

TORONTO ADMIRALTY DISTRICT.

1920

Nov. 27.

Reasons for Judgment.

Hodgins, L.J.A.

BETWEEN

JAMES J. QUINN.....PLAINTIFF;

AND

THE SHIP *VOLUNTEER*.....DEFENDANT.

Seaman's Wages—Profits—Agreement to accept share of profits for services.

Where a seaman holding a master's certificate, agrees to accept a share of the season's profits earned by a ship in return for his services as master, he cannot, in the event of the venture not being successful, or before its conclusion, make a claim for payment of wages for navigating the ship.

THIS was an action for wages as master against the ship *Volunteer*.

November 20th, 1920.

The case was heard before Honourable Wm. Justice Hodgins, L.J.A., at Toronto.

T. Louis Monahan, counsel for plaintiff.

F. H. Barlow, counsel for defendant.

The facts are stated in the reasons for judgment.

HODGINS, L. J. A. now (November 27th, 1920) delivered judgment.

Action by plaintiff, holding a master's certificate, for wages as master from 15th April, 1920, to 11th June, 1920, for 58 days at \$5.00 per day, less \$42.00 on account, leaving a balance of \$248.00.

The plaintiff sues for wages, while at the trial he swore that he had made no arrangement with the

owner of the ship and had never asked him for wages until he got off the ship in June, when he asked for \$3.00 per day as wages and not \$5.00 for which he now sues.

It appears the vessel in question is a stone hooker which Hartrick, the owner, bought in September, 1919, for \$800, and decided to outfit her during the winter and sail her during the summer. The vessel was outfitted during the spring of 1920 by both plaintiff and Hartrick, and on 22nd May, 1920, she went on her first voyage bringing back gravel which she discharged at the dock in Toronto on the 4th of June, 1920. On the 11th of June the plaintiff assisted in taking the ship to dry dock which she hit in getting in. Both parties got very hot over it and plaintiff left after the vessel got into dock and on the next day claimed \$3.00 wages from the 15th April.

According to the plaintiff's account, although Hartrick offered him during the winter of 1919 a half interest in the boat if he helped him next season, plaintiff did not intend to go with him and denies any discussion during March or at any time about the terms on which he says he assisted Hartrick. Nothing was done to the ship during the winter although plaintiff shovelled snow off her several times.

On 15th April the plaintiff and Hartrick commenced the outfitting which lasted to the 22nd of May, during which time Hartrick paid for plaintiff's meals.

Hartrick's account is that plaintiff agreed to work for him and to sail the vessel for him on the basis of one-third to Hartrick, one-third for expenses and one-third to the plaintiff; to be paid out of the profits made by the boat during the summer and he denies having offered the plaintiff a half interest in the vessel. He also says that the plaintiff agreed in March to work on shares.

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Apart from some question as to the advantage derived by Hartrick when plaintiff worked the case must turn, I think, on the interview on the boat on her return with the gravel which is deposed to by Hartrick and his wife whose account of the matter I accept. The plaintiff was not willing to go further than denying it and to say that it did not take place as far as he remembered. That conversation, according to Hartrick, is that he offered the plaintiff when he received the money for the gravel, \$97.50, to pay him one-third, but the plaintiff demanded one-half, which Hartrick agreed to, provided the expenses were first deducted. These expenses consisted of a grocery bill for provisions for the voyage incurred by the plaintiff and he admits that he suggested payment of that and accompanied Hartrick to the shop where it was paid. Prior to going to the grocer Mrs. Hartrick had been asked to figure up the division, which she did, showing \$38.83 as the plaintiff's share. This the plaintiff refused to take, asking for one-half share in the boat as well, which Hartrick declined. On the following day the plaintiff accepted \$38.33 which he contends was only paid on account, although he did not say so to Hartrick. Shortly after that payment he left the vessel in a huff, thus abandoning all chance of being paid for his work before the ship was in service.

The conclusion I have come to from the whole case is that the plaintiff agreed to do that work and to sail the vessel for one-third of the net earnings of the vessel during the summer of 1920; that he abandoned the ship and refused to carry out that arrangement on the 11th June, 1920, and that his claim for wages entirely fails.

The action will be dismissed with costs.

Judgment accordingly.