

Case No. 5,335.

[7 Wkly. Notes Cas. 50.]

THE GEORGE KINGMAN.

District Court, E. D. Pennsylvania.

May 2, 1879.

SEAMEN—ACTION FOR ASSAULT BY MASTER.

[A master sued for an assault, and denying the same in his answer, cannot, on proof of the assault, rely upon a justification.]

Libel for personal damage by Mayhorn against Howes, master of the barque. The libellant was hired as cook and steward of the barque on a voyage to Portugal and back to this port, which was duly performed. During the voyage he was accidentally scalded by hot water, and alleged that before his recovery the master forced him to return to work with threats and oaths. That soon afterward the master assaulted him by kicking him in the face, which resulted in a temporary scar. That upon another occasion the master again assaulted him, and knocked him down with his fist. Each of the assaults was deposed to by one other member of the crew. There was no evidence of any permanent injury to the libellant. Upon the part of the master both assaults were denied, the kicking entirely, and as to the blow with the fist, the master deposed that the libellant attempted to pass him on deck on the windward side, and that he merely removed him by a slight push; also, that he was unsatisfactory as a cook, and very insolent under reproof. The master's testimony was not corroborated by other witnesses.

E. F. Pugh, for libellant, cited *Payne v. Allen* [Case No. 10,855]; *The Agincourt*, 1 Hagg. Adm. 271; *Pars. Mar. Law*, 464; *Abb. Shipp.* 178, and notes; *The Enchantress*, 1 Hagg. Adm. 395.

Henry Flanders, for respondent. Irrespective of the oath of the master, this is at most a case where the master was compelled to punish an insubordinate seaman. *Fuller v. Colby* [Case No. 5,149]; *Forbes v. Parsons* [Id. 4,929].

THE COURT (BUTLER, District Judge), referring to the danger both of encouraging such suits, and of refusing parties redress in such cases, held that the assaults had been sufficiently proved, and that as the answer denied the assaults, it was not competent for the respondent to rely on a justification. Decree for libellant for one hundred dollars, with costs.