BRITISH COLUMBIA ADMIRALTY DISTRICT.

1921

September 2.

CROMBIE *et al*.....PLAINTIFFS;

VS.

CANADIAN GOVERNMENT MERCHANT MARINE LTD.....DEFENDANT.

Shipping and seamen—Ship's articles—Termination of voyage—Discretion of master in regard thereto.

By articles signed at Halifax plaintiff agreed to serve on board the S.S. "Canadian Carrier" * * * on a voyage from Halifax, N.S. to New York, U.S.A., thence to any port or ports between certain degrees of latitude to and fro, as required, for a period not to exceed 12 months. Final port of discharge to be in the Dominion of Canada.

The ship sailed from Halifax on March 4th 1921 and after calling at New York and other points in the United States sailed for Honolulu and from there to Vancouver, arriving June 3rd, 1921. After taking a cargo to Nanoose Bay, V.I., she returned to Vancouver where she completed her cargo and sailed for Montreal, on June 20th 1921, via Panama, arriving August 7th 1921, and finally discharging cargo and paying off the crew at this point which was the final discharge and termination of the voyage. The plaintiff, boatswain, asked to be paid off when the ship first reached Vancouver and when refused left the ship against the master's order,

Held: On the facts, that the voyage contemplated was a 12 months tramp within certain limits, as required by the master and was not terminated till Montreal was reached. That plaintiff being required by the master was, under his Articles, obliged to complete the voyage and to go on to Montreal.

That the fixing of the port which shall be the termination of the voyage is within the discretion of the master,

ACTION by plaintiff to recover wages against the Company defendant claiming that after the ship first reached Vancouver the voyage was at an end, that port being, as he contended, the final port of discharge in Canada.

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August 31st, 1921.

Case heard before the Honourable Mr. Justice Martin at Vancouver.

Milton Price for plaintiffs;

E. C. Mayers and *A. R. McLeod* for defendant.

The facts are stated in the reasons for judgment.

MARTIN, L.J.A., now this 2nd September 1921 delivered judgment.

According to articles signed at Halifax, N.S., on the 2nd February, 1921, the plaintiff agreed to serve on board the S.S. "Canadian Carrier" ..... on a voyage from Halifax, N.S., to New York, U.S.A., thence to any port or ports between the limits of 75 degrees north, and 65 degrees south latitude to and fro as required for a period not to exceed twelve months. Final port of discharge to be in the Dominion of Canada.

The ship, which is registered at Montreal, sailed from Halifax on 4th March for New York, where she loaded part of her cargo for Callao, completing her cargo at Baltimore, and sailing on the 17th March for Callao via the Panama Canal, arriving at Callao on 2nd April, where she discharged cargo and left for Iquique, (via Arica) arriving on 19th, where she loaded cargo for Honolulu arriving there on 15th May, where she discharged cargo, and took on cargo for Vancouver arriving there on 3rd June and discharged cargo; left Vancouver on 5th June for Nanoose Bay, V.I., loaded part of cargo there and returned to Vancouver on 14th June where she completed cargo for Montreal and

sailed on 20th for Montreal, via Panama, and arrived there on 7th August, 1921, when she finally discharged cargo and paid off her crew, which, according to the evidence of the captain, was the final discharge and "termination" of the voyage.

The plaintiff was the boatswain and claimed the right to be paid off after the ship first reached Vancouver, though only about 4½ months of the 12 months time specified in the articles had expired, on the ground that the voyage was at an end there, that port being, he contended, the "final port of discharge" in Canada, but after discussion his claim was eventually refused by the master, upon instructions from his owners, and so the plaintiff left the ship against the master's orders before the 18th of June, when she was on the point of sailing for Montreal.

The main question is, was he right in his contention, and therefore entitled to the wages he claims? The answer depends upon the true construction of the articles applied to the particular facts and I have been referred to several authorities more or less applicable but, as might be expected, based upon circumstances more or less varying. It is difficult to apply to such a vast country as Canada fronting upon two oceans thousands of miles apart, the separated coasts of which are most readily reached through a canal owned by another nation, some of the reasons upon which English decisions are based which apply to an island having relatively only a small and all-enveloping, accessible coast line. In *Quinn* v. *Leathem*, (1) Lord Chancellor Halsbury emphasized the point that decisions must be interpreted by the facts upon which they are pronounced, and in the very instructive recent case upon fixtures of *Travis-Barker* v. *Reed* (2)

(1) 1901 A.C. 495 at p. 506. (2) 1921 3 W.W.R. 770.

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the Alberta Court of Appeal drew attention to the care that must be taken in "adopting the decisions of the English Courts on the question of fixtures in view of the very different conditions of this new country and the very different manners and methods of construction of buildings and very different customs and habits of the people living here, especially their readiness to move from one place to another, and the not infrequent removal even of large buildings, pointing out that what might be considered a very serious injury to the soil in England, might well be regarded here as quite trivial and negligible." Per Beck, J.A., and *cf.* Stuart, J. A., at pp. 773, 776.

Considering these articles, then, upon the geographical and nautical facts before me, I am of opinion that the voyage contemplated was a twelve months "tramp," one "to and fro" within certain latitudes as "required", *i.e.* by the master. The articles do not in essentials differ from those which were under consideration in the *Board of Trade* v. *Baxter*, the *Scarsdale*, (1) which when carefully examined supports the defendant's submission though invoked by the plaintiff in support of the view that the voyage ended upon arrival at Vancouver, being the first Canadian port touched at since leaving Canada at the beginning of the voyage. But I am unable to see why the plaintiff was not under these articles called upon to go on to Montreal as "required" by the master just as the fireman was called upon to go on to Cardiff as required by the master in the *Scarsdale* case; indeed, this case is if anything a stronger one against the plaintiff because in the *Scarsdale* after the cargo had been discharged at Southampton the ship went on in ballast only to Cardiff as the loading port for the next cargo, whereas here the

(1) 1907 A.C. 373.

ship took on a cargo from Vancouver to Montreal, the master fixing that point as the "termination" of the voyage, and the leaving of that discretion to the master was declared to be legal in the *Scarsdale* case (1); I refer particularly to the judgment of Lord Collins on that point, and cite his observations on pp. 384-5:— "Now it is not disputed that the adventure contemplated by this agreement is properly described as a voyage (see per Bargrave Dean J., Vaughan Williams and Stirling L. JJ.), though it covers many possible distinct subordinate adventures involving the discharging and receiving of cargoes at many different points "trading in any rotation". The maximum period, viz., one year, is named, and the places or parts of the world to which the voyage or engagement is not to extend are defined. Nor was exception taken to the provision giving discretion to the master to name the port within home trade limits at which the voyage, treating that word as concerned with the transit and delivery of cargo only, was to end. How, then, was the suggested element of illegality introduced into the discussion? With the greatest deference to the eminent counsel who argued for the appellants, be it said, simply by begging the question. On the assumption that the voyage ended at the port where the last cargo was delivered a provision that the master might order the ship on to a fresh destination might involve the commencement of a new voyage and so sin against the statute; but if the voyage did not end till the ship had reached her destination at the home port required by the master, there is nothing upon which to found an implication of illegality. I agree with the contention of Mr. Hamilton, which was adopted by the Court of Appeal, that the voyage contemplated for the cargo

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need not be co-extensive with that contemplated for the ship, though it very often is. I think it is very much to be deprecated that the Court should be subtle to find implications of illegality having the effect of hampering freedom of contract in business matters where no express prohibition can be found."

And these observations have added force in favour of the defendant in view of the geographical differences between Canada and England already referred to.

Being of this opinion it is unnecessary to consider the other questions raised and therefore the action must be dismissed with costs, and it follows that the defendant is entitled to judgment upon the counter-claim, the small amount of which is not disputed.

Judgment accordingly.