

Case No. 3,245.

[Crabbe, 281.]¹

CORNIER v. SAWYER.

District Court, E. D. Pennsylvania.

Aug. 7, 1839.

SEAMAN'S ACTION FOR ASSAULT.

Where a quarrel occurred between, a master and a mate, and the latter left the vessel, to consult the consul, but returned, saying that the consul advised the matter should be, "made up;" and the master, third parties having mediated between them, agreed to do so; the mate has no cause of action, against the master, because of such quarrel.

This was an action [by Jean H. Cornier against Simon Sawyer, master of the schooner Frederick Reed] for assault and personal damage. It appeared that the parties, while in Porto Rico, quarrelled, and the respondent disrated the libellant, who was a mate; that the libellant refused to go before the mast, and went to see the consul; that after some days, during which time other persons had mediated between them, the libellant returned, saying the consul advised that "the matter should be made up, and dropped," to which the captain agreed; that the libellant had returned to his duty as mate, and had been paid his full wages on his arrival; and that, afterwards, this suit had been commenced.

H. Hubbell, for libellant.

Mr. Gerhard, for respondent.

HOPKINSON, District Judge. This was a very proper case for compromise; there were faults on both sides. The parties had mutual complaints against each other. The captain complained of habitual insolence, insubordination, and refusal to obey his orders; of gross carelessness, or want of skill, in the libellant's conduct as mate, and of this he has proof. The mate complains of harsh treatment, coarse and abusive language, and unprovoked and oppressive punishments. Both had some reason for these complaints. It was a fair case for compromise and mutual concession; and this was what the consul advised. It appears that the consul said they "had better make it up," and, therefore, the mate was again received; that is, the captain did drop it gave up his causes of complaint, and certainly was entitled to expect the same to be done on the other side; otherwise they did not make it up, they did not drop it, but the captain only did so. Such was not the advice of the consul, by which the libellant was willing to abide. The mutual concession, as advised by the consul, was what the libellant came and offered to the captain, and what the latter accepted; by this both parties were to be restored to their original relations and positions, to the status ante bellum; the captain has performed his part of the treaty, the mate endeavors to withdraw from his. The libel is dismissed, without costs.

¹ [Reported by William H. Crabbe, Esq.]