BRITISH COLUMBIA ADMIRALTY DISTRICT.

CABLE.....PLAINTIFF; 1907 Nov. 8.

v.

THE SHIP "*SOCOTRA*".

Shipping—Engagement for return voyage—Seamen left in foreign port by reason of sickness—Merchant Shipping Act, 1906 (Imp.), secs. 37, 38—Merchant Shipping Act, 1894 (Imp.), secs. 158, 166—Certificate of discharge—Mistake in computing wages due—Action—Costs.

Section 166 (1) of *The Merchant Shipping Act*, 1894 (Imp.) provides that where a seaman is engaged for a voyage which is to terminate in the United Kingdom, he shall not be entitled to sue in any court abroad for wages unless he is discharged with such sanction as is required by the Act, and with the written consent of the master, etc. By *The Merchant Shipping Act*, 1906 (Imp.), secs. 37 and 38 it is provided that where a master leaves a seaman behind on shore in any place out of the United Kingdom on the ground of his unfitness or inability to proceed to sea, he shall deliver to the person signing the required certificate of the proper authority, a full and true account of the wages due to the seaman. The master shall pay the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea, if he is left in a British possession to the seaman himself, and if he is left elsewhere to the British consular officer.

The plaintiff shipped for a voyage from Shields, England, to Victoria, B.C., and return. Before the termination of the voyage he was left at an American port by reason of illness and remained in the hospital there for fifteen days, beginning on the 18th of July, 1907. On the 18th of July the master of the ship left a certificate of discharge with the British Vice-Consul at such port as required by sec. 31 of the Act of 1906, but such certificate was not dated by the master, and the date of the 22nd of August was inserted in the certificate by the Vice Consul when the plaintiff called upon him after leaving the hospital. The master made an error in computing the amount of the plaintiff's wages due on the 18th of July and deposited less than the full amount due in the hands of the Vice-Consul. In an action for the recovery of wages by the plaintiff,—

Held, that the requirements of the statute respecting the certificate of discharge was sufficiently complied with; that the plaintiff was properly discharged on the 18th of July, and that he was entitled, under sec. 158 of the Act of 1894, to the full amount of his wages up to that date.

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2. That as the master made an error, though unintentionally, in computing the wages, and the plaintiff had been obliged to bring action, he was entitled to his costs.

ACTION for wages.

The case was heard at Victoria, B.C., by Mr. Justice Martin, Local Judge of the British Columbia Admiralty District, on the 2nd and 5th days of November, 1907.

R. C. Lowe for plaintiff;

F. Peters, K.C., for Ship.

The facts of the case are stated in the reasons for judgment.

MARTIN, L. J., now (November 8th, 1907) delivered judgment.

With respect to the opening objection to the right of the plaintiff to invoke the aid of this court, based upon the bar set up by sec. 165, of *The Merchant Shipping Act*, 1894, because the claim is under fifty pounds, I am of the opinion that Mr. Lowe's contention is correct, viz., that the facts clearly bring it within the fourth exception to that section, and therefore the action is properly brought.

The ship is a British bottom, registered at Glasgow, and is on a voyage from Shields to Los Angeles (California), Seattle, Victoria, and back to Shields, from which last port she sailed on the 26th of January last. The plaintiff shipped for the whole voyage as cook and steward, at five pounds per month, and was left behind at Los Angeles on the 18th of July for the reason that he was admittedly unfit and unable to proceed to sea because of illness, being at the time in the hospital, wherein he was detained fifty days, owing to an accident to his leg that he sustained in the cook's galley, which injury was aggravated by the fact that he had for some time been suffering from varicose veins which necessitated an operation in the hospital at Los Angeles.

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I pause here to say that I am satisfied that the charges he makes against the master or mate for neglect of duty, either as regards the supply of sufficient oil to light the galley, or as regards humane attention to him after his accident, are not, in my opinion, based upon anything substantial.

It is claimed by the plaintiff that he has never been lawfully discharged and is therefore still on the ship's articles and entitled to his wages to the date of the writ.

In answer to this the defendants rely on section 166 (1) of *The Merchants Shipping Act*, 1894, as follows :—

"166. (1) Where a seaman is engaged for a voyage or engagement which is to terminate in the United Kingdom, he shall not be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as is required by this Act, and with the written consent of the master, or proves such ill-usage on the part or by authority of the master, as to warrant reasonable apprehension of danger to his life if he were to remain on board."

If, therefore, the plaintiff has not been "discharged with such sanction as is required by the Act" (see sec. 36 of 1906 for the procedure) he cannot maintain this action, seeing that both the voyage and his engagement are to "terminate in the United Kingdom," unless he "proves such ill-usage, etc." This he has attempted to do, but I need only to say that he has failed to convince me that there is any good ground therefor. The consequence of this is that unless he was discharged, despite his contention to the contrary, his action must be dismissed. But the defendants contended that he was duly discharged and left behind under secs. 30, 31, 32, 36, 37, 38 and 39 of *The Merchant Shipping Act*, 1906.

First, in regard to the question of leaving behind. This is a procedure and matter quite distinct from that of a discharge, as is clearly shown by said sections, particu-

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larly Nos. 158, 36 and 37, and I have no difficulty in coming to the conclusion here that the proper sanction was obtained to leave the plaintiff behind and that consequently and by operation of sec. 158 the service "terminated" (as to which cf. *Sivewright* v. *Allen* (1)), on the 18th of July, and that the plaintiff, as the section provides, is "entitled to wages up to the time of such termination, but not for any longer period." It was urged on behalf of the plaintiff that this procedure was dependent upon the delivery by the master, to the proper authority, of a full and true account of the wages due to the seaman," under sec. 37, and that if such an account were not delivered the proper authority could not grant the necessary certificate. It is admitted that the account made out by the master was incorrect, and I find that he should have allowed the seaman one dollar and seventy cents more than he did.

After a careful consideration of all the various sections which might throw light on this matter, I have come to the conclusion that this is not the proper construction of the Act, for the granting of the certificate is clearly in the nature of a judicial act of the authority under sec. 36, which stands apart from, and is to be determined before, any question arises as to the duty of the master regarding the payment of wages under the following section 37. Indeed, it must be so, as this case illustrates, for the question as to whether or no the plaintiff was, in the opinion of said authority, fit to proceed to sea could not from any point of view be dependent upon the amount of his wages. The fact that he did lie in the hospital for fifty days shows how impossible it would be to give effect to a contrary view, for it would defeat the intended remedy.

Then, second, with regard to the discharge. I am satisfied on all the evidence that the master duly obtained

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the sanction of the proper authority, under said sec. 30 to discharge the plaintiff, and my observations with respect to leaving behind apply in principle to this procedure. And I find that the master did in fact make out a certificate of discharge for the seaman as required by sec. 31, though in view of the not unreasonable uncertainty of the master in regard to the signature on exhibit 7, purporting to be his, I am not satisfied that said exhibit 7 is the original discharge, but since it was obvious that the uncertainty of the master was, as he explained, largely due to the strange fact that the certificate, No. 7, was dated the 22nd of August instead of the 18th of July, on which date the master left it with the Vice-Consul, it may be that after all it is really the original certificate, though signed in blank by the master on 18th July, and the otherwise unaccountable date (which not unnaturally created the uncertainty) is the day upon which the Vice-Consul filled in the blank and gave it to the plaintiff when he called upon him after leaving the hospital, which in fact would be the 22nd of August because the plaintiff says he went there on the 3rd of July and stayed there fifty days. This document, moreover, is the same which the Consul-General at San Francisco says, in his letter of September 30th to the shipping master here, was left with him by the plaintiff. However, be that as it may, I am satisfied, as has been said, that a proper certificate was made out, and I should be inclined to think, if anything turned on the point, that in the circumstances the leaving of such certificate with "the proper authority" (here the Vice-Consul) was a sufficient "giving" thereof to the seaman to satisfy said sec. 31.

The result is that had the master left the correct account and amount of wages with the proper authority, the plaintiff would have had no claim upon the ship, for

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all the master's obligation would have been discharged under and by virtue of sections 38 and 39. Unfortunately, however, the master made a slip which, though an honest one, nevertheless placed the seaman in a position of embarrassment and the fact is that he has never yet had deposited to his credit in the hands of any proper authority or formally tendered to him, either in California or here, the full amount of the balance of his wages, and consequently he was justified in refusing to accept the offer of $13.65 in full settlement of his demands. Indeed, nothing has yet been paid into court to satisfy his claim and it is plain that the defendants cannot invoke the statute to support an insufficient deposit of wages, and therefore the plaintiff is entitled to judgment for fifteen dollars and thirty-five cents being the balance of the amount that should have been paid to him on the 18th of July when his engagement terminated by operation of sec. 158.

With respect to costs, though the matter is small in amount yet it is not so in principle, and difficult questions were raised which are of general importance to masters and seamen. Though the plaintiff is obviously of a peculiar disposition and did not create a favourable impression in the witness box, and has advanced extreme claims, both legal and on the merits, which have been disallowed, yet at the same time he was undoubtedly placed in a very perplexing position by the neglect of the master, (though quite unintentional) to perform his statutory duty and make out a correct account of his wages,—which, I may say, is a matter wherein great care should be taken to see that the mariner is allowed everything that is justly due to him. If he is not, this court should, I think, in pursuance of its general policy to protect to every reasonable extent the interests of mariners, give him his costs of recovering his wages in full, however trifling the amount, unless there are stronger

reasons than are to be found in this case for depriving him of them.

Judgment accordingly.

Solicitor for plaintiff: *R. C. Lowe.*

Solicitors for ship: *Peters & Wilson.*