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No. 6

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

OCTOBER 21ST, 1919.

JOHNSON v. MCKAY.

*Account—Judgment—Reference—Report—Opening up—Appeal—
Further Directions—Costs—Shares in Ship—Disbursements.*

Appeal by the defendant from the judgment of MIDDLETON, J., upon further directions, declaring the interests or shares of the parties in the ship "Sarnor."

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

W. N. Tilley, K.C., for the appellant.

R. S. Cassels, K.C., for the plaintiffs, respondents.

HODGINS, J.A., reading the judgment of the Court, said that this action was brought pursuant to leave granted by the Second Divisional Court in a judgment of the 16th January, 1918, in an action between the present appellant as plaintiff and the respondents, who were then defendants. By that judgment the Court declared that the plaintiff (McKay) was now the sole owner of all shares in the ship "Sarnor," but subject to and without prejudice to the right of the defendants to acquire from and have transferred by the plaintiff to the defendants Johnson 20 per cent. and Bonham 40 per cent. and to be adjudged and declared the owners of 20 per cent. and 40 per cent. of such shares and of the earnings, if any, of the "Sarnor" for salvage or otherwise, upon the plaintiff being reimbursed such amount as should, upon a due accounting by all parties and upon the taking of an account of all the earnings of and all expenditures made on behalf of the ship, be payable to the plaintiff under the agreements of the 1st June, 1916; and the Court adjudged that, unless such accounting should be directed in any other action now pending between the parties to that