

1914

Oct. 29.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

FARRELL,

PLAINTIFF,

v.

THE STEAMSHIP "WHITE."

Seaman's wages—Ship's articles—"Lay" and "bonus".

Plaintiff sued for a balance of wages as pilot on a whaling steamer at the rate of "\$50 per month and lay", as entered on the ship's articles. The articles provided also for the payment of a bonus to the members of the crew at the termination of the whaling season, stipulating, however, that should any of the persons who had signed such articles leave the employment of the owners of the ship, or be discharged for cause, before the determination of the whaling season, such persons should forfeit all claims to a bonus. There was no such provision applied to the "lay", the amount of which earned in addition to wages at any period during the whaling season being liquidated and set out in a table of lays embodied in the articles. The plaintiff did not remain in the said employment for the period mentioned, but voluntarily signed off the ship's articles in a port at which the ship touched before the expiry of the season.

Held, upon a proper construction of the ship's articles, that while the plaintiff had forfeited any right to a "bonus" by leaving the ship before the end of the whaling season, he had not thereby prejudiced his right to credit on his wages for the amount of his lay.

ACTION for seaman's wages and for an amount due for "lay."

Tried before the Honourable Mr. Justice Martin, Local Judge of the British Columbia Admiralty District, at Victoria, October 14, 1916.

J. Percival Walls, for plaintiff.

E. V. Bodwell, K.C., for defendant.

1914

FARRELL

v.

THE "WHITE."

Reasons for
Judgment.

MARTIN, Loc. J. (October 29, 1914) delivered judgment.

I reserved the question raised by this action for further consideration because of its wide application to seamen employed in various kinds of fisheries on this coast wherein it is customary to give what are called "lays." The plaintiff sued for a balance alleged to be due him for wages as pilot on the whaling Steamer "White" at the rate of \$50 per month "and lay," so entered on the articles. The "lay" is set out in a printed table in the articles apportioning to the officers and crew various amounts for various kinds of whales; that which the plaintiff is entitled to being \$25 for each right whale; \$10 for each sperm whale; \$4 for each sulphur bottom whale; \$2 for each fin back whale and \$1 for each hump back. Preceding this table the articles contain this printed clause:

"Wages to be paid monthly, and bonus to be paid at the final termination of the whaling season 1914. Should any of the persons signed on the articles leave the employment of the Canadian North Pacific Fisheries, Ltd., or be discharged for insubordination before the final termination of the whaling season 1914, he shall forfeit all claims to a bonus."

At the end of the table of "lays" is this written notice: "Fireman and cook to receive \$5 per month "bonus at end of season." In the list of the crew, given later in the articles, out of the nineteen seamen who signed on in various capacities, 11 were to receive so much wages in cash per month "and lay," 7 were to receive so much wages "and bonus."

and the master was entered as under a "special agreement."

I decided at the trial that, on the facts, the plaintiff voluntarily signed off at the whaling station at Naden Harbour, Graham Island, on the 14th July last, and that he was not entitled to his expenses of coming to the ship's home port at Victoria. But a further dispute arises from the fact that at the time he was paid off and signed off he did so on the understanding with the manager of the station that he was to be paid his lay money on his arrival in Victoria and he received a statement from the manager, dated 13th July, showing that he was entitled to the sum of \$60 for whales of various kinds captured during his service. This statement is addressed to the company (Canadian North Pacific Fisheries, Ltd.) at Victoria, and begins: "As shewn by our "pay-rolls bonus and lay have been earned by W. "Farrell, pilot S.S. "White", for periods ending "(particulars here). Total \$60." At the foot is this clause:—

NOTICE.—Stations will issue pay-rolls for amount of bonus earned as shown on the statement. Pay-roll draft must be attached to the statement and sent to head office by mail. This account will be checked by the head office and draft issued to employee at Victoria. This statement and draft must be sent direct to Victoria office and not given to *employee*.

This statement given to the plaintiff was probably a duplicate of that which would be sent to the Company's head office at Victoria. On his arrival at Victoria the plaintiff presented this statement at said head office, where he was informed that the mat-

1914
 FARRELL
 v.
 THE "WHITE."
 Reasons for
 Judgment.

1914
 FARRELL
 v.
 THE "WHITE."
 Reasons for
 Judgment.

ter would be referred to the master of the "White" for report, but the amount was not then paid to the plaintiff, nor later, though he made at least one more demand for it, and therefore a refusal to pay must be inferred, and the right to recover is now contested.

The difficulty arises from the use of the words "bonus" and "lay", and reliance for the plaintiff is placed upon the fact that a distinction is recognized and drawn both in the articles and statement between then, and that while the articles provide for the "forfeiture of claims to a bonus" in case of discharge for insubordination or leaving the employment "before the final determination of the whaling season," yet no such consequences attach to a lay.

In *Abbott's Law Dictionary* a "lay" is thus, in general, defined, the definition being founded on the case of *Coffin v. Jenkins*:¹

"A share of the profits of a fishing or whaling voyage, which is, by the usages of those employments, commonly allotted to each officer and seaman, as his compensation, and in lieu of fixed wages. This custom does not create any partnership in the profits of the voyage. The lay is regarded in admiralty, as in the nature of wages for seamen in the common merchant service, and is governed, as respects forfeiture, by the same rules."

Lays were the custom in the British whale fishery from early times, and were, in that fishery, stipulated in the articles to be paid out of the produce of the voyage to be divided in certain proportions. It

¹ U.S. Cir. Ct. 3 Story, 108.

is stated in *Wilkinson v. Frasier*,¹ that the proportion of a common sailor was a one-hundredth and ninetieth part. In that case it was decided by Lord Alvanley that—

1814
FARRELL
v.
THE "WHITE."
Reasons for
Judgment.

“the share was in the nature of wages, unliquidated at the time, but capable of being reduced to a certainty on the sale of the oil, which had taken place, and that he should not therefore consider them (seamen) as partners, but as entitled to wages to the extent of their proportion in the produce of the voyage.”

In *Perrott v. Bryant*² a similar method of remuneration is described as “really only a mode of calculating the amount of the wages due to the dredgers from the owners of the boats.”

In the case of such a lay as is now before the court there was no occasion to wait till the end, or the produce of the voyage to determine the share due thereunder because it was liquidated at the time and set out in the table of lays, and therefore immediately upon the whales being brought into the station every man on the articles was entitled to credit on his wages for the amount of his lay. The test may be seen in this, that if after the whales had been brought to the station it had been destroyed by fire so that the whales could not be utilized, nevertheless the crew had earned their lay, *i.e.* their additional wages, and ascertained the amount thereof, though it would be otherwise if, *e.g.*, the lay were payable out of the proceeds of the oil, etc., from the catch.

¹ (1803) 4 Esp. 182.

² (1836) 2 Y. & C. 61.

1914
 FARRELL
 v.
 THE "WHITE."
 Reasons for
 Judgment.

A "bonus", however, is of a fundamentally different nature. It is thus defined in the *New English Dictionary*:—

"A boon or gift over and above what is normally due as remuneration to the receiver, and which is therefore something wholly to the good.

(a) Money or its equivalent, given as a premium, or as an extra or irregular remuneration, in consideration of offices performed, or to encourage their performance; sometimes merely a euphemism for *douceur*, bribe.

(c) A gratuity paid to workmen, masters of vessels, etc., over and above their stated salary."

The first of the above clauses was adopted in *Re Eddystone Marine Ins. Co.*¹ and it was held that the word "bonus" on share certificates was utterly inappropriate to their having been issued in satisfaction of a debt or other liability and therefore the holder of them was fixed on a list of contributories as liable for the full value thereof.

It follows from the foregoing, I think, that the forfeiture clause should under the articles and form of the lay thereby provided for, be restricted to what it in terms includes, *viz*: a bonus, and not be extended to cover something of so different a nature as a lay, and consequently the plaintiff is entitled to judgment for the amount of his lay. It is desirable to note, since a lay had been held to be in the nature of wages, that it was on that ground that the several plaintiffs in the consolidated actions of *Miller et al v. The Orion* failed to recover their lays when their

¹ (1894) W.N. 30.

actions for wages were dismissed in the trial immediately before the present case was called on, because the plaintiffs had been discharged for insubordination.

1914
FARRELL
v.
THE "WHITE."
Reasons for
Judgment.

Judgment for plaintiff.