

QUEBEC ADMIRALTY DISTRICT

1921

No. 506

January 12.

ARMAND MARCHAND.....PLAINTIFF;

VS.

THE SHIP SAMUEL MARSHALL..DEFENDANT.

AND

THREE OTHER CASES BEARING

NOS. 507, 509 AND 516.

Shipping and Seamen—Minors' right to sue for wages—Lex fori—Admiralty Courts—Canada Shipping Act—Interpretation of Seaman's Contract—Benefit of the doubt—Bonus.

M. and others, minors under the age of 21 and over 14, were engaged in the province of Quebec, to serve on board the *S.S.M.* plying between the Great Lakes and Father Pt., and sued in the province of Quebec, before the Exchequer Court of Canada, in Admiralty, for wages and bonus due them.

Held: That whatever relates to the remedy to be enforced should be determined by the *lex fori*, and as the remedy of the plaintiff had been invoked in the province of Quebec, by the law of which province a minor over 14 may sue in his own name to recover wages due him, plaintiff had the status and capacity to sue before this Court.

Don vs. Lippman 5 C. & F. Rep. pp. 1 and 13. *The Milford*; Swabey 362. *The Tagus* 72 L.J. Adm. 4; referred to.

2. That where it is established that seamen were to be paid a bonus of \$10.00 a month, at the end of the season, and where the ship was arrested before the close of navigation, and the owners failed to obtain her release, such failure on their part was in effect a consent that she be laid up from that date, and the season's operations were then ended, and the seamen became entitled to their wages and bonus. *The Malta* 2 Hagg. Adm. 158, and *Viners Abridgement, Verbo. "Mariners* p. 235 referred to.

5. It is the immemorial and benevolent practice of the Court, that, where there is any doubt as to the meaning of the contract of hire, the seaman should get the benefit thereof; and in such a case the contract should be interpreted against the owner and in favor of the seaman.

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AN ACTION for wages by various seamen who were minors under the age of 21, on board the ship *Samuel Marshall*.

The owners of the ship moved to have the action dismissed on the ground that the plaintiffs being minors had no right to sue before the Admiralty Court.

December, 11th, 18th, 1920.

Reasons for
Judgment.

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Argument on the questions of law raised by the plaintiff was heard before the Honourable Mr. Justice MacLennan at Montreal.

Harold Walker, counsel for plaintiff Marchand.

T. M. Tansey, counsel for defendant.

The facts and the questions of law raised are stated in the reasons for judgment.

MACLENNAN, D. L. J. A. now (January 21, 1921,) delivered judgment.

These are all actions for wages and some questions arise which are common to all of the four cases. The plaintiffs Marchand, Leblanc and Lehouillier were seamen aboard the ship *Samuel Marshall*, and the plaintiff Trepanier was the assistant cook. Leblanc and Trepanier signed the articles of engagement dated at Sorel, May 7th, 1920, to serve on board the ship between Montreal and the Great Lakes and on the river St. Lawrence as far as Father Point for a period not to exceed eight months, the ship to be used as freight boat. The articles contained an agreement that fifteen days notice must be given before leaving the vessel and "in case of the ship being laid up, the crew to be paid without extra wages." Under the

heading of "Particulars of Engagement" there is a column headed "Amount of wages per week of calendar month," in which it is mentioned the monthly wages of each member of the crew who signed the articles, and there is also another column headed "Bonus at the end of the season," but no amount is entered in the latter column opposite the names of the crew.

Each of the above plaintiffs is a minor, and the owners of the ship at the trial objected to each action on the ground that the plaintiff being a minor was incompetent to sue for his wages. This is the first question to be decided and it applies to the four cases. Counsel for defendant submitted that the Exchequer Court in Admiralty administered the Maritime Law of England in like manner as if the cause of action were being tried and disposed of in the English Court of Admiralty and that by the English Maritime Law a minor seaman under the age of 21 years could not sue in his own name but through a curator or guardian; *MacLachlan, Merchant Shipping* (5th Ed.) 263 and *Albert Crosby* (1). Counsel for plaintiff relies upon article 304 of the Civil Code of Lower Canada, which provides that a minor of 14 years of age may alone bring action to recover his wages.

The question to be decided here is what law applies. These plaintiffs were all engaged in the province of Québec and the actions were entered in this province. Article 6 of the Civil Code provides that an inhabitant of Lower Canada is governed by its laws respecting the status and capacity of persons, and C.C. 304 gives a minor 14 years of age a right of action to recover his wages. Many years ago the House of Lords, in *Don*

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(1) Lush. 44.

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vs. *Lippmann* (1), laid down the rule, that whatever relates to the remedy to be enforced must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made. This rule was followed by Dr. Lushington in *The Milford* (2), and by Phillimore J. in *The Tagus* (3). In *The Minerva* (4), Lord Stowell at p. 358 said: "Seamen are the favorites of the law . . . and placed particularly under its protection." In view of these authorities I came to the conclusion that the remedy of the plaintiffs being invoked in the province of Quebec must be governed by the provisions of the law of this province which gives a minor a right of action to recover his wages. Had these plaintiffs taken proceedings before a Judge of the Sessions of the Peace or Police Magistrate, as they were entitled to do under the Canada Shipping Act, the objection to their actions on the ground that they were minors could not have been raised. In my opinion, this objection should not prevail in the Admiralty Court, and I therefore hold that the plaintiffs had the capacity and status which justify them in entering their actions in this Court.

Another question of importance relates to the right of the plaintiffs to claim a bonus. It is established by the evidence that each member of the crew, with the exception of the captain who had a special agreement in that connection, was to be paid a bonus of \$10.00 per month at the end of the season. This bonus was in reality part of the wages of the crew and they all received a bonus for the previous season and, in my opinion, the plaintiffs established their right to receive

(1) (5) C. & F. Reports, 1 and 13.

(2) Swabey 362.

(3) 72 L. J. Adm. 4.

(4) 1 Hagg. 347.

such bonus; *The Elmville* (1). The defendant submitted that the end of the season had not arrived when these actions were instituted. This ship had been engaged during the season of 1920 in carrying coal from Lake Erie ports to the port of Montreal and arrived in Montreal on its last trip down on Sunday, 14th November, at 10 a.m., with a cargo of coal aboard, which was discharged on the following day. On November 16th a cargo of liquor consigned to Windsor, Ontario, was placed aboard the ship, but was removed by seizure in revendication against the owners on 17th November. On the latter date the ship was arrested by one McCullough on a claim for wages. The owners did not take any steps to secure the ships' release from that seizure, but very improperly, on the 18th November, induced the Master to leave the port of Montreal for Cornwall, Ontario. The Marshall of the Court who had arrested the ship and was in custody thereof having obtained information of the attempt to remove the ship from this jurisdiction, succeeded in stopping her at the Soulanges Canal and compelled her to return to Montreal. In the meantime further arrests were made of the ship at the instance of divers members of the crew. As the owners did nothing to obtain the ship's release from the arrest by McCullough, the further employment of the ship became impossible. The season's operations were ended and the crew became entitled to their wages and bonus. The articles expressly provided, that in case the ship is laid up the crew is to be paid without extra wages. This clearly contemplated the termination of the operations before the close of the season of navigation

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(1) 73 L. J. Adm. 120.

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and when the owners failed to obtain the ship's release from arrest they in fact consented to her being laid up from that date; *Viner's Abridgement* (1); *The Malta* (2), *Maclachlan* (5th Ed.), *Merchant Shipping*, 247. It has been an immemorial and benevolent practice of the Court, if there is any doubt about a contract, to give the seamen the benefit of it; *The Nonpareil* (3); *Roscoe's Ad. Practice*, (4th Ed.) 251.

Armand Marchand joined the ship in September; his wages were \$65.00 per month and he claims \$20.00 for two months bonus. He was paid wages to the end of October and I find that he is entitled to \$41.17 being wages from 1st to 19th November, 1920, at \$65.00 per month, and a further sum of \$20.00 being two months bonus, in all \$61.17 for which there will be judgment in his favour against the ship with costs.

Florence Trepanier was the second cook on the ship; her wages were \$45.00 per month with a bonus of \$10.00 per month, and she had served on the ship during the whole season. She has proved her claim of \$28.50 for the first nineteen days in November and \$70.00 being seven months bonus, in all \$98.50, for which amount there will be judgment in her favour against the ship and costs.

Paul Leblanc had served during the whole season; his wages were \$75.00 with a bonus of \$10.00 per month. He made a claim of \$5.00 for some extra services but this item is not proved or allowed. He has established his right to \$47.50 being wages from 1st to 19th November, 1920, and \$70.00 bonus, forming a total of \$117.50 for which there will be judgment in his favour against the ship with costs.

(1) *Verbo Mariners*, p. 235. (2) 2 Hagg. 158.
(3) *Br. & L.* 355.

Xavier Lehouillier began on 1st August, 1920, and was paid to the end of October; his wages were \$65.00 per month and he has proved his claim for wages from 1st to 22nd November, \$47.67, and his right to a bonus for four months, \$40.00, forming a total of \$87.67, for which amount there will be judgment in his favour against the ship with costs.

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Judgment accordingly.

Solicitors for plaintiffs: *Heneker, Chauvin, Walker & Stewart.*

Solicitors for defendant: *Solon Elisoph.*
