

30th October, 1967

Judges

His Hon. Mr. Justice Prof. Sir Anthony J. Mamo, O.B.E.,
C.St.J., Q.C., B.A., LL.D., — President
The Hon. Mr. Justice Prof. J.J. Cremona, K.M., LL.D., B.A.
D.Litt. (Rome), B.A. Hons. (Lond.), Ph.D. (Lond.),
F.R.Hist.S. — Vice President
The Hon. Mr. Justice J. Flores, B.L. Can., LL.D.

John Henry Watson

versus

Captain St. George Anderson noe

Bahri — Paga — Dritt għall- — Rimpatriju — Spejjeż ta'

*Bahri li jiġi l'leżenja għandu dritt għall-ispejjeż fl'lema jinkorri
b'leżenja rimpatrijati f'pajjiżu.*

The Court, this is an appeal from a judgement of Her Majesty's Commercial Court dated the 11th day of May, 1967. In his writ of summons the plaintiff, after premising that on the 14th of September 1966, at Alicante, Spain, the defen-

dant employed him as second engineer in the motor yacht "Henry Morgan" at a weekly wage of twenty-five pounds (£25), and that he was given notice by a letter dated 30th December, 1966 that his employment in the said yacht was being terminated with effect from the 31st December, 1966; and that the defendant still owes him the sum of one hundred and fifty nine pounds, sixteen shillings and two pence (£159.16.2) balance of a higher sum by way of arrears of wages and expenses as results from the annexed exhibit "A"; and that he was unemployed during the period 5th January 1967 to 6th February, 1967 during which period he disbursed money for board and lodging and other expenses, and had to remain in Malta, as defendant did not even pay him a repatriation allowance to Alicante, Spain, as he was bound to do — prayed that (1) defendant be ordered to pay him the sum of one hundred and fifty nine pounds sixteen shillings two pence (£159.16.2) balance of a higher sum of way of arrear of pay and other expenses due to him in connection with his employment on the motor yacht "Henry Morgan", the master whereof is the defendant, 2) the defendant should be ordered to pay such sum as will be assessed in repayment of expenses disbursed by plaintiff for board and lodging for the period 5th January 1967 to the 6th February 1967, during which period plaintiff remained unemployed in Malta through the fault of defendant;

In his statement of defence (page 6) the plaintiff pleaded that he owed nothing to defendant either by way of wages or in respect of lodging, board or other expenses.

In its judgment the first Court allowed the first claim up to £55 only, costs to be borne as to one third by defendant and as to two third by plaintiff and dismissed the second claim with costs against the plaintiff; after considering as follows:—

Omissis;

The plaintiff entered an appeal against the said judgment and prayed that it be varied in the sense that it be reversed in so far as it disallowed his first claim to the amount of £104.16.2. and his second claim to the expenses disbursed for the period from the 5th January to the 6th February, 1967 and affirmed in all other respects, so that both his claims may be allowed in full.

In his reply the respondent pleaded, firstly, that the proceedings on the appeal are null in as much as the notice of appeal was given in a language different from that in which the proceedings in first instance had been conducted by order of the Court; and, secondly, that on the merits, the judgment appealed from is just and should be affirmed with costs against the appellant.

At the hearing of the appeal on the 6th October, 1967, the respondent withdrew the plea of nullity of the appeal and the Court need not therefore, concern itself with it further.

On the merits, in regard to the first claim made in the writ of summons, the Court is not of opinion that the appellant has made good his complaints against the judgment appealed from. This claim comprises — so far as relevant to this appeal — (a) a claim for wages in respect of the period during which the appellant was in hospital; (b) a claim for wages in respect of the period during which the appellant was on leave in Britain; and (c) a claim for the reimbursement of the money paid for his return air passage to London when the appellant went on leave.

Although in regard to the claim for wages under (a) above, reference is made in the petition to section 160 of the

Merchant Shipping Act, 1894, it has not been established to the satisfaction of the Court that that claim or, indeed those under (b) and (c) are, in fact, regulated by statute or Ministry of Transport rules. They must therefore be based, if they are based at all, on contract either expressly or impliedly. The Agreement in writing made at the time of the engagement does not contain any express term concerning those matters. Nor does the evidence show in any satisfactory way, any subsequent contract in regard to those matters.

Concerning the claim under (a), the mere fact that the respondent "had prior knowledge before he employed" the appellant does not necessarily imply any undertaking by the respondent to pay wages during the time the appellant would have been in hospital. As regards the claim under (b) the appellant said in his evidence that "when he was employed in Alicante it was agreed verbally that he would be entitled to leave with pay". Since the appellant himself contends that "he had a written agreement with the Captain regarding his employment", which he exhibited, one would expect to find that term of the contract in the writing. Since it isn't there the Court is inclined to accept the evidence of the respondent that the matter of pay during leave must be regulated by the custom prevailing to the effect that "normally (i.e. as the Court understands it in the absence of express agreement) the crew are entitled to leave with pay only after completing a cruise of six months." The respondent denied that there was any agreement that the appellant should be paid while on leave.

With regard to the claim under (c), the appellant says in the petition that the owner promised to refund the expense. The appellant's version is that when he went to Scotland, at the invitation of the owner, the latter gave him a nice welcome, put him up in his own hotel for two days and then told

him to return to his boat or yacht when his leave finished on the 5th January, 1967 and he would reimburse him for all his expenses, and back wages. In the Court's view, allowing that the promise was in fact made on those terms, does not come up to a binding understanding to refund the fare for the return trip from Malta to London. It is more consistent with the fact of the case to hold that the owner's promise referred to the expense of appellant's trip from London to Glasgow — which expense the owner in fact refunded. The appellant further said in his evidence that when he requested permission of the respondent to go on leave, the respondent told him that when he returned to Malta he would refund the air fare to Scotland and back. That is impliedly denied by the respondent and in any event appears to the Court to be hardly consistent with appellant's other statement that "when he left on leave he did not tell (the respondent) where he was going." Certainly the appellant did not tell his respondent that he was going to Scotland.

Secondly, in the writ of summons, the appellant claimed the refund of expenses incurred by him for board and lodging for the period from the 5th January to the 6th February, 1967, during which time he was stranded in Malta through the fault of the respondent. The first Court disallowed this claim on the grounds that the appellant had received notice of discharge when he was in England: He could therefore either have stayed in England or gone directly to Alicante: if he chose instead to come to Malta, he did it at his risk.

With respect this Court is unable to agree with that reasoning. The appellant became aware of his discharge on the 5th January, when he was already at London Airport on his way to Malta. He still had his personal belongings on board the yacht in Malta. In those circumstances it was not unreasonable for the appellant to return to Malta. Now the

respondent or, at any rate those who were at the time responsible for the vessel, did not make any arrangements for the repatriation of the appellant to Alicante and indeed declined any responsibility in that regard. That responsibility has now been admitted by the respondent who said in evidence "The respondent is liable to repatriate the members of the crew from the port of dismissal to the port of engagement". Because nothing was done to repatriate the appellant, he was in effect stranded here until he succeeded in finding new employment. The Court thinks that the expense claimed is reasonable and that the refund is due to the appellant.

Wherefore the Court allows the appeal but only to the extent of admitting appellant's second claim in the writ of summons and therefore varies the judgment appealed from the others the respondent to pay to the appellant, in addition to the £55 allowed by the first Court a further sum of £80 by way of refund to the expense incurred by him for his maintenance and accommodation during the period from the 5th January to the 6th February, 1967.

The costs of first instance on the first claim in the writ of summons remain as ordered by the first Court: those of the first instance on the second claim will be borne by the respondent. The costs of the appeal will be borne as to one half by the appellant and as to the other half by the respondent.
