THE ENERGY

Ford v Owners of the M.F.V. Energy

Supreme Court
Unsworth, C.J.,
5 May 1970

Shipping — meaning of "foreign-going ship" — Merchant Shipping Act, 1894, ss. 92 and 742.

A single voyage from England (for purposes other than trade) is not sufficient to bring a ship within the definition of "foreign-going ship" for the purpose of the Merchant Shipping Act, 1894.

Quaere. Whether a contract of employment made in breach of s.92 is void for illegality.

Cases referred to in the judgment.

Kinley v The Sierra Nevada, [1924] 18 Ll. L. Rep. 294.
Shaw v Groom, [1970] 1 All E.R. 702.

Action

This was an action brought by the master of a motor fishing vessel for wages and disbursements. It was argued, inter alia, that the contract of employment was unenforceable for illegality.

P.J. Isola for the plaintiff.
J.J. Triay for the defendants.

13 May 1970: The following judgment was read—

The plaintiff in this case claims the sum of £416. 0s. 1d. which he alleges is due to him in respect of wages as master of the M.F.V. "Energy" and disbursements made by him on behalf of the defendants.

(After dealing with issues of fact, the judgment continues—)

There remains for consideration the question whether the contract was illegal. The defendants' submission on this point is that the vessel was a "foreign-going ship" within the meaning of s. 742 of the Merchant Shipping Act, 1894, and consequently required the master to be duly certified as such in accordance with s. 92 of that Act. In these circumstances it was submitted that the contract for the employment as master of the plaintiff (who only held a first mate's certificate) could not be performed without a violation of the law and was accordingly illegal and void whether the parties knew the law or not (Chitty on Contract 23rd Edition p. 811 at para. 810.). The vessel was in fact registered as a fishing vessel but the contention was that it became a foreign-going ship for the purpose of this particular voyage.

The definition of "foreign-going ship" in s. 742 of the Merchant Shipping Act, 1894, reads as follows:—

> ' "Foreign-going ship" includes every ship employed in trading or going between some place or places in the United Kingdom and some place or places situated beyond the following limits: that is to say the coasts of the United Kingdom, the Channel Islands, the Isle of Man and the Continent of Europe between the river Elbe and Brest inclusive;'

It seems to me that in order to come within the definition a ship must either be engaged in trade or be going "between" different places. In my view a single voyage from England (for purposes other than trade) is not sufficient to bring a ship within the definition. If it had been intended to include a single voyage the word in the definition would have been "or going from some place in the United Kingdom to some place or places". This view is supported by the decision in *Kinley v The Sierra Nevada* [1] where it appears to have been held that a ship which was being refitted after one foreign voyage came within the definition of a foreign-going ship on the ground that it was possible that it would make a further voyage from an English port. It would appear from this decision that the ship would not have been held to be a foreign-going ship if it had not been for the evidence establishing that there was a possibility of a further voyage from an English port. The report of this case is unfortunately not available here and I have based my conclusions on the short reference to it in the footnote in Halsbury 3rd Ed., Vol. 35, p. 125. But in any event, apart from this decision it seems to me that the definition itself does not include a ship other than one engaged in trading which only makes one voyage.

On the facts and authorities available to me, the conclusion that I have reached is that the defendants have not established that the vessel in this case was a foreign-going vessel so as to constitute an illegal contract and I do not think that there is sufficient material which would justify me in intervening of my own motion on the ground of illegality. It is unnecessary for me to make a finding as to the particular category of the vessel for the purpose of the voyage, but it is significant that the Navy and Air Line Officers Association appear to have considered that a certified master was not necessary for the voyage and the vessel was treated as a yacht at ports of call.

In view of the finding that s. 92 of the Merchant Shipping Act does not apply the question whether that section merely creates a penalty or whether it goes further and makes the contract of employment illegal within the principle set out in *Shaw v Groom* [2] does not arise.