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# Mutiny at the Dock

## I.

IN MARCH, 1936, the 374 members of the crew of the Panama-Pacific liner, California, refused to release the ship from its dock in the harbor at San Pedro, California, until the officials of the company agreed to pay them the Pacific Coast scale of wages on the return trip to New York, instead of the wages paid on the Atlantic Coast.<sup>1</sup>

The crew performed all its duties on board ship during the three day period that it was detained at dock. It was agreed to put to sea only after a telephone conversation with Secretary of Labor Perkins in Washington, in which Secretary Perkins urged the crew to help the ship proceed and promised to see that their demands were placed before a conference between the International Sailors' Union and Atlantic Coast shippers, who were then negotiating a new wage and hour contract.<sup>2</sup> After the men had been promised that Secretary Perkins would use her "good offices" to prevent discrimination against the strikers, the crew agreed to resume the voyage.<sup>3</sup>

Secretary Perkins asserted that the action of the crew was merely a strike.<sup>4</sup> Secretary of Commerce Roper told reporters "that the strikers had violated the laws of the sea", and "called upon the Justice Department to take direct action against the sailors on the California for mutiny, overriding the suggestions of Secretary Perkins."<sup>5</sup>

The officials of the Panama-Pacific Line, in a paid advertisement, apologized for the delay of the ship in Los Angeles and stated that the crew was guilty of a "crime"<sup>6</sup> under section 292 of the United States Criminal Code. This section defines mutiny.

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<sup>1</sup> Los Angeles Times, Tuesday, March 3, 1936, Part II, page 3, col. 1; Wednesday, March 4, 1936, Part II, page 5, col. 4; Thursday, March 5, 1936, Part II, page 1, col. 7; page 3, col. 2; Sunday, March 15, 1936, Part I, page 1, col. 3; page 2, col. 3.

At the time, there was a difference of approximately \$5.00 a month for an average man, the West Coast rate being \$62.50, and the Atlantic Coast rate \$57.50. See Rothschild, *Legal Implications of a Strike by Seamen* (1936) 45 YALE L. J. 1181, also based upon the San Pedro episode.

<sup>2</sup> Los Angeles Times, Sunday, March 15, 1936, Part I, page 1, col. 3; page 2, col. 3.

After the California resumed its voyage, The International Seamen's Union obtained a new contract from the Panama Pacific Lines granting the wages the sailors had demanded. Fourteen companies signed the new contract.

<sup>3</sup> Los Angeles Times, Sunday, March 15, 1936, Part I, page 2, col. 3.

<sup>4</sup> Los Angeles Times, Sunday, March 15, 1936, Part I, page 1, col. 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> Los Angeles Times, Saturday, March 21, 1936. The advertisement read as follows:

Thus, the question is squarely presented: Can there be a mutiny at the dock?

## II.

The Constitution grants to Congress the power to "define and punish Piracies and Felonies committed on the high seas."<sup>7</sup> Congress has enacted statutes which from a legislative standpoint adequately cover the field of mutiny. The act of 1790,<sup>8</sup> by which the endeavor to make and the making of a revolt in a ship were first made crimes in the United States, declared that if a seaman should make a revolt in a ship, he would be adjudged a pirate and a felon, and laid down severe penalties therefor without enumerating the acts that would constitute the offenses.

In the early leading case of *United States v. Kelly*<sup>9</sup> the defendants,

"A STATEMENT RELATIVE TO THE CANCELLED SAILING OF  
THE S. S. CALIFORNIA

"The sailing of the S. S. California from New York scheduled for today has been cancelled.

"In Los Angeles on March 2nd last certain former members of the crew of the California refused to obey the orders of the captain. The ship was delayed three days as a result.

"Refusal of the members of a crew to obey the orders of a captain is a crime against the United States, being punishable under Section 292 of the Criminal Code, by a fine of not more than \$1,000 or imprisonment for not more than 5 years, or both.

"Upon arrival of the California in New York on the morning of March 18, the crew of the California was paid off, the term of their engagement having expired under the ship's articles.

"The leaders of the Los Angeles episode have now induced, by one means or another, the former members of the crew of the California not to sign the ship's articles for the new voyage unless all of the leaders responsible for the trouble in Los Angeles be taken back also.

"The Panama-Pacific Line is unwilling to have any of its vessels put to sea with members of the crew not prepared to obey the lawful orders of the captain, or who have been guilty of a crime. The Line demands of its crews competence, loyalty and obedience to lawful commands.

"Safety at sea and the lives of the passengers depend primarily upon the efficiency and discipline of the crew, and strict obedience to the orders of the captain of the ship.

"The Panama-Pacific Line cannot compromise the safety of its passengers. It has declined to take back those members of the crew who refused to obey the orders of the captain.

"The International Sailors' Union (affiliated with the American Federation of Labor), with which we have an agreement running until 1937, supports our position. This is not an issue involving organized labor.

"The Panama-Pacific Line regrets the inconvenience to the public and asks for its support in its efforts to maintain the highest standards for safety at sea.

PANAMA-PACIFIC LINES."

<sup>7</sup> U. S. CONST., Art. I, §8, Cl. 10.

<sup>8</sup> 1 STAT. (1790) 115, c. 9, §§ 12, 36.

<sup>9</sup> (1826) 11 Wheat. (24 U. S.) 417, *aff'd* (1825) Fed. Cas. No. 15516.

Kelly and others of the crew, were indicted under the statute of 1790. They were found guilty and appealed to the Supreme Court on the ground "that the act of Congress does not define the offense of endeavoring to make a revolt, and that it was not competent to the court to give a judicial definition of a crime heretofore unknown."

Mr. Justice Washington, in delivering the opinion of the Court, stated that although the act of Congress did not define the offense, it was nevertheless competent for the court to give a judicial definition of it. "We think that the offense consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person."

In the words of Justice Story: "It has been supposed that the terms of this definition [*United States v. Kelly*] excluded cases where seamen conspire together not to do duty on board, so as to compel the master to yield to their wishes in respect to the navigation, the course of the voyage, or the exercise of his proper functions as commander, but it is confidently believed that such was not the understanding of the court itself."<sup>10</sup> In line with Story's views concerning the definition set forth in the *Kelly* case, the case of *United States v. Hemmer*<sup>11</sup> included within the scope of a proper definition of mutiny a refusal by the crew or a part thereof to do duty, or to obey further orders, and an effort to prevent the master from exercising his lawful authority in the navigation, management or police of the ship. In *United States v. Haines*,<sup>12</sup> Justice Story further clarified his view as to a proper definition of what constitutes mutiny and held that removal from command need not be by physical force, but that the overthrow of authority may be just as complete by a universal disobedience of orders as by actual force. The *Kelly* case permits constructive as well as physical revolt.

<sup>10</sup> ABBOTT, SHIPPING (4th Am. Ed. 1829, with Story's Notes) 141.

<sup>11</sup> (1825) Fed. Cas. No. 15345. Also see *U. S. v. Smith* (1816) Fed. Cas. No. 16337; *U. S. v. Savage* (1830) Fed. Cas. No. 16225; *U. S. v. Barker* (1829) Fed. Cas. No. 14516; *U. S. v. Gardner* (1829) Fed. Cas. No. 15188; *U. S. v. Peterson* (1846) Fed. Cas. No. 16037; *U. S. v. Thompson* (1832) Fed. Cas. No. 16492, all of which enunciate the rule of the *Hemmer* case, *i.e.*, disobedience to lawful commands constitutes a constructive endeavor to commit a revolt.

<sup>12</sup> (1829) Fed. Cas. No. 15275. See *Reg. v. M'Gregor* (1844) 1 Car. & K. 429 and *Rex v. Hastings* (1825) 1 Mood. 82, wherein members of the crew were indicted under the English statute of 11 & 12 WILL. III (1700) c. 7, § 9, for endeavoring to make a revolt in a ship and the courts held that such endeavor could consist of the combination of the crew to resist the captain by disobedience to orders as well as by physical acts or deprivation of authority.

In 1835, the act of 1790 was amended in conformity with the decision in *United States v. Kelly* and the expansions thereon by Justice Story.<sup>13</sup> In the few cases decided under the act of 1835, the earlier views were approved and followed.<sup>14</sup>

In 1909, the law of mutiny as it now stands was enacted.<sup>15</sup> It is therein stated: "Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board said vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew, to disobey or resist the lawful orders of the master or other officer of said vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than \$1,000 or imprisoned not more than five years, or both." The penalty for succeeding in the making of a revolt and mutiny is set forth in the next section of the act.

### III.

A review of the few cases involving mutinous action by the crew of a vessel discloses that problems analagous to the situation at San Pedro have rarely come before appellate courts. The decisions of the last several centuries serve largely as a basis for distinction rather than as a foundation of precedent.

Social-industrial developments require that the question be considered in its bearing upon the relationship between employer and labor as well as that between captain and crew. The law of mutiny developed when it was considered illegal for employees to organize into unions, when a trade union was frowned upon, and when a strike, in furtherance of demands made by such a union, was held to be beyond the lawful rights of any group of laborers. Such action by employees today is no longer open to legal question. The trade union has

<sup>13</sup> 4 STAT. (1835) 776, c. 40 §2.

<sup>14</sup> U. S. v. Peterson, *supra* note 11, in which it was held that disobedience to lawful orders is sufficient to constitute an endeavor to revolt; U. S. v. Cassidy (1837) Fed. Cas. No. 14745, holding that the combination of seamen to refuse to do further duty on board the ship and to resist the lawful commands of the officers was sufficient to sustain an indictment for an endeavor to conduct a revolt under the 1835 Act; U. S. v. Nye (1855) Fed. Cas. No. 15906, following Justice Story's views in U. S. v. Barker and U. S. v. Gardner, both *supra* note 11, that refusal to obey lawful commands is an endeavor to make a revolt, and citing with approval U. S. v. Cassidy, *supra*.

<sup>15</sup> 35 STAT. (1909) 1146, REV. STAT. 5359, 5360, c. 321, §§ 292, 293, 18 U. S. C. A. (1927) c. 12, §§ 483, 484.

become firmly entrenched in the modern industrial world as a powerful and necessary factor; and the strike, to protest against arbitrary and unfair treatment by employers or to secure better wages and working conditions, is recognized as a lawful corollary of the right of collective bargaining.

The historical attitude of the courts as to the authority of the master over his mariners was based on the extreme necessity for complete acquiescence and obedience to any and all orders, tending to promote the safety of the ship at sea. An early writer speaks of "the moral obligation of services, whether large or small, to life or property in peril on the seas, which have ever been rewarded with a large munificence by the law, and the selfish and wilful refusal of which has ever been visited with the contempt and execration of mankind."<sup>15a</sup> The power of the captain was declared to be analagous to that of a parent over his child or of a master over his scholar; such power was despotic and it was within the province of the master to insure utter obedience not only by personal chastisement, but by confinement or imprisonment on board ship.<sup>16</sup>

It is not here contended that safety at sea no longer continues to be an important consideration. On the contrary, safety must always be maintained. Where safety is involved, seamen have no right to refuse obedience by way of a strike. But the legal right of collective bargaining, with its usual lawful incidents, must be allowed where no danger may result to the ship, its cargo or its passengers, as in the case of a vessel at dock.<sup>17</sup>

The arbitrary character of the relation between master and seaman has diminished to a great extent. The power to inflict corporal punishment, for example, has fallen into disuse; and it would be exceedingly difficult to satisfy a court that its exercise was reasonable.<sup>18</sup> Punish-

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<sup>15a</sup> Curtis, *Obedience Due From Seamen to the Master of the Vessel* (1840) 23 Am. Jur. 70, 73.

<sup>16</sup> ABBOTT, *op. cit. supra* note 10, at 136, 137; MACLACHLAN, *SHIPPING* (7th ed. 1932) 150.

<sup>17</sup> The only early recognition of this principle is in *The Blake* (1839) 1 W. Rob. 73, 166 Eng. Rep. 500, wherein it was held that a refusal by members of the crew, while the vessel was docked, to put to sea was no mutiny. It was said: "It is also to be observed, that the occurrence took place in port, where the ship was exposed to no hazard; and I draw a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas, where it might expose to destruction the ship, cargo, and the lives of all on board." 166 Eng. Rep. at 506.

<sup>18</sup> MACLACHLAN, *op. cit. supra* note 16, at 152, citing ABBOTT, *op. cit. supra* note 10, at 240. See 46 U. S. C. A. (1928) c. 18, § 712, prohibiting flogging and all other forms of corporal punishment on board of any vessel, and making such action a misdemeanor punishable by a prison sentence. For historical view, see *Lamb v. Burnett* (1831) 1 C. & J. 291, wherein the master was held justified in flogging

ment of a seaman can today be supported in the eyes of the law only if it is administered to prevent injury to the ship, its contents, or persons on board.<sup>19</sup>

The relation between captain and crew is now almost entirely regulated by statute. Provisions, medical treatment, living accommodations, clothing, heating and ventilation, to which seamen are entitled, are all specifically provided for;<sup>20</sup> a violation of any of these provisions imposes upon the master various pecuniary penalties.<sup>21</sup>

The master of a vessel is no longer the despot that he was in earlier years, in spite of the fact that safety at sea is still the dominant consideration under the law.

#### IV.

An analysis of the cases, both in this country and in other English-speaking nations, where alleged mutinous conduct occurred when the ship was in proximity to the shore, leads us first to the early case of *United States v. Hamilton*,<sup>22</sup> in which the crew refused to put to sea

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a seaman on board an English vessel in port at Canton. Even at that time, when seamen could be flogged by the captain, excessive punishment was the basis of a tort action. The *Agincourt* (1824) 1 Hagg. 271.

<sup>19</sup> *Escandon v. Pan American Foreign Corporation* (S. D. Tex. 1935) 12 Fed. Supp. 1006, in which it was held proper for a chief officer to handcuff and confine a seaman who was attempting to interfere with the pumps, as a precautionary measure to prevent injury to the ship. Therein cited is *The South Portland* (1901) 111 Fed. 767, where the court held that it was proper to punish at sea by confinement in the brig because of the necessity of safety at sea, but that it was unlawful to imprison a sailor because of his refusal, when the vessel is in port, to proceed on a voyage, no matter how much inconvenience and loss ship-owners and merchants and travellers may suffer.

<sup>20</sup> 46 U. S. C. A. (1928) c. 18, §§ 541-713; MERCHANT SHIPPING ACT (England) 57 & 58 Vict. (1894) §§ 198-211; CANADA SHIPPING ACT, 24 & 25 GEG. V. (1934) §§ 224-229. The English and Canadian Shipping Acts require the master to sign an agreement with the crew, and provide for a fine if the master fails to make the agreement as required. Sections 111 and 135 of the English Act and Section 163 of the Canadian Act both provide for fines on the master, if he fails to carry out the statutory duty with regard to the engagement and paying of his crew. Both acts provide for cancellation or suspension of the master's certificate if he is found incompetent or has been guilty of any gross act of misconduct, drunkenness or tyranny; and both acts further provide that the master may be removed upon application of one-third or more of the crew of the ship. See 46 U. S. C. A. (1928) c. 11, §239, similarly providing for suspension or revocation of a master's license on the ground of incompetency or misconduct. Also see (1927) 35 Ops. Att'y Gen. 197.

<sup>21</sup> 46 U. S. C. A. (1928) c. 18, §§ 662-669. MERCHANT SHIPPING ACT, *loc. cit. supra* note 20; CANADA SHIPPING ACT, *loc. cit. supra* note 20; and AUSTRALIAN NAVIGATION ACT of 1912-26, §§ 116-136, specify provisions, sleeping accommodations, ventilation, heating, lighting and medical services to be rendered seamen within the terms of the respective acts.

<sup>22</sup> (1818) Fed. Cas. No. 15291; also see *U. S. v. Cassidy*, *supra* note 14, in which Justice Story held that a refusal on the part of the crew in port at St. Helena to put out to sea under a new master was an endeavor to commit a revolt.

after the ship had put in at Salem harbor for a new master upon the illness of the original master. It was held by Justice Story that the men were guilty of an endeavor to revolt; and that it was immaterial whether the offense was committed in port or on the high seas, as the mischief was the same.

In *United States v. Keeffe*<sup>23</sup> defendant was indicted for the offense of endeavoring to commit a revolt on board a ship lying in a foreign port. In this case, Justice Story followed his earlier decision in *United States v. Hamilton* and again stated that the offense of endeavoring to incite revolt might be committed in port as well as at sea.

In *United States v. Barker*<sup>24</sup> Justice Story held the defendant not guilty of an endeavor to make a revolt on board a ship anchored in Boston harbor, on the ground that a simple refusal by one or more to do duty does not amount to the offense, unless it is done by a common combination or to effect a common purpose.

In *United States v. Gardner*<sup>25</sup> the defendants refused to get the ship under way from its anchorage in Boston harbor unless the master agreed that they should have a day watch below, in the forenoon, during the whole voyage. This the master denied as being an unreasonable request. It was unknown as a regulation on board ships. The crew then collected in the fore-castle and refused to obey any orders. Justice Story, in affirming the conviction by the trial court, held: "There was a common combination by the crew, for a common and illegal object, and they refused obedience to the lawful orders of the master, and excited each other to persist in that disobedience, so as to overthrow his authority and command on board the ship." This case is interesting. This very thing is today expressly granted by statute<sup>26</sup> and has been the subject of proper collective bargaining, but was the basis for conduct which was held criminal one hundred years ago.

It was long ago held not mutinous for the crew to refuse to put to sea in an unseaworthy vessel;<sup>27</sup> nor was it a revolt to compel the master to return to port because of the actual unseaworthiness of the vessel.<sup>28</sup> Likewise, confining the master on the ground of his intemperance and his endangering of the vessel was not considered a felony.<sup>29</sup> Nor was a crew guilty of making a revolt if, from the improper con-

<sup>23</sup> (1824) Fed. Cas. No. 15509.

<sup>24</sup> *Supra* note 11.

<sup>25</sup> *Supra* note 11.

<sup>26</sup> 46 U. S. C. A. (1928) c. 18, § 673, providing that the crew shall be given certain watches below deck during the course of the voyage.

<sup>27</sup> *U. S. v. Nye*, *supra* note 14; *Hartley v. Ponsonby* (1857) 26 L. J. Q. B. 322, and *Davidson v. Todhunter* (Liverpool Assizes 1855) 8 L. T. 803, also adhere to this view.

<sup>28</sup> *U. S. v. Ashton* (1834) Fed. Cas. No. 14470.

<sup>29</sup> *The Ulysses* (1800) Fed. Cas. No. 14330.

duct of the captain, the crew believed with good reason that they would be subjected to unlawful and cruel or oppressive treatment, or that a great wrong was about to be inflicted on one of their number, and thereupon the crew took reasonable measures for his or their own protection.<sup>30</sup> Such actions were considered reasonable and legal interferences with the authority of the master. Gradually the courts held that indictments for mutinous conduct could be predicated only upon illegal conduct as measured by circumstances existing at that time.

#### V.

In the last half century, only a few cases have involved that type of conduct which, under earlier authorities, would approach mutinous proportions. In *United States v. Huff*<sup>31</sup> the defendant, mate on a steamboat engaged in commerce on the Mississippi River, refused to obey the commands of the master, called him violent names, refused to be discharged and tried to get others of the crew to disobey the master. The defendant was held guilty of endeavoring to effect a mutiny. In its decision, the court cited and followed *United States v. Kelly*, holding that willful disobedience could constitute a violation of the act of 1835. This decision is immediately justifiable on the ground of safety to the vessel, for the master was at the time directing the repair of damages occasioned by a collision.

In *United States v. Reid*<sup>32</sup> the court found defendants guilty of an endeavor to revolt while the ship was bound from Philadelphia to San Francisco. In this case, none of the old decisions is cited. The court only listed categorically the essential elements to be proved in order to sustain a conviction under the Criminal Code. The vessel here was not in proximity to any shore; and obedience was required to preserve the ship from the elements.

In *Hamilton v. United States*<sup>33</sup> the conviction of the defendants for endeavoring to make a revolt was affirmed. Here the crew refused to do further work while the ship was anchored for repairs three miles from shore in the harbor at Hamilton, Bermuda, mistakenly thinking that the time of voyage had expired. The court held that such united action of the crew in refusing to yield obedience to the lawful command of the master constituted mutinous conduct, in line with the early decisions. It was further held that the men were not justified in refusing to work, because the vessel had not arrived at its port of destination but had only reached a port of distress. This decision finds quick support when it is considered that the safety of the vessel was endangered.

<sup>30</sup> U. S. v. Borden (1857) Fed. Cas. No. 14625; see also the English case of Reg. v. Rose (1847) 2 Cox Crim. Cas. 329, following the same doctrine.

<sup>31</sup> (1882) 13 Fed. 630.

<sup>32</sup> (1913) 210 Fed. 486.

<sup>33</sup> (1920) 268 Fed. 15.

The enumerated cases cannot serve as authority for the proposition that a refusal by the crew to work while the ship is at dock, until certain wage demands are met, is an endeavor to make a revolt. The essential reason for requiring the utter obedience of the crew to the master is safety at sea. In most of the named cases the element of safety was involved, because the ship was in a situation where the disobedience of the crew might result in its destruction.

It is basically different where the ship is at dock. The element of insuring safety is no longer present. From the very nature of things, the same degree of obedience is no longer necessary for the preservation of the ship. At dock, the problems confronted parallel those of ordinary industrial employments. Discipline on the sea is not like discipline on land in industrial pursuits; but discipline at dock does not have the same justification for absolute control. As was stated in *The Condor*,<sup>34</sup> "The relations between master and man require an authority which is not necessary when both parties have immediate recourse to constituted authority."

## VI.

The appellate records of the United States and the British Empire bring to light only two cases in which the factual situation closely approximates the actions on the S. S. California. *Bidwell v. Abbott*,<sup>35</sup> a recent Australian decision, was an action under the English Merchant Shipping Act of 1894, for willful disobedience arising out of defendant's refusal, together with the other members of the crew of the S. S. Barrabool, to take up duties for the purpose of releasing the ship from its dock in the port at Brisbane. The refusal was made by the men under instructions from the Australian Seamen's Union. The difficulties originated in a maritime dispute between certain unions of workers and the shipowners. The crew carried on its full duties on the ship, with the exception of taking it away from the wharf. It was willing to take the vessel to sea if wages were paid or guaranteed at the rate existing immediately before a reduction had been made by the National Maritime Board.

The defendant was convicted and sentenced to a short term of imprisonment. On appeal the judgment of the lower court was affirmed. The opinion stated only that there was sufficient evidence to justify a conviction under the Merchant Shipping Act.<sup>36</sup> Nowhere in the

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<sup>34</sup> 1912) 196 Fed. 71, 74.

<sup>35</sup> (1926) S. R. Q. 196 (Supreme Court of Queensland, Australia).

<sup>36</sup> Chapter 60, §225 of the MERCHANT SHIPPING ACT, *supra* note 20, sets forth a list of misdemeanors known as offenses against discipline, including in subdivision (c) thereof a 12 week prison term for continued willful disobedience. The enumerated offenses are quitting ship without leave, willful disobedience, assaulting an officer, combining with any of the crew to disobey lawful commands, willfully damaging the ship or cargo, and smuggling. Three months in

opinion is any mention made of mutiny or endeavor to revolt, although the British Empire has statutes covering such conduct under which the defendant could have been indicted if his actions had been considered mutinous.<sup>37</sup>

It is significant that the course followed in this case, which factually resembles the S. S. California incident, was to charge a misdemeanor, rather than the offense of endeavor to mutiny, a serious felony with a severe penalty. The *Bidwell* case is thus a symbol that conditions have changed. Conduct which at an earlier date was held to be mutinous<sup>38</sup> is not mutiny today.<sup>39</sup> The rise of the trade union and the universal

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prison is the severest penalty imposed. Section 221 of the Act provides a 10 week prison term for neglect or refusal without reasonable cause, to join the ship.

The CANADIAN SHIPPING ACT, *supra* note 20, c. 44, §249 (a) to (i), and §244, reads exactly as does the English Act but applies only to ships registered in Canada. As to ships registered in Australia, see the AUSTRALIAN NAVIGATION ACT of 1912-26, Part II, §100, which is much the same as the English and Canadian Acts.

The United States has provisions very similar to the English enactment as to offenses against discipline, in 38 STAT. (1915) 1166, 46 U. S. C. A. (1928) c. 18, §701, and the fifth subdivision thereof provides the same maximum penalty for continued willful disobedience as §225 (c) of the English Act under which the defendant was convicted in *Bidwell v. Abbott*, *supra* note 35.

<sup>37</sup> 11 & 12 WILL. III (1700) c. 7, § 9, made perpetual by 6 GEO. I (1719) c. 19, and never repealed. This imposes a death penalty on any person who makes or endeavors to make a revolt in the ship. The PRACY ACT of 1837, 7 WILL. IV (1837) and I VICT. (1837) c. 88, §3, changed the penalty above from death to transportation for 15 years to life. The PENAL SERVITUDE ACT of 1857, 20 and 21 VICT. (1857) c. 3, §2, further changed the penalty from transportation to penal servitude for the same period as the term of transportation would have been. For the Canadian statute, see CAN. REV. STATS. (1927) c. 36, §138.

<sup>38</sup> See *Reg. v. Smith* (1848) 3 Cox Crim. Cas. 443, a case involving an indictment under 11 & 12 WILL. III (1699) c. 7, §9, for making a revolt, in that the defendants refused to put to sea because of a dispute at a time when the ship was docked in the port at Harlingen, Holland. The court recognized the act as mutinous; and released the defendants only because they were not seamen within the act, *i.e.*, they had not signed shipping articles.

<sup>39</sup> England no longer punishes combinations of seamen to neglect duty as mutiny, but proceeds under the MERCHANT SHIPPING ACT, *supra* note 20, §225. See *Caroe v. Bayliss* (1908) 25 T. L. R. 22, where the engine room crew refused to obey orders. The men were held not guilty of a violation of the Act. Also see *Patterson v. Robinson* (1929) 2 K. B. 91, 141 L. T. 165; *O'Reilly v. Dryman* (1915) 114 L. T. 613, 85 L. J. K. B. (N.S.) 492, where the nine members of the crew refused to put to sea on the ground of insufficient seamen. They were held not guilty of a violation of § 225 of the Act.

The fact that the crews were held not guilty is not so interesting or important as the attitude of the courts in treating the cases as disciplinary breaches rather than as mutinous conduct.

The Canadian courts share the English view and punish combinations of seamen to disobey commands or neglect duty as infringements of the Shipping Act. *Rex v. Bridges* (1907) 13 B. C. R. 67; *Rex v. Olsen* (1906) 4 W. L. R. 108; *Rex v. Adolph* (1907) 12 Can. Crim. Cas. 413; *Rex v. Heckman* (1902) 5 Can. Crim. Cas. 242.

recognition of the right of collective bargaining has been a great factor in this new attitude of the courts.

That such is the case is succinctly shown in the decision in *Weisthoff v. American-Hawaiian S. S. Co.*<sup>40</sup> The ship was docked in New York. The crew refused to perform its duties until demands on the master were met: (1) settle immediately the West Coast strike of 15,000 longshoremen and seamen; (2) pay the 1929 Shipping Board wage scale; (3) maintain three watches; (4) pay for all overtime at the rate of 60 cents per hour; (5) provide more and better food; (6) make no discrimination against any of the crew; (7) discharge no member of the crew; (8) recognize the Marine Workers' Industrial Union.

The crew brought an action for wages. The court held that the men had not been guilty of an attempt to effect a revolt, which would forfeit wages.<sup>41</sup> "We do not find more than the making of demands, some of which were ill advised . . . It was rather a case of poor judgment and misunderstanding of their rights than the gross misconduct which will forfeit wages."

Two things must be kept in mind in the *Bidwell* and *Weisthoff* cases: (1) both ships were at dock; (2) the refusal to obey commands was made by members of trade unions. Both crews would have been indicted and convicted of an endeavor to make a revolt, had the incidents occurred 100 years ago. The earlier decisions marked such conduct as mutinous.

#### CONCLUSION

The decisions of a by-gone day would hold that a refusal to obey lawful commands while the ship is docked is an endeavor to make or the making of a revolt. But recognition of the labor union and the right of labor to bargain collectively and to dramatize its demands by means of the strike is now an integral part of the social-industrial world and of the law that reflects the important changes in that world.

The doctrines of Justice Story must be changed to make room for the expansions of understanding and social rights. When the crew of a ship, safely moored to a dock, strikes and refuses to work, in the effort to gain certain legitimate ends, for themselves and for others of their class, such action is no longer mutinous but is only a lawful incident in the exercise of the right of collective bargaining.

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<sup>40</sup> (1935) 79 F. (2d) 124.

<sup>41</sup> Mutiny has always been penalized by at least a forfeiture of wages. The *Susan* (1829) 2 Hagg. 229; The *H. C. Wahlberg* (1898) 87 Fed. 361; The *Stacey Clarke* (1892) 54 Fed. 533; The *Shawnee* (1891) 45 Fed. 769.