

THE SARAH E. KENNEDY.

McCARTHY and others v. THE SARAH E. KENNEDY.

(District Court, D. New Jersey. November 11, 1885.)

ADMIRALTY PRACTICE—CONSOLIDATION OF SUITS—LIBELS FOR WAGES AND REDUCTION OF PROVISIONS—REV. ST. §§ 978, 4568.

The several libels filed by the crew of a vessel for wages due, and for compensation and allowance for the reduction of provisions during a voyage, may be consolidated.

Libels *in Rem*. Motion to consolidate, etc.

Bedle, Muirheid & McGee, for libelants.

Owen & Gray, for respondent.

NIXON, J. Fourteen several libels have been filed by the crew of the brig Sarah E. Kennedy for wages due, and for compensation and allowance for the reduction of provisions during the voyage. A motion is now made by the claimant for a consolidation of the suits. It is resisted by the proctors for libelants on the ground that the additional claim of the several libelants for compensation, on account of the bad quality of the provisions furnished for the voyage, takes the cases out of the category of actions that should have been joint, or should be consolidated. The motion must prevail. See *The Prinz Georg*, 19 Fed. Rep. 653. Indeed, it would be a great hardship for the libelants to refuse it, inasmuch as the court is forbidden to allow them more than the costs of one libel, although they may recover in all the suits. It is provided in section 978 of the Revised Statutes that when proceedings are had before a court of the United States in several libels against any vessel and cargo which might legally be joined in one libel, there shall not be allowed thereon more costs than in one libel, unless special cause for libeling the vessel and cargo separately is satisfactorily shown on motion in open court. No such cause is shown in these cases. The claim for allowance on account of insufficient supply of proper food is in addition to their wages, and is specifically provided for in section 4568, Rev. St. The principles on which compensation is to be awarded to the seamen are so clearly stated in the statute, that quite as little difficulty will arise in determining the amount in one libel, as occurs in ascertaining the several sums due for wages earned.

Let an order be entered consolidating the several suits.

MALOY v. DUDEN and others.

(Circuit Court, S. D. New York. December 19, 1885.)

1. REMOVAL OF CAUSE—FOREIGN CITIZENS.

Declaration of intention to become a citizen of the United States does not make the citizen or subject of a foreign country cease to be such, within the act of March 3, 1875, so as to prevent his removal of a suit from the state court.

2. SAME—ALIENS—FOREIGN NATURALIZATION—PROOF OF.

The defendant's affidavit, together with an official passport certifying the naturalization of the defendant as a British citizen, held sufficient *prima facie* evidence that the requirements of the English statutes had been complied with.

3. SAME—TRIAL—WHEN BEGUN.

Where a cause was called on the day calendar for trial, and objections were immediately urged by the defendants that the cause was not in readiness for trial, because the time granted to amend the answer had not expired, and a motion was pending to vacate that order, and thereupon the trial judge sent the case to another part of the court to hear the motion and objections, and suspended any further proceedings in the cause until the objections and motion were disposed of, and before the motion was heard the cause was removed into this court, held, that the trial had not commenced within the ruling of the supreme court in the *Removal Cases*, 100 U. S. 473, and that the cause was removed in time.

Motion to Remand.

Jas. M. Lyddy, for plaintiff.

Ira L. Bamberger, for defendant Duden.

Frankenheimer & Rosenblatt, for defendant Baillie.

E. C. Jones, of counsel for defendants.

BROWN, J. This cause, originally commenced in the supreme court of the state of New York, was removed to this court on the ground that the defendants were foreign citizens and subjects, the plaintiff being a resident of this state. A motion is now made to remand the cause.

1. The first ground on which a remand is claimed is because the defendant H. Duden, a naturalized citizen of Great Britain, some two years ago filed his declaration of intention to become a citizen of the United States. He has never applied for or obtained admission to be a citizen of this country, or his final certificate of naturalization. This point has, in substance, been directly adjudicated by Mr. Justice MILLER in the case of *Lanz v. Randall*, 4 Dill. 425, and overruled on the ground that the foreign citizen or subject remained such until naturalization was complete according to the laws of congress, although, by the state laws, he might vote or hold office after the mere declaration of intention to become a citizen. The passport issued by Earl Granville to this defendant, in 1880, as a British citizen, together with the defendant's affidavit, furnish sufficient *prima facie* evidence that the requirements of the English statutes of naturalization had been complied with. No renunciation of allegiance to Great Britain was required by our law (section 2165) to be made at
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