

Case No. 3,263. COSTELLO V. AMERICAN STEAMSHIP CO.
[1 Wkly. Notes Cas. 204.]

District Court, E. D. Pennsylvania.

Feb. 6, 1875.

SEAMEN'S WAGES—FORFEITURE—WHAT CONSTITUTES DESERTION.

[A seaman arrested and imprisoned in a foreign port is not a deserter, within the act of 1790, so as to forfeit wages due at the time of the arrest.]

In admiralty. Libellant [Michael Costello] shipped on respondent's steamship Illinois on April 16th, at Philadelphia, for a voyage thence to Liverpool and back to Philadelphia, The vessel arrived in Liverpool on April 27th, 1874. On the evening of April 28th libellant obtained leave to go ashore for 24 hours. While ashore he became intoxicated, and was arrested by the Liverpool police, and locked up in the station house.

In the meantime, on the night of April 30th, the vessel hauled out into the stream, and at mid-day of May 1st, libellant being absent, the vessel sailed without him. Another

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man was shipped in his place, and he was logged as a deserter. As soon as released, libellant proceeded to the vessel, and found that she had just started on her voyage, and he was unable to reach her. This was at 12 o'clock m. of May 1st. He obtained a free passage home on the next vessel of the same line that sailed from Liverpool, and on arriving in Philadelphia claimed his wages up to the time of his leaving the vessel in Liverpool. Respondent refused to pay him, on the ground that libellant, having been 48 hours absent from the vessel without leave, and having been entered on the log as a deserter, had forfeited his wages under the act of July 20, 1790 [1 Stat. 131].

Mr. Coulston, for libellant

Morton P. Henry, for respondent

THE COURT (CADWALADER, District Judge) held that this was not a case of statutory desertion, but docked the libellant six or nine dollars from his wages, according to the date at which his services began.

COSTER, In re. See Case No. 17,027.