

jurisdiction *in personam* of suits for assaults, and I see no reason to doubt that a seaman may join in an action for wages a claim against the vessel for injuries received by such acts of negligence as the ship is liable for, in a proceeding *in rem*; but, by General Admiralty Rule 16, "in all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only."

It seems to be the opinion of Mr. Benedict, however, (Benedict's Admiralty, § 309,) that this rule is confined to cases technically for assault and battery as a mere tort, and that if the action be brought on a contract, as for not carrying a passenger safely, or without injury, or for not treating with kindness a passenger or seaman, an assault or beating being the gravamen of the breach, that the suit may be *in rem* against the vessel. No authorities, however, are cited to this proposition, and upon a careful examination I have been unable to find any which lends it support. It is true there are certain cases *in rem* in which the libellant may join any number of demands, and in cases *in personam* claims *ex delicto* and *ex contractu* are not infrequently joined in the same libel. Dunlap's Admiralty, 89.

The question here involved is discussed in but a single case, viz., *Pratt v. Thomas*, 1 Ware's Rep. 427, in which the learned judge for the district of Maine considers the subject with his usual thoroughness, and comes to a conclusion that a claim for damages for a personal wrong is an entirely independent claim, and perfectly unconnected with that for wages. This case is a much stronger one against a joinder than the one at the bar, as it was a libel *in personam* against the master.

If it had been supposed that the court could entertain jurisdiction *in rem* of a suit for an assault, it is incredible that precedents for such suits should not be found in the books, for cases of aggravated assaults upon seamen are of the commonest occurrence. Upon the contrary, in all reported cases of this kind the actions are *in personam* only. *The Agincourt*, 1 Hagg. 271; *The Lowther Castle*, Id. 384; *The Enchantress*,

Id. 395; *The Ruckers*, 4 Rob. 73; *Chamberlain v. Chandler*, 3 Mass. 242; *Peterson v. Watson*, Blatch. & How. 487; *Thomas v. Gray*, Id. 493; *Treadwell v. Joseph*, 1 Sumn. 390; *Williams & Bruce's Adm. Pr.* 61; *Butler v. McLeeann*, 1 Ware, 219; *Forbes v. Parsons*, Crabbe, 283; *Fuller v. Colby*, 3 W. & M. 1; *Anderson v. Ross*, 2 Saw. 91.

Doubtless a seamen is entitled to be cured of his wounds at the expense of the ship, and to his wages during his sickness; and I know of no reason why libellant might not have joined a claim of this kind with one for wages. 2 Pars. on Ship. 80-85; *The Lillie Hopkins*, 1 Wood, 170; *The Bradish Johnson*, Id. 301; *The D. S. Cage*, Id. 401; *The Ben Flint*, 1 Biss. 567. His claim for damages, however, is rather for the pain and suffering endured than the expense of cure; in other words, it is a claim for an assault and battery, and not for wages and medical attendance.

An act of congress making the damages occasioned by assaults of officers upon seamen a lien upon the ship may be the only effectual means of checking the brutality and inhumanity so frequently seen on shipboard, but I am satisfied that the law at present warrants no such method of procedure.

The exceptions must therefore be sustained.

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THE N. Y. & BROOKLYN FERRY CO. v. THE STEAM-TUG "ADRIATIC" AND THE ICE-BARGE "FITCH."

THE SHALER & HALL QUARRY CO. v. THE SAME.

(District Court, E. D. New York. March 10, 1880.)

COLLISION—BARGE IN TOW OF TUG—SCHOONER STRUCK BY BARGE AND DRIVEN INTO FERRY-BOAT.

In admiralty.

*Beebe, Wilcox & Hobbs*, for libellants.

*C. Van Santvoord and Macklay & Mudge*, for tug and barge.

BENEDIOT, J. These two actions were tried together. The first is brought to recover of the tug Adriatic and the ice-barge

Fitch the damages caused by a collision between the schooner David Curry and the ferry-boat Nevada, in the East river, on the seventeenth of December, 1877. The second is brought by the owners of the schooner David Curry, to recover of the same tug and barge the damages caused to that schooner by the same collision, as well as the damages caused to the schooner by a prior collision between the schooner and the ice-barge, that occurred immediately prior to the collision between the schooner and the ferry-boat, and is claimed to have been the sole cause of such subsequent collision.

The following are my conclusions upon the evidence:

The ferry-boat Nevada was proceeding down the East river above the Catharine ferry-slip, on the Brooklyn shore, the tide being ebb. She was where she had the right to be, and was giving plenty of room for the vessels passing up the river to go by her in safety. While so proceeding she was run in to on the starboard side by the schooner David Curry, and sustained serious injuries. The cause of this collision between the ferry-boat and the schooner was a sudden change of course on the part of the schooner which carried her into the ferry-boat.

The schooner was proceeding up the East river, and in about the middle thereof. While so proceeding she was run into on her port bow by the ice-barge Fitch which was also proceeding up the river, between the schooner and the New York shore, in tow of the tug Adriatic. The immediate and necessary result of this collision between the ice-barge and the schooner was to knock the schooner off her course so suddenly that it was impossible for anything to be done either on the schooner or the ferry-boat to prevent the schooner from running into the ferry-boat, as above stated.

The cause of the collision between the ice-barge and the schooner was a sheer on the part of the barge out of her proper course and into the course of the schooner. It was the duty of the ice-barge, under the circumstances, to keep away from the course of the schooner, and she could have done so by the proper management of her helm. The schooner did nothing to cause the collision between her and the barge; it was the duty of the schooner to hold her course,