In Admiralty,

Hyland & Zabriskie, for libelant.

McDaniel, Wheeler & Souther, for claimant.

BROWN, J. The libelant shipped as second officer on board the Alvena. In the course of the voyage, while at Port Antonio, he reported to the captain the fact of the disobedience of the mate's orders by one of the seamen. The second officer has authority to give orders to sailors, and it is expected that sailors shall obey them. When reporting the disobedience, the mate told the captain that if the seaman was not discharged he would not remain on the ship. The captain replied that that was mutinous language, and directed the mate to go to his room and consider himself under arrest. The mate, not long after, left the ship without the permission or knowledge of the master, taking his effects with him, and intending not to return; and the ship continued her voyage without him. The mate's language was clearly that of insubordination. It was the business of the captain to investigate the charge of disobedience, and to determine the matter according to his own judgment. The mate's language was, in effect, dictation to the captain what his decision must be, or that he (the mate) would otherwise leave the ship. This was plainly derogatory to the master's authority, and incompatible with proper subordination and discipline. The master's reply, and his direction that the mate go to his room and consider himself under arrest, were legitimate and appropriate rebuke, and correction mildly administered. The intelligence of the mate leaves him no excuse for his improper assumption to dictate to the master, through a threat of desertion if his wishes were not observed.

In behalf of the libelant it is urged that leaving the ship for justifiable cause is not such desertion as incurs a forfeiture of wages; and that cruel and oppressive treatment on the part of the master is justifiable cause for leaving. *Sherwood* v. *McIntosh*, 1 Ware, 109, 119; *The America*, Blatchf. & H. 185; 2 Pars. Shipp. & Adm. 98. It is urged that the captain's ordering the second mate to go to his room and to consider himself under arrest for such a cause, upon his reporting a seaman's disobedience, was cruel and oppressive treatment, within the principle above cited. But that principle is inapplicable here. When the seaman is held justified in leaving the ship, it is because the master is guilty of a gross abuse of his powers, and of a violation of the implied terms of his contract with the seaman, which are equivalent to a discharge. The cases in which this rule is applied are cases only where the personal safety of the seaman is in some degree threatened, or cases that involve such gross degradation as is clearly beyond the legitimate exercise of the master's authority. They do not apply to that mere wounding of self-love, and to that humiliation of a sensitive spirit, which are more or less involved in all disciplinary punishments, whether light or severe. The very efficacy of such punishment depends chiefly upon these moral and personal sensibilities.

In this case I see nothing in the captain's conduct beyond the bounds of legitimate and appropriate correction. It is not denied that the mate's leaving the ship subsequently was with the intention not to return. His cause for leaving was not a justifiable one, and the unpaid portion of his salary must be, therefore, held forfeited. Libel dismissed, with costs.

THE C. B. SANFORD.

(*District Court, D. New Jersey.* January 27, 1885.)

1. ADMIRALTY PRACTICE—COUNTER-CLAIM—ANSWER.
   In a suit for materials furnished and repairs made to a steam-tug, the owners may set up, in their answer, as a counter-claim an indebtedness due them by the libelants for pulling off of a marine railway belonging to libelants a steam-ship, and conveying to such railway a hawser, for that purpose, at their request.
2. SAME—ADMIRALTY RULE 53—CROSS-LIBELS.
   Such a counter-claim cannot be set up by cross-libel under admiralty rule 53, as that rule applies only to counter-claims arising out of the same cause of action for which the original libel is filed.

Libel *in rem.*

Flavel McGee, for libelant.

E. L. Campbell, for respondent.

NIXON, J. This is a suit for materials furnished and repairs made to the steam-tug C. B. Sanford. The respondents, the Narragansett Transportation Company, intervenes as owners of the tug, and files an answer admitting the libelant's claim, but setting up that when the repairs were made the libelants were indebted to the owners of said tug in a large sum of money, for services rendered to libelants, at their request, in and about the pulling off from a marine railway of said libelants at Clifton, Staten island, the steam-ship Professor Morse, and in going for and conveying to said railway a hawser for such purpose, and praying that the libel may be dismissed, and that a decree may be entered in favor of respondents for $6.15, the excess of its counter-claim over the claim of the libelants. The proctors for the libelants have excepted to so much of the answer as alleges the counter-claim or set-off, and especially to the prayer for a decree in favor of the respondents for the excess of such counter-claim. The exception presents the question whether, by the rules of the admiralty practice, such a set-off may be made in the answer, and considered by the judge in reaching a final decree on the pleadings. It is certainly not a case for a cross-libel. An examination of the fifty-third admiralty rule, allowing cross-libels, shows that they are only to be filed upon counter-claims arising out of the same cause of action for which the original libel was filed. See *Crowell* v. *The Theresa Wolf,* 4 FED. REP. 152; Cohen, Adm. 257.

The claim of the respondents in the present case is for an admiralty service, but it has no connection with the libelant's bill for materials and repairs. In determining the question we get no help from the practice of the common-law courts. The right of set-off in these tribunals is derived from the statute law. The practical inconvenience of not allowing defendants in common-law actions to put in a counter-claim to the plaintiff's demand was early felt in the colony of New Jersey. In the eighth year of the reign of George I., to-wit, on May 5, 1722, the colonial assembly, setting at Perth Amboy, passed an "act for preventing multiplicity of suits," with the following preamble, which reveals the existing evil, which the legislature desired to remedy:

"Whereas, many vexatious suits have been brought by troublesome and litigious persons when, upon just balance of amounts, there has been nothing due, or, perhaps, the plaintiff overpaid,—there being no law empowering justices and juries in such cases to balance accounts,—and the defendant can have no remedy but by cross-action," etc.

The act which followed the above preamble not only permitted but required the defendant, in a suit for money due, to plead any set-off or counter claim which he might have, and it authorized the court when the offset exceeded the plaintiff's demand, to give judgment in favor of the defendant. This was seven years in advance of the English statute of 2 Geo. II. *c.* 22, § 13, which simply permitted the defendant, but did not compel him, to plead an offset in the courts of common law; but the practice in admiralty follows the civil law, which allows such counter-claim, without regard to legislation by statute. Cooper translates Liber 4, tit. 6, § 30, of the Institutes of Justinian as follows:

"In all actions of good faith a full power is given to the judge of calculating, according to the rules of justice and equity, how much ought to be restored to the plaintiff; and, of course, when the plaintiff is found to be indebted to the defendants in a less sum, it is in the power of the judge to allow a compensation, and to condemn the defendant in the payment of the difference."

And in section 39, "*De Compensationibus*," we have the same statement repeated:

"When a compensation is alleged by the defendant, it generally happens that the plaintiff recovers less than his demand, for it is in the power of the judge, as we have before declared, to make an equitable deduction from the demand of the plaintiff of whatever he owes to the defendant, and to condemn the defendant to the payment only of the remainder."

The set-off therefore will be allowed. With regard to the other prayer of the answer, that a decree may be rendered for any excess of claim found due to the defendant, I think the right of authority gives to the judge the right to exercise such power; but the question has not arisen in the case, and it will be time enough to decide it when it arises. An order will be signed overruling the exceptions.

GOLDSMITH v. GILLILAND and others.

(*Circuit Court, D. Oregon.* February 13, 1885.)

1. EQUITY JURISDICTION OF THE NATIONAL COURTS—STATE LAWS.
   The equity jurisdiction of the national courts, and the mode of procedure therein, exists independently of state laws, and cannot be limited or restrained by them.
2. RIGHT GIVEN BY STATE LAW.
   A right given by a state law, that is properly the subject of a suit in equity, may be thereby enforced or protected in the national courts.
3. CERTAINTY IN THE DESCRIPTION OF PREMISES IN A BILL.
   One-eighth of an undivided tract of land is not distinguishable from another, and in a suit to determine an adverse claim to three such eighths, there cannot, in the nature of things, be any more certain or definite description of them than that.
4. SUIT TO DETERMINE AN ADVERSE CLAIM TO REAL PROPERTY.
   In a suit to remove a certain cloud on the title to real property, it must appear from the bill that there is such a cloud, and in what it consists; but in a suit brought under section 500 of the Oregon Code of Civil Procedure to determine an adverse claim to such property, whether it casts a cloud thereon or not, it is not necessary to state the nature or circumstances of the defendant's claim, but it is sufficient to allege that the defendant wrongfully makes such claim, and call upon him to set it forth in his answer, and submit its validity to the judgment of the court.
5. PERSON IN POSSESSION MERELY.
   A person in the mere possession of real property cannot maintain a suit to determine an adverse claim thereto, but it must also appear that he is in possession under some claim of right or title.
6. STATEMENT OF PLAINTIFF'S CASE.
   Generally, it is sufficient for the plaintiff in such suit to allege his possession, and the nature of his estate or interest in the premises, together with the source of his right or title; but when, as in many cases, there is reason to believe that the rightfulness of the defendants' claim depends on the validity or effect of some link in the plaintiff's chain of title, it is convenient, and may be necessary, to state the circumstances thereabout fully and in detail, so as to prevent the necessity of future amendments, and to promote the progress and dispatch of the case.

Suit to Determine an Adverse Claim to Real Property.

James F. Watson, for defendants.

James K. Kelly and *George H. Durham*, for defendants.

DEADY, J. This suit is brought by the plaintiff, a citizen of New York, to have his title to an undivided interest in certain real property, situate in Multnomah county, Oregon, quieted, as against a claim of the defendants, who are citizens of Oregon, that they have an estate or interest therein adverse to him. It appears from the bill that the property in question is the undivided five-eighths of the E. ½ of the Danford Balch donation, numbered 58, and containing 172.96 acres, the same being parts of sections 28, 29, 32, and 33, of township 1 N., and range 1 E. of the Wallamet meridian. It is alleged in the bill that the plaintiff is the owner in fee of said undivided five-eighths, and that he "deraigns his title" thereto "by a good and sufficient chain of mesne conveyances" from "the donation claimants;" that from October 4, 1870, until December 31, 1883, the plaintiff and