

Case No. 17,960,
[Betts' Scr. Bk. 31.]

WOOD V. THE NORTH.

District Court, S. D. New York.

1839.

SHIPPING—AUTHORITY OF MASTER—DEGRADATION OF MATE.

[A master has no right to degrade his mate in a foreign port for an alleged offense, and make him do seaman's duty; and if the mate refuse to do duty as a seaman, the master is bound to offer him a passage home.]

This was a libel claiming to recover from the brig wages alleged to be due the libelant from the 20th of March, 1840, to the month of October in the same year, for a voyage from New York to Hamburg and back, for which voyage he had signed the ship's articles for wages at the rate of \$25 per month. The libelant was first mate, and the vessel arrived at Hamburg in the month of May, 1840, where the libelant alleged he was turned off by the master of the vessel. But, as it appeared in the evidence, the master did not turn him out of the vessel, but degraded him from the rank of mate to that of a man before the mast. It appeared, from the deposition of the American consul at Hamburg, that in July, 1840, Wood called at the consul's office, and complained that the captain of the vessel had ordered the cook not to give him any thing to eat, and that, in consequence, he left the vessel. The consul then summoned the master of the vessel before him, and he admitted that he had given the order complained of, in consequence of Wood's conduct. He also stated that he had ordered Wood to go back to the vessel, not in his capacity of mate, but as a man before the mast, and in such capacity to come home in the vessel. This Wood refused to do, and now claimed his full wages up to the time the vessel arrived at New York, and also \$50 for his passage home, and \$20 for his expenses at Hamburg while he was waiting to get an opportunity to return here,—being in all \$178.

Counsel for the plaintiff contended that a master of a vessel has no right to thus degrade his mate in a foreign port, and leave him no choice but to submit to the degradation or come home in some other vessel.

Mr. Nash, for libelant.

Mr. Ellingwood, for respondents.

THE COURT (BETTS, District Judge) held that the master Was bound to offer the mate a passage home, and that it was only in case of necessity, for instance, while a vessel is at sea, that the master had the right to degrade his mate for an alleged offense, and make him do seaman's duty; and that the master's right to do it then only grew out of the circumstances of the case, and the situation of the vessel. Decree ordered for the libelant.