

a profit, not a loss, on the adventure. On the whole, I do not think that there is evidence that the plaintiff undertook to give his services in any event gratuitously, and as his former expectations have been disappointed, I hold that he is remitted to his original rights.

But it is further contended, that even if that be so, his misconduct has forfeited his claim. Now, the facts are these: He arrived on the 21st December at Queenstown, where he left the ship, and travelled on to Liverpool where he was told by Mr. Burchardt, on the 28th, that nothing could be done till the holidays were over. He therefore returned directly to Queenstown, but was never consulted by Cater & Co. as directed by the letter of Salter & Twining. On the contrary, Cater & Co., insisting on their alleged rights under the bill of lading and certificate of sale, treated him, not as jointly interested in the ship and cargo, but merely as an ordinary master, ordering him to obey their directions about the ship and cargo. I have read Captain Fairbanks' letters to them carefully, but am quite unable to see anything improper in them, he only asserts his own rights, refers to Salter & Twining's letters, and denies their power to pledge his property for their own engagements.

However, Cater & Co. having endorsed the bill of lading to Mr. Barker, he demanded the cargo, which Captain Fairbanks refused to deliver. Whether the refusal was in point of law justifiable or not, is a matter on which it would be premature to express an opinion. But he is entitled to shew what reasons he alleged for not delivering it; and he accordingly wrote to Cater & Co. a letter dated 21st January, stating that Mr. Barker had demanded the cargo, and threatened, on his refusal to deliver it, to have Mr. Fairbanks put in prison and the ship arrested. None of the statements of that letter as to Mr. Barker's conduct are denied, though that gentleman was in Court at the hearing. I have no doubt that Mr. Fairbanks was treated, to say the best, with a high hand, and there was some provocation given for the harsh epithet fraudulent which he used respecting the manner in which he had been treated. It does not appear to have been ever stated to him by Cater & Co., who yet knew very well that he was interested in the cargo, that any property had passed under the endorsement of the bill of lading, or that Barker was more than a nude assignee, who would as such not be entitled to sue on it either at Common Law or in this Court, as was decided by the "*St. Cloud*" (Brown & L. 18.) No doubt the consignee named in a bill of lading, or his assignee under a proper endorsement of it, is in general the person entitled to receive the cargo, and Captain Fairbanks would have been quite justified in delivering the cargo to the holder of the bill of lading. But then he may have fairly expected that Cater & Co. knew the