

Case No. 1358a, BERRY V. THE MONTEZUMA.  
[N. Y. Eve. Post, March 6, 1856.]

District Court, S. D. New York.

ADMIRALTY—PLEADING—ADMISSIONS OF ANSWER—SEAMAN'S WAGES—TIME OF SERVICE.

[Libellant in a suit for seaman's wages is entitled to use an admission of the answer as to the date of his Service without being hound by the allegation of the answer as to the time when his service began.]

[In admiralty. Libel for seaman's wages by James Berry against the schooner Montezuma.]

W. J. Haskett, for libellant.

D. McMahon, for claimant.

Before BETTS, District Judge.

The libel seeks to recover \$66.50, a balance of wages due him for service on the schooner from February 1 to July 2, 1855, at \$18 per month. The whole wages amounted to \$91.20, against which the libellant credits payments to \$24.70. The answer admits the rate of wages and service on board, ending July 2, but denies that it began before the 6th of February, and sums up the amount earned at \$87.60, on which it claims payment to \$51.87, leaving a balance of \$35.73, to which tender, with \$11.35 costs, was made to the libellant, and duly paid into court.

Held, that the libellant proved satisfactorily that he entered on board the vessel as early as the 1st of February, 1855, and is entitled to use the admission of the answer that he continued with the vessel to July 2, without being bound by the assertion of the answer that his service did not begin till February 6. The two facts are independent of each other, and the owner of the vessel is not entitled to have his admission of one qualify or make evidence his assertion of the other. The claimant fails to prove the credits he sets up, and the libellant is entitled to judgment for the apparent balance of \$66.50 and costs. But it is ordered that he may have, if asked for, a reference to a commissioner to state the account, and may offer further proofs of payments. The reference being for his favor alone, it must be at his expense exclusively.