THE FRANCISCO GARGUILO.*

District Court, E. D. New York. December, 7, 1882.

PILOTAGE—TENDER OF SERVICES—STATE STATUTE.

A pilot-who brought a vessel into the port of New York from sea became entitled under a state statute to pilot her to sea when she next left the port, by himself or one of his boat's company. The master of the vessel arranged with the pilot to meet him at a certain time and place, whence they were to go on board the vessel together. The pilot presented himself at the time and place appointed; the master did not appear, but went on board and to sea without a pilot. *Held,* that this was sufficient tender of his services on the part of the pilot, without his presenting himself on board the vessel, to charge the vessel with liability for the damages resulting from the non-performance of the obligation created by the statute.

In Admiralty.

Butler, Stillman & Hubbard, for libelant.

Goodrich, Beady & Platt, for claimant.

BENEDICT, D. J. This case comes before the court upon exceptions to the libel. The facts averred in the libel are in substance these: The libelant, John E. Johnson, being a regular licensed pilot, was employed to pilot the bark Francisco Garguilo from sea to the port of New York, and in fact did bring that vessel in from sea. When 496 the vessel was about to leave the port the next time, the master of the vessel arranged with the libelant to meet him at a certain time and place in the city of New York, whence, according to the arrangement, the pilot and the master were to go together on board the bark, and the bark was then to be taken to sea by the libelant. In pursuance of this arrangement, the libelant presented himself at the time and place appointed. The master did not then appear, but went on board his vessel and to sea without a pilot.

The statute of the state of New York provides that "any pilot bringing in a vessel from sea shall, by himself or one of his boat's company, be entitled to pilot her to sea when she next leaves the port." By virtue of this statute the libelant, upon the facts stated; became entitled to take this vessel to sea on the voyage described in the libel. An obligation to employ and pay the libelant for that service was created by the statute. Upon due tender of the service by the libelant and refusal by the master to accept the same, a right of action for damages resulting accrued to the libelant. This right of action arising out of the non-performance of a *quasi* contract of pilotage is maritime in character, and may be enforced in admiralty. The case is similar, in. these respects, to cases decided by the supreme court of the United States. *Steam-ship Co.* v. *Joliffe,* 2 Wall. 450; Ex parte McNiel, 13 Wall. 242.

In order to make a proper tender of his services as outward pilot for the vessel, it was sufficient for the pilot to present himself at the time and place appointed by the master to meet the pilot and take him on board. Under the circumstances stated in the libel it was not necessary for the pilot to present himself on board the vessel in order to make the tender of service complete. Nor is the rendition of some service by the pilot on board of the vessel necessary to charge the vessel with liability for the damages resulting from the non-performance of the obligation created by the statute.

There must be a decree for the libelant upon the exceptions, with leave to claimant to answer on payment of costs.

See *The Alzena,* 14 FED. REP. 175, and note.

* Reported by R. D. & Wyllys Benedict.