

action, an action for an account should be commenced by the defendants on or before the 1st April, 1918, and should be prosecuted with due diligence, and the amount, if any, which should be found payable to McKay should be paid by the defendants within 60 days after being so ascertained.

This action was accordingly begun on the 28th March, 1918, for an account and a declaration that the plaintiffs, upon payment to the defendant on the basis of the account, were the owners respectively of 20 and 40 per cent. interests in the steamship.

The judgment now appealed against declared that, subject to and upon payment by the plaintiffs of the sums found by the Master, the plaintiffs and the defendant were, on the 1st August, 1917, and had been since and were now co-owners of the ship "Sarnor" in these proportions: 20 per cent. to Johnson and 40 per cent. each to Bonham and McKay. The learned Judge (Middleton, J.) did not fix the date of the vesting of the shares, and the judgment as entered included something that he did not actually decide.

Upon the argument of this appeal, it was obvious that the account taken was incomplete and not in accordance with the judgment in the former action, and it was intimated that leave would be given to appeal from the report, and the Court would deal with the matter as if that leave had been taken advantage of and the report was before the Court.

The judgment and the report should then be set aside, and the case should go back to the Referee with instructions to take the whole account directed by the judgment of the Second Divisional Court in the previous action.

Further directions should be reserved until after report, whereupon a judgment can be pronounced for payment of the amount due to the defendant over and above the amount already paid into Court, if anything, vesting the shares of the plaintiffs in them, and declaring the date at which such vesting should take place, together with any other directions respecting the incidence of the disbursements said to have been made by the plaintiffs as against any of the parties to the action.

When the case came before Middleton, J., the defendant refused to appeal from the report or apply for leave to do so; and so the present judgment was an indulgence to him. On the other hand, the plaintiffs had taken out a judgment containing a finding not made by the learned Judge. In these circumstances, there should be no costs of the appeal nor of the motion before Middleton, J., to either party. The costs of the previous reference and the reference now directed should be reserved to be dealt with on further directions after the making of the new report.

*Appeal allowed.*