

Case No. 3,972.
[6 Ben. 402.]¹

THE DOLPHIN.

District Court, E. D. New York.

March, 1873.

SEAMEN'S "WAGES—EVIDENCE—DAMAGES.

1. Sailors were shipped in New York for a voyage to San Domingo, at \$23 a month. They went on board the vessel and went to work, and were afterwards told to go home to their boarding house for meals. On their return they were told that other men had been shipped in their place, and they filed a libel to recover damages for the loss of the voyage. On the trial, the three libellants testified that they returned the next day after they had been told to go home. The master testified that they did not return till the second day, and until after he had obtained other men in their places: *held*, that as the master could have called his mate and the shipping master to sustain him, and had failed to do so, without the suggestion of any difficulty in so doing, the question would be determined according to the statement of the greater number of witnesses.
2. That, on the evidence, therefore, the men were discharged without reason, and were entitled to recover damages for the loss of the voyage.

[Cited in *The Acorn*, 32 Fed. 638.]

3. That half a month's wages was sufficient compensation.

Henry Morris, for libellants.

Beebe, Donohue & Cooke, for claimants.

BENEDICT, District Judge. This is a cause of subtraction of wages. There is no doubt, upon the evidence, that these libellants were hired for a voyage to St. Domingo, at \$25 per month; that they rendered themselves on board the schooner and went to work, and that they were afterwards told to go home to their boarding house for meals, because they could not procure the meals on board. The men left the ship, therefore, by permission, and, as they say, returned the next day ready to continue their labors, when they were informed that other men had been shipped, and their services were not required. The master, however, says, that the men did not return the next day, nor until the day after, and until after he had shipped other men, supposing that the libellants had abandoned the voyage. Upon this question of fact in dispute, there are, on the one side, three witnesses, the libellants, and on the other side the master. It lay in the power of the master to remove any doubt by calling his mate, and also the shipping master, who was his agent, and who not only engaged the libellants for him, but also engaged one of the men taken in place of the libellants; and as he has omitted to produce those witnesses, without the suggestion of any difficulty in obtaining their testimony, he cannot complain if the question at issue between him and the men be determined according to the statement of the greater number of witnesses. It must, therefore, be held, that the weight of

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evidence is, that the men were discharged without reason, and consequently that they are entitled to recover damages sustained by the loss of the voyage. Half a month's wages will compensate them for this loss, and they may therefore take a decree for \$12.50 each, with costs to be taxed.

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