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LITIGIOUS MARINERS: WAGE CASES IN THE SEVENTEENTH-CENTURY ADMIRALTY COURT*

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ABSTRACT. *The merchant mariner could appeal to the law in the seventeenth century for remedies against arbitrary treatment. But historians have argued that even when the sailor was able to afford legal process he faced judges who served the interests of master and shipowner. This essay estimates the fees of a suit for wages in the seventeenth century, the mariner's propensity to initiate action, and his chances of winning. Evidence for such an appraisal, and for describing the attitudes of judges toward mariner complaints, comes from all wage cases decided by the High Court of Admiralty in sixteen years chosen from across the century. The results add to recent discoveries about the nature of justice in a litigious age and test claims that the sailor was commonly a victim both at sea and at law.*

I

In his classic study of the shipping industry, Ralph Davis advised us not to exaggerate the hardships of early modern sailors.[1] Allegations in court that merchant mariners had suffered arbitrary or even savage treatment often reflected lawyers' tactics, Davis thought, as much as life at sea. Eager lawyers of the seventeenth century may have encouraged seamen to bring legal actions which kept shipowners tolerably honest, so that the typical mariner earned more than workers on land and usually returned home from a long voyage 'with plenty of money'.[2] His earnings after several voyages could provide a capital base from which to ascend socially, to become a mate, a master – perhaps more.[3] For the less ambitious there were other lasting, if intangible, benefits from a life at sea, Davis argued, for how could you put a price on seeing 'the wonder of early morning landfalls, the blaze of the Mediterranean in June, the velvet seas of the tropics laced with flying fish, the laughing savages of Genoa and Old Calabar'? And where could you purchase the lifetime of stories which a sailor carried with him when he came home for good?[4]

Marcus Rediker, however, has discounted the romance of a mariner's life by describing the shipping industry in the early eighteenth century as a scene of

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[1] Ralph Davis, *The rise of the English shipping industry* (London, 1962), p. 157.
[2] Ibid., pp. 72, 151, 154, 157–8. [3] Ibid., pp. 84, 151. [4] Ibid., p. 158.

class conflict, an often brutal struggle in which judges as well as masters were agents of capitalism. 'A central part of capital's plan during the early and uncertain stages of expansion was to shift as many burdens and risks associated with the growing but unstable Atlantic economy as possible to the seaman's shoulders.'[5] The mariner may have resisted, justifying the theft of cargo or threat of mutiny as means to the social wage and, when able to afford the fees of justice, using legal manoeuvres of his own. But although Rediker offers no numbers to establish how often courts denied wage claims in the eighteenth century, he concludes that Admiralty judges on both sides of the Atlantic 'rendered numerous verdicts that supported the interests of merchants and captains even when the evidence and the law stood firmly on the side of the common tar'.[6] The 'largely unchecked nature' of the captain's authority was, he writes, 'guaranteed by law, upheld in the admiralty courts, and embodied in wage contracts'.[7] Rather than agreeing with Davis that life at sea offered the chance to advance socially, and aesthetic satisfactions beyond measure, Rediker emphasizes that 'a great many seamen responded to the inequities of the system by withdrawing from the wage economy altogether', by becoming pirates or seeking asylum from the tyranny of the market somewhere on the margins of the Western world.[8]

More recently, Charles Kindleberger has doubted that oppression at sea began with capitalism but has agreed that the early modern mariner was exploited both in and out of court. Overworked and undernourished in ships left unsafe by owners, exposed to brutality and profiteering, Kindleberger's sailor was not the rebel found by Rediker, but instead a pathetic fellow, paralysed by fear or procrastination and unable to act as a free agent. Although Kindleberger has seen no satisfactory study of how mariners fared in court, he joins Rediker by arguing 'that on the whole [they] did not do well before the representatives of the law', who came from the 'same ranks' as merchant owners. To emphasize the sailor's futility before the judges, he quotes Melville: '[A]t sea, no appeal lies beyond the captain … And as for going to law with him at the end of the voyage, you might as well go to law with the Czar of Russia.'[9] So that to find in the recent literature a more sanguine view of the mariner's experience in court, one must look beyond the early modern period to Henry Bourguignon's study of Sir William Scott, a remarkable jurist whose thirty years on the Admiralty bench ended in 1828. Scott ruled for the mariner in three-quarters of the wage cases among his published decisions, while regularly assessing shipowners with court costs; and if his opinions were generally supportive of British entrepreneurs, Scott was also, Bourguignon suspects,

[5] Marcus Rediker, *Between the devil and the deep blue sea: merchant seamen, pirates, and the Anglo-American maritime world, 1700–1750* (Cambridge, 1978), pp. 140, 151. [6] Ibid., pp. 144, 315.
[7] Ibid., pp. 208, 210, 212–13. [8] Ibid., p. 146, ch. 6.
[9] Charles Kindleberger, *Mariners and markets* (New York, 1992), pp. 64, 71–2. In this passage Melville was describing the legal position of emigrant passengers, not mariners. *Redburn, his first voyage* (New York, 1957 edn), pp. 253–4.

'somewhat more concerned than his predecessors to protect the interests of seamen'.[10]

Should recent scholarship persuade us, then, to disregard the optimism of Ralph Davis and consider the early modern mariner unambiguously as victim? Do the arguments of Rediker and Kindleberger establish that a sailor's chances to defend himself at sea or at law were slim indeed for most of the seventeenth and eighteenth centuries? And would judicial concern for the mariner's welfare develop only later, as Scott's career might suggest, at the dawn of a more enlightened age when the English had begun finally to contemplate justice not only for the sailor but also for the slave? To address these issues this study focuses on the mariner's experience before judges in the seventeenth century, the first half of the period Davis associated with England's ascent to maritime supremacy. The evidence comes from all wage cases decided by the High Court of Admiralty at London in sixteen years chosen from across the century (1608–9, 1628–9, 1655–62, 1678–9 and 1698–9).[11]

These years mark conspicuous trends in the powers and activity of the Admiralty Court. The judges, practitioners of civil law, enjoyed throughout the seventeenth century an exclusive prize jurisdiction over spoils from war at sea. But their authority in wage disputes was part of their instance jurisdiction, powers exercised in both war and peace across such a range of ordinary business transactions that they invited challenge from common law courts. Suits involving contracts to freight, man and provision ships, bottomry loans, bills of lading, and other instance matters, brought merchants as well as mariners before the judges and produced, together with prize cases, more than a doubling of Admiralty litigation in the first half of the century. The court's archives, preserved at the Public Record Office, were already substantial by 1600 but became exceptionally rich for the period from 1630 to 1660. After the Restoration, however, common law judges gradually reduced civilian powers and expanded their own by issuing writs of prohibition to stop Admiralty process in some instance cases, even occasionally those for wages.[12] Thus, an

[10] Henry J. Bourguignon, *Sir William Scott, Lord Stowell: judge of the High Court of Admiralty, 1798–1828* (Cambridge, 1987), pp. 78–9.

[11] Admiralty decrees are found at the Public Record Office, High Court of Admiralty (HCA) 24. But many suits, and especially wage cases, were determined by the judges in interlocutory decrees inscribed only in the court's procedural record, the Act Books (HCA 3). And wages were sometimes awarded in the course of a case which had begun over freight or damage. The Act Books have therefore been used to discover all wage decisions resulting during the sixteen years of the sample from interlocutory, first, or second ('definitive') decrees, completed arbitrations, or out-of-court agreements reported by the scribes. To the procedural record for each case, information has been added from the Warrant Books (HCA 38), libels and allegations filed with the decrees (HCA 24), and Examinations undertaken at London or on commission elsewhere (HCA 13).

[12] An extended discussion of maritime jurisdiction is found in M. J. Prichard and D. E. C. Yale, eds., *Hale and Fleetwood on Admiralty jurisdiction* (Selden Society, 108, 1993), introduction. See also D. E. C. Yale, 'A view of the Admiral jurisdiction: Sir Mathew Hale and the civilians', in D. Jenkins, ed., *Legal history studies, 1972* (Cardiff, 1975), and G. F. Steckley, 'Merchants and the Admiralty Court during the English Revolution', *American Journal of Legal History*, 22 (1978), pp. 137–75.

Table 1. *Average number of Admiralty warrants issued annually to begin actions of all kinds, including those for wages, and the average value of the cases as alleged by plaintiffs, 1540–1699**

All years	Years with data	Average number of warrants	Selected years	Average number of warrants	Average value of cases (£)
1540–99	53	344	1548–9	293	143
			1578–9	311	181
1600–29	28	301	*1608–9*	*299*	*376*
			1628–9	*547*	*908*
1630–62	33	746	*1655–62*	*647*	*2,709***
1663–99	37	284	*1678–9*	*327*	*238*
			1698–9	*260*	*421*

* Sample years in italics.

** If warrants beginning nine cases, each with an alleged value of £1 million, are subtracted from the total for 1662, the average declared value in 4,176 warrants from 1655–62 is £560.

Source: HCA 38, Warrant Books, 1540–1699.

ebbing of Admiralty litigation, as well as the earlier surge of activity, can be measured by counting the warrants issued to arrest defendants and begin all suits, including wage actions, in the years sampled here (see Table 1). New warrants in the later years studied (1678–9, 1698–9) had fallen back to about 300 per year, comparable to levels of the earliest period (1608–9) and the late sixteenth century.[13] But the years sampled in between (1628–9, 1655–62) frame three decades when on average over 740 Admiralty cases were being filed annually. This unprecedented rush of maritime disputes had resulted from active privateering against the French, Dutch, and Spanish and the continuing growth of commercial traffic, as colliers streamed into London from Newcastle and merchants freighted more ships for Mediterranean, Asian, and Atlantic destinations.[14]

We might suspect, in fact, that the higher levels of Admiralty business until the 1660s were generated primarily by aggressive merchants rather than

[13] Beginning in the 1650s, warrants to initiate prize cases were no longer recorded in the registers. This bookkeeping change obviously lowered totals in the last half of the century, but it is difficult to say by how much because the scribes had always been inconsistent in reporting the kind of case filed. William S. Holdsworth, *The history of the English law* (16 vols., London, 1938–66), 1, p. 564.

[14] During the period from 1629 to 1662 warrants peaked in 1639 at 1,452 and fell below 460 only in 1647. For the diversification of English trade, see G. D. Ramsay, *English overseas trade during the centuries of emergence* (London, 1957); D. C. Coleman, *The economy of England, 1450–1750* (Oxford, 1977), chs. 4, 8; Brian Dietz, 'Overseas trade and metropolitan growth', in A. L. Beier and Roger Finlay, eds., *London, 1500–1700: the making of the metropolis* (London, 1986).

aggrieved mariners, by London worthies securing their profits from reprisal or squabbling over contracts for freight. To be sure, sailors disembarking at London could easily have found the Admiralty Court. The judges heard cases during most of the century at what a mariner called 'Doctor Commons Court', the public hall of the residence for civil lawyers just south of St Paul's; and while ecclesiastical causes were also heard there, mention in this essay of suits at Doctors' Commons refers to Admiralty hearings at this central location, within easy walking distance for the sailor whose ship had safely arrived in the Upper Pool near the Tower but whose wages had not been paid.[15] The price of admission to court, however – the fees of an Admiralty suit – may well have deterred some mariners. Edward Barlow, the seventeenth-century seaman, complained on occasion that he could not afford to sue for his wages.[16] The historian of Trinity House has doubted that many of Barlow's peers had the time or resources for civil litigation, and an expert on the wooden world of sailors concludes that seeking legal remedies was 'hardly easy for a penniless illiterate'.[17] Indeed Admiralty justice was not cheap. In cases of the sample for which there is evidence, court costs, including some if not all lawyers' fees, averaged nearly £8, roughly half a year's pay for the ordinary mariner *if* he were lucky enough to be fully employed. Costs could reach 75 per cent, even more than 200 per cent, of contested pay; and although the sum of wages sought in the average case (£158) reflects the fact that most actions were brought by several members of a ship's company who could share fees while seeking their aggregate pay, there is reason to suspect that the individual sailor might not have sued alone in the seventeenth century for fear his plea would fail and he would face court costs which were twice the amount of his lost wages (see Table 2).[18]

Despite such risk, however, mariners came by the thousands to file suits at Admiralty. One can estimate that they purchased about 6,900 warrants to initiate wage actions during the century (see Table 3). Moreover, because

[15] *Barlow's journal*, ed. Basil Lubbock (London, 1934), p. 90; G. I. O. Duncan, *The High Court of Delegates* (Cambridge, 1971), p. 203. The engraving by Rowlandson and Pugin in R. Ackermann's *The microcosm of London* (3 vols., London, 1808–10), I, facing p. 224, allows us to imagine how the court might have appeared in the late seventeenth century when Doctors' Commons had been rebuilt after the Fire. In the early decades of the century, and occasionally later as well, the court convened at the abandoned church of St Margaret's Hill, Southwark. *A survey of London by John Stow*, ed. C. L. Kingsford (Oxford, 1908), pp. 53, 59; *The diary of Samuel Pepys*, ed. R. C. Latham and W. Matthews (11 vols., London, 1970–83), IV, p. 76.

[16] *Barlow's journal*, pp. 358, 365.

[17] G. G. Harriss, ed., *Trinity House of Deptford transactions, 1609–1635* (London Record Society, 19, 1983), p. xiv; N. A. M. Rodger, *The wooden world: an anatomy of the Georgian navy* (London, 1986), p. 117. While the ill-treated naval mariner could appeal to a 'higher authority which took seriously the welfare of its men', Rodger considers legal remedy to have been the only protection for eighteenth-century merchant seamen.

[18] Ould v. *Amity* (1698), HCA 3/61, fo. 140; Berwick v. *Richard and Mary* (1699), HCA 3/61, fo. 273. Median costs in the 89 cases for which there are data were £7.5. Only seven mariner-plaintiffs, representing less than 3 per cent of the cases, chose to sue *in forma pauperis*, a procedure which freed them from the fees of court or counsel.

Table 2. *Court costs as a percentage of wages sought in eighty-nine Admiralty cases, 1608–1699*

Years	Average of wages sought (cases) (£)	% of cases having a single plaintiff	Average of court costs as % of wages sought
1608–9	144 (2)	0	10·7
1628–9	170 (4)	25	14·8
1655–62	270 (18)	33	10·7
1678–9	131 (29)	46	14·5
1698–9	126 (36)	28	22·0
All sixteen years	£158 (89)	35	16·6

Sources: HCA 3, Act Books; 24, Decrees and Libels, 1608–99.

groups of sailors, averaging thirteen in number, brought two-thirds of all cases in the present sample, while single plaintiffs filed the rest, we might suppose that 6,900 warrants represented over 60,000 mariners taking the first step to sue in London's central maritime court.[19] Masters suing alone account for only 6 per cent of the sample, actions by mates just 3 per cent.[20] Hence, the great majority of plaintiffs were almost certainly sailors of the lower ranks – able, ordinary, and novice seamen – joined by a smaller group of specialists such as carpenters, surgeons, and gunners; and the warrant data suggest that the propensity of such seventeenth-century seamen to sue for their pay at Admiralty, measured against either shipping traffic or population, was much higher than that of their Victorian counterparts (see Table 4).

The pace at which suits were being filed may simply confirm an old but recently documented argument that the English in the seventeenth century had become a remarkably litigious people. If merchants and mariners were filing more Admiralty cases of all kinds in the middle decades than ever before, we now know that English men and women had recently been flocking to sue in town courts, central common law courts, and Chancery in unprecedented numbers.[21] But an already strong demand for Admiralty wage litigation at

[19] $(1/3 \times 6{,}900) + 13(2/3 \times 6{,}900) = 62{,}100$.

[20] Masters' cases for wages are included here because only at the end of the century were they denied to the court by common law prohibitions. HCA 30/1042, Simpson MS, pp. 78, 150, 290, 365; Prichard and Yale, eds., *Hale and Fleetwood*, pp. lxxiii–lxxiv. For the classification of crew members, see Rodger, *The wooden world*, pp. 15–29, and Davis, *English shipping industry*, pp. 133–8.

[21] C. W. Brooks, 'Interpersonal conflict and social tension: civil litigation in England, 1640–1830', in A. L. Beier, D. Cannadine and James M. Rosenheim, eds., *The first modern society: essays in English history in honour of Lawrence Stone* (Cambridge, 1989), pp. 360–7, and idem, *Pettyfoggers and vipers of the commonwealth: the 'lower branch' of the legal profession in early modern England* (Cambridge, 1986), pp. 77–8. See also Craig Muldrew, 'The culture of reconciliation: community and the settlement of economic disputes in early modern England', *Historical Journal*, 39 (1996), pp. 915–19; idem, 'Credit and the courts: debt litigation in a seventeenth-century urban

Table 3 *Annual number of wage warrants and wage determinations in the Admiralty Court, 1608–1699*

(1) Years	(2) Average annual number of warrants reported in the Warrant Books as initiating wage cases	(3) Estimated annual number of warrants initiating wage cases corrected for under-reporting*	(4) Average annual number of wage cases reaching an official determination**
1608–9	8	45	16
1628–9	81	104	11
1655–62	45	64	15
1678–9	47	52	22
1698–9	82	94	26
Weighted averages***	50	69	17

* The court scribes did not always record the kind of dispute which had provoked the plaintiff to sue out a warrant. Therefore, to estimate the total number of warrants purchased to initiate wage litigation, it is necessary to adjust upwards the totals reported as such in the Warrant Books (column 2). The adjustments are made for 1628–99 by noting for each group of years the fraction of wage cases of the sample in which the Warrant Book had not indicated the matter at issue and increasing the reported yearly averages by that factor. But this method does not result in a realistic figure for 1608–9 when the court scribes were especially negligent in recording the type of complaint. Therefore, it is assumed that wage cases accounted in 1608–9 for the same share of total warrants, 15 per cent, as is indicated by the sample data for 1628 through 1679. The share of total warrants represented by wage cases more than doubled to 36 per cent by 1698–9, as the instance jurisdiction of the court narrowed, and data from those years should therefore not be used to estimate the number of wage cases earlier in the century.

** Official determinations include judicial decrees and also agreements or arbitrations reported in the court's Act Books.

*** The estimates for all sixteen years are obtained by weighting the averages by the number of years in each grouping.

Sources: HCA 3, Act Books; 24, Decrees and Libels; 38, Warrant Books, 1608–99.

Doctors' Commons continued to grow from the 1690s into the new century, even as the aggregate volume of all types of cases in both Admiralty and other central courts was beginning to decline.[22] The number of Admiralty suits other than wage actions had begun to fall, as we have seen, in the 1660s when

community', *Economic History Review*, 46 (1993), pp. 23–8; idem, *The economy of obligation: the culture of credit and social relations in early modern England* (New York, 1998), chs. 8–9.

[22] Brooks, 'Interpersonal conflict', pp. 360–3; Henry Horwitz, *Chancery equity records and proceedings, 1600–1800* (London, 1995), pp. 28–31. Warrants identified in the registers as beginning

Table 4 *Estimated rates of wage litigation in the Admiralty Court during the seventeenth and nineteenth centuries*

Years	Average number of warrants issued annually to begin wage cases	Ships entering London annually from foreign ports	'Wage warrants' per entering ship	Population of London	'Wage warrants' per capita
1608–9	45	c. 1,100	1 per 24	230,000	1 per 5,100
1655–62	64	c. 1400	1 per 22	560,000	1 per 8,800
1698–9	94	c. 1,900	1 per 20	640,000	1 per 6,800
1858–9	80	10,889	1 per 136	2,680,000	1 per 33,500
1878–9	25	10,859	1 per 434	3,890,000	1 per 155,600

Sources: warrants: for the seventeenth century, Table 3 above, based on HCA 38, Warrant Books; for the nineteenth century, *House of Commons, accounts and papers, return of judicial statistics, 1859, 1860, 1878–9, 1880*. By statute in 1854 masters were once again, after a prohibition of a century and a half, allowed to sue for wages at Admiralty; thus the wage jurisdictions of the seventeenth and late nineteenth centuries are comparable. Prichard and Yale, eds., *Hale and Fleetwood*, p. lxxiv. Ships entering London: for the seventeenth century, estimates based on Brian Dietz, 'Overseas trade and metropolitan growth', in A. L. Beier and Roger Finlay, eds., *London, 1500–1700: the making of the metropolis* (London, 1986), table 11, p. 128; D. C. Coleman, *The economy of England, 1450–1750* (Oxford, 1977), p. 133; and Henry G. Roseveare, '"The damned combination": the port of London and the wharfingers' cartel of 1695', *London Journal*, 21 (1996), p. 109, n. 40; for 1858–9 and 1878–9, *Minutes of evidence taken before the Royal Commission on the Port of London, 1900–1901* (London, 1902), appendix 14, p. 260, a reference kindly supplied by Mr Aspinall of the Museum of London. Population: for the seventeenth century, V. Harding, 'The population of London, 1550–1700', *London Journal*, 14 (1990), table 1, p. 112; for the nineteenth century, *London Statistics*, 26 (London County Council, 1921).

common law judges issued writs of prohibition to transfer more maritime business into their own courts. Few defendants in Admiralty wage cases, however, obtained prohibitions in the sample years to move their disputes from Doctors' Commons to Westminster, and part of the explanation for the continuing – indeed growing – number of Admiralty wage decrees is that both mariners and their employers had found civil law procedures more useful than common law rules for wage hearings.[23] Several Admiralty judges went to press during the century to tout the convenience of their rules, and it was generally fair advertising.[24] All of the following efficiencies were noted by the judges and could be illustrated with cases from the present sample: the ability of foreign, as well as English, mariners to sue for wages at Admiralty, where the rules were those of an international law and the case might proceed at any time, not just during the common law terms; the crew's option to join as multiple plaintiffs in a wage action at Admiralty, when at common law each sailor had to sue individually; the mariner's ability by civil law process *in rem* (against the thing) to arrest, sue, and gain possession of a physical property, in this case a valuable ship or cargo, when at common law he could sue only a person and might be forced to rely for satisfaction on an absconding master or bankrupt shipowner; proof of the wage agreement by testimony of only the litigants themselves, without requiring confirmation from third-party witnesses; the reliance on testimony taken in written depositions out of court, which freed the mariner and his employer from continued appearances and allowed evidence to be gathered abroad; referrals of technical cases to arbitrators who were veterans of the shipping industry; and finally, summary process, which was customary in wage cases and allowed suit without bail, minors as witnesses, and the suspension of other rules.

Seventeenth-century wage suits at Admiralty could be expensive, then, but were also more efficient than common law hearings and could even be relatively expeditious. A few cases of the sample, especially in the period of legal uncertainty at the end of the interregnum, dragged on for years, and Admiralty judges exaggerated when they claimed they could resolve most wage disputes 'within a few days', 'a week's time or less'.[25] Still, the judge had pronounced

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wage cases average 102 per year and accounted for 66 per cent of all warrants issued by the Admiralty Court in 1718–19, as compared with an average of 82 per year and 31 per cent of all warrants issued in 1698–9.

[23] Only three cases of the sample were stopped by prohibitions. Cf. Prichard and Yale, eds., *Hale and Fleetwood*, pp. lxxiii–lxxiv.

[24] John Godolphin, *A view of the Admiral jurisdiction* (London, 1661); Richard Zouch, *The jurisdiction of the Admiralty of England asserted* (London, 1663), pp. 139–52; HCA 30/1036, fo. 157; Leoline Jenkins, 'Argument, in behalf of a bill to ascertain the jurisdiction of the Admiralty, in the House of Lords (1670)', in William Wynne, *Life of Sir Leoline Jenkins* (2 vols., London, 1724), I, pp. lxxvi–lxxxv; [?Charles Hedges], *Reasons for settling Admiralty jurisdiction* (1690), in *Harleian miscellany* (12 vols., London, 1808–11), IX, pp. 465–80.

[25] Of the seven cases in the sample which lasted more than two years from warrant to determination, six came from the years 1655 to 1662. Overstatements of Admiralty efficiency are found in Jenkins, 'Argument', p. lxxx, and [?Hedges], *Reasons for settling*, pp. 470, 473.

Table 5 *Average length of Admiralty wage cases which can be measured, 1608–1699*

Years	Cases	Average days, warrant to official determination*
1608–9	12	78
1628–9	19	74
1655–62	111	188
1678–9	44	40
1698–9	52	102
All sixteen years	238	127
Excluding 1655–62	127	74

* Official determinations include judicial decrees and also agreements or arbitrations reported in the court's Act Books.

Sources: HCA 3, Act Books; 24, Decrees and Libels; 38, Warrant Books, 1608–99.

a decree, or had recognized an arbitration or agreement, within three months after the warrant of arrest in 71 per cent of cases from the sample which can be measured, and the average length of all such cases, as compared with the deliberate pace of modern litigation, does not seem excessive: roughly four months from beginning to end; if suits from the revolutionary era are excluded, about two and a half months (see Table 5). By contrast, the typical freight case occupied merchants, their lawyers, and the court for over a year.

II

Reasonably expeditious process helps to explain why mariners sued in a court where fees were high. Time was money for the mariner, too. But is there any evidence for a more substantive explanation? If all court costs, plaintiff's and defendant's, were ordinarily borne by the losing party, is there any reason to think that thousands of sailors were willing to risk expensive suits in this central court because they suspected that their chances of winning – and paying no fees at all – were fairly good? To answer this question, we must gauge judicial attitudes toward mariners' pleas by looking at an array of decisions from the sample years.

The estimated 6,900 warrants purchased to begin wage suits in the seventeenth century did not, of course, result in a similar number of judicial decrees. Pursuing a case to a judge's decision might cost £8, but for less than a tenth of that price – if joined by his mates, often less than a 'shilling a piece' – a mariner could simply buy the warrant to arrest master or shipowner and thereby encourage him to pay the wages due.[26] One can presume that the

[26] Jenkins assumed that 'all the crew of a ship may join in one action for less than 1 *s* a piece'. 'Argument', p. lxxxiv. But the typical cost of the warrant, its execution and certification, rose from about 12 *s* at the beginning of the century to about £1 by 1698–9, while the average size of crews in overseas shipping was declining. Davis, *English shipping industry*, pp. 58–9.

warrant was used most often in this way, simply as a dunning device by which the sailor successfully pressured his employer to pay up before anyone need appear in court.[27] Other warrants led to some initial skirmishing before the judge and then an early agreement out of court as the parties began to worry about further expenditure of time and money. Therefore, while it is likely that some 1,100 warrants were issued to begin wage actions during the sample years, only 271 cases, on average about 17 per year, reached a decree by the judges, a ruling by appointed arbiters, or an out-of-court agreement registered in the court's Act Books (see above, Table 3).[28] This means, however, that wage disputes accounted for nearly a quarter of all instance cases reaching official determination in the sample years, a share more than twice that devoted to the next most frequently litigated matter.[29]

Interpretation of these 271 wage cases is unfortunately limited by the nature of Admiralty sources. Court scribes seldom recorded any details of either arbitrations or out-of-court agreements, which together account for 31 cases of the sample. More importantly, the judges' decrees in the remaining 240 suits were summary in the extreme, possessing 'the inscrutable character' of civil law 'judgements in which reasons were neither recorded nor reported'.[30] Such judicial reticence provoked the Long Parliament to insist by statute in 1648 that the court explain its decisions, but there is no evidence that the judges ever took heed.[31] Their wage decrees both before and after the statute rarely contained more than the briefest statement of fact, followed by a ruling for or against the mariner-plaintiff, and an award of money or possession of the ship if the suit succeeded. If the sailor failed to prove his case, the decree simply said

[27] A sampling from 1607–8, 1657, and 1661 suggests that only 30 per cent of Admiralty warrants involving all types of suits resulted in so much as a court appearance or the filing of a motion by either party. For similar uses of the Chancery subpoena and the recognizance, see Horwitz, *Chancery equity records*, pp. 9, 11, and Robert B. Shoemaker, *Prosecution and punishment: petty crime and the law in London and rural Middlesex, c. 1660–1725* (Cambridge, 1991), ch. 5.

[28] Only eighteen wage cases in the sixteen-year sample were recorded in the Act Books as 'agreed'; but there is no evidence of a requirement to report such agreements, and there is every reason to suspect that many more cases were settled out of court. It is likely that more than 800 warrants were issued in the sixteen years to begin wage cases which never reached a decree; many were likely dropped by the plaintiff, but surely a large number were resolved by mutual agreement of the parties. On the other hand, mariners would not ordinarily have expected arbitration of their claims. Only thirteen cases of the sample, less than 5 per cent, were resolved by court-appointed arbitrators. Cf. J. A. Sharpe, '"Such disagreement betwyx neighbours": litigation and human relations in early modern England', in John Bossy, ed., *Disputes and settlements: law and human relations in the West* (Cambridge, 1983).

[29] While the count of cases involving other matters is still being perfected, it appears that the 271 wage decisions were among roughly 1,100 cases of all kinds which were decided during the sixteen years of the sample. Nearly 100 decrees involving proprietary interests in ships or cargo rank second in frequency.

[30] Prichard and Yale, eds., *Hale and Fleetwood*, pp. vi and xlvi. Cf. Duncan, *High Court of Delegates*, p. vii, 164, and Richard Helmholz, *Marriage litigation in medieval England* (Cambridge, 1974), pp. 120–1.

[31] C. H. Firth and R. S. Rait, eds., *Acts and ordinances of the Interregnum* (2 vols., London, 1911), 1, p. 1120.

so and dismissed the master or shipowner without any description of fact, let alone hint of the court's reasoning. It is seldom possible, then, even after comparing the decision with the allegations, testimony, and procedural record, to be sure about the court's logic in any given case. Rarely, however, is it difficult to determine who won, though plaintiffs in a single case might include both winners and losers. Some mariners of the group who brought the typical suit might win full wages while fellow plaintiffs suffered reductions or denial of pay. Thus, in order to assess the sailor's chances of succeeding at Admiralty, we should describe the court's characteristic responses to specific kinds of wage disputes and then sort the 240 cases which ended by a judge's decision into three categories: first, those in which all mariners who sued won the wages they sought (full wages given); second, those in which at least one of the mariners suffered a reduction in pay, even if his fellow plaintiffs won all of theirs (wages reduced); and third, those in which at least one of the plaintiffs lost all of his pay (wages denied).[32]

To discover the court's typical responses to various kinds of wage disputes, we must first look at a broad category of cases in which the mariner's performance was not really at issue but where disagreement had arisen over the rate of pay, terms of hire, design of the voyage, or wage liability when a voyage had failed through no fault of the sailor. We might expect to find many disputes over rates of pay and terms of hire because the wage agreement was rarely witnessed by a third party, but such cases are infrequent in the sample and suggest no particular pattern. John Ould claimed in 1698 that he had been hired by the month, not the voyage, for service from Plymouth to London, and the judge agreed, giving him £4 rather than £3.[33] A landlady testified in 1699 that John Taylor was hired in her kitchen for 40 *s* per month 'war or peace'; but the court reduced Taylor's rate on the homeward run to 25 *s*, because the Peace of Ryswick was concluded after the voyage to Newfoundland had begun and the naval commissioners, employers of the ship, had therefore lowered their freight payments from 50 *s* to 20 *s* per ton.[34] The judge in 1678 denied Mrs Allenson's claim for £2 still owed of the pay her husband had earned before his death off Guinea. But the widow admitted having already received £20 of the wages due, and her husband's employers alleged that he had violated the terms of hire by trading privately in slaves, a commerce from which Mrs Allenson had collected an additional £24.[35]

If litigation over the initial terms of hire was infrequent, mariners often complained when masters or merchants changed a ship's destination mid-voyage. Such alterations were common, especially in the Mediterranean carrying trade, and Davis thought that masters could usually persuade

[32] In no case of the sample did the court use all three remedies, i.e., full wages, reduction, and denial.

[33] Ould v. *Amity* (1698), HCA 3/61, fo. 140; 13/82, fos. 7, 30–1; 24/126/82, 104, 120.

[34] Taylor and others v. *John and William* (1699), HCA 3/61, fos. 252, 261; 24/126/191, 194.

[35] Allenson v. *Golden Lyon* and Wilkins (1679), HCA 3/54, fos. 305, 308, 312; 13/131, answers of Frances Allenson, 13 Oct. 1679; 24/119/123.

mariners to accept a new route by promising wages on account to the time of the change.[36] Rediker, however, argues that eighteenth-century mariners often opposed the efforts of 'capitalist traders … to fix a ship's voyage in any way that the master and merchant "should think most advantageous"', but that their resistance was tolerated by judges only when labour was scarce, as during war.[37] The cases sampled here, from years almost evenly divided between war and peace, confirm that early modern sailors were willing to oppose alterations and take their complaints to court. Captain Griddon was so fearful in 1654 that the mariners would have his ship arrested at Falmouth over a change in route, 'contrary to the agreement in shipping them', that he kept the alteration secret until they had reached Barbados. There several of his crew refused the new design to sail with sugars to Genoa, forcing a return to England; and the merchant-owners withheld wages, claiming losses of over a thousand pounds. By suing at Doctors' Commons, however, the sailors 'received satisfaction for the matter demanded by them', and in contrast to Rediker's account of later experience, most plaintiffs from these sample years of the seventeenth century won full wages at Admiralty despite their resistance to changes in route, even during the peaceful years of the early sixties and late seventies.[38] When Captain Frost informed mariners of the *Providence* on her homeward voyage in 1661 that they would not, as announced at the hiring, cross the bar at Newcastle but sail instead to Stockholm, Robert Lamb allegedly told the captain to 'kiss his britches and be hanged', then forced the ship into the English port where he convinced his mates to abandon her. Nevertheless, the judge gave Lamb and the others full wages.[39] Occasionally, the court may have drawn a line at violent protest. Sailors who opposed a change in design lost all wages in 1662 after testimony that one of their number, Brewster, had chased away replacement mariners by threatening to 'fetch an axe and cut their legs off'.[40] Less intimidating resistance was, however, generally tolerated by the court, especially if the new route would have taken the ship into dangerous waters. When mariners of the *Daniel and Thomas*, for example, refused to extend the voyage from Leghorn to Egypt in 1677, the infuriated master 'beat some of them with his cane'. Then, deciding it would be better to ship willing hands, he sent the rebels ashore and denied them both food and wages. But the dissident sailors later recovered their full pay of £150 by suing at Admiralty.[41]

The court could also protect the mariner's interests when politics altered the wage relationship. Merchant-owners could not escape wage debts by alleging

[36] Davis, *English shipping industry*, pp. 140–1.

[37] Rediker, *Devil and the deep blue sea*, pp. 118, 138, 140–1.

[38] White and others v. Griddon (1657), HCA 3/47, fo. 411; 24/112/149, 152; 24/133, *ex parte* Griddon, 19 Feb. 1656.

[39] Lamb and others v. *Providence* (1661), HCA 3/49, fos. 152, 154; 24/114/105.

[40] Hind and others v. Tye (1662), HCA 3/49, fo. 538; 3/50, fo. 48; 13/74, fos. 291–2, 296, 300, 303–4, 306; 24/114/230.

[41] Mascole and others v. *Daniel and Thomas* (1679), HCA 3/54, fos. 282–3, 287, 292, 313; 13/131, 24/119/113; Davis, *English shipping industry*, p. 248.

that sailors had deserted their ships when pressed into the state's service.[42] If the court ruled against Rose who had been forced to serve the Commonwealth navy, it was apparently because he had refused, unlike others pressed out of the merchant ship, to accept wages offered by the former master's widow and insisted on suing the new master who had not been party to his hiring.[43]

Many suits in the century raised the issue of whether wages were due when the ship was lost or the voyage otherwise ruined through no fault of the mariner, and the court's usual policy in such cases, 'the last-port rule', might be thought harmful to sailors' interests. Judges repeatedly decided, as they would well into the modern era, that if the ship were cast away or taken by enemy or pirates, wages were due only to the last port of delivery.[44] This rule followed the cliché of argument recited by owners and their lawyers, that 'freight is the mother of wages'. But by making wages payable only if cargo were delivered, the court required the labourer who had served a sinking ship to suffer loss from a venture in whose profits he would never have participated. Mariners indeed protested against this logic by suing throughout the century for full wages payable to the day the ship was cast away or captured, suing occasionally when the ship had made no port and delivered no goods.[45] Their protests had some effect, for when Admiralty judges decided such cases in even this limited sample, they could reveal their own ambivalence towards the last-port rule, enforcing it when it benefited the mariner but sometimes ignoring it when it did not. Judge Richard Trevor, for example, disregarded the rule in 1609 and insisted that mariners of the *Prosperous* be paid for the full time of their employment beyond the last port of delivery, Candia, to the date of the ship's capture by pirates.[46]

If by mid-century the judges usually honoured the last-port rule, they could invoke it to award wages over objections of masters or owners who had lost their ships.[47] The *Peter*, for example, was lost to Barbary pirates in 1656. But when Captain Wilmot and Edward Paul, the mate, were ransomed, Paul sued Wilmot at Admiralty on behalf of the mariners still held with the ship in Tripoli, and the judges ordered wages paid, presumably to the mariners' dependants, as far as Smyrna, the last port of delivery.[48] The rule allowed Mrs Whiting and other widows in 1659 to win their husbands' wages to the date horses, coal, and beer were delivered in Barbados, if not to the time, twelve days

[42] Morgrane and others v. Browne (1658), HCA 3/47, fo. 637.

[43] Rose v. Maples (1655), HCA 3/46, fo. 233.

[44] HCA 30/1042, Simpson MS, pp. 218, 247, 251, 279, 282, 295–6, 337, 338–9, 366, 372, 377; Bourguignon, *Sir William Scott*, p. 69.

[45] Harrison and others v. Mitchell and others (1657), HCA 3/47, fo. 416.

[46] Crowne and others v. Startupp (1609), HCA 3/27, fos. 338, 352.

[47] Bolling and others v. Bradley (1656), HCA 3/47, fo. 165; Garrett v. Fowke and others (1656), HCA 3/47, fo. 188; Powell and others v. Lewellin and others (1658), HCA 3/47, fo. 576; 3/48, fo. 155; 13/125, answers of V. Austin, 24 Aug. 1653, and H. Powell, 3 Nov. 1653; 24/111/162, 168, 215; PRO, High Court of Delegates, 5/16, 29 June 1657.

[48] Paul and others v. Wilmot (1657), HCA 3/47, fo. 510; fo. 58. Wilmot alleged that the ship was held at Tripoli while an entry in the Act Book identified the port as Algiers.

after departing for London, the ship *Agreement* and all hands were lost at sea.[49] The mid-century court could also, however, take exception to the last-port rule in order to benefit mariners, especially those involved in slaving voyages. The judges knew that while most goods were not discharged in Africa for cash profit, but were converted by barter into human cargo for transatlantic delivery, the ships were usually hired on time contracts and owners demanded monthly freight payments long before the slaves arrived in America. Consequently the court decreed that wages should likewise be payable on the basis of time served to Africa rather than cargo delivered.[50] This reasoning convinced John Paige, a London slave merchant, that the court's bias favoured mariners, for the judges in 1653 had awarded six months' pay to fourteen widows after Paige's ship, the *Swan*, many of her crew, and most of her human cargo had been lost off Guinea.[51] But the policy held and mariners of the *Content* won five months' pay in 1660 though their ship had sunk before her cargo of slaves could reach West Indian markets.[52]

The last-port rule had proved a flexible instrument, then, which might be interpreted or ignored to protect sailors' interests. After the Restoration, however, merchants asked the court to consider a policy more harmful to mariners. Three London wine importers, for example, persuaded Judge Zouch in 1663 to enforce an agreement which required sailors to give up even the modest protection of the last-port rule and forfeit all wages – both outbound and homeward – when their ship sank on the return voyage from Spain.[53] But apparently Zouch's successors did not follow his lead, which would have invited sharper practice by owners, for within two years an Admiralty judge had ordered sailors paid after he had ignored a similar agreement stipulating loss of all wages unless the ship came safely home.[54] At common law, however, owners could plead such terms of hire as 'the custom of merchants'. It appears that King's Bench at least twice, in the 1660s and 1690s, enforced special contracts subversive of the last-port rule and essentially overturned Admiralty wage awards by prohibiting process even after sentence.[55] Although the issue is not raised in any litigation of the sample, judges at Doctors' Commons must have feared – long before Holt saw the danger in 1700 – that written contracts calling under certain circumstances for the loss of all pay could harm many an illiterate mariner.[56] In any case, the Admiralty Court at the end of the century

[49] Whiting and others v. Lewellin and Gunnell (1659), HCA 3/48, fo. 578; 13/72, fos. 631, 693.

[50] Davis, *English shipping industry*, pp. 166–7. Guinea, Newfoundland, and the Bay of Honduras were not considered 'unlivery' ports in the eighteenth century because there were no settled factories of merchants there. HCA 30/1042, Simpson MS, pp. 26, 251, 295, 348.

[51] G. F. Steckley, ed., *The letters of John Paige, 1648–1658* (London Record Society, 21, 1984), pp. 51–2, 76–7, 94–5, 98–9.

[52] White and others v. Oxwicke and others (1660), HCA 3/49, fo. 21; 13/129.

[53] Mariners of the *Fortune* v. Coledike (1663), HCA 3/49, fos. 438, 510, 514, 695; 3/50, fos. 9, 20, 233, 236; 13/74, fos. 272, 349.

[54] Blackwell etc. v. Clerk, 1 Keble 684 (1664).

[55] Ibid.; Opie v. Child, 1 Salkeld 31 (1693).

[56] Edwards v. Shepherd, King's Bench (1700), Lincoln's Inn MS 147, p. 123; Anon., 1 Raymond, 639 (1701); Edwards v. Child, 2 Vern. 727 (1716).

was enforcing the older last-port doctrine, whether to the advantage of owner or mariner, as two decisions from 1699 indicate. Judge Hedges benefited the owners of the *Aleppo* in the first case when he denied all pay, agreeing that 'there never were any goods delivered… nor any freight ever made'.[57] However, in the second case and by the same rule, Hedges ordered mariners of the *Effingham* paid for half the voyage despite protests that their behaviour had lost the ship to a French privateer. The *Effingham* had failed to turn when he commanded, said the master, because the helmsman and others had deserted their posts and 'run between the decks' at the approach of the Frenchman. Cowardly or not on the homeward run, the mariners won full wages to the day outward cargo had been delivered in Jamaica.[58]

But Judge Hedges could also, like Trevor in 1609, protect mariners' interests by flatly denying the logic of the last-port rule. He awarded wages in five separate cases of 1698–9 involving ships which had never left London nor earned a penny of freight. The merchant-defendants, who had hoped to profit from a freer trade to Asia and had hired ships and crew, were forced to abandon their designs, allegedly at the loss of several thousand pounds, after the East India monopoly was newly legislated in 1698. Hedges, however, had listened to the mariners' pleas that they 'and their families [were] ready to starve' after waiting ten months in the Thames with no wages, and he required the owners to pay more than the half-wages they insisted were customary until departure from the river.[59] The accountant's argument that 'freight is the mother of wages' was repeated by owners and their lawyers and ordinarily prevailed at Doctors' Commons in the seventeenth century. But by resisting employers' tactics which could harm the mariner, frequently benefiting the sailor by enforcing the last-port rule, and occasionally to the same end ignoring its logic, Admiralty judges could also show concern for labourers who risked their lives at sea and often enough in port.

III

The allegation of cowardice against the *Effingham*'s crew, though found irrelevant by the judge, suggests the other broad category of wage cases we must consider, those in which the mariner's performance was the central issue. If some merchants and common lawyers thought Admiralty judges overly concerned for sailors when voyages were ruined by nature, the enemy, or

[57] Crispe and others v. Winter (1699), HCA, 3/61, fo. 346; 13/135, answers of Joshua Winters, 18 July 1699; 24/126/264.

[58] Tennison and others v. Lemon and others (1698), HCA 3/61, fo. 33; 24/126/26.

[59] Bruce and others v. *Carlisle* (1699), 3/61, fos. 226, 231; 13/135; answer of John Breholt, 19 Jan. 1699; 24/126, 171, 185; Moneypenny and others v. *Priscilla* (1698), HCA 3/61, fo. 137; 24/126/101, 106; Mills and others v. *Priscilla* (1698), HCA 3/61, fo. 138; 24/126/100; 24/126/197; Peale and others v. *Carlisle* (1698), HCA 3/61, fo. 233; 13/135; 24/126/170, 184; Pyott v. *Priscilla* (1699), HCA 3/61, fos. 244, 257. For the politics involved, see Henry Horwitz, 'The East India trade, the politicians, and the constitution: 1689–1702', *Journal of British Studies*, 17 (1978), pp. 1–18.

domestic politics, would they have also considered the court too lenient in resolving the more numerous wage disputes of the seventeenth century, those which followed from complaints of the mariner's thievery, incompetence, negligence, insubordination, mutiny, or desertion? Or did proof of offences like these provoke such severity from the judges that we are left wondering why so many sailors risked suit at Doctors' Commons?

A mariner's honesty was daily tested as he handled valuable cargoes in exchange for common wages, and the sailor who justified his theft of cod fish on a voyage from Newfoundland, saying 'they that wrought in the vineyard must eat of the grapes', understood the concept of the social wage.[60] But did seventeenth-century judges? Cases from the sample reveal that the Admiralty Court treated charges of theft dispassionately, sometimes reducing wages, but rarely punishing embezzlement by denial of all pay, and occasionally even tolerating rather bold behaviour. Captain Maynard and the crew of the *Little Lewis*, for example, admitted taking 7,000 pieces of eight (over £1,500) from the ship's round house during a voyage to Brazil in 1660. The money, they insisted, was rightfully theirs because the ship's first master had died before he could honour his promise to pay wages at every port, and Judge John Exton ignored the shipowners' allegation of theft in order to award the sailors their remaining pay.[61] Wage reductions for thievery were seldom severe. After Captain Goodlad had accused his crew of stealing from a cargo of pepper in 1628 and had deducted 27*s* from the pay of every mariner, the judge restored 10*s* to each man.[62] Sailors of the *Bendish* did lose £25 of their aggregate pay in 1657, but this was after testimony that while homeward bound they had drunk or embezzled over 700 gallons of Spanish wine, cargo worth £40.[63] And if John Ward lost all his wages in 1698, it was either because he had stolen a hundred pounds of pork from the ship's stores to give his pregnant mother or because he was such an incompetent cook that he was 'rammed' at the mast 'for not dressing well the victuals', though it is unlikely that judges worried much about culinary standards at sea.[64]

It appears, in fact, that the court did not insist on professional precision of any kind in an era when navigational techniques were crude and many a landsman was lured or forced into a new and difficult life. Even though Stephen Bonner, a mate, had miscalculated latitude by several degrees on a voyage to the Canaries, he won full wages in 1658 after crew members said that at least he knew generally where he was when the confused master could not identify the island in front of him as Tenerife.[65] A carpenter's mate prevailed

[60] Hinde and others v. Tye (1662), HCA 13/74, fo. 292, testimony of Joseph Martin reporting Hinde's comment.

[61] Maynard and others v. *Little Lewis* and others (1661), HCA 3/49, fo. 292; 13/29, answers of Maynard and others; 24/114/152, 156.

[62] Johnson and others v. Goodlad (1628), HCA 3/32, fo. 105.

[63] Mariners of the *Bendish* v. *Bendish* and others (1657), HCA 3/47, fos. 365, 410.

[64] Ward and others v. Strutton [1698], HCA 3/61, fo. 56; 24/126/52.

[65] Bonner v. Titsell (1658), HCA 3/47, fo. 624.

in 1698 despite complaints about his inept performance on a voyage to India. Thomas Thaxter, witnesses said, had to ask how to make a simple shipboard device, then went to work so clumsily with axe and knife that they called him 'the knife carpenter'. At Bombay the master could apparently tolerate Thaxter's incompetence no longer, watched him go ashore, and ordered the crew to weigh anchor at midnight. But the carpenter finally reached London again, and the Admirably Court awarded him over £100 for the thirty-two months he had served before being stranded in the East.[66]

There is in the sample no case of wages entirely denied by the judges for inability alone. Even reductions in pay for incompetence usually required additional allegations of dishonesty or insubordination. When the court reduced Richard Reed's wages by half in 1678 for failure to perform, there was reason to think he had lied about his health at the hiring. A witness had testified that while Reed's ship was still outbound in the Downs, he was admitting a stiffness, caused by a fall during an earlier venture to Greenland, which would incapacitate him for the entire voyage to Virginia.[67] The court's typical distinction between mere incompetence and inability combined with surliness is illustrated by the case of George Parish and Luke Angel in 1655. Green hands on an Atlantic voyage, the two sailors were 'unable', said the owners, 'to perform any employment which belonged to mariners in a ship'. Parish, however, got full wages on the boatswain's word that at least he would try, while Angel's wages were cut by half after testimony that he had refused to follow orders, saying 'he could not or would not do it [even] if they knocked him on the head'.[68]

In this and similar cases, then, Admiralty judges insisted that those who hired novice mariners must also pay them and reduced wages only when inability was compounded by insolence. On the other hand, Edward Barlow complained that experienced sailors were often punished by their employers after baseless charges of negligence, just as he and his mates had been unfairly docked £3 per man in 1663 for allegedly mishandling Brazilian sugars which were wet and ruined on arrival at London. From Barlow's generalization, Rediker went on to implicate merchants and masters in an 'unrelenting abuse' of the law, cutting wages on unfounded accusations that cargo or ship had been damaged by careless mariners.[69] It should be noted, however, that Barlow and his fellow sailors had refused to be exploited on account of the spoilt sugar in 1663. '[W]e all consented to try the law and see what that would do for us. So putting our cause into Doctor Commons Court, we overthrew them and recovered all our wages.'[70] And cases of the sample suggest that this was a common result when seventeenth-century mariners appealed to Admiralty judges against arbitrary reductions. A Dutch master whose ship had delivered

[66] Thaxter and others v. *Tonqueen Merchant* and others (1698), HCA 3/61, fo. 71; 24/126/63.
[67] Reed v. *Constant* and others (1678), 3/54, fo. 64; 24/119/120.
[68] Angel and others v. Read (1655), HCA 3/46, fo. 349.
[69] Rediker, *Devil and the deep blue sea*, pp. 144–5.
[70] *Barlow's journal*, pp. 89–90.

300 tons of Polish wheat at London protested in 1609 that any damage to cargo was caused by heavy weather, not the negligence of his crew. The court agreed, ordered the remaining freight brought in, and distributed £74 so that the master could pay his men.[71] The judges excused mariners from fault in 1656 after wines were lost at sea off Malaga. Instead they blamed the merchants who had ordered that the ship be anchored miles from port to facilitate smuggling and had sent rafts of wine by cover of night in a sea so violent that the heavy casks 'tore the ropes in pieces', nearly crushing the arms of a sailor who was managing the sling. The decree gave full wages.[72]

The few cases in which pay was reduced for negligence do not reveal a court hostile to mariners, and only evidence of utterly careless performance, it seems, could provoke a judge to deny all wages. The mate and boatswain supervised the building of such flimsy stanchions in the *Tankervaile* that thirty-five horses being transported from Norway to Barbados 'fell one upon the other as the ship came to work and roll in the [North Sea] and all [the animals] died except one'. The two officers lost their pay in 1656, but nothing more.[73] If the complaints against Severino Peterson were true, it might be understandable that Judge Jenkins denied him all wages in 1679. Peterson, said witnesses, carried no useful medicines in his surgeon's chest, had attempted to cure a leg wound by bathing it in brandy, and had carelessly tapped the ash from his pipe in the gunner's quarters, igniting powder on the floor and setting off an explosion which knocked the helmsman from his wheel, blew windows from the captain's cabin, and launched the captain's bed into the sea. There were, however, even more charges against Peterson, and it is unclear whether his wages were denied for negligence alone or because he had also assaulted the master, wounding him so severely that he was unable to leave his cabin for days.[74]

Surely we should not be surprised if Admiralty judges had acted swiftly to reduce or deny pay in cases like Peterson's where there was evidence of serious insubordination. But again, as in cases of theft, incompetence, and negligence, the court seemed to weigh accusations of individual disobedience carefully and reach decisions which often favoured the mariner. The testimony against Richard Smith in 1699 was damning. He had advertised himself as a mate who was familiar with the Virginia coast, but at landfall in America admitted he 'knew not where he was', went below and 'hid himself', forcing an inexperienced master to navigate by 'his own observations of the sun'. The crew nearly starved when it took the master six weeks to find the port, and then Smith turned violent. He unlocked the captain's cabin, helped himself to five or six gallons of brandy – though one witness said only four gallons – and when

[71] Swence v. Burnell and others (1609), HCA 3/27, fos. 191, 199, 206, 211.

[72] Perryman and others v. Holding (1656), HCA 3/46, fos. 578, 591; 13/127, answers of Barnaby Holding, 17 Mar. 1656, and Francis Lenthall, 17 Apr. 1656.

[73] Cooke and Johnson v. *Tankervaile* and others (1656), HCA 3/46, fo. 638; 13/127, answers of Richard Bastion; 24/112/164, 166.

[74] Peterson and others v. *Welcome* (1679), 3/54, fo. 379; 24/119/138, 142.

discovered drunk, assaulted the master 'on board ship and challenged him to a fight ashore'. Still, the judge reduced Smith's wages by less than 25 per cent.[75] John Bonham lost only half his pay in 1657 for attempting to steal the ship, threatening to kill the master, and committing 'other misdemeanours'.[76] Humphrey Launder, a mate, did lose all his pay in 1679, but it was because he had become so infuriated when his ship was steered on to the rocks at Gothenburg that he had attacked the Swedish pilot with a bottle, fracturing his skull and killing him. Lawyers may have saved Launder's life in the Swedish court by citing the medieval code which permitted decapitation of a negligent pilot. Whatever the defence, it had cost the master and owners £55 after delaying the ship's departure for a month, and it might seem reasonable that such inefficiency compounded by homicide should at London have cost the mate his pay.[77]

Potentially more dangerous than the individual deeds of a Smith or Launder were acts of collective insubordination, and the Admiralty Court issued proclamations to discourage mutiny as it became more frequent in the early seventeenth century.[78] There are ten cases of mutiny in the sample, but in this matter as in the others observed so far, it appears that the court gave sailors a fair hearing. The East India Company, for example, had refused wages to Elias Sherbrooke, carpenter of the *Discovery*, alleging that he had incited mutiny on a return voyage from Asia. When commanders of the *Discovery* and two other Company ships, nearing home after months under sail, had decided that instead of putting into Ireland for victuals they would stand to sea and await a wind for London, Sherbrooke, said witnesses, rebelled. He persuaded his mates to down tools, asking, 'Shall we go to sea to be starved, having a good harbour under our lee?' The rebellion forced the ships into Cork, and Sherbrooke's employers later sued him at Admiralty. But though the court ordered the sailor to apologize to Company officials, the judge also insisted, despite claims the mutiny had reduced profits from the voyage, that all of Sherbrooke's wages must be paid.[79]

The court was hesitant, moreover, to issue blanket denials of pay after charges of mutiny against the entire crew. Edward Gosling, a first mate, was accused in 1658 of having incited mutiny when Captain Damorell ordered his

[75] Smith and others v. *Joseph and Benjamin* (1699), HCA 3/61, fo. 391; 13/135, answers of Hurst, 7 Nov. 1699; 24/126/293, 301–2.

[76] Bonham v. *John Baptist* and Bonner (1657), HCA 3/47, fo. 351.

[77] Launder v. *Lancelot* and Thompson (1679), HCA 3/54, fos. 373, 377; 24/119/152, schedule of Launder's wages. Article 23 of the laws of Oleron required that the pilot make good the damage if the ship miscarried and that a mariner or master who decapitated a negligent but impecunious pilot would not be answerable for the deed. Godolphin, *Admiral jurisdiction* (1685), p. 188; HCA 30/1042, Simpson MS, p. 149; Wynne, *Jenkins*, II, p. 769.

[78] K. R. Andrews, *Ships, money, and politics: seafaring and naval enterprise in the reign of Charles I* (Cambridge, 1991), ch. 3. For the proclamation Judge Henry Marten issued in 1631 and 1635 to discourage mutiny, see Harris, ed., *Trinity House transactions, 1609–1635*, p. 151.

[79] East India Company v. Sherbrooke (1629), HCA 3/32, fos. 248, 408; 13/48, fos. 72, 127, 129, 155, 233.

men to drag their whaler miles into an ice field near the Arctic Circle. The judges cut Gosling's wages by half but acquitted the crew and freed both mate and ordinary sailors from liability for thousands of pounds in alleged damages.[80] Mariners of the *Edward and John* faced charges that they had refused to unload sugars at London, threatened those hired to do the job, and had driven the captain from his ship by warning that when 'they had him at sea again they would take their course with him'. The judges, however, must have found the allegations inflated for they reduced the mariners' pay by only 10 per cent.[81] Cases of the sample suggest, then, that when the judges found mutiny which justified denial of all wages, the evidence, as in the case of Launder's homicide, was difficult to construe in the mariner's favour. The court could hardly doubt, for example, that a mutiny had occurred on the *Hannibal* off Guinea in 1697, for someone in the crew had sent Captain Hill and seventeen mariners away in the long boat and had sailed the ship to Pernambuco. But while Judge Hedges denied pay to eight mutinous sailors, he did not rush to find collective guilt, for he also decided that six men who remained on board after the rising were innocent, and he gave them three months' wages, following precedent from earlier slaving cases which allowed some pay even if cargo had not been delivered.[82]

Finally, one might suspect that the Admiralty Court, which infrequently in the sample years denied or even reduced wages after charges of theft, incompetence, negligence, or mutiny, had less latitude in cases of desertion. Often, however, the circumstances in which the merchant mariner had left the ship were open to interpretation, and the judges, though unwilling as always to explain their rulings, were again ready to make distinctions which favoured seamen. They sought guidance from Trinity House and defined the end of a voyage, when a mariner might legally depart, in accordance with local custom and the terms of wage agreements. John Bettson, for example, faced charges of desertion in 1656 when he refused to return with his ship from London to Newcastle. But the court heard evidence that at the hiring the voyage to Elsinore was described as ending at Newcastle *or* London and gave the sailor full pay.[83] Mariners of the *Golden Fleece*, after arriving from Hull in 1679, had abandoned the ship in the Thames when she was still heavily laden, but though the judge initially deducted 10 *s* from each mariner's wage, he then ordered the crew paid an additional 16 *s* a piece for the two and a half weeks they *had* spent heaving cargo.[84] In other desertion cases the judge excused the mariner because of ambiguity in the master's orders. Both Mitchell Davidson in 1658

[80] Batson and others v. Gosling and others (1658), HCA 3/48, fo. 204; 24/112/234, 236; 24/113/179.

[81] Huggery and others v. Totty (1656), HCA 3/47, fos. 65, 67, 70–1, 86, 103, 127, 137; 24/112/203, 244, 280.

[82] Cooke and others v. *Hannibal* and others (1698), HCA 3/61, fo. 164; 24/126/103.

[83] Bettson v. Dickson and others (1656), HCA 3/46, fo. 625; 13/127, answers of John Bettson, 17 Apr. 1656; 24/112/158, 162.

[84] Turner and others v. *Golden Fleece* and others (1679), HCA 3/54, fo. 258; 13/78; 24/119/100.

and Michael Henderson in 1678 won their pay by arguing that they had got the master's permission to leave the ship. Henderson said he had received a wage advance to buy shoes at Plymouth and that when he saw his ship sail away he hired a boat and rowed four miles in a desperate attempt to catch her, the kind of response which would persuade later judges that a seaman was no deserter.[85]

Even in cases of desertion which involved no confusion about terms of employment or master's orders, the court seemed reluctant to deny all wages. Henry Critchet, who deserted in 1679, might very well by later Admiralty standards have lost all his pay for habitual drunkenness alone.[86] He had been seen 'twenty times in drink' by his master and had gone ashore in Ireland, said other witnesses, after being drunk 'in the working time of the day' and 'for two days and nights together'. He had growled that 'he cared not a fart' for the captain who was trying to retrieve him from an Irish tavern. Then he deserted. But the judge, while apparently recognizing the sailor's irresponsibility, gave Critchet's wife half his wages.[87] Desertion was even fully excused by the court in 1657 after mariners had angrily abandoned the *Gilbert* at Bristol. The master, they said, had overloaded the ship at Virginia, and, when warned of the danger, replied, 'Let her sink, if she will, and let us go to the devil and be damned together.' His wishes nearly came true, for as the ship neared England during a stormy voyage, 'the head and stern post… gave way', and crew members tried to patch the leaks with 'two pieces of beef cut into slices'. Reaching Bristol did not soothe the mariners. Some threatened to 'blow up… both ship and goods' if she were re-laden for London. Others deserted. But Judges Godolphin and Cocke awarded the deserters full wages to Bristol and gave additional salary to those who had stayed by the ship all the way to London.[88]

It appears from this sample, then, that when Admiralty judges punished desertion in the seventeenth century by denying all wages they saw little choice. Hugo Wilkins lost all his pay after deserting in 1679 but there was testimony that he had stolen and sold eleven slaves from the ship's cargo at Barbados and then, with two accomplices, threatened the life of a young sailor until he signed a false account of the incident.[89] In the same year Jeremiah Bludworth lost all wages after witnesses said he had deserted at Seville following a fight in which he had bloodied the master's face, torn off his periwig, thrown it into the sea, and threatened to send the master after it, grabbing him and running 'him up to the side of the ship' and bending 'his body over', so that the master would surely have gone overboard had not someone 'accidentally taken hold of his legs'.[90]

[85] Davidson v. Hosier (1658), HCA 3/47, fo. 609; Henderson v. *Mayflower* and others (1678), HCA 3/54, fos. 191, 385, 390, 454; 13/78, testimony of Richard Hutchinson; 13/131, answers of Michael Henderson, 29 Aug. 1677; 24/118/35; HCA 30/1042, Simpson MS, p. 24.

[86] Bourguignon, *Sir William Scott*, p. 77.

[87] Critchet v. *Duke of Ormond* and others (1679), HCA 3/54, fos. 215, 233, 247.

[88] Drayson and others v. *Gilbert* (1657), HCA 3/47, fo. 486; 24/113/49.

[89] Wilkins v. *Coaster* (1679), HCA, 3/54, fos. 291, 309, 325; 24/119/115–16.

[90] Bludworth v. *Francis* and others (1679), HCA 3/54, fos. 213, 256–7, 260.

IV

It is hardly surprising that a number of Admiralty judges who presided at Doctors' Commons during the sample years invested with their London neighbours in overseas trade and colonization, or were closely related to those who did.[91] But should we have expected, then, to find a different bias in the wage decisions examined here? Or was the social temperament of Admiralty judges both compatible with their private ventures and comparable to that of other English officials? Craig Muldrew has argued that judges of seventeenth-century town courts promoted confidence in a commercial economy by making it easy for poor people to sue for what was owed them.[92] Historians have discovered officials in other jurisdictions who could mute their social prejudices, recognize the ambiguity of evidence, mitigate penalties, even reduce court costs, after being moved by the demeanour or circumstances of the accused.[93] That Admiralty judges reacted in similar ways, by allowing poor mariners to join in suit and share costs, by often discounting employers' accusations but responding to sailors' pleas – the argument advanced so far – is supported by further discovery that all mariner-plaintiffs in nearly 80 per cent of the cases sampled won their full wages, as understood to mean pay for the time of their service or at least to the last port of delivery (see Table 6). This definition of success, by excluding any case in which just one of multiple plaintiffs suffered even a partial loss of wages, may well understate the court's concern for mariners. Yet wholly successful suits account for more than 70 per cent of decisions in seven of the eight periods studied; and the low figure for 1678–9 is explained by a coincidence of cases involving the homicidal Launder and sailors who had assaulted their masters, so that the success rate had recovered substantially by the end of the century, even during the interval of peace after

[91] Judge Richard Trevor invested in the Virginia Company in 1612. His colleague Daniel Dunn had also participated in that venture as well as in the French, Newfoundland, and Spanish companies. T. K. Rabb, *Enterprise and empire* (London, 1967), pp. 284, 293. Richard Zouch is included in Professor Rabb's list apparently because he was an MP in the 1620s, but his seat in the Commons was provided by his cousin, Lord Edward Zouch, who invested in both the Virginia and New England companies. *DNB*; Rabb, *Enterprise and empire*, p. 410. John Godolphin's uncle, Sir William Godolphin, invested in the Virginia company and other ventures. Ibid., p. 298. William Hedges, brother of the Admiralty judge, was an officer of the East India, Levant, and Royal African companies. J. R. Woodhead, *The rulers of London* (London, 1965), p. 88. Judges Thomas Crompton and Henry Marten are on Rabb's list only as MPs; but Marten was considered the wealthiest member of Doctors' Commons in 1639; and although the directors of the East India Company omitted the usual New Year's gratuities in 1635 because of poor trade, they gave Marten a cash gift 'in view of the many occasions' they would have 'to make use of [him]'. Rabb, *Enterprise and empire*, pp. 274, 339; B. P. Levack, *The civil lawyers in England, 1603–1641* (Oxford, 1973), pp. 222–3, 252–3; E. B. Sainsbury, ed., *Court minutes of the East India Company, 1653–1639* (London, 1907), pp. xiii, 137–8.

[92] Muldrew, *The economy of obligation*, ch. 8.

[93] Cynthia B. Herrup, *The common peace: participation and the criminal law in seventeenth-century England* (Cambridge, 1987), passim; Martin Ingram, *Church courts, sex and marriage in England, 1570–1640* (Cambridge, 1987), pp. 56–8, 187–8, 364–8. Robert Shoemaker has found evidence that women and the poor were assessed lower costs and fines but generally suspects that because they 'faced numerous obstacles when they used the judicial system, they are unlikely to have believed that the law would always treat them fairly'. *Prosecution and punishment*, pp. 117, 159, chs. 6, 7, 11.

Table 6 *Outcomes in Admiralty wage cases, 1608–1609*

	Number of cases	All mariners given full wages		Wages of at least one mariner reduced		At least one mariner denied all wages	
		Cases	%	Cases	%	Cases	%
1608–9	28	26	93	2	7	0	0
1628–9	19	17	89	2	11	0	0
1655–6	37	31	84	4	11	2	5
1657–8	37	28	76	6	16	3	8
1659–60	10	9	90	1	10	0	0
1661–2	19	17	89	0	0	2	11
1678–9	43	23	53	9	21	11	26
1698–9	47	34	72	3	7	10	21
Court decree	240	185	77	27	11	28	12
Arbitrated	13						
Agreed	18						
Total	271						

Sources: HCA 3, Act Books; 24, Decrees and Libels, 1608–99.

Ryswick.[94] Such encouraging results were surely known in a general sense by sailors who routinely exchanged information about employers; and this should begin to resolve an issue posed at the outset, for it seems that even the individual mariner might well have risked the high cost of litigation, and sued alone in the seventeenth century, when he heard that his chances of winning and escaping all court fees were in fact rather good.[95] All plaintiffs in nearly eight of ten cases from the sample were awarded full wages and in a ninth case reduced wages, which usually meant half pay or more. Mariners won full wages in more than nine of ten cases when they were joined in suit by the master, and even in the small minority of cases when the pay claim was denied, the plaintiff was not always left penniless, as widow Allenson's profits from the slave trade indicate.

After awarding full wages the court consistently assessed defendant-owners with costs.[96] The winning sailor paid costs only after a default judgement, when the defendant had failed to appear, and then the fees could usually be deducted quite painlessly from the value of the ship which had been arrested, condemned, and sold to meet the wage bill.[97] But sailors were even less likely to face heavy legal expenses than is suggested by their success in winning full pay, for the

[94] Cf. Rediker, *Devil and the deep blue sea*, p. 292.

[95] Ibid., pp. 134, 203; Davis, *English shipping industry*, p. 135; *Barlow's journal*, p. 352.

[96] Mrs Dunne, representing successful mariners, protested that one of her husband's mates was mistakenly charged with fees. Dunne v. Wood (1655), HCA 3/46, fo. 300.

[97] Godolphin, *Admiral jurisdiction*, p. 43.

Table 7 *The last discovered procedural step in Admiralty wage cases for which there is evidence of execution, 1608–1699*

	Cases	%
Money received from registry by mariner, spouse, or proctor	75	55
Money left in registry for distribution to the mariner	8	6
Ships or goods sold, or ordered sold, to pay the mariner	17	12
Possession of ship awarded to the mariner	28	20
Defendant imprisoned until he should pay the mariner	10	7
	138	100

Sources: HCA 3, Act Books; 24, Decrees and Libels, 1608–99.

court usually assessed owner-defendants, not mariners, with costs when wages were reduced by decree.[98] Some owners were directed to pay fees even when wages were denied, and in the few instances when the court found the sailor liable, it sometimes assessed costs at unusually low rates or waived them altogether.[99] After denying Jeremiah Bludworth all his wages because he had attacked his master and deserted, the judge excused him from costs.[100] Better that the chastened and penniless sailor find a new ship than languish in the Marshalsea prison over a debt to the court, unable to pay his 'dues' to the gaoler, and kept from starving, as Judge Jenkins worried, only at the charity of court officials.[101]

The successful mariner-plaintiff, on the other hand, could typically enjoy his legal victory and go home with money in his pockets. Evidence of execution remains from nearly two-thirds of cases resulting in wage awards, and the last recorded act in 83, or 61 per cent, of these was either an appearance by the defendant to deposit money with the court for distribution to the mariner or – and far more often – an appearance by the mariner, his spouse, or lawyer to receive the wages due (see Table 7). In an additional 28 cases mariners gained by default, and first decree, possession of a ship which could be ordered sold to

[98] The judge who cut the injured Richard Reed's wages by half charged him no costs because he was a pauper and ordered the owners to contribute to his out-of-court expenses. Reed v. *Constant* and others (1678) HCA 3/54, fo. 64.

[99] Joshua Barnes, a deserter who lost his case, was assessed costs, but the court reduced them from £2 to £1 because the wages in question had been less than £10. Barnes v. *Hannah* and *Elizabeth* [1679], HCA 3/54, fo. 305. In ten of thirteen cases when wages were reduced and for which there is evidence, costs were assessed to the defendant owners; in two more the court assessed no costs; leaving but one case in which a mariner paid something towards fees, in fact only a fraction while the owner-defendants paid more than half. In two of fifteen cases when wages were denied and for which there is information, owner-defendants, while being freed from paying wages to at least one mariner, still paid costs. Plaintiff-mariners in four more cases, despite losing their wages, were assessed no costs by the judges. In two cases losing mariners were assessed only £2 or less, i.e. no more than a quarter of average fees in the sample.

[100] Bludworth v. *Francis* and others (1679), HCA 3/54, fo. 260.

[101] Jenkins to Pepys, 2 Aug. 1677, in Wynne, *Jenkins*, II, p. 709.

pay wages; and because only 7 of 271 cases in the sample had proceeded to a second or definitive sentence, it appears that first decrees awarding possession to mariner-plaintiffs were seldom contested.[102] Sir Leoline Jenkins complained that a mariner's widow was forced by the decision of a common law jury in 1668 to give back wages awarded by the Admiralty Court, but it was in a case stopped by prohibition, a rare event in wage litigation.[103]

The number of decrees giving plaintiffs possession of ships or ordering the sale of vessels or cargo to ensure that wages were paid – nearly half of those for which there is record of execution – proves the importance to the sailor of civil law process *in rem*.[104] Such action against the ship secured assets from which he could get his money and in default judgements pay costs. It required that wages be adjudicated before other claims against the ship were heard, and it resulted in a process of execution which also favoured the mariner, for his rights to proceeds from the sale of the ship took precedence over those of masters, freighters, holders of bottomry debt, provisioners, shipwrights, and other creditors.[105] The procedure was not, of course, fool-proof, for the vessel when sold occasionally brought less than the wages due.[106] Sailors of the *Prince John Gascoyne* in 1698 won a judgement of £191, then watched the ship sell for £150, and cleared after court costs and expenses of sale only £120, less than two-thirds of the pay they had earned.[107]

But no court guarantees justice and the Admiralty judges apparently enjoyed general approval even though their customers sometimes met with the aggravations common to legal process anywhere. A case lasting nearly two years ended in complaint that the defendant had 'made over his estate' to

[102] On the declining frequency of second decrees, see Prichard and Yale, eds., *Hale and Fleetwood*, p. cxxx, n. 3.

[103] Jenkins, 'Argument', p. lxxxi.

[104] The total of awards giving possession or ordering the sale of ship or cargo includes, of course, some cases counted in Table 7 as ultimately resulting in money receipted by plaintiffs or left for them in the registry. We now have an excellent description of how procedure *in rem* became the 'distinctive process' in Admiralty litigation when common law courts issued prohibitions to deny Admiralty process *in personam*. Prichard and Yale, eds., *Hale and Fleetwood*, pp. xxxviii–xlvii, cxxiv–cxxxv. Cases of the present sample confirm the supposition that process *in personam* 'withered away' over the course of the seventeenth century. The declining fractions of cases in the sample brought *in personam* are as follows: 1608–29, 34 of 52 (65 per cent); 1655–62, 55 of 123 (45 per cent); 1678–99, 12 of 96 (13 per cent).

[105] Stephens and others v. Wages for service in the *Mary Margaret* (1609), HCA 3/27, fo. 337; Rex and others v. Goods in the *Mary Margaret* (1609), HCA 3/27, fo. 337; Cassway and others v. *Prosperous* and others (1658), HCA 3/48, fos. 317, 331, 340, 348. In Lane and others v. James and others (1678), mariners got their wages before the master. HCA 3/53, fos. 513, 528. In Anderson v. *Fortune* (1698), the master was paid before holders of bottomry deb. HCA 3/61, fo. 60; 24/126/39. In Edlington and others v. *William and John* (1698), mariners were paid before carpenters. HCA 3/61, fos. 307, 321, 326, 334, 338, 345, 350, 413; 24/126/241.

[106] In Shanke and others v. *Sarah and Elizabeth* (1698), the ship was appraised for less than half the wages due. HCA 3/61, fos. 87, 93, 96, 106, 117; 24/126/92. In Hendrickson and others v. Claeson (1657), actions against the ship had been filed by sailors, owners, freighters, provisioners, and lenders, but although the mariners' claims came first, the value of the ship when sold did not meet the wage bill. HCA 3/47, fos. 523, 606.

[107] Wells and others v. *Prince John Gascoyne* (1698), HCA, 3/61, fos. 171, 176; 24/35.

avoid paying the judgement.[108] An observer deplored the 'indecencies of speech', 'brawlings', and 'other rude behaviour' in the court.[109] A master was accused of threatening witnesses with violence on the court's premises, another of bribing mariners to testify against their mates.[110] Sailors in one case violently resisted judicial authority from the outset by throwing overboard both the warrant of arrest and the Admiralty officer who was carrying it. But by casting the terrified official into the 'river at Kilmare', they were able to prevent arrest of the ship by the Irish Admiralty, sail off to London, and sue successfully at Doctors' Commons for £384 in wages.[111] In the remaining cases of the sample, resistance was civil: a significant minority of defendants failed to appear and lost by default, a few employers endured gaol for not paying the judgement, and some litigants used every procedural device to delay the inevitable. Captain Middleton admitted owing his late cook over four years of wages but refused to pay the mariner's executrix because her suit had annoyed him. He had, said he, 'ten thousand pound to command … and was able enough to pay her, but now he would not, for she should have law enough for her money', and the case was settled over Middleton's dead body when his widow agreed to terms out of court.[112]

The captain's case was exceptional. Most parties co-operated and most sailors won their wages expeditiously. This could not, of course, free seventeenth-century mariners from a host of dangers both natural and artificial. Worm-eaten ships sank. London merchants might refuse to honour bills of exchange which sailors had accepted for wages. A stout and drunken master could 'chase the men fore and aft' as if they were 'a flock of sheep'.[113] Serious conflicts between employer and employee which never reached court were surely legion, and even when the aggrieved were willing and able to sue, they occasionally met with treatment in court which seems severe. Judges Godolphin and Cocke rejected allegations that repeated beatings from the master had justified William Cooper's desertion.[114] Captain Shelley was allowed to leave

[108] Yeomans and Bowen v. Simmons (1659), HCA 3/48, fo. 224.

[109] The observer was James, Duke of York, who as Lord High Admiral in 1668 made proposals for improving the court's procedures. HCA 30/1036, fo. 336.

[110] Bridgman v. Van Eudoven (1609), HCA 13/40, fo. 113, testimony of Giles Poulson that the master, on seeing Poulson come to testify, threatened to lay him 'by the heels'; 13/40/116, testimony of Nicholas Blowe that the master 'in this office' threatened to put him in prison and cut off his ears. See also Wilkins v. *Coaster* (1679), HCA, 3/54, fos. 291, 309, 325; 24/119/115–16. For allegations of bribery, see Powell and others v. Lewellin and others (1658), HCA 24/111/215.

[111] Batten and others v. *Orrery* (1679), HCA 3/54, fos. 296, 368; 24/119/147.

[112] Croford and others v. *Elizabeth and Mary* and others (1660), HCA 3/48, fo. 626; 13/73, fo. 98, testimony of Grace Hogsflesh, 12 Mar. 1659.

[113] Body and others v. Sands and others (1698), HCA 3/61, fo. 43; Peterson and others v. *Welcome* (1679), HCA 119/142; E. H. W. Meyerstein, ed., *Adventures by sea of Edward Coxere* (Oxford, 1946), p. 53.

[114] Tatnell v. *Tiger* and others (1658), HCA 3/48, fo. 80; 24/112/235; 113/58, 127. It was reported in other cases that discipline was imposed by beatings. Wills v. Carpenter (1609), HCA 13/39, fo. 177, testimony of Peter Merry, 10 May 1608; Hankin v. *Richard and James* and others (1679), HCA 3/54, fo. 269.

widow Pollard only a gratuity of 2s 6d after she claimed he had auctioned away her late husband's belongings for £17.[115] Judge Hedges forced sailors to bear heavy debts for room and board ashore after the *Charles* had become ice-bound all winter at Danzig because in order to get their wages on arrival in the Baltic the men had carelessly signed papers which cleared them from the ship.[116] Perhaps the court in a later and allegedly more enlightened age would have treated these and other petitioners more generously. On the other hand, seventeenth-century Admiralty judges long before Scott recognized that theirs was an equitable jurisdiction.[117] They rejected out of hand fraudulent receipts for wages signed unwittingly by wives of mariners who had not been paid.[118] They anticipated judges Holt, Penrice, and Scott by refusing to enforce contracts which required illiterate mariners to forfeit all wages if the ship failed to come home.[119] In sum, it is reasonably clear from the sample studied here that the Admiralty Court in the seventeenth century was usually sensitive to the sailor's needs, willing to modify procedural and substantive rules to his benefit, and reluctant to charge him with costs.

Where this sense of equity originated is scarcely discernible in the judges' laconic decrees. Their occasional recommendations of charity for mariners' widows or children might suggest the prompting of Christian conscience.[120] But published comments from the judges about wage litigation and the general pattern of their decisions reveal another logic, an argument essentially as old as medieval maritime codes but now expressed in the language of utility and reason of state. This jurisprudence probably began with an assumption that the force of law was necessary to resolve pay disputes. Enforceable wage agreements had long since replaced mutual trust, especially in long-distance navigation, perhaps because the employment relationship could be virtually modern in its anonymity. The dozen or more mariners of a ship's crew, multi-national in origin, might be hired by the master as agent for a dozen or more faceless part-owners who were scattered from London and Devonshire to Iberia and the Canaries.[121] Attempting to avoid law suits by brotherly reconciliation was

[115] Pollard v. Shelley (1661), HCA 3/49, fo. 138.

[116] Tapley and others v. *Charles* (1699), HCA 3/61, fos. 347, 375; 13/135, answers of William Pinnell; 24/126/261.

[117] Godolphin, *Admiral jurisdiction*, To the Reader, Preface, p. 3, and ch. xi, p. 114; Zouch, *Jurisdiction of the Admiralty*, pp. 4, 38–9, 143.

[118] Bolling and others v. Bradley (1656), HCA 3/47, fo. 333.

[119] *Blackwell etc.* v. *Clerk*, 1 Keble 684 (1664). Holt considered such contracts 'prejudicial to navigation'. Edwards v. Shepherd, King's Bench (1700), Lincoln's Inn MS 147, p. 123. The eighteenth-century compendium of Admiralty rules on which Scott drew suggests that agreements requiring mariners to sign away their wages in the event of calamity could be pleaded. HCA 30/1042, p. 26. But the Admiralty judge Sir Henry Penrice would not enforce such an agreement in Buck v. Hackett and Chambers (1724), Lincoln's Inn MS 147, pp. 121–2. He thought the contract 'unjust … as such poor people are very subject to be imposed on and often set their hands to what they do not know, and it not being in proof that the contract was ever read over to them or that they knew the contents of it'.

[120] Towers v. Barton and others (1658), HCA 3/48, fo. 83.

[121] Davis, *English shipping industry*, p. 83.

impractical at best in such circumstances and became even less likely when merchant-owners referred to sailors as 'dogs' or the 'kind of people' who 'will not understand reason', or after months of contention between the master and his crew, men so physical, anxious, and alone with nature as sailors on a ship.[122] What chance for harmony on the *Peacock* in 1609 after mariners had called the master 'a rogue, ass, beast, and bloodhound' and had threatened to 'thrust a knife in him'?[123] Admiralty judges who regularly heard such stories hardly needed to conjecture that life at sea among men of comparable strength would be forever brutish and short and the art of navigation endangered without some effort to impose order. But the jurists could also use Hobbesian logic to insist that such discipline follow from true mediation. Consider Robert Wiseman's argument in 1657 justifying Admiralty powers over wage cases and opposing the creation of maritime courts where merchants, rather than civil lawyers, would preside.

> [T]here is such a spirit of opposition reigns between the Merchant and the Mariner, who is as useful and serviceable at sea as the Merchant can possibly pretend to be, that if the Merchant should sit to judge the Mariner, in time, the company of poor Mariners might be so severely dealt with, and kept with such short wages by the Merchant … that he will not care to serve, and so navigation may be quite lost.[124]

Wiseman's fellow judges saw their obligations in a similar light. Mariners, wrote Judge John Exton, deserved jurists who made the 'determination of maritime causes their whole work'.[125] Judge Zouch insisted that the sailor, 'the life of shipping', must be provided courts where he could 'well obtain his wages', or he would 'betake himself to some other course of life'.[126] Mariners depended, wrote Hedges, on the efficiencies of Admiralty procedure, without which, Jenkins added, their families would surely starve.[127] And Dr Godolphin, who ruled in more cases of the sample than any other judge, extended the logic with well-worn metaphors connecting mariner, court, and state: the welfare of the community required a healthy Admiralty jurisdiction which would permit the mariner's art to flourish; merchants and mariners were 'the able supports to any Nation or Kingdom'; their ships must 'plow the seas', not 'lie by the walls'.[128] Sailors who refused to sail during war without state convoy might be thought too presumptuous and face the loss of wages, as a case from the sample

[122] Cf. Muldrew, 'Culture of reconciliation', passim; *The letters of John Paige, 1648–1658*, p. 77.

[123] Bridgman v. Van Douen (1609), HCA 13/40, fo. 126.

[124] Robert Wiseman, *The law of laws; or the excellency of the civil law* (London, 1656), p. 150. Wiseman never enjoyed regular appointment to the Admiralty bench but served as surrogate judge in Jenkins's absence. William Senior, 'The judges of the High Court of Admiralty', *Mariner's Mirror*, 13 (1927), p. 343.

[125] John Exton, *The maritime dicaeologie, or sea-jurisdiction of England* (London, 1664), p. 145.

[126] Zouch, *Jurisdiction of the Admiralty*, p. 151.

[127] [?Hedges], *Reasons for settling*, p. 473; Jenkins, 'Argument', pp. lxxxii, lxxiv.

[128] Godolphin, *Admiral jurisdiction*, introduction. Abbott and Scott would later use some of Godolphin's metaphors. Bourguignon, *Sir William Scott*, p. 86 n. 119.

implies.[129] But custodial justice in peace-time even for French or Dutch seamen made practical sense when English shipowners hired in an international labour market. Freight might be the mother of wages, but construing, or sometimes ignoring, the last-port rule to satisfy a mariner's sense of fairness was also pragmatic. Seeking only utility, the court could dispense with moral absolutes, merely deduct a mariner's theft from his pay, give the incompetent or cowardly novice his contracted wage, even distinguish mutiny or desertion from sin.[130] For in all of this – a policy of calculated tolerance – the judge was rewarding risk, helping to lure young men from countryside and metropolis into a most dangerous career, ensuring that the wooden walls were manned for the extension of empire, and correcting for the myopia of merchant-owners who could not see beyond profit or loss from the voyage at hand.[131]

This functional justice may have been generally acceptable to litigious mariners. 'When a man should offend at sea', said a sailor in 1629, 'if his commander … do not punish him for the same, he ought to be punished by the Court of Admiralty.'[132] Edward Barlow, who won full wages both times he sued for pay, suspected in a third instance that a suit 'might have caused [the master] to have paid sore' for his sharp dealing, and in only 1 of the 271 cases studied here is there record of an outburst in court by a party protesting the unfairness of it all.[133] A man named Heath cried out in 1698, 'If there was any law in the nation, this was not justice!' But he was Captain Heath, part-owner of the *Tonqueen Merchant*, and he had just been ordered to pay full wages to Thaxter, the incompetent 'knife carpenter'. The protesting employer was taken into custody at the court's direction, then released 'upon his submission and begging pardon'.[134]

When Judge Scott later presided at Doctors' Commons, the nineteenth-century mariner could expect, it was said, 'to have his good actions remunerated' – his pay ensured – 'like every other individual member of the state, by the protection of its laws'.[135] But the sailor's rate of success in wage cases decided by Scott and then Victorian judges seems to have been about 75

[129] Davison and others v. *Joshua* and Lawson (1698), HCA 3/61, fos. 335, 342; 13/82, fos. 70, 80–1, 123, 125, 155; 24/126/126, 261.

[130] For a view that early modern lawyers abandoned the lofty vision of justice as an absolute in order to address the more practical and limited task of managing conflict, see William J. Bouwsma, 'Lawyers and early modern culture', *American Historical Review*, 78 (1973), p. 318.

[131] The historian of Cromwell's navy has described seventeenth-century officials of another sort who sympathized with sailors, struggled against financial constraints to pay them wages, and responded to mutinies with moderation. Bernard Capp, *Cromwell's navy* (Oxford, 1989), pp. 280–1, 290–2.

[132] East India Co. v Sherbrooke (1629), HCA 13/48, fo. 129, testimony of Gersum Howard.

[133] Barlow's suits were in years outside the present sample. He returned to London on merchant ships twenty-two times from 1659 to 1703. Twice he sued to win his wages; he received full pay without suit after 55 per cent of the other voyages, reduced pay after 35 per cent and no pay after 10 per cent. *Barlow's journal*, pp. 90, 358, 365, 455, and passim.

[134] Thaxter and others v. *Tonqueen Merchant* and others (1698), HCA 3/61, fo. 71; 24/126/63.

[135] Arthur Browne, *A compendious view of the civil law and of the law of the Admiralty* (2 vols., London, 1802), II, pp. 154–5.

per cent – no higher than that discovered in the suits studied here.[136] And if further research should prove the present sample of cases representative for the seventeenth century, it appears that more than 60,000 mariners in that earlier age of imperial war, expanded markets, and slaving voyages could already afford a kind of justice and reasonably expect to win their wages at Admiralty.

[136] Mariners won 74 per cent of the wage cases among Scott's published decisions. Bourguignon, *Sir William Scott*, p. 78. Defendants before the court in 1858 paid 76 per cent of all costs, which suggests that Victorian mariner-plaintiffs were winning with a frequency similar to that experienced by their seventeenth-century counterparts. *House of Commons, accounts and papers, return of judicial statistics, 1859*, pp. 186–7. Sir Edward Simpson's compendium of Admiralty rules might be interpreted to suggest that sailors faced judges in the eighteenth century who were more severe than those of the seventeenth. HCA 30/1042, passim. But such a change is certainly not implied by the increased pace at which sailors were suing for wages at Admiralty in 1718–19. See above, n. 22.