(*U. S.* v. *Harwood*, 3 Sumn. 14.) But an action can be maintained by a seaman discharged in a foreign port with his own consent, (*Ogden* v. *Cox*, 12 Johns. 143;) but the certificate of the consul, to excuse the master, states that he was left in the foreign port with his consent. *U. S.* v. *Barstow*, 1 Paine, 336. A shipmaster sued on his bond may give parol evidence of a consul's certificate authorizing the discharge of one of his crew, on satisfactory proof that such paper was once in existence and has been lost. *U. S.* v. *Parsons*, 1 Low. 107. Where a master by deceit or collusion procures the discharge of a seaman at a foreign port, he can claim no benefit or immunity under it. *Tingle* v. *Tucker*, Abb. Adm. 519. He cannot discharge seamen abroad unless the vessel is condemned or sold or wrecked. *Burke* v. *Buttman*, 1 Low. 191. Where the voyage is broken up without necessity on a foreign voyage, and seamen are discharged without payment of the three-months' wages, the court will, on a libel of the seamen, compel the owner to pay such wages,—two-thirds to the seamen and one-third for the use of the United States. *Pool* v. *Welch*, Gilp. 193. The seamen are entitled, on a voyage broken up in a foreign country, to wages till their return, and are not bound to work their way back as seamen on the vessel belonging to the same owner. *Burke* v. *Buttman*, 1 Low. 19. In the absence of a contract the master is under an implied contract to return the seamen to the port of shipment. *Worth* v. *The Lioness No.* 2, 2 McCrary, 208. It may be doubted whether the intention of congress was to require or permit the payment to be made elsewhere than to the consul at the place of discharge. *Pool* v. *Welch*, Gilp. 193. Generally, when the performance of a contract has become impossible by a fortuitous event, the parties are discharged from its obligations. *The Dawn*, 2 Ware, 121.—[ED.

CASE OF THE CHINESE LABORERS ON SHIPBOARD.

In re AH TIE and others.

(*Circuit Court, D. California.* August 29, 1882.)

1. CHINESE LABORERS—IMMIGRATION—PROHIBITION.

The prohibition upon the master of a vessel, contained in the act of congress restraining the immigration of Chinese laborers, from bringing within the United States, from any foreign port or place, any Chinese laborer, was intended to prevent the importation of such laborers from the foreign port or place,—laborers who there embarked on the vessel,—and does not apply to bringing a Chinese laborer already on board his vessel when touching at a foreign port or place.

Matter of Ah Sing, *ante*, 286, affirmed.

2. SEAMEN—ON AMERICAN VESSEL.

While on board an American vessel a Chinese laborer is within the jurisdiction of the United States, and does not lose by his employment the right of residence here previously acquired under the treaty with China.

Matter of Ah Sing, *ante*, 286, affirmed.

3. SAME—NOT CHANGED BY TEMPORARY ABSENCE.

The *status* of a person employed on an American vessel is not changed by the fact that he is permitted by the captain to land for a few hours at a foreign port or place, and a Chinese laborer on an American vessel cannot be held to lose his residence here, so as to come within the purview of the prohibitory act of congress, by a temporary entry upon a foreign country.

4. STATUTORY CONSTRUCTION.

All laws should be so construed, if possible, as to avoid an unjust or an absurd conclusion.

McAllister & Bergin, for petitioners.

Milton Andros, for the captain.

Before FIELD, Justice, and SAWYER, C. J.

FIELD, Justice. The petitioners are part of the crew of the American steam-ship City of Sydney. Their case is substantially like that of Ah Sing, the Chinese cabin waiter of the same vessel, recently before us on *habeas corpus*.[1] It differs in only one particular. Like him, they are Chinese, and like him they shipped on board of the steam-ship on the fifth of May last, signing at the time articles binding themselves to go as part of its crew on a voyage from San Francisco to Sydney and back. One of the petitioners served on board as a scullion; the others, as waiters or pantrymen. The vessel departed from this port on the eighth of May, arrived at Sydney on the fourth of June, left Sydney on the fourteenth of July, and arrived here on the eighth inst., having touched at the ports of Auckland, in New Zealand, and Honolulu, in the Hawaiian Islands. At Sydney the petitioners, on several occasions, by the written permission of the captain, went on shore and remained a few hours, without, however, severing or intending to sever their connection with the vessel as part of its crew. This fact is the only one distinguishing this case from that of Ah Sing. We there held that the prohibition upon the master of a vessel, contained in the act of congress, to bring within the United States from a foreign port or place any Chinese laborer, was intended to prevent the importation of such laborers from the foreign port or place,—laborers who there embarked on the vessel,—and did not apply to his bringing a Chinese laborer already on board of his vessel touching at the foreign port. We also held that while on board the American vessel the laborer was within the jurisdiction of the United States, and does not lose, by his employment, the right of residence here previously acquired under the treaty with his country.

The *status* of the petitioners and their relation to the vessel were not changed in any respect by the fact that they were permitted by

[1] Ante, p. 236.

the captain to land for a few hours at the port of Sydney. They were bound, by their contract of shipment, to return with the vessel; and the captain was bound to bring them back. He could not have forced them ashore in a foreign port; nor could he have abandoned them there. Had he done either of these things, he would have rendered himself liable to criminal prosecution. An act of congress passed more than half a century ago, and re-enacted in the Revised Statutes, declares that "every master or commander of any vessel, belonging in whole or in part to any citizen of the United States, who, during his being abroad, maliciously, and without justifiable cause, forces any officer or mariner of such vessel on shore in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return when he is ready to proceed on his homeward voyage, shall be punished" by fine and imprisonment. The fine may extend to $500, and the imprisonment to six months. Rev. St. § 5363. The terms "officers and mariners," here used, apply to all persons, other than the captain, employed under shipping articles on the vessel in any capacity.

In *U. S.* v. *Coffin*, 1 Sumn. 394, Judge Story was called upon to construe this act, and he held that the "home" referred to was not the home of any seaman, native or foreign, but the home port of the ship for the voyage.

In another case (*Matthews* v. *Offley*, 3 Sumn. 125) the same distinguished judge had occasion to consider the circumstances under which a foreign seaman, who had acquired a residence in the United States, and had been engaged in the merchant service, could be deemed to have abandoned that service, so as to justify the captain of another vessel in refusing to bring him home from a foreign port as a destitute seaman, by direction of the consul; and the judge said that some overt act on the seaman's part, such as engaging in a foreign service, or resuming his original native character, or disowning his American character and domicile, seemed indispensable to rebut the presumption that he still attached himself to the American service. Something equally indicative of an intention on the part of a Chinese laborer who had shipped on an American vessel as one of its crew in an American port, to abandon the service of the ship and his residence in the United States, would seem to be necessary to justify the master in refusing to bring him back. The

law of congress as to the duty of the master in this particular has not been, in terms, repealed by the act restraining the immigration of Chinese laborers, and the purpose of the latter act does not require us to hold that the former is repealed by implication. A Chinese laborer on an American vessel cannot be held to lose his residence here, so as to come within the purview of the act, by such temporary entry upon a foreign country as may be caused by the arrival of the vessel on her outward voyage at her port of destination, or her touching at any intermediate port in going or returning, or her putting into a foreign port in stress of weather. And we should hesitate to say that it would be lost by the laborer passing through a foreign country in going to different parts of the United States by any of the direct routes, though we are told by the counsel of the respondent that a Chinese laborer, having taken a ticket by the overland railroad from this place to New York, by the Central Michigan route, which passes from Detroit to Niagara Falls through Canada, was stopped at Niagara and sent back, as within the prohibition of the act of congress, and on his attempting to retrace his steps was again stopped at Detroit. A construction which would justify such a proceeding cannot fail to bring odium upon the act, and invite efforts for its repeal. The wisdom of its enactment will be better vindicated by a construction less repellant to our sense of justice and right.

All laws should be so construed, if possible, as to avoid an unjust or an absurd conclusion. "General terms," said the supreme court, in a case before it, "should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law, in such cases, should prevail over its letter." *U. S.* v. *Kirby*, 7 Wall. 482. So the judges of England construed the law which enacted that a prisoner breaking prison should be deemed guilty of a felony, holding that it did not apply to one breaking out when the prison was on fire, observing that the prisoner was "not to be hanged because he would not stay to be burnt." And in illustration of this doctrine the construction given to the Bolognian law against drawing blood in the street is often cited. That law enacted that whoever thus drew blood should be punished with the utmost severity, but the courts held that it did not extend to the surgeon who opened the vein of a person falling down in the street in

a fit. The application sought to be made of that law to the surgeon was hardly less absurd than some of the applications which, without much reflection, are sought to be made of the act of congress.

The petitioners must be discharged. Ordered accordingly.

THE WHISTLER.

(*District Court, D. Oregon.* August 31, 1882.)

1. PLEADINGS.

New matter in an answer constituting a defensive allegation should be articled and pleaded separately, and not blended with the response to any article of the libel.

2. EXCEPTIONS.

Exceptions to an answer for insufficiency and impertinence are taken for entirely different causes, and therefore they ought not to be taken to the same matter, either conjunctively or disjunctively.

3. PILOT SERVICE—PLACE OF TENDER OF.

A state may permit or require its pilots to tender their services to inward-bound vessels at a greater distance from the shore than three miles, or the outward limit of the pilot ground.

4. SAME—OFFER OF, WHEN SUFFICIENT.

The bark Whistler was approaching the mouth of the Columbia river with intent to enter and load there as soon as one of the three pilot tugs stationed there should come out to her without orders to go elsewhere, and being met by one of said tugs, without such orders, she was taken in tow thereby, and went in; but on the day before, and while she was standing off and on about 30 miles from the bar, she was hailed by an Oregon schooner pilot, who tendered his services to pilot her in, which were refused. *Held*, that the vessel was "bound in the river," within the meaning of the statute giving full pilotage for the offer and refusal of such services, and, having afterwards gone in, the libelant became entitled to such pilotage.

Frederick R. Strong, for libelant.

John W. Whalley, for claimant.

DEADY, D. J. The libelant, George W. Woods, brings this suit to enforce a lien upon the American bark Whistler for the sum of $72, for pilotage, arising, as he alleges, as follows: On March 18, 1882, the libelant, being a duly-licensed pilot under the laws of Oregon for the Columbia river below Astoria, hailed the said vessel and offered to pilot her across the bar of said river to Astoria, she being then in the open sea outside of said bar, drawing nine feet of water, and bound for said port, which offer the master of said vessel declined; but afterwards, on the same day, "entered said port" under the charge

of another pilot, by reason whereof the libelant became and is entitled to full pilotage—eight dollars per foot draught—from said vessel.

The answer of the claimant, A. M. Simpson, admits the offer and refusal of the libelant's services, but denies that the vessel was then upon the pilot ground, or bound for the port of Astoria, or that she ever entered the same, or that the libelant made the first offer to pilot her; and alleges that on March 6th the Whistler sailed from San Francisco on "a coasting voyage, bound to the mouth of the Columbia river for orders," to be there received from one of the three tugs, naming them, to the effect that he was to take his vessel to Puget Sound or into the Columbia river, and if no orders were received from either of said tugs, the vessel was to proceed to Knappton, Washington Territory, in tow of the first one that came to her, and there load with lumber for San Francisco; that when the libelant hailed the vessel "she was lying off and on about 30 miles from the mouth of the Columbia river, awaiting the arrival of one of the said tugs," and had not received orders from any of them as to "his future course;" and that on March 19th one of said tugs hailed said vessel, without orders, whereupon, in pursuance of his sailing directions, the master of the latter requested the tug to tow him to Knappton, which was done, when he loaded with lumber for San Francisco.

The libelant excepts to portions of the answer, setting them out *in extenso*, as insufficient, irrelevant, and impertinent.

The answer is not *articled*, but run together in a continuous statement, without special references to the articles of the libel to which it relates, but the portions excepted to may be briefly referred to as follows: (1) The denial that the vessel was bound to Astoria or that she entered there; (2) the allegation that she came to the mouth of the river under directions to take orders for her future course from one of the tugs; and (3) that she had not received her orders when hailed by the libelant, but entered the river afterwards in pursuance of the same and loaded with lumber at Knappton.

An exception to an answer in admirality ought to specify whether it is taken for insufficiency or impertinence. They are very different grounds, and an exception to an allegation for both causes on one *or* the other of them is not good pleading. The former is only allowed upon the ground that the answer, so far as excepted to, is not a full and explicit response to the allegation or allegations of the libel, while the latter merely raises the question of whether the answer is a response and defense to such allegation. *The California*, 1 Sawy. 465.

The first of these exceptions is not well taken, in any view of the matter. The allegations excepted to are clear and explicit, and in direct response to the answer.

If the libelant is of the opinion, as he well may be, that it is immaterial in this case whether the Whistler was bound to Astoria or did go there, so that she entered the river, he should not have alleged the fact in his libel. Having made the allegation and called upon the claimant to answer, he cannot object that it is impertinent, even if the allegation and answer are both immaterial. The only way to get rid of the matter, if it is thought desirable, is to amend the libel and omit it.

The matter embraced in the second and third exceptions is a defensive allegation, and, however sufficient as such, is liable to an exception for impertinence, because not separately pleaded, but blended with the matter in response to the libel. Id.

But the exceptions were argued by counsel without reference to this point, and will be so considered.

If the offer of the libelant to pilot the Whistler was a valid one, the liability of the vessel to him for full pilotage is not denied.

The pilot law of Oregon (Gen. Laws, 708) provides that the master of a vessel may pilot her "from outside the Columbia river bar into said river," but he shall "pay to such pilot as shall first offer his services outside of the bar full pilotage," which, by the same law, (p. 707,) is eight dollars per foot draught for the first twelve feet.

Some effect prejudicial to the offer of the libelant is attempted to be given by the answer to the fact, as therein alleged, that it was made at some distance beyond the bar—say 30 miles. No authority has been cited on the point, and but little attention paid to it on the argument. There is no provision in the Oregon law defining the limit of the bar pilot ground outwardly, further than what is implied in the use of the phrase "Columbia-river bar," (Gen. Laws, 706;) but it is implied, both from usage and the law, that a pilot may cruise beyond that, for it is provided, (Id.,) that the pilots on the bar shall keep a seaworthy boat "to cruise outside the bar," and an incoming vessel is made liable for full pilotage to the first pilot who offers his services outside of the bar." Id. 708.

While it may be that the state cannot extend the pilot ground at the mouth of the river indefinitely into the sea, and probably not further than three miles beyond the headland, it does not follow that she may not permit and require her pilots to cruise for vessels at a

much greater distance from the shore, nor that an offer of pilot service to be performed on the pilot ground, made at such distance, to a vessel bound in the river, is not valid and effective, as if made within three miles of the shore.

In *Lea* v. *Ship Alexander*, 2 Paine, 468, Mr. Justice Wayne says that the term "cruising ground" is not synonymous with "pilots' water or pilotage ground."

"By pilots' cruising ground is meant that distance out in the sea along a certain extent of coast that pilots cruise for vessels bound to ports, inlets, harbors, rivers, or bays into which a pilot may take them by his commission. By pilots' water or pilotage ground is meant the access to a bay, inlet, river, harbor, or port, beginning at the exterior point where a pilot may take leave of an outward-bound vessel, and extending to the place fixed upon by law or usage for the anchorage or mooring of inward-bound vessels."

In *Horton* v. *Smith*, 6 Ben. 264, Judge Benedict, in considering this question, says:

"It is the policy of most pilot laws to induce the pilots to make an early tender of their services to inward-bound vessels. * * * State boundaries have been sometimes considered as furnishing the outward limit, (1 Daly, 185,) although Sandy Hook pilots are sought for, and their services taken much further out than a marine league. In France it has been adjudged, in regard to vessels bound to Havre, that the pilots may board such vessels at any time or distance out, and the liability to take a pilot has been adjudged to attach to a French ship although she was at the time in English waters, as at the Downs. Cour. Cass. D. 1866, p. 303; Caumonte, Traite Pilote, 31."

The offer, in my judgment, is not insufficient on account of the place where it was made. Was the offer invalid because of the direction to the master not to enter, if he got orders by the tug to go elsewhere? I think not. The Whistler was bound in the Columbia river, subject to a contingency that never happened, and she came in. No order was received from the tug, and the vessel, in pursuance of the purpose with which she came to the bar, went into the river on the voyage in which she received the offer of pilot service from the libelant. The offer of pilot service was made upon the assumption that the vessel was then bound in the river, and also upon the contingency that she would go in. If she met orders at the mouth that turned her back, or was foundered or blown away before the pilot service was or could be performed, then the offer went for naught. But the offer having been made while the vessel was on her way to and approaching the mouth of the river with the intent to enter, unless turned away by a contingency which did not happen, to-wit, an order from the tug, and having entered in pursuance of such purpose, it

is, in my judgment, an offer of pilot service within the letter and spirit of the law, and, being refused, entitles the libelant to full pilotage.

If the law were otherwise, it would be very easy to have an understanding between coasters and the tugs at the mouth of the river by which the pilots who cruise for vessels in a pilot boat outside would be unjustly deprived of all benefit of their enterprise in hailing vessels beyond the bar, in favor of the tug pilots who wait inside in ease and safety until they are signaled by the approaching vessel. All that is necessary is to give the master directions on leaving port not to go into the river until met by a tug, and then to go in with the tug and its pilot, unless he there receives orders to the contrary—orders which he is certain not to receive, and no one ever expected he would.

Indeed, when all the circumstances are considered,—those of general notoriety as well as those set out in the pleadings,—it is difficult to avoid the conclusion that this defense is a mere preconcerted device to prevent the schooner pilots from making an effectual offer of pilot service to the Whistler before she was taken in tow by the tug, as per previous arrangement with the owners of both.

The exceptions are allowed.

GREEFE *v.* CORTIS.

(District Court, E. D. New York. July 27, 1882.)

SEAMEN—DISCOUNT OF ADVANCE SECURITY.

Where defendant did not ship the seamen, nor employ the shipping agent to ship them, nor was he owner of the vessel, nor did he know of the giving of the agreements sued on, the fact that he was authorized to collect the inward freight, and procure outward freight, and pay the ship's disbursements, upon the master's certificate, does not make him an agent who "authorized the giving of the advance security," although he paid the shipping agent's bill on which the advances were charged.

Henry Heath, for plaintiff.

McDaniel & Souther, for defendant.

BENEDICT, D. J. This is an action in which, by virtue of section 4534, Rev. St., it is sought to hold the defendant liable for the advance wages of three seamen of the ship James Aiken, upon three agreements made by a shipping agent named Haveron, which had