1936

Dec. 30.

QUEBEC ADMIRALTY DISTRICT

BETWEEN:

H. BROWN ET AL..... PLAINTIFFS;

AND

CANADIAN NATIONAL STEAMSHIPS COMPANY LIMITED.... DEFENDANT.

Shipping—Canada Shipping Act, R.S.C. 1927, c. 186, s. 176—Anticipation of wages by seamen—Equitable settlement advantageous to seamen.

Plaintiffs were members of the crew of the SS. *Canadian Planter,* which was wrecked on May 3, 1936, thereby terminating plaintiffs' employment. Defendant paid their wages up to May 7, 1936, and was ready to pay to each plaintiff from day to day while unemployed, an amount equal to the daily wages he would have earned during the two months succeeding May 3, 1936. Plaintiffs applied to defendant to be allowed to anticipate in a lump sum the payments which would have been made to them from day to day to July 3, 1936. Defendant disputed this right of anticipation and the matter was referred to the Shipping Master of the Port of Montreal, it being agreed between the parties that the articles of agreement signed by the plaintiffs should constitute an agreement in writing to submit the dispute to the decision of the Shipping Master. Following the decision of the Ship-

(1) (1915) 23 D.L.R. 491; (1914) 51 S.C.R. 39, affirming (1915) 22 D.L.R. 488; (1914) 15 Ex. C.R. 111.

(2) (1910) 15 O.W.R. 52; (1908) 12 O.W.R. 749.

(3) (1888) 13 P. 82.

(4) (1892) P. 304.

(5) (1899) P. 285.

ping Master defendant paid to each plaintiff a sum equal to one month's wages from May 8, 1936, to June 8, 1936.

Plaintiffs brought action claiming the balance of two months' wages from May 3, 1936, to July 3, 1936.

Held: That s. 176 of the Canada Shipping Act, R.S.C. 1927, c. 186, is not applicable to this case.

2. That since the settlement arranged between the parties was equitable and advantageous to the plaintiffs, the action should be dismissed.

ACTION *in personam* against defendant by plaintiffs claiming one month's wages due to them by reason of the wreck of the SS. *Canadian Planter.*

The action was tried before the Honourable Mr. Justice Philippe Demers, D.J.A., Quebec Admiralty District, at Montreal.

H. H. Harris for plaintiffs.

C. A. deL. Harwood, K.C., for defendant.

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

DEMERS D.J.A., now (December 30, 1936) delivered the following judgment:

This is an action *in personam* instituted by nineteen members of the crew of the steamship *Canadian Planter* claiming one month's wages due to them by reason of the wreck of the ship.

The defendant has pleaded, admitting the statements made in paragraph 1 of Plaintiffs' Statement of Claim, admitting that by reason of said wreck the services of plaintiffs were terminated before the date contemplated in plaintiffs' engagement with defendant company but denying the other allegations of paragraph 2 of Statement of Claim.

Defendant further states that on their arrival in Montreal, plaintiffs were, on or about May 5, 1936, paid an amount equal to the wages they would have earned from May 4, 1936, to May 7, 1936, inclusive; and on that date defendant company stood ready to pay to each plaintiff from day to day while each of them was unemployed, an amount equal to the daily wages he would have earned during the period of two months next succeeding May 3, 1936.

During the period May 5, 1936, to May 7, 1936, the plaintiffs, through their solicitor, made representation to

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the defendant company asking that the plaintiffs be allowed to anticipate in a lump sum payment, the payments which would otherwise have been made from day to day. The defendant company disputed the plaintiffs right to anticipate their wages in a lump sum but agreed to submit the dispute to the Shipping Master of the Port of Montreal.

The plaintiffs by themselves and by their solicitor, and defendant company by its agents agreed before the Shipping Master on May 7, 1936, that the articles of agreement and their respective signatures therein should constitute an agreement in writing to submit such dispute to the decision of the Shipping Master. Said dispute between the plaintiffs and the defendant company was heard by the Shipping Master on May 7, 1936, at his office in the Port of Montreal, and his decision therein is recorded in the articles of agreement.

Following the said decision made by the Shipping Master, the defendant company paid to each of the plaintiffs on or about May 8, 1936, a sum equal to one month's wages from May 8, 1936, to June 8, 1936.

Defendant company avers that such decision of the Shipping Master is binding on the parties under the provisions of the Canada Shipping Act, Revised Statutes of Canada (1927), Chapter 186, Section 176, and does not contravene any of the provisions of the said Act and that there are no wages unpaid and due the plaintiffs or any of them as detailed in the statement of claim. And subsidiarily, defendant company avers that:

(*a*) Plaintiff McLeod was paid the following sums, to wit:

On or about May 5, 1936	$ 6 00
" " " May 7, 1936	45 00
" " " June 20, 1936	39 00

forming the total of $90 for the period of two months from May 3 to July 3, 1936;

(*b*) Plaintiff Evans was paid as follows:

On or about May 5, 1936	$ 3 60
" " " May 7, 1936	27 00
" " " June 20, 1936	23 40

forming a total of $54 for the period of two months from May 3 to July 3, 1936;

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(*c*) Plaintiffs C. Chisholm and R. J. Giggie were on or about May 8, 1936, signed on the SS. *Prince Henry,* on which vessel they have since been employed;

(*d*) Plaintiffs William O'Donohue and Martin Cluett did on or about June 7, 1936, sign on SS. *Cymbiline,* on which ship they have since been employed.

That part of the plea based on section 176 of the *Canada Shipping Act,* Chapter 186, Revised Statutes of Canada, 1927, is unfounded for two reasons: first, there was no reference in writing; second, this section does not apply to this case. There was no dispute between the parties and the Shipping Master did not decide the question. It is the seamen themselves who, being informed of their rights, decided to limit them.

A seaman is entitled, it is true, to be paid each day on which he is unemployed during two months, but the employer may prove that the seaman was able to obtain employment on that day. That is the reason why the crew, under the advice of their solicitor, the same who has taken this action, asked the company to pay them one month in satisfaction of their wages.

There is no doubt that this settlement was equitable and advantageous. The fact is that it is proved by the Shipping Master that within one month they could all get work.

It has also been admitted that six of them have no claim whatever; two of them were paid and repatriated; two of them signed on the 8th of May, and two of them within one month, according to their admission, but nine of them have filed affidavits to the effect that they could not get employment, and for these I am of the opinion that they have a claim if the limitation of their wages they made is illegal.

At first sight, if we read section 179 with the French translation of the word "abandon" as "renoncer," it would seem that this case does not fall under the terms of the law. I have not found any authority on this very question.

Roscoe, 5th Edition, cites only the case of the *Juliana* (1), where it was a renunciation by advance of wages in case of loss. But the question of abandonment of wages for salvage being in the same phrase, in virtue of the principle

(1) (1882) 2 Dods 504.

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nosce a sociis, the plaintiffs' attorney invokes the case of *Rosario* (1), where it was decided that the prohibition applied to subsequent agreements. In the case of *Rosario*, the seamen had transferred their rights to their employer. They had abandoned their rights to salvage, but later on the same judge, quoting Lushington, in another case, the *Afrika* (2), where a payment in satisfaction was negotiated by the solicitor of the seamen, maintained the payment as equitable.

Now, let us see what interpretation of the word "abandonment" Judge Lushington gives us:

> The Act of Parliament says that every stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage shall be wholly inoperative, and the court has held, and must hold, that not only all agreements, barring salvage, are wholly inoperative, but that agreements limiting the proportion of salvage money are to be maintained only so far as they are really equitable (3).

That is to say, that Parliament has declared null the abandonment and the courts will annul an agreement limiting the right when it is not equitable.

Being of the opinion that this agreement was favourable to the seamen, I fail to see how the solicitor who suggested and negotiated it, can now contend decently that this agreement is null. These laws were passed to protect the seamen against their ignorance and weakness, not to protect fraud.

For these reasons, judgment should be entered dismissing the action, with costs.

Judgment accordingly.