RICHARD A. GUILDFORD .....APPELLANT; 1882

AND

THE ANGLO-FRENCH STEAMSHIP COMPANY..... } RESPONDENT.

*Oct. 29.
1883
*Mar. 28.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Master and owner—Contract, Breach of—Damages, Measure of.

The action was brought by *G.* against *A.F. S. S. Co.* to recover damages for an alleged breach of contract. The plaintiff was master of the ss. *George Shattuck*, trading between *Halifax* and *St. Pierre* and other ports in the Dominion. She was owned by defendant company, the plaintiff being one of the largest shareholders of the company. Plaintiff's contract was that he was to supply the ship with men and provisions for the passengers and crew, and sail her as commander for $900 a month, afterwards increased to $950. The ship had been originally accustomed to remain at *St. Pierre* 48 hours, but the time was afterwards lengthened to 60 hours by the company, yet the plaintiff insisted on remaining only 48 hours, against the express directions of the company's agents at *St. Pierre*, and was otherwise disobedient to the agents, in consequence of which he was, on the 22nd May, without prior notice, dismissed from the service of the company.

The case was tried before Sir *William Young*, C.J., without a jury, who, considering that the plaintiff was not a master in the ordinary sense, held that he had been wrongfully dismissed and found a verdict in his favor for $2,000. A rule *nisi* was made absolute by the full court for a new trial. On appeal to the Supreme Court of *Canada* it was

Held,—1st. That even if the dismissal had been wrongful, the damages were excessive, and the case should go back for a new trial on this ground.

2nd. *Per Ritchie*, C.J., and *Fournier* and *Gwynne*, JJ., That the fact of the master being a shareholder in the corporation owning the vessel had no bearing on the case, and that it was proper to grant a new trial to have the question as to whether the plaintiff so acted as to justify his dismissal by the owners submitted to a jury, or a judge, if case be tried without a jury.

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*PRESENT.—Sir W. J. Ritchie, Kt., C.J., and Strong, Fournier, Henry and Gwynne, JJ.

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APPEAL from a judgment of the Supreme Court of *Nova Scotia*, making absolute a rule *nisi* to set aside a verdict of $2,000 in favor of the appellant. The action was brought by appellant against respondents to recover damages for an alleged breach of contract.

The plaintiff was master of the steamship *George Shattuck*, trading between *Halifax* and *St. Pierre* and other ports in the Dominion. She was owned by defendant company; the plaintiff being the largest shareholder of the company. He was dismissed before the expiration of the term of his agreement.

The 1st count of the declaration was based on an agreement to hire the plaintiff at $1,200 a year while the vessel should be engaged on such voyages, and alleged a wrongful dismissal on 22nd May, 1878. The 2nd count declared on an agreement for six months, at $950 per month (to include supplies for the ship and wages for the crew), and wrongful dismissal during that period, and while performing the voyages prescribed. The 3rd count alleged a hiring for six months, from 14th March, 1878, and a dismissal on 22nd May, 1878. The 4th count alleged an agreement to hire plaintiff, as long as the steamer should be employed by defendant company at $1,200 a year and dismissal while she was so employed. The 5th count alleged that, by way of inducing plaintiff to take $4,000 in shares, the defendant company promised that he should have command of the steamer while she belonged to defendant company, at $1,200, a year, and wrongful dismissal during that time. The 6th count alleged an agreement that, in consideration of plaintiff paying $4,000 into the company as a sharesman, the company would give him command of any steamer which they might put in the trade; that he paid the money and became master of the *George Shattuck*, and also undertook to provide wages and provisions at their request,

while they should employ the steamer, at $950 per month, and a wrongful dismissal before the expiration of the term. The common counts were added.

The 1st plea denied all the agreements. The 2nd denied all the grievances. The 3rd denied the employment. The 4th denied that plaintiff performed his duties. The 5th alleged negligence, carelessness and disobedient conduct on the part of plaintff. The 6th alleged disobedience and insubordination and refusal to obey the lawful commands of defendants and their agents, and insults to agents and improper and outrageous conduct. The 7th alleged that while the ship was in plaintiff's possession, defendants replevied her and dispossessed him, and that the replevin suit is still pending. To the common counts were pleaded never indebted and payment.

On May 26th, 1880, Sir *William Young*, who tried the cause without a jury, gave a verdict for plaintiff for $2,000. A rule *nisi* was taken for a new trial, and this was made absolute on 10th July, 1881. From this decision the present appeal was taken.

Mr. *Thompson*, Q.C., for appellant, relied on the following reasons in support of the appeal :

1st. The conduct imputed to the plaintiff did not warrant the respondent company in dismissing the plaintiff before the termination, of his contract, while employed under such an agreement as that which had been made.

2nd. The statements of misconduct were denied, and the verdict found this issue in favor of the plaintiff.

3rd. The contract by which plaintiff became, for a definite term, master, and entitled to find the ship in wages and provisions, was not one which could be terminated for the reasons which the respondents assign.

4th. The plaintiff's management of the ship having

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been faithful and satisfactory, and he being one of her owners and having a contract for a definite term, he was not removable for such reasons as have been assigned.

5th. The reasons assigned by the plaintiff, and which have not been controverted, were such as to excuse the language and conduct attributed to him—or, at any rate, to save him from the consequences of dismissal,

6th. The respondents condoned the alleged misconduct.

7th. The reasons which the respondents now assign for his removal are either offences which were condoned, or of which it does not appear that they had knowledge at the time of dismissal.

Mr. *Rigby*, Q C, for respondents, contended—

1st. That the respondents were justified in dismissing him, and that the appellant, not being a part owner of the respondents' steamer, the latter had a right at any time to dismiss without cause and without notice.

2nd. That the finding of the judge who tried the case as a matter of fact that the justification pleaded in the 5th and 6th pleas was not proved, is against all the evidence, or at least the weight of evidence.

But it must be observed that the finding of the judge was not an absolute finding, but was made with certain reservations, and in his judgment he characterizes appellant's language as indefensible. Besides, the learned judge considered the appellant to be a part owner in the steamer, and that the right of the owners to dismiss him was qualified by that fact, and also because he and his son had become stockholders in the enterprise, and the former had embarked all his capital in it.

3rd. That the damages were excessive.

If the justification was not proved the utmost

damages recoverable would be an equivalent for such a period of service as would cover a reasonable notice of such dismissal, which would be far below the sum awarded.

Besides, in estimating the damages, the judge was influenced by circumstances which ought not properly to have been considered in relation to that question, such as the transactions between one *Frecker* and appellant at the original inception of the enterprise, the alleged interest of appellant in the ship, that he was not a master in the ordinary sense, and that he had embarked all his capital, a considerable sum to him, in the purchase and ownership of the vessel. These circumstances are urged in the judgment originally given by his Lordship after the trial, and more strongly insisted upon in his subsequent dissenting opinion.

RITCHIE, C. J.: -

I think this appeal must be dismissed. It is abundantly clear that neither the fact of plaintiff being a shareholder, nor what he may have done with a view to redeeming the concern and saving it from ruin, which seems to have so much influenced the mind of the learned Chief Justice who tried this case without a jury, should have, in my opinion, any bearing whatever on this case. This is simply an action by the plaintiff for an alleged breach of contract in wrongfully dismissing him from his situation as master of a steam vessel belonging to defendants. The contract appears to have been that defendants agreed to employ plaintiff as master of the ship, and that he should receive $950 a month for commanding and sailing the ship and finding the crew and passengers.

The simple questions involved are, first, did plaintiff so conduct himself while in command of the ship as master, as to justify the defendants, the owners, in dismissing him? And this is a question for the jury and

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should have been determined by the judge who tried this case without a jury. If so, there is an end of the action. But secondly, if his dismissal was not justifiable, then what damages is he entitled to recover? The learned Chief Justice did not pass on the first question pure and simple, but treating plaintiff "not as a master in the ordinary sense," but under all the circumstances thought him entitled to a verdict, and that the sum of $2,000 was not unreasonable damages. The circumstances which influenced the Chief Justice appear to have been the fact that the vessel was owned by a corporation, and the master was a shareholder, for he adds to what I have just quoted:

> As it was understood, however, that the case would be remitted to the court in *banco*, the amount of damages, as well as the questions of law as to the right of dismissal, and the distinction between the ownership of a ship by a body of individuals, the master being one of them, and by a corporation under an Act, would come up for adjudication after argument and full enquiry.

This question as to the ownership of the vessel, the captain being a shareholder, had, as I have said, in my opinion, nothing whatever to do with the case, as everything must turn on the contract entered into with the company, with which plaintiff's interest in the ship as a shareholder had nothing whatever to do.

But, secondly, if the judge had found the dismissal unwarranted, there is nothing whatever to justify the amount of damages awarded. The true measure of damages in cases of wrongful dismissal are very plain and very simple, and in no circumstances, under the evidence in this cause, could plaintiff, on a monthly salary, under a contract by which he was not only to act as captain but was to find the crew and passengers for $950 a month, his wages as master being previously to his agreement $100 a month, be entitled to recover $2,000.

The court below were therefore quite right in granting a new trial, when the case can be submitted to a

jury, or to a judge, if tried without a jury, as to whether the plaintiff so acted as to justify his dismissal, a question of fact for the jury. Secondly, as to the amount of damages, as to the measure of which the jury should be instructed as in the ordinary case of employer and employee.

STRONG, J.:

The question of wrongful dismissal would have been one entirely for the jury, if a jury had tried this case; as it was, the question was one for the consideration of the learned Chief Justice, Sir *W. Young*, as a question of fact, and of the proper inferences to be drawn from facts; and upon the finding that the plaintiff was wrongfully dismissed, I should not be disposed to disturb his verdict. Making all allowance for the habits and manner of men of the plaintiff's calling, and taking into account his good service to the company and his undeniably good seamanship and management of his vessel, I think he was very harshly dealt with.

The damages, however, are unwarrantedly large; vindictive damages cannot be given in actions for breach of contract. The damages ought therefore to have been measured in the present case by the amount of the loss which the breach of contract occasioned the plaintiff, and as the hiring was a monthly one, a month's wages or $950 was the utmost which could properly have been allowed. I should be prepared to let a verdict for the plaintiff stand reducing the damages to this amount, but as the other members of the court think there ought to be a new trial, I do not dissent.

FOURNIER, J., concurred with Ritchie, C.J.

HENRY, J.:

I agree with the views of brother *Strong* in regard to this question. I think it is a proper question for a jury. If the Chief Justice, who was sitting as a jury,

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had found for the plaintiff damages such as we could justify, I would have felt inclined to sustain the verdict, but I must say that under the circumstances I think, with the means we have of ascertaining what the damages ought to be, they are too high. Therefore, I consent that the verdict should be set aside.

GWYNNE, J.:

This case was, as it appears to me, eminently a proper one to justify the court below in ordering a new trial. Whether the plaintiff was or not entitled to notice before being dismissed, depended upon his contract and the nature of his employment. This raised a mixed question of law and fact, which does not appear to have been tried. If entitled to notice, it could not, as appears, have been more than one month's notice, and then would have arisen the question whether the causes of dismissal relied upon and the evidence given thereof were sufficient to justify dismissal without notice. That was a point proper to be determined by a jury or a court of first instance acting as a jury, and does not appear to me to have been sufficiently considered. It is not a point proper for this court sitting as a Court of Appeal to adjudicate upon, as if it was a court of first instance. Then as to damages, the sole measure of damages applicable to the case appears to have been ignored. The only proper course to be pursued, as it appears to me, was to remit the case to be tried anew, as the ground upon which the learned Chief Justice proceeded in rendering a verdict for the plaintiff cannot, in my opinion, be supported. The plaintiff's appeal, therefore, against the rule absolute, ordering a new trial, must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellant: *Thompson & Graham.*

Solicitor for respondents: *Samuel G. Rigby.*