

Case No. 3,258.
[6 Ben. 288.]¹

THE CORTES.

District Court, E. D. New York.

Dec. Term, 1872.

SEAMAN'S WAGES—INJURY TO SEAMAN ON BOARD SHIP—COSTS.

A seaman, who had shipped in New York for a voyage to New Orleans and back, after the vessel had started on her return, voyage from New Orleans fell from the yard and broke his arm. The owners of the steamer sent him at once to a hospital, paying his wages till the date of his leaving the ship, and afterwards brought him to New York. The seaman having filed a libel to recover wages for the rest of the voyage, and damages for the injury, the owners of the vessel paid the amount of the wages into court, which the libellant drew out. *Held*, that the libellant was entitled to the wages for the rest of the voyage, and as there was no proof or allegation of a tender of the amount, he was entitled to a decree for his costs.

This was a libel in admiralty by William Price, who alleged that he shipped, on the Cortes in New York for a voyage to New Orleans and back; that, after the vessel had started on her return voyage, he fell from the yard and broke his arm, and was sent to a hospital in New Orleans, and, after a few days, was brought to New York in another steamer and sent to the hospital in New York; and he claimed to recover \$18, a balance of wages due, and \$400 damages for the broken arm.

The owners of the steamer answered that they had paid the man up to the time when he left the ship, and were willing to pay him up to the time of the arrival of the Cortes in New York. His claim for damages they denied. And they paid into court the amount of the wages which they offered to pay.

A. Nash, for libellant.

Man & Parsons, for claimant.

BENEDICT, District Judge. The libellant having incurred no expenses in his cure is entitled to recover no more than the wages which the claimants have heretofore paid into court.

In the absence of any proof or allegation of a tender of this or any sum, the libellant is also entitled to his taxable costs. The sum paid into the registry having been heretofore withdrawn by the libellant, he is now entitled to a decree for his costs only.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]