

Case No. 4,609. FAIRCHILD ET AL. V. THE AURELIUS.
[5 Hunt, Mer. Mag. 263.]

Circuit Court D. Massachusetts.

1841.

SEAMEN'S WAGES—PORT OF DISCHARGE—PORT OF DISTRESS.

[Seamen shipped for a voyage to “a port of discharge in the United States” cannot maintain a libel for wages after leaving the ship at a port of distress in the United States.]

In admiralty.

This was a libel for seamen's wages. The libellant Fairchild was second mate, and the other libellant steward of the ship on a voyage from Richmond to Havre, and a final port of discharge in the United States. The ship performed her voyage to Havre, and there cleared for Richmond, Va., but experiencing heavy weather, and having carried away her mainmast fore and mizzen topmasts, and sustained other damages, put away for Boston, where she arrived on the ninth of June, and the crew all left. The defence was, that the voyage was not terminated, this being a port of distress merely, and not a port of discharge; and that a libel would not lie until the libellants had performed the contract on their part. THE COURT sustained these positions, held that the libel was premature, and ordered it to be dismissed.