

having sold similar vessels on your side before, and being a thoroughly practical man, can give every information as to build, character and equipment of vessel and cargo: We have advanced the amount necessary to fit out the "Joseph Dexter." Everything is new and good. The proceeds, therefore, after the necessary disbursements are paid, and also what Captain Fairbanks may wish to have for strictly personal expenses, are to be held subject to our order.

We are yours, faithfully,

(Signed)

SALTER & TWINING.

It is plain the statements of Salter & Twining, in their subsequent letters to Cater & Co., cannot bind Captain Fairbanks, namely, that he was bound to give his time to fit out the vessel free of charge. They refer, in those letters, to the above mentioned letter of 24th November, as containing their understanding with him; and, as a matter of evidence, I give more credit to his statements on oath, than their assertions made after the dispute had arisen. But Mr Burchardt contends that by this agreement Capt. Fairbanks precluded himself from claiming any sum beyond his strictly personal expenses and disbursements. If a professional man, or one whose services are accepted as such, performs professional work, he is *prima facie* entitled to a fair remuneration for them; but if the *prima facie* presumption be disputed, he is bound to make out his case, and it is then a question whether, taking all the evidence together, he has done so. (Hurgeston & Kelly, Lib. Ex. 360.) If he has declared or admitted that he gave them on the understanding that he was not to be paid for them, he certainly cannot recover, but the expectation of his being otherwise remunerated will not prevent his recovering the fair value of his work and labor if that expectation had failed him. Thus, in *Baxter vs. Gray*, 3 Man. & G. 761, a surgeon was allowed to recover for his professional services and medicines against the executors of his patient during whose life the plaintiff had made no claim for them, hoping to be re-paid by a legacy, in which expectation he was disappointed. Now, looking to the language of the letter of the 24th November, it surely could not be successfully contended that the wages of a mere stranger, if employed as master, would not be necessary disbursements; and when I am asked to imply that Captain Fairbanks' wages should be excluded from the category of necessary disbursements, merely because nothing had been specially said about them, I should expect some authority for such a strained construction.

It was likely enough that they should not have been specially mentioned, as he was a part owner, and the parties appear to have been long on very intimate and confidential terms, and all expected