

could have been had, because the condition was not complied with. But it is clear that upon such a note the right of recovery is not to be determined by ordinary legal rules; since the statute is explicit, that the person discounting the security may recover the amount promised by the security, with costs, if the seaman has been previously discharged with the consent of the master. The seaman in this case clearly was so discharged, without sufficient new cause arising after he was shipped; and the person who discounted the security had, therefore, a statutory right to recover the amount mentioned in it, not by force of the terms of the note, but by force of the statute. The libelant, when sued, did not give notice to the respondents. This, however, is immaterial, since the judgment itself is regarded as immaterial, here. Being liable to an indorsee, under the statute for the amount mentioned in the security, as an agent for the owners, who had authorized the drawing of the security, the libelant might have paid it without suit; and upon such payment he would have become entitled to reimbursement from the respondents as principals, without reference to any judgment.

The libelant is, therefore, entitled to recover the sum of \$60, with interest, from the time of payment, together with costs in this court. Not having given notice of the suit in the city court to the respondents, he is not entitled to recover of the latter the costs in that court.

GOVE v. JUDSON and another.

(District Court, S. D. New York. February 8, 1884.)

SHIPPING—SEAMEN—SHIPPING ARTICLES—DISCHARGE—EXTRA WAGES—SECTION 4582.

An American seaman discharged from an American vessel in a foreign port, because the captain "has no funds to pay and could sail no further," will be deemed discharged with his own consent within the meaning and equity of section 4582, which was designed to furnish the seaman, in such cases, with means of return to his own country; and no consul being found in the foreign port nor extra wages paid there, as required, the seaman may maintain an action in admiralty on his return, against the owners, for his two months' extra pay.

In Admiralty.

J. A. Hyland, for libelant.

E. Seymour, for Sturges, one of the respondents.

BROWN, J. The libelant, an American seaman, in May, 1879, shipped on board the American bark *Rocket*, then lying at Newcastle, Australia, as first mate, for a voyage to the port of Saigow, Cochin China; thence to such ports as the master might direct, and thence to the United States. The libelant sailed from Newcastle, acting as first mate, and the bark arrived at Saigow in September of the same year. The crew then wanted to be discharged on the ground

of too much pumping, and on the tenth of September all were discharged by the captain, including the libellant; the vessel being then unseaworthy, and the captain stating that "there were no funds to pay with, and that she could sail no further." The libellant at the time demanded extra pay, and to go before the consul, but was told by the captain that there was no consul there; and the libellant, upon inquiry, was unable to find any consul; and only wages up to the time of discharge were paid by the master. As the claim for extra wages is not founded on the shipping articles, the formal defects in their certification and acknowledgment are immaterial. *Dustin v. Marray*, 5 Ben. 10. Under section 4582, if a seaman be discharged in a foreign port, with his own consent, three months' pay is required to be paid to the consul, two-thirds of which, by section 4584, are payable to the seaman on engaging his return to the United States. It has been repeatedly held, in this and other courts, that upon such a discharge, if the payment is not made to the consul, the seaman may by suit recover the sum to which he is entitled. *The Hermon*, 1 Low. 515; *Wells v. Meldrun*, Blatchf. & H. 344; *The Blohm*, 1 Ben. 228; *The Caroline E. Kelly*, 2 Abb. (U. S.) 160; *Coffin v. Weld*, 2 Low. 81. In the case of *Hoffman v. Yarrington*, 1 Low. 168, it was held that, under the provisions of the act of August 18, 1856, (Rev. St. § 4583,) extra wages will not be required where the vessel has been condemned as unfit for service from sea-damage arising during the voyage. In the present case there is no evidence that the vessel had been condemned as unfit for service.

It is objected that the evidence shows that the discharge of the libellant was not "with his own consent." What the libellant testifies on that subject is, "My discharge there was not my voluntary act, it was compulsory; by compulsion, I mean the captain told me there was no funds to pay, and could sail no further; I requested the captain to find a consul," etc. This evidence does not show that the libellant's discharge was not, under the circumstance which he explains, "with his own consent," within the meaning of the statute. His discharge was evidently "with his own consent," although that consent was constrained and rendered necessary under the circumstances, and, in that sense, compulsory, because the captain had no funds to pay, and could sail no further; and such duress will not deprive him of his right to extra pay. *Bates v. Seabury*, 1 Spr. 433.

The discharge not being within the exception of section 4583, the libellant's claim is evidently within the equity of the statute and its intention to provide American seamen with the means of return to this country; and he is therefore, I think, entitled to a decree for two months' pay, amounting to \$80, with interest from the time of filing the libel, September 7, 1881, making \$91.60, with costs.

RAY v. ONE BLOCK OF MARBLE.

(District Court, S. D. New York. January 26, 1884.)

DEMURRAGE—BILL OF LADING—READINESS TO DISCHARGE.

Where the bill of lading for a block of marble weighing seven tons provided that it should be discharged by the receiver within six hours after written notice of the master's readiness to deliver it, or pay demurrage, £15 per day, *held*, that the ship was bound to afford reasonable and customary facilities for the discharge; and the receiver being prepared to move the vessel some 250 feet to the usual place of discharge at his own expense, as was usual, and the mate, in the absence of the captain, having repeatedly refused to permit the vessel to be thus moved, partly for the reason that she had not her anchors aboard, *held*, that she was not in readiness to deliver within the meaning of the bill of lading, and could not recover during the time of such refusal.

Action for Demurrage.

A. J. Heath, for libellant.

W. W. Goodrich, for claimant.

BROWN, J. This action was brought to recover demurrage for delay in the discharge of a block of marble weighing about seven tons. The bill of lading contained the following clause:

"The marble to be discharged in New York, at the expense and risk of the receiver, six hours after written notice being given by the master that he is ready to deliver the same, or to pay demurrage at the rate of fifteen pounds sterling per running day."

To discharge her general cargo the vessel went to Coe's stores and lay along-side a bulkhead, at right angles with the line of the pier, near the end of which a permanent derrick was erected, and which was the usual and chief place in this city for the discharge of blocks of marble. The vessel was only about 250 feet distant from this derrick. The consignee was notified of readiness to discharge by a postal-card, mailed to him on a Friday forenoon, and which was received at his office at about 5 p. m. This was too late to be a valid notice for that day. The consignee had previously engaged Mr. Smith, the proprietor of the marble yard and derrick close by, to unlode the marble as soon as the vessel was ready. Mr. Smith had previously, on Friday, sent his son to the vessel to arrange to have her hauled to the derrick, 250 feet further along the bulkhead and pier, in order to discharge the marble. The captain was absent from the vessel, and the mate declined to say anything on the subject in his absence. It was a usual and customary thing for vessels discharging other cargo near by, and also having marble aboard, to discharge the marble at this slip, and to be hauled along-side the derrick by Mr. Smith's men for the purpose of quick discharge; and vessels waiting to discharge marble were usually hauled along-side the derrick in turn by Mr. Smith's men. On Saturday morning the consignee again went to the vessel with Mr. Smith, or his son, and again requested permission to move the vessel to the derrick, and offered sufficient men to move her