THE SACHEM.

HILL v. THE SACHEM.

(District Court, S. D. New York. February 15, 1894.)

SEAMEN'S WAGES—DISCHARGE ABROAD—IRREGULAR HEARING BEFORE CONSUL.

Where, on the question of the competency of a seaman, there has been a hearing before a consul, and a proper record preserved of his decision and judgment, it is ordinarily entitled to full credence; but, where there has been no hearing, no judgment, and no record, a forced discharge abroad is illegal, and it is no defense that it was abetted by irregular action of the consular office.

In Admiralty. Libel for seamen's wages. Decree for libelant.

R. J. Moses, for libelant.

Wing, Shoudy & Putnam and Mr. Burlingham, for respondents.

BROWN, District Judge. The evidence of incompetency of the libelant as cook, is not, to my mind, satisfactory. It is certain that after the arrival of the ship at Hong Kong, the captain was determined to get rid of the libelant as cook; and it is equally certain that the consul, before whom both went, endeavored to favor the captain's wishes, while he at the same time refused to afford the libelant any opportunity to prove his capacity or fitness for the place. The captain made no charges against him in the log until after the seaman had been sent ashore. The alternative was forced upon him, either to go back on board the ship and be disrated, or else to be discharged at Hong Kong; and that, without any hearing on the merits. This was an injustice to the libelant, and apparently an abuse by the consul of his position and influence.

Where a hearing has been had on the merits, on the demand of the master, or the seaman, and a proper record preserved of the consul's decision and judgment, discharging the seaman, it is ordinarily entitled to full credence, notwithstanding the contradictions made by the seaman afterwards, such as I have not unfrequently had in previous cases. In the present case, there was no hearing, no judgment, and no record, so far as the testimony shows. The libelant was paid $200, his wages up to the moment of discharge, which he received under protest. Such a forced discharge, with no hearing on the merits, at a distant place, and with no pay beyond the day of discharge, is inhumane and opposed to the policy and the statutes of this country, (Rev. St. § 4580;) and it is no defense that it was abetted, so far as appears, by the irregular action of the consular office. The libelant was unable to obtain employment to return from Hong Kong, and took passage for San Franciso at an expense of $196, and thence to New York, at an expense of $91.50. To this I add one month's wages, $40, all of which, with interest, amounts to $347.15, for which a decree may be entered, with costs.

THE CHAUNCEY M. DEPEW. THE GEORGE W. PRATT. THE LILA M. HARDY. THE ALFRED. CHAPMAN DERRICK & WRECKING CO. v. THREE TUGS. CORNELL STEAMBOAT CO. v. THE ALFRED.[1]

(District Court, S. D. New York. January 23, 1894.)

1. COLLISION—VESSELS AT ANCHOR—CROWDED CHANNEL—DREDGE LAWFULLY MOORED.
   It is obligatory on their owners to raise, when practicable, vessels sunk in collision. Hence, a derrick anchored in the channel of the East river under a permit from the secretary of the treasury, occupied in raising a sunken vessel, and, though a partial obstruction to navigation, not such a complete obstruction as to constitute a nuisance, was *held* not unlawfully anchored, though off the regular anchorage grounds, and not in fault for damage suffered by a vessel which collided with her.

2. SAME—DREDGE ANCHORED IN NARROW CHANNEL WAY—LIABILITY OF COLLIDING VESSELS.
   A derrick anchored in the crowded channel way of the East river, engaged in raising a sunken vessel, although not unlawfully in such position, was *held* not entitled to all the immunities of vessels anchored on anchorage grounds; and certain tugs, which collided with her in spite of skill and diligence exercised by their pilots, were *held* not responsible for the damage to the derrick.

3. SAME—ANCHORAGE GROUNDS — ACT AUTHORIZING SECRETARY OF TREASURY TO ESTABLISH—APPLICATION TO VESSELS ENGAGED IN RAISING WRECKS.
   Whether the anchoring of a derrick for the purpose of raising a wreck falls within the purview of the act of May 16, 1888, or the authority of the secretary of the treasury thereunder "to define and establish an anchorage ground," etc., quaere.

In Admiralty. Libels and cross libels for collision. Dismissed.

Wing, Shoudy & Putnam and Mr. Burlingham, for Chapman, etc., Co. and the Alfred.

Carpenter & Mosher, for the Chauncey M. Depew.

Benedict & Benedict, for the George W. Pratt and the Lila M. Hardy.

BROWN, District Judge. The first three libels above named were filed by the owners of the derrick Alfred to recover damages sustained by the derrick from three separate collisions with the steam tugs above named, all happening in the course of about two hours, between half past 7 and half past 9 A. M., on May 17, 1893, while the derrick was at anchor a little way above the Brooklyn bridge, and off pier 40, in the East river, over the sunken wreck Emma, which it was there engaged in raising.

The width of the East river in that locality is about 1,350 feet from pier to pier. It is the narrowest part of the river. At times the concourse of vessels there is large, and in passing in opposite directions, great care and skill are needed at such times to avoid collisions, even when there are no fixed obstructions. The derrick was anchored about 500 feet off from the New York pier, and was

[1] Reported by E. G. Benedict, Esq., of the New York bar.