

Although the policy of the law does not permit the mariner to insure his wages, yet he is allowed to retain any advance he may have received, as so much secured from the danger of being lost. It is a doctrine laid down in all the books that advance wages are not to be returned in cases of shipwreck. Valin, Com. tome 1, p. 702. Pothier, Louage Mar. n. 184-185. Curtis, p. 275. Haggard's Admy. Reports, vol. 1, p. 219. In Curtis, p. 274, there is a note to this effect: "The court defined advance wages to be in effect a sum that is given in part consideration of the contract to go on the voyage and is not affected by any subsequent occurrences, the owner consenting to lose it, if the wages subsequently earned do not indemnify him."

Upon referring to the judgment itself from which the foregoing statement is deduced and which will be found in the 4th vol. Mason's Reports, p. 103, the case of the *Mentor*, wherein advance wages were stipulated, judge Story (1) expounded the law on this subject in the following words:

"The right to such advance wages is therefore a part consideration of their contract; and if they go on the voyage, the advance so made is absolutely their due, and is not affected by any subsequent occurrences. It constitutes no personal charge against the seamen, and if by any accident in the course of the voyage, the latter is defeated, so that no wages become due, the advance is not recoverable back from the seamen. It is to be considered as a bounty upon their shipping.

"The true effect of a stipulation for advance wages, is that the owner gives the advance absolutely, if the seaman goes on the voyage, consenting to lose it, if the wages subsequently earned do not indemnify him."

As to the difference stated in the argument between the case of money actually paid in advance and the case of an agreement or promise to pay in advance, for services to be performed, when the performance fails or becomes impossible; there is no doubt that such difference may exist in a variety of cases that can be imagined, and this difference would depend upon the nature of the agreement and the services to be performed, the services being the consideration for the promise; but there can be no axiom more clear than that the legal effect of a payment actually made to a seaman in advance of wages and an agreement to pay him in advance if he goes on the voyage, is precisely the same; for the agreement, *quoad* the advance, is to exempt

(1) Lord Stowell has declared that the Americans have attained great perfection in maritime jurisprudence, and the decision of judge Story, one of their most eminent jurists, on this point must be high authority.