

Case No. 8,088.
[Bee, 198.]¹

L'ARINA V. THE EXCHANGE.

District Court, D. South Carolina.

July, 1803.

SEAMEN'S WAGES—NOMINAL MASTER—SUM AGREED TO BE PAID ON DISCHARGE.

A person hired for a particular purpose as nominal captain is entitled to wages agreed upon with the real captain, and so far the vessel and owners are bound. But not for a further sum in case of discharge.

[Cited in *Thomas v. Osborn*, 19 How. (60 U. S.) 45; *The Dubuque*, Case No. 4,110; *Peterson v. The Nellie and Annie*, 37 Fed. 218.]

At a summary hearing of this case, a plea to the jurisdiction of the court was urged, because the actor being master of the vessel could not sue in the admiralty or make her liable for his wages, his remedy being against the owners only. It appeared in evidence that the actor was merely called master of the brig, but never was considered so, or acted as such, except by lending his name to clear the vessel at the Havanna. An agreement was produced between him and Manwaring, the real captain, that he should receive fifty dollars per month, to proceed to Charleston, and return to the Havanna; unless he should be discharged, or the voyage should be altered: in either case he was to receive 200 dollars, over and above his wages.

In considering the case, THE COURT decided that the actor never was captain in fact, and therefore not barred from suing here. That the agreement for monthly wages was binding on the owners; and the vessel liable, as far as that amount That the words "unless discharged" gave Manwaring a clear right to discharge him; and that by doing so, Manwaring became personally liable,

L'ARINA v. The EXCHANGE.

at common law, for the said sum of 200 dollars. That the owners were in no manner bound for the same.

THE COURT adjudged accordingly, that the brig was liable to the amount agreed upon as monthly wages; with costs.

{NOTE. It was subsequently decided in the suit brought by the plaintiff against Manwaring to recover the \$200 that the matter was a subject for common-law jurisdiction, and could not properly be brought in admiralty. Case No. 8,089.]

¹ [Reported by Hon. Thomas Bee, District Judge.]