

But to return to the abstract question of the draft:—

The defendant when he signed it, either had, or had not, the intention to pay the amount when the plaintiff should have proceeded to sea in the ship; if, in good faith, he did intend to pay the amount as soon as he should be informed of the performance of the condition by the plaintiff, there is no reason why that lawful intention should not now be forced into effect; if, on the contrary, it was his intention when he signed the paper, to withhold the payment, until he should have heard of the safe arrival of the ship and the delivery of her cargo at the port of destination, then he was using a false pretence to induce the plaintiff to go in the vessel, which cannot avail him in a court of justice.

The ship having left the port of Quebec, whether she were wrecked upon the coast of England, or the shores of Canada, can make no difference as to the defendant's liability.

It was argued for the defendant that he has now a right to say: "I signed that paper by error, or having signed it, although I was liable at one period for the payment, an event has since occurred which absolves me from the liability." The answer of the seaman would naturally be: "If by your error I have been induced to go on a dangerous voyage, it is just that the consequence of your own error should be supported by yourself, not by me; and if you were at any one time obliged to pay the amount, your obligation still exists, nothing having been done or omitted on my part to relieve you from it; you took the necessary steps to insure your ship against the perils of the sea; you knew that a total loss of the ship would bring with it a total loss of all the wages that I should earn and *you agreed to pay me the sum mentioned, as an advance and as so much secured to me from the risks I undertook to encounter.*"

It must be observed that the contract between the master of the ship and the mariners contains a stipulation for advance wages (£5 to the plaintiff) and the draft in question appears to have been given and accepted in payment for the advance.

A stipulation to pay a sum in advance of wages to a mariner, on condition that he proceeds to sea upon the voyage, is from its very nature an agreement to pay so much absolutely upon the fulfilment of the condition, whether the ship and cargo be lost upon the voyage or not; if it were otherwise, and if the payment were to depend upon the earning of freight by the ship, and consequent earning of wages by the mariner, it would be competent to the master or owner to withhold the payment in every instance, until the final termination of the voyage, and thus render his own stipulation nugatory.