

MOWATT v. BROWN.

{14 Betts. D. C. MS. 80.}

District Court, S. D. New York. Dec. 28, 1848.

SEAMEN—WAGES—DISABILITY CONCEALED AT
TIME OF SHIPPING.

{A seaman who ships for a voyage, concealing from the master a long-standing disease, which incapacitates him from labor, is not entitled to wages.}

{This was a libel by John Mowatt against Joseph R. Brown for seaman's wages.}

PER CURIAM (BETTS, District Judge). The libellant shipped in this port the 7th of April last as an able seaman on the barque Adario for a voyage to the coast of Africa and back. He entered on board in a disordered state of body, and never regained his health and strength in the five months the vessel was absent, so as to be able to perform his duty on board. He now sues the master of the vessel for wages on the voyage and claims a balance of § 31 and upwards. This is not the case of a seaman taken sick in the service of the ship, when, by the maritime law, he continues entitled to running wages, and also to be cured of his malady at the charge of the ship. Abb. Shipp. 733; Curt. Merch. Seam. 107; Id. 291. He was laboring under an old and fixed affection disabling him from performing the duty of a sailor, and it was a fraud upon the master and owner to ship as an able seaman under such circumstances. Pet. Adm. 263; Curt. Merch. Seam. 29. Had he been able to perform valuable services to any amount, he might obtain satisfaction pro tanto, the master having the right to make a reasonable deduction for his deficiency. Abb. Shipp. 734, note; 3 Kent, Comm. (6th Ed.) 186. Under the proofs in this case it is made to appear that the libellant was disabled by

an old infirmity, which he concealed from the master at the time of shipping, and which continued upon him, and disabled him from duty during the voyage, and therefore he cannot now sustain an action as for meritorious services. Libel dismissed, with summary costs.

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