping Board ship when we signed the articles. We also knew that the Oceanic Steamship Company had had her for—I don't know how long, but for a certain amount of time, and that the Pacific Mail was going to take her over when she got to Sydney. That is the understanding the crew had, every one of them.

Q. And on the way over on the "Thomas" you worked an hour a day?

A. Not every day; we were shifted into two sections, and when one gang was working the other one did not have to work. We had to check up the stores for the second class, and the third class, and the first class, we had to check up all the stores; and besides that, we had to dish out food for the soldiers.

Q. The transport was carrying soldiers back to San Francisco, was she? A. Yes, sir.

Q. Were you paid anything for any of those services at all?

A. No. We were called up to the Quartermaster's Department, and he told us that if we were willing to do the duty of a soldier, except the military duty, we would be treated as good as the soldiers, but if we did not do work it would make it

(Deposition of Andrew G. Ramstad.)

bad for us. That is the statement he gave in front of the whole crew. So we had a little conference by ourselves, and we came to the conclusion that it was better for use to go to work as he wanted us to do. We were conceded then the same as the soldiers; we were traveling in the same class as the soldiers. [40] The passage is \$22.50 for each man from Manila.

Q. The passage on the transport?

A. Yes; that is what I heard; that is what the ship's crew said.

Q. But none of them paid anything? A. No.

Q. You neither got any pay, nor did you pay anything?

A. No, we didn't pay anything; the Shipping Commissioner sent us aboard.

Q. The second day out from San Francisco you say there was no bread, or was it that there was some objection to the quality of the bread?

A. There was no bread.

Q. No bread at all? A. No, no bread at all.

Q. Was there any substitute for bread?

A. No. I complained to the steward, and he went and told the skipper, and the skipper called me up in his room and he asked what reason I had to complain about the bread. I told him that whenever we have reason we will complain, it doesn't matter what it is. He told me that if I didn't like the ship I could go ashore at Honolulu.

Q. Wasn't there any bread on the ship at all?

(Deposition of Andrew G. Ramstad.)

A. Yes, there was bread, but the skipper said the stove was not in commission. I told him he should look after that before he left San Francisco.

Q. Did you get no bread?

A. Oh, yes, we got bread the day after.

Q. The day after the complaint?

A. Yes; then we had bread all the way along, but many meals we didn't have no bread, but I guess that was more the fault of the cooks. After leaving Sydney we didn't have bread for more than half the passage, from Sydney up to Manila.

Q. Do you know the cause for that?

A. They claimed they did not have any yeast. That is the only reason they had. But that was not the fault of the crew. And also potatoes; I [41] reminded the skipper about the potatoes before leaving Newcastle, but he didn't answer me. As a matter of fact, it was not up to me to look after potatoes or anything else. I just told him in case he didn't know about it.

Q. And you say there were no potatoes from Newcastle?

A. We had certain meals some days, but altogether for about ten days we didn't have nothing, either bread or potatoes.

Q. During any of the meals? A. No.

Q. That is to say, during ten days, at none of the meals did you have any bread or potatoes?

A. About ten days altogether from leaving Sydney to Manila we didn't have any bread.

Q. At some meals you had and at some you had

(Deposition of Andrew G. Ramstad.)

not? A. At some we had and at some we had not.

Q. And that extended over a period of about ten days?

A. No, that extended over the whole trip; if you put all the meals together, it will make ten days, or something like that.

Q. And at some meals you had them, but at some you had not. Is that correct? A. Yes.

Q. And putting all the meals together at which you did not have bread or potatoes, or bread and potatoes, it would make a period of ten days, counting three meals a day? A. Yes, sir.

Q. So that, figuring the number of meals you were without bread or potatoes, it would be equivalent to ten days altogether—in other words, three meals a day for ten days? A. Yes, sir.

Q. Thirty meals at which you did not have potatoes or bread. Is that right? A. Yes, sir.

Q. But it would not be all in one day that you would not have bread or potatoes, would it?

A. The last four days before coming into Manila we did not have any potatoes at all, or no bread whatsoever. We got bread, but it was just like a stone, [42] nobody could eat it.

Q. You couldn't raise it?

A. No. The Sunday after we got to Manila—we got there on a Saturday—on Sunday at breakfast there was hardly anything to eat; we all had the intention of leaving the ship, as our agreement was up, but we could not go ashore unless we got paid off; only the men who had money went ashore; those

(Deposition of Andrew G. Ramstad.)

who did not have any money had to stay on board. We had to complain about the food on Saturday morning, there were neither bread or potatoes.

Q. That was in Manila? A. Yes.

Q. Do you remember the name of the hotel you went to?

A. The Washington Hotel, the Phoenix Hotel, and the Elite Hotel.

Q. How were the meals there—were they satisfactory?

A. Yes, the meals were satisfactory there.

Q. So that the subsistence you got in Manila was satisfactory to you?

A. We were all sent to the Elite first, but it was satisfactory to none of us; then we asked the Shipping Commissioner to change us, and some went to the Phoenix and others went to the Washington.

Q. And after that it was satisfactory?

A. Yes, sir.

Q. You said that you had an arrangement with some of the ship owners there, or with somebody, to pay you \$2.75 a day for subsistence.

A. That is the agreement here in San Francisco, between the crew and the ship owners, that \$2.75 a day shall be considered as subsistence money, including food and hotel—bed money.

Q. Is that in the original articles?

A. No, they never put that in the articles.

Q. That is the Sailors' Union Agreement with the ship owners? A. Yes. [43]

Q. And you say that the subsistence there at

(Deposition of Andrew G. Ramstad.)

those hotels was only costing \$2 instead of \$2.75?

A. Yes, sir.

Q. How do you know that?

A. We got our own receipts down from the hotel when we left.

Q. For \$2 a day? A. Yes.

Redirect Examination.

Mr. HUTTON.—Q. Did you say they discharged the cargo of coal that they took aboard at Newcastle at Manila? A. Yes, sir.

Q. Do you know on what date it was discharged?

A. No, I could not tell that exactly, as I left the ship the second day after she arrived there, but they started to discharge the coal on Monday morning; we came in on Saturday at five o'clock.

Q. And they started to discharge Monday morning at eight o'clock? A. Yes, sir.

Q. Do you know what day the ship left Manila?

A. I believe it was on the 5th or 6th of March.

Q. Did they have any trouble getting a new crew?

A. No—yes, I believe they had some trouble getting it, but I didn't know much about that.

Q. Did the ship leak?

A. No. Our understanding was this: When we got to Manila with the ship there would be a Chinese crew to take our place, as the ship was going to go over to China, or run between China and India, picking up freight for the bigger boats of the same company. That was our understanding.

Q. Who told you that?

A. Some of the officers. The third officer told me

(Deposition of Andrew G. Ramstad.)

that here in San Francisco—Leland. We all had that understanding about the ship.

Q. What Shipping Commissioner was it who told you that as far as he could see you had a right to be paid off in Manila?

A. The Shipping Commissioner at Manila told us that. [44]

Q. When did he tell you that?

A. When we were up there speaking to him about things. As a matter of fact, he didn't know what to do, but he said that by the articles we had the right to leave the ship. We also asked him if it would be right if we sent a telegram to the Shipping Commissioner here in San Francisco, and he agreed to that. He sent it to him. It cost about 42 pesos. We collected that from all the crew. We sent the telegram to MacArthur, but we received no answer.

United States of America,
State and Northern District of California,
City and County of San Francisco.

I certify that, in pursuance of stipulation of counsel, on Friday, July 30, 1920, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office, Room 308 United States Post-office and Courthouse Building, in the City and County of San Francisco, State of California, personally appeared Andrew G. Ramstad, a witness called on behalf of the libelants in the cause entitled in the caption hereof; and H. W. Hutton, Esq., appeared as proctor for the libelants, and Charles T.

Heggerty, Esq., appeared as proctor for the respondents, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation [45] of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

Accompanying said deposition and referred to and specified therein are Libelants' Exhibits, Ramstad, Nos. 1 to 5, inclusive, and Respondents' Exhibit "A.")

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 7th day of Aug., 1920.

FRANCIS KRULL, (Seal)
United States Commissioner, Northern District of
California, at San Francisco. [46]

[Title of Court and Cause.]

**(Memorandum Opinion and Order to Enter a Decree
in Accordance With Opinion.)**

H. W. HUTTON, Esq., Proctor for Libelants.

FRANK M. SILVA, Esq., United States Attorney,
and E. M. LEONARD, Esq., Assistant United
States Attorney, Proctors for Respondents.

RUDKIN, District Judge.

On the 13th day of December, 1919, the libelants signed shipping articles before the United States Shipping Commissioner, at the Port of San Francisco, to serve as seamen on a voyage on the steam vessel "Jacox," described in the articles as follows:

"From the Port of San Francisco, California, to Manila, P. I., for final discharge for a term of time not exceeding six (6) calendar months."

The articles contained this further stipulation:

"Officers, including steward and radio operator, shall receive first-class transportation, and wages, remainder of crew second-class transportation, and wages to San Francisco, upon termination of the voyage."

On, or *seen* after the date of the articles, the vessel proceeded from San Francisco to Honolulu, thence to Sydney and New Castle, Australia, and thence to Manila, arriving at the latter port on February 28th, 1920. On the [49] following day the libelants left the vessel and demanded their wages, claiming that their term of service had expired.

This demand was not complied with, but on March 3^d following the libelants were each paid one-half of the wages earned up to and including the 29th day of February. The master insisted that the libelants were obligated by the shipping articles to continue the voyage to Hongkong, China, but this they refused to do unless new articles were signed for such voyage. The master refused to sign new articles, claiming that he had no authority so to do. Later the libelants returned to San Francisco upon a Government transport, and, upon their return, were paid wages in full up to the date of their arrival at San Francisco and signed the customary release. In the present proceeding the libelants seek to recover the following additional sums:

1. Double pay from the 4th day of March to the 26th day of April, or 52 days in all, as a penalty for failure to pay the wages due at the expiration of the term of service;

2. The cost of second-class passage from Manila to San Francisco;

3. Ten dollars to each libelant for failure to furnish potatoes and a like sum for failure to furnish bread for a period of ten days in all;

4. Seventy-five cents per day for each day detained in Manila, being the difference between Two Dollars a day paid for their maintenance and Two Dollars and Seventy-five Cents a day agreed upon between the seamen and the ship owners; and

5. Seventeen Dollars and Fifty Cents for overtime to the libelant Williams. [50]

After a careful examination of the record and

briefs, I have reached the following conclusions:

1st. That the voyage terminated at Manila and that the respondents have failed to show sufficient cause for failure to pay the seamen the wages due them. They have therefore incurred the penalty imposed by law.

2d. That the libelants were entitled to transportation, second class, from Manila to San Francisco and not to the cost of such transportation. They were, in fact, transported free of charge on a Government transport, receiving the same treatment as was accorded to American soldiers, working only one hour every other day to secure certain privileges or better treatment. Under these circumstances they are not entitled to recover the cost of transportation.

3d. I think the testimony fairly establishes the fact that the libelants were not furnished potatoes for a period of about ten days, but there is a failure of proof as to the failure to furnish bread. The testimony on the latter point is uncertain and the complaint seems to go to the quality of the bread furnished rather than the failure to furnish bread at all.

4th. The maintenance furnished was satisfactory and was paid for by the respondents, so that I fail to see any basis for the recovery of seventy-five cents per day, the difference between the amount paid and the amount of maintenance agreed upon.

5th. There seems to be no defense to the claim for overtime on the part of the libelant Williams.

Let a decree be entered accordingly.

August 18th, 1920.

[Endorsed]: Filed Aug. 18, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [51]

[Title of Court and Cause.]

**Supplemental Memorandum (Re Form of Final
Decree).**

H. W. HUTTON, for Libelants.

FRANK M. SILVA, United States Attorney, and
E. M. LEONARD, Assistant United States
Attorney, for Respondents.

RUDKIN, District Judge.

An interesting question is here presented involving the construction of Section 3 of the Act of March 4, 1915 (Section 8320, Comp. St. 1916), when applied to the peculiar facts of this case. On the final hearing the Court held that the voyage in question terminated at Manila that the respondents failed to show sufficient cause for their refusal to pay libelants the wages due them at that time, and thus incurred the penalty imposed by law. The extent of the penalty or the amount of the recovery, however, were not discussed or considered at that time. The libelants have submitted a decree awarding them double pay from the 4th day of March, 1920, to and including the 25th day of April, 1920, or 53 days in all. The respondents, on the other hand, have submitted a decree awarding single

wages only, from the 4th day of March, 1920, to and including the 25th day of April, 1920, which they compute as 52 days in all. The difference between the parties is therefore the difference between single and double pay and a difference of [52] one day in the computation of time. The facts which give rise to this difference are briefly these: Under the terms of the shipping articles the libelants were entitled to wages to San Francisco upon the termination of the voyage, and such wages have been in fact paid. If they are now awarded double pay for the same period the result will be that they have been thrice paid. If such is the intent and meaning of the statute the Court of course is not concerned with the result, but was such the legislative intent? While the statute is in a measure penal in its nature, there is also present the element of compensation to the seaman and the additional allowance is expressly made recoverable as wages. It seems to me, therefore, that equity and justice would require no more than the payment of double wages in all covering the period of default. The statute is a penal one and the courts have been disposed to construe it rather strictly. The suggestion of counsel for libelants that the pay allowed for the period of the return voyage to San Francisco was in fact pay for the original voyage does not appeal to me. The vessel on its departure did not expect to return to San Francisco and provision was therefore made for the payment of wages for the return voyage to the home port. The libelants were in fact, therefore, paid single wages until

their return to California and are not entitled to double wages now.

While the libel only claims the penalty for 52 days, it occurs to me that the computation made by the libelants is correct. The libelants should have been paid on the 3d day of March and on the 4th day of March became entitled to the penalty for the default. They also became entitled to the penalty accruing on each succeeding day up to and including the 25th day of April, which makes 53 days in all. The form of decree submitted by the respondents will therefore be signed when modified [53] so as to allow but one day's additional pay for the period of 53 days.

Let the proposed decree be reformed and submitted accordingly.

August 31st, 1920.

[Endorsed]: Filed Aug. 31, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [54]

[Title of Court and Cause.]

Decree.

This cause having been heard on the pleadings and proofs and the arguments and briefs of the respective parties, and the Court being fully advised, it is now ORDERED, ADJUDGED AND DECREED and this does ORDER, ADJUDGE AND DECREE, that for and on account of the matters set forth in the pleadings and shown by the proofs herein, that libelants have and recover, from the

defendants, United States of America, and Pacific Mail Steamship Company, the following sums respectively:

For the statutory penalty provided for the non-payment of seaman's wages, by Section 4529, Revised Statutes of the United States, from and including the 4th day of March, 1920, to and including the 25th day of April, 1920, fifty-three (53) days in all, as follows:

Libelant Phillip Morrison, the sum of one hundred sixty-seven dollars and eighty-three and one-third cents (\$167.83 $\frac{1}{3}$).

Libelant A. Ramstad, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant J. M. Johansen, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant A. B. Eklov, the sum of one hundred fifty-nine dollars (\$159.00). [55]

Libelant E. J. Lindstrom, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant C. W. Ingrobretses, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant R. V. Hagaslampi, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant A. Krishlauk, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant L. Deppman, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant Antonio Mulet, the sum of one hundred fifty-nine (\$159.00).

Libelant V. Kususkin, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant J. Biggins, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant G. Rein, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant W. Clay, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant J. Andresen, the sum of one hundred fifty-nine dollars (\$159.00).

Libelant T. S. Vincent, the sum of one hundred thirty-nine dollars and thirty-three and one-third cents (\$139.33 $\frac{1}{3}$).

Libelant A. H. Raymiller, the sum of one hundred fourteen dollars and eighty-three and one-third cents (\$114.83 $\frac{1}{3}$).

Libelant W. B. Richards, the sum of one hundred fourteen dollars and eighty-three and one-third cents (\$114.83 $\frac{1}{3}$).

Libelant George Williams, the sum of one hundred eighty-four dollars and thirty-three cents (\$184.33 $\frac{1}{3}$).

Libelant James W. Oree, the sum of one hundred fifty-nine dollars (\$159.00). [56]

Each of said libelants the further sum of ten (\$10.00) dollars for shortage of potatoes, for ten days.

Libelant George Williams the sum of seventeen 40/100 (\$17.40) dollars for overtime worked.

Together with their costs to be taxed.

Dated September 9th, 1920.

FRANK H. RUDKIN,
United States District Judge.

Receipt of copy of the within Decree is hereby admitted this 2d day of September, 1920.

H. W. HUTTON,
Proctor for Libelant.

[Endorsed]: Filed Sep. 9, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 10, Judg. and Decrees, at page 105. [57]

[Title of Court and Cause.]

(Notice of Appeal by Libelants.)

The defendants in the above cause and their proctors will please take notice, that libelants appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree given and made in said cause by said district court, on the 9th day of September, 1920.

You will further take notice, that libelants desire only to review on said appeal the following questions.

The action of the said District Court in fixing the amount of the penalty for the nonpayment of their wages when they should have been paid in Manila, March 4th, 1920, to one day's pay per day for 53 days, instead of two days' pay per day for 53 days.

The action of the said District Court in deciding that libelants were not entitled to judgment for the sum of \$222.00 each the cost of a second-class passage from Manila to San Francisco.

Dated December 10th, 1920.

Yours, etc.,

H. W. HUTTON,

Proctor for Libelants.

Copy received this 10th day of December, 1920.

CHARLES J. HEGGERTY,

KNIGHT & HEGGERTY,

Proctor for Pacific Mail S. S. Co. [58]

Copy received this 10th day of December, 1920.

FRANK K. SILVA,

U. S. Atty.,

E. M. LEONARD,

Proctor for United States of America.

[Endorsed]: Filed Dec. 10, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [59]

[Title of Court and Cause.]

Assignments of Error (Libelants).

1. The Court erred in not awarding to each of the libelants the cost of a second-class passage from Manila to San Francisco.

2. The Court erred in deciding that the wages paid each of the libelants upon his arrival in San Francisco were a credit upon the amount of the penalty owing by defendants to each of the libelants under section 4529 of the Revised Statutes of the United States.

3. The Court erred in not deciding that the wages paid to each of the libelants in San Francisco at the time of their arrival there from the voyage

they made on the "Jaco," from the time of the expiration of their contract of service on that vessel, was pay for time actually consumed and was not a credit on the statutory penalty for the failure to pay the wages payable in Manila.

H. W. HUTTON,

Proctor for Libelants.

Copy received this 13th day of —, 192—.

CHAS. J. HEGGERTY,
KNIGHT & HEGGERTY,

Proctor for Pacific Mail Steamship Co.

Copy received this 13th day of December, 1920.

FRANK M. SILVA,

U. S. Atty.

E. M. LEONARD,

Asst. U. S. Atty.,

Proctors for United States of America.

[Endorsed]: Filed Dec. 13, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [60]

[Title of Court and Cause.]

Notice of Appeal by Respondents.

To Each of the Above-named Libelants and to
Their Proctor, H. W. Hutton.

You and each of you will please take notice that the United States of America, and Pacific Mail Steamship Company, defendants above named, and each of them, appeals from the final decree of court in this cause made and given in favor of the above-named libelants and against the above-named de-

defendants on the 9th day of September, 1920.

You will also please take notice that the above-named defendants desire only to review on appeal the following portions of said decree, to wit:

That portion of said decree which awards to each of said libelants seaman's wages from and including the 4th day of March, 1920, to and including the 25th day of April, 1920, that portion which awards to each of said libelants the sum of ten (\$10.00) dollars for shortage of potatoes for ten (10) [61] days, and that portion which awards to libelant George Williams the sum of seventeen dollars and forty cents (\$17.40) for overtime worked.

Dated: December 15, 1920.

FRANK M. SILVA,
United States Attorney.

E. M. LEONARD,
Asst. United States Attorney,
Proctors for United States of America.

KNIGHT & HEGGERTY,
Proctors for Pacific Mail Steamship Company.

Due service and receipt of the above Notice of Appeal is hereby admitted this fifteenth day of December, 1920.

H. W. HUTTON,
Proctor for Libelant.

[Endorsed]: Filed Dec. 15, 1920. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [62]

[Title of Court and Cause.]

Assignment of Errors (Respondents').

The United States of America and the Pacific Mail Steamship Company, defendants above named, assign errors in the rulings and proceedings of the District Court herein as follows:

I.

That the Court erred in entering its decree awarding to each of said libelants penalty provided for non-payment of seaman's wages by Section 4529 of the Revised Statutes of the United States, from and including the 4th day of March, 1920, to and including the 24th day of April, 1920.

II.

That the Court erred in awarding to each of libelants the further sum of ten (\$10.00) dollars for shortage of potatoes for ten (10) days.

III.

That the Court erred in awarding to libelant George Williams the sum of seventeen dollars and forty cents (\$17.40) for overtime worked.

IV.

That the Court erred in awarding the costs to said libelants.

FRANK M. SILVA,
United States Attorney. [63]

E. M. LEONARD,
Asst. United States Attorney,
Proctor for United States of America.

KNIGHT & HEGGERTY,
Proctors for Pacific Mail Steamship Company.

Due service and receipt of the above Assignment of Errors is hereby admitted this fifteen day of December 1920.

H. W. HUTTON,
Proctor for Libelant.

[Endorsed]: Filed Dec. 15, 1920. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [64]

[Title of Court and Cause.]

(Stipulation as to Certain Facts.)

It is hereby stipulated that it was agreed in open court at the time of the trial of the above cause, between the respective parties thereto by and through their respective proctors, that the cost of a second-class passage from Manila to San Francisco at the time of libelants leaving the said vessel "Jacox" in Manila, to wit, during the month of March, 1920, was the sum of two hundred and twenty-two and 50/100 (\$222.50) dollars.

Dated: December 22d, 1920.

H. W. HUTTON,
Proctor for Libelants.
KNIGHT & HEGGERTY,
Proctors for Pacific Mail Steamship Company.
FRANK M. SILVA,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Proctors for United States of America.

[Endorsed]: Filed Dec. 23, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [65]

[Title of Court and Cause.]

(Stipulation and Order Re Consolidation of Appeals.)

The libelants and each of the defendants in the above cause having taken appeals therein to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree given and made in said cause by the said District Court on the 9th day of September, 1920, and libelants having filed a praecipe for the apostles on said appeal herein, which is correct,—

IT IS STIPULATED that all said appeals shall be heard on the apostles called for in said praecipe, and that but one apostles shall be sent from said District Court to said United States Circuit Court of Appeals for the Ninth Circuit, and that but one transcript of record shall be printed in said Court of Appeals, and all of said appeals shall be heard on said one transcript.

Dated: December 15th, 1920.

H. W. HUTTON,

Proctor for Libelants.

KNIGHT & HEGGERTY,

Proctors for Pacific Mail Steamship Company.

FRANK M. SILVA,

United States Attorney,

E. M. LEONARD,

Assistant U. S. Attorney,

Proctors for United States of America.

It is so ordered.

Dated December 17th, 1920.

W. H. HUNT,
Circuit Judge. [66]

[Endorsed]: Filed Dec. 17, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [67]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 68 pages, numbered from 1 to 68, inclusive, contain a full, true, and correct transcript of certain records and proceedings in the case of T. S. Vincent, et. al., Libelants, vs. United States of America and Pacific Mail Steamship Company, Respondents, No. 16,845, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal, and the instructions of proctors for appellants herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Twenty-two Dollars and Thirty Cents (\$22.30), and that one-half thereof has been paid by proctor for libelants and the remainder will be charged against the United States in my quarterly account for the current quarter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 27th day of December, A. D. 1920.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [69]

[Endorsed]: No. 3614. United States Circuit Court of Appeals for the Ninth Circuit. T. S. Vincent, A. Ramsted, J. M. Johansen, A. B. Eklov, K. J. Lindstrom, V. Kukuskin, G. Rein, Philip Morrison, A. H. Raymiller, L. Deppman, W. B. Richards, C. W. Ingebretsen, W. Clay, A. Krishlauk, J. Biggins, E. V. Kajaslampi, Antonio Mulet, J. Andersen, James W. Oree and George Williams, Appellants and Cross-Appellees, vs. The United States of America and Pacific Mail Steamship Company, a Corporation, Appellees and Cross-Appellants. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed December 27, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Libelants' Exhibit No. 1.

PACIFIC MAIL STEAMSHIP COMPANY.

508 California Street.

San Francisco, Cal., May 3rd, 1920.

Mr. H. W. Hutton,

Attorney at Law,

527 Pacific Bldg.,

San Francisco, Calif.

Subject: Crew—SS. "Jacox."

Dear Sir:

Replying to your letter of the 27th instant on above subject:

Beg to advise that in respect to this crew, that you are probably aware that we made a partial settlement and we now have the matter up with the Shipping Board, the owners of the vessel, regarding the points mentioned in your letter and hope to hear from them in a day or so when we will immediately advise you.

Yours very truly,

PACIFIC MAIL STEAMSHIP COMPANY,

H. E. A. RAILTON

Auditor & Assistant Secretary.

R/G.

[Endorsed]: United States District Court. No. 16,845. Vincent vs. U. S. Lib. Exhibit No. 1. Filed Aug. 9, 1920. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3614. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 27, 1920. F. D. Monckton, Clerk.

Libelants' Exhibit No. 2.

The Government of the Philippine Islands,
Department of Finance.

BUREAU OF CUSTOMS.

Manila.

March 24, 1920.

TO WHOM IT MAY CONCERN :

I hereby certify :

That the following members of the crew of the Shipping Board S. S. "Jacox" which arrived at this port February 28, 1920, were considered as deserters therefrom for the reason that they refused to proceed with her to Hongkong where she had to be delivered :

C. W. Ingebretsen.	James Biggins.
T. S. Vincent.	Philip Morrison.
A. Krisplanik.	J. Jahansen.
C. V. Kajaslampi.	Waldo B. Richards.
A. B. Ekton.	Johan Andreson.
G. Rein.	A. Ramtad.—
K. Y. Lindstram.	Jony Mulet.
A. Paymiller.	James W. Oree.
V. Kukuskin.	George Williams.
Louis Deppman.	John Cottrell.
Billy Clay.	

That the Pacific Mail Steamship Company at Manila who are acting as agents for the said vessel signified their willingness to bring the above named members of the crew back to Manila and here to make the final discharge after such delivery was effected if they desired.

That notwithstanding the agents' statement, the said members of the crew of the S. S. "Jacox" insisted on being discharged at this port without taking the said vessel to Hongkong, the port of delivery, on the ground that she completed her voyage and delivery was made; whereupon the Master thereof rated the said seamen as such deserters and this office so confirms.

That the Master of the said vessel paid on March 3, 1920, or three days previous to her departure for Hongkong, to the above members of the crew, with the exception of John Cottrell, one-half of the wages which were then earned by them up to and including March 2, 1920.

[Seal]

[Signature Illegible]

Insular Collector of Customs,
Acting as American Consul at Manila.

[Endorsed]: United States District Court. No. 16,845. Vincent vs. U. S. Lib. Exhibit No. 2. Filed Aug. 9, 1920. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3614. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 27, 1920. F. D. Monckton, Clerk.

