

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

In re Sutherland

53 F. 551 (D. Or. 1892) · Decided December 17, 1892

SUMMARY

The court denied a habeas corpus petition seeking the release of a seaman who had signed shipping articles, received an advance, and failed to join his assigned vessel. It held that the seaman was legally bound to render himself on board and became a deserter by failing to do so, while also observing that the purported treaty concerning deserters lacked legal force because Senate approval was not shown.

CASE DETAILS

COURT	United States District Court for the District of Oregon
WRITING FOR THE COURT	Heady, District Judge
JURISDICTION	Oregon
DECIDED	December 17, 1892
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for habeas corpus challenging the detention of a seaman by the master of a British merchant vessel after the seaman failed to join the vessel and was treated as a deserter.
PRECEDENTIAL VALUE	Published federal district court opinion
PARTIES	Peter Grant v. James Crombie, master of the Invergarry

TOPICS

- admiralty
- civil procedure
- constitutional law

PRACTICE AREAS

- Admiralty
- Habeas corpus
- Maritime employment

QUESTIONS PRESENTED

- Whether the purported treaty concerning deserters had legal force without advice and consent of the United States Senate.
- Whether a seaman who signs articles requiring him to render himself on board at once becomes bound to join the vessel and may lawfully be held by the master after failing to do so.

HOLDINGS

1. The purported treaty had no legal force because the record did not show that the United States Senate had advised and consented to it; proceedings taken solely under that treaty were therefore ineffective.
2. A seaman who signs shipping articles requiring him to render himself on board at once is bound to do so; failure to join the vessel constitutes desertion. Because Sutherland was legally bound to join the Invergarry and came into the master's custody, his detention was lawful and the writ of habeas corpus was properly dismissed.

KEY QUOTATIONS

“A contract is complete when the articles are signed, and, unless they contain a provision postponing his going on board, the seaman is bound to render himself on board at once, or else he becomes a deserter.”
(552)

FACTUAL BACKGROUND

George Sutherland signed articles at San Francisco for a voyage aboard the British bark Invergarry, received an advance on his wages, and traveled to Astoria at the vessel's expense. Although the articles required him to proceed to Astoria and render himself on board at once, he refused to join the Invergarry after arriving there and was persuaded to remain by Peter Grant and others. Proceedings under a purported United States-British treaty resulted in Sutherland's placement in the master's custody, but he later escaped.

PROCEDURAL HISTORY

George Sutherland signed shipping articles at San Francisco for a voyage that required him to travel to Astoria and join the British bark Invergarry. After Sutherland failed to join the vessel, proceedings were initiated before the British vice consul under a purported treaty concerning deserters, and Sutherland was placed in the master's custody. Peter Grant petitioned for a writ of habeas corpus. The master returned that Sutherland had escaped, and the court dismissed the writ and entered judgment against Grant for costs.

DISPOSITION

dismissed

OPINION

HEADY, J.

HEADY, District Judge. On December 7, 1892, George Sutherland duly shipped at San Francisco, before the British consul, for a voyage on the British bark Invergarry, to a port of discharge in the ■ United Kingdom. At the time, the vessel was lying at Astoria, Or., loaded and ready to clear for Queenstown. At the time of signing the articles, Sutherland received \$40 advance on his wages, and at once proceeded to Astoria, on the steamship Queen, at the expense of the bark, where he arrived on the morning of the 9th.

There he refused and neglected to join the vessel, being thereto persuaded by the petitioner, Peter Grant, and his associates, certain boarding-house keepers at Astoria.-. The master of the Invergarry, Mr. James Crombie, then instituted proceedings under a supposed treaty between Great Britain and the United States, concerning deserters from merchant vessels, signed at Washington on June 3, 1892, to have said Sutherland returned to the vessel as a deserter, which resulted in his being placed thereon in the custody of the master, where he said he desired to remain and proceed upon the voyage.

On the 10th inst., on the petition of Peter Grant, a writ of habeas corpus issued from this court, directed to the said master, commanding him to produce the body of Sutherland before the same, with the cause of his detention.

On the 12th inst. the master made a return setting forth the above facts, and the day after made a supplemental return, to the effect that Sutherland had escaped, at Portland, that morning, and he was unable further to comply with the writ.

The petitioner demurred to the return, and the case was argued by counsel. The shipping articles were annexed to the return, and made a part thereof. From these it appears that Sutherland "agreed to make the voyage from San Francisco to Astoria, there to join the Invergarry and proceed on her to a port of discharge" as above stated, and to render himself "on board at once," and to be "obedient to all lawful commands of the master, "whether on board, in boats, or on shore." It does not appear that the treaty aforesaid, under which the proceedings before the vice consul, at Astoria, took place, has ever been confirmed by the United States senate.

The constitution (article 2, § 2) gives the president power to make treaties, "with the advice and consent of the senate," and not without it. So far as appears, the senate not having advised and consented to this so-called "treaty," it has no legal force, and the proceedings taken thereunder are of no avail. But if the seaman was legally bound to render himself on board the Invergarry, as he certainly was, and he afterwards came into the custody of the master, he was lawfully there, and the writ must be discharged.

The voyage commenced at San Francisco on the Queen, and the fact that it was to be prosecuted from Astoria onward in the Invergarry makes no difference in the status or obligation of the sailor. A contract is complete when the articles are signed, and, unless they contain a provision postponing his going on board, the seaman is bound to render himself on board at once, or else he becomes a deserter. ' 2 Pars.

Shipp. & Adm. 99. These articles required Sutherland to render himself on board "at once," which he did, and afterwards deserted, at Astoria. This was not a contract of shipment on the Queen and to ship on the Invergarry at Astoria after reaching there. Sutherland shipped for the whole voyage

from San Francisco to Europe, — from San Francisco to Astoria in the Queen, and thence forward in the Invergarry.

By failing to render himself on board of either vessel, or absenting himself therefrom, he became a deserter. The writ is dismissed, and judgment is given against the petitioner for costs.