

THE PHCENIX.  
LOWNDES v. THE PHCENIX.

*District Court, D. South Carolina.*

March, 1888.

ADMIRALTY—PRACTICE—BOND FOR COSTS—JURATORY CAUTION.

In admiralty, under a strict rule that a stipulation for costs must be filed with the libel, upon a proper showing one may be allowed to sue upon “a juratory caution,” and, when a libel has been filed, with security, which is shown to be bad, upon a motion to file additional security the court will not order an absolute dismissal upon failure to file such security.

In Admiralty. Motion for additional security for costs.

*Inglesby & Miller* and *J. P. K. Bryan*, for libelant.

*I. N. Nathan*, for claimant.

SIMONTON, J. The libel is for personal injuries to one of a gang of stevedores engaged in loading the steam-ship. When libelant filed his libel, he gave the stipulation for costs, with one Gardner as surety. The claimant has filed a certificate from the state court showing that there are entered against Gardner several judgments yet unsatisfied. Upon this he moves an order that libelant give additional security on pain of dismissal of his libel. The proctors for libelant state that probably he cannot give additional security, and in this event they ask that the privilege of a juratory caution be reserved to him. Suits *in forma pauperis*, or, using the technical words in admiralty, upon “a juratory caution,” are recognized in the district courts of the United States. *Bradford v. Bradford*, 2 Flip. 281; *Polydore v. Prince*, Ware, 410; *Thomas v. Thorwegan*, 27 Fed. Rep. 400. And this in courts in which there is an imperative rule requiring security for costs. We have such a rule, (25). There is much to commend this indulgence to poor suitors. It would be abhorrent to a sense of justice to refuse the remedy for a clear right on the only ground that the suitor cannot give a bond for costs. But it may be abused. In a port filled with shipping the temptation may be very strong to libel a ship just about to sail and force the payment of a groundless or extravagant claim. If there be no check in the shape of a stipulation for costs, this may lead to irreparable loss, or intolerable wrong. No final rule on this subject will be made. Let an order be taken, requiring additional security, to be put in within five days. If at the expiration of this time no security be put in, and if it be established in a proper way that none can be put in, the merits of the case *prima facie* will be examined.