

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lablache v. Rangel (ship "Nina") from the High Court of Admiralty of England ; delivered the 6th February, 1868.*

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Present :

THE MASTER OF THE ROLLS.

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD T. KINDERSLEY.

IN this case, their Lordships, to avoid delay, intimated on the 20th December the nature of the Report and recommendation they had agreed humbly to submit to Her Majesty ; and Her Majesty was pleased by her Order in Council of the same date to approve of that Report, and to direct that the same be carried into execution. Their Lordships will now proceed to state more fully the reasons of that decision, which could not be stated at their last sitting before the adjournment of the Committee.

This is an Appeal from the Court of Admiralty, which dismissed the Defendant from this cause and all further observance of justice therein, and condemned the Plaintiff in the costs and damages consequent on the arrest of the vessel "Nina," and also condemned him in the costs of the cause and decreed the vessel to be released.

The vessel is a Portuguese vessel ; the Appellant is a British subject.

In April 1867 the Plaintiff commenced his services on board the "Nina," then lying at Havana. He signed the articles in the common form which was supplied to him, a certified copy of which is in evidence. On arrival at Greenock, he alleges that he was, by D'Almeida, the nominal captain, turned

out of the vessel without payment of what was due to him for wages and disbursements on account of the ship. Upon which he arrested her, but not prosecuting the case with sufficient diligence in Scotland, the suit was dismissed and the ship released. The "Nina" then came to Cardiff, where the Appellant again arrested the ship, and instituted this suit in the Admiralty Court for wages and disbursements.

In accordance with the 10th of the Rules of the Admiralty Court, published in 1859, notice of the suit was given to the Portuguese Consul residing in this country; whereupon the Consul sent in a protest, which, as far as is material, is as follows:—

"4. I have inspected the certificate of the matricula and roll under which the 'Nina' was sailing when she arrived at Greenock in the month of June 1867; and I say that such matricula and roll purports to have been duly executed, as required by Portuguese law, before Fernando de Gaver e Tiscar, the Consul-General of His Most Faithful Majesty the King of Portugal at Havana.

"5. By the law of Portugal, the masters of all Portuguese vessels are required, before taking any officer or seaman to sea in a Portuguese vessel, to enter into a matricula and roll, setting forth the voyage upon which the ship is about to sail, and that the officers and seamen about to proceed in her have agreed to serve for that voyage; and such matricula and roll is by Portuguese law the only mode in which a binding engagement can be entered into between the master of a Portuguese ship and his officers and seamen; and the matricula and roll when entered is signed by the master, officers, and seamen."

"7. The plaintiff in this action, Charles La Blache, has, by the said matricula and roll, submitted himself to the provisions of the *Codigo Commercial* of Portugal, by which the said Charles La Blache is restricted from taking any proceedings against the 'Nina' or her master, and is required to submit any dispute or disputes that might be existing between them either to the Portuguese Vice-Consul at Glasgow or to myself.

"8. The said Charles La Blache has not, as I am informed and believe, submitted or attempted to submit any dispute or disputes existing between him and the master of the 'Nina' to the Portuguese Vice-Consul at Glasgow; and that the said Charles La Blache has not submitted or attempted to submit any such dispute to me, which I would have readily entertained had the said Charles La Blache so done.

"9. The said Charles La Blache being subject to the provisions of the *Codigo Commercial*, and not having taken the measures adopted thereby to settle his dispute with the master of the 'Nina,' I respectfully submit that it is not within the jurisdiction of this honourable Court to entertain the claim of the said Charles La Blache; and, as the commercial representative of His Majesty the King of Portugal, I consider it to be my duty to respectfully and formally protest against the exercise of

the jurisdiction of this honourable Court in or about the dispute existing between the said Charles La Blache and the master of the Portuguese ship 'Nina.'

" F. I. VAN ZELLAR."

In this state of things several questions arise:

1. Whether the Court of Admiralty has any jurisdiction at all in the case of a claim for wages by seamen for service on board of a foreign vessel.

2. If it has such jurisdiction, whether, before exercising it, the Court is bound to send notice of the case to the Consul of the State to which the vessel belongs.

3. If the foreign Consul intervenes and protests, whether such protest operates *ipso facto* as an absolute bar to the prosecution of the suit, or whether the Judge is to take into consideration the grounds and reasons advanced by the Consul, and to determine according to his discretion whether, having regard to those grounds and reasons, it is fit and proper that the suit should proceed or be stayed.

4. Whether the grounds and reasons put forward in the protest of the Portuguese Consul in the present case are sufficient to satisfy the Court that the suit ought to be stayed.

On the first question, no doubt whatever is entertained by their Lordships. From the time of Lord Stowell down to the present, the Court of Admiralty has always asserted and exercised this jurisdiction. And if there remained any doubt on the subject, the 10th section of the Act 24 Vic., c. 10, expressly gives jurisdiction to the Court of Admiralty in the case of *any* ship, which, as the context and the rest of the Act plainly show, means the ship of any nation.

Nor have their Lordships any more doubt upon the second question. It has been argued at the bar that the 10th section of the Act of 24 Vic., c. 10, before referred to has the effect of abolishing the practice enjoined by the 10th of the Rules of the Admiralty Court of 1859, before referred to, of sending notice to the Consul of the nation to which the foreign ship belongs. To this argument their Lordships cannot accede. If it had been intended by the legislature to abolish the practice, that 10th Rule, which it is to be observed has the force of statute, would have been expressly referred to by

the Act, and overruled. This is not done. The 10th section of the Act is perfectly consistent with the Rule. The only object of that section was to extend the jurisdiction which the Court already had in the ordinary case of wages, to the cases of wages under special contract, and of disbursements on account of the ship.

With respect to the third question, their Lordships are of opinion that the protest of the foreign Consul does not, *ipso facto*, operate as a bar to the prosecution of the suit. The foreign Consul has not the power to put a veto on the exercise of its jurisdiction by the Court of Admiralty. It is well observed by Dr. Lushington, in the case of the "Golubchick," that the jurisdiction of the Court of Admiralty cannot depend upon the will of a foreign Consul; that as he cannot confer the jurisdiction, so he cannot take it away. If the Consul protests, but advances no reason, the suit will proceed. If he advances reasons for staying the suit, the Plaintiff must be at liberty to dispute the facts and answer the reasons put forward by the Consul; and then the Judge of the Court of Admiralty is to exercise his discretion, and determine whether, having regard to those reasons, with the answers thereto, it is fit and proper that the suit should proceed or be stayed. By discretion is meant, to use the words of Lord Eldon (7 Ves. 34), not an arbitrary, capricious discretion, but one that is regulated upon grounds that will make it judicial. That the exercise of this jurisdiction by the Court of Admiralty lies in the discretion of the Court in the sense before stated, is established by a long line of authorities, from the time of Lord Stowell down to the present. They are all one way, and they are, in the opinion of their Lordships, conclusive on this subject. And their Lordships concur in the decision of the late learned Judge of the Court of Admiralty in the case of the "Octavie," that this discretion is not taken away by the 10th section of the Admiralty Jurisdiction Act already referred to.

Upon the first three questions, then, their Lordships are of opinion that in the case of a suit for wages by seamen for service on board of a foreign vessel, the Court of Admiralty has jurisdiction, but that it will not exercise it without first giving

notice to the Consul of the nation to which the foreign vessel belongs; and that if the foreign Consul, by protest, objects to the prosecution of the suit, the Court will determine, according to its discretion, judicially exercised, whether, having regard to the reasons advanced by the Consul, and the answers to them offered on the part of the Plaintiff, it is fit and proper that the suit should proceed or be stayed.

Their Lordships are further of opinion that it makes no difference that the Plaintiff is a British subject. It is the nationality of the vessel, and not the nationality of the individual seaman suing for his wages, that must regulate the course of procedure.

With respect to the fourth question which is whether the facts and reasons adduced by the foreign Consul are established, and, if so, whether they are sufficient to induce the Court to stay the further prosecution of this suit. Their Lordships think that they are so. The Plaintiff does not deny that the roll or matricula which he signed was in the usual form, and that it contained the usual printed conditions which now appear on the certified copy produced in Court. By these he agrees to be bound by the Portuguese law; the Consul asserts the law to be, that in case of difference between the seamen and the captain, the case shall be determined by the Portuguese Consul residing in the country where the ship is arrested. The consequence is, that he is the Judge to determine the contest between the Plaintiff and Defendant, and he is ready and willing to hear and dispose of the case. No evidence is given to contest the accuracy of this statement, and this being so, their Lordships are of opinion that the Plaintiff has agreed to refer such matters to the decision of the Portuguese Consul resident here, and that this constitutes a sufficient ground to induce the learned Judge of the Court of Admiralty to come to the conclusion that, in the proper exercise of his discretion, this suit should not be proceeded with.

It must be a very strong case in which their Lordships would be disposed to overrule the discretion of any Judge which had been *bond fide* exercised on judicial principles, and they are of opinion that the decision of the learned Judge is correct in dismissing

the cause and releasing the vessel ; but the Decree in the Court below proceeds to award costs and damages to the Defendant against the Plaintiff. Their Lordships are unable to discover on what principle this can be rested. The question in the Court below, and now before their Lordships, is not whether the Plaintiff was right in his suit ; for the suit has not properly come to any hearing on the merits. The evidence necessary for arriving at a decision on the merits has not been produced. The only question properly before the Court below was whether the suit instituted by the Plaintiff should be allowed to proceed or not ; in other words, whether the facts and reasons set forth by the Portuguese Consul were sufficient to induce the Court to refuse to allow the suit to proceed, and these facts and reasons were the only matters which could be properly contested in the Court below. The learned Judge arrived at the conclusion, as their Lordships think, correctly, that the suit should not proceed ; but that very circumstance made it impossible for the Court to come to a safe and satisfactory conclusion as to what would have been the result if the suit had been allowed to proceed, the proofs on both sides given in the usual manner and the cause heard on the merits.

Their Lordships, therefore, are unable to concur with the learned Judge of the Court of Admiralty in that portion of his Decree which fixes the Plaintiff with the payment of costs and damages, and have therefore humbly reported to Her Majesty that the Decree of the Court of Admiralty be varied by striking out of it so much as relates to such costs and damages. The Decree runs thus: Her Majesty dismisses the Defendant from this cause and all further observance of justice therein, and decrees the said vessel to be released ; but their Lordships do not think fit to make any order as to costs, either in the Court below, or in the Appeal to Her Majesty in Council.

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