

WHOSE BOAT?

TWO ESTHONIANS DISPUTE OWNERSHIP.

COURT DISMISSES TWO CHARGES.

The adjourned charge against Alexander Nicholas, fisherman, of having on or about July 5, 1922, been in possession of a sailing boat in Franklin Harbor, which might reasonably be suspected of having been unlawfully obtained, came on for hearing at the Pirie Police Court yesterday.

The information was laid by Jack Lindbek, laborer. Mr. S. J. Warren appeared for the prosecution, and Mr. J. G. Sweeney for the defence. Mr. D. C. Scott, S.M., occupied the bench.

Mr. Sweeney said he desired to take two objections to the information.

Mr. Warren applied for permission to withdraw the information, and to substitute another one, with an alteration in the date from July 5 to July 13.

Mr. Sweeney asked for the dismissal of the information. He said the defendant was arrested at Cowell on a sworn information, and had been brought to Pirie and incarcerated. He had been deprived of his liberty from Thursday to Saturday, as the prosecution had objected to bail. There were seven witnesses present, while two others could not be located, as the alleged offence had taken place in 1914.

Mr. Warren asked that the question of costs should be costs in the cause. There was another information before the court.

The S.M. said the information would be dismissed with £5 costs.

New Information Laid.

A fresh information was then laid, charging the defendant with having

A fresh information was then laid, charging the defendant with having been in possession of the boat on July 13.

Mr. Sweeney objected to the information, as no offence was disclosed in that a sailing boat could not be grasped naturally and carried.

The S.M. said the matter would take some looking into, and he would reserve his decision on the point.

Mr. Warren detailed the facts of the case. He said Limbek, the informant, was a laborer residing at Risdon Park. In 1914 he was working at the Smelters. Limbek and defendant were boarding at the same house, and decided to build a sailing boat with the idea of going into partnership as fishermen. At first they put in their spare time only in building the boat, but later the informant devoted the whole of his time to the boat, and he was dismissed from the Smelters. The whole of the material was purchased by the informant. It was originally intended that the cost should be shared, but the defendant backed out of it, though he had done a small amount of work on the boat. The greater part of the timber was bought from Bowden and Son, by the informant, and paid for by him. The receipts were issued in the name of Limbek, and these subsequently passed into the possession of the defendant. The purchases of timber commenced in May, 1914, and in addition Limbek also bought seam plates, anchor, ropes, wire, and copper nails for the fitting out of the boat. He put in an infinitely greater amount of labor on the boat than did the defendant. Counsel contended that whatever work the defendant did on the timber did not give him a claim to ownership. The boat was conveyed to the water for launching by Malloy's on December 10, 1914, and Limbek was sued for the cartage upon his return from the war. Early in 1915 the informant made up his mind to go to the war, and he asked the defendant whether he was prepared to buy a half-share in the boat. The defendant declined, saying the boat was only good for firewood. Limbek replied, "Ah

for firewood. Limbek replied, "All right, you leave her on the beach, she is my boat."

The S.M.: Why should he make such a remark? It looked as if the defendant had some touch with the boat.

Mr. Warren: It would imply that the informant feared the defendant would interfere with the boat, on the assumption that he had put some labor in it. It seemed only a natural precaution for the informant to take. The defendant had done no work entitling him to ownership.

The S.M.: It seemed a big jump for the informant to make such a remark. He could have protected himself in another way.

Mr. Warren said that during September, 1915, the informant returned to Pirie on furlough, and spent two days here, and noticed that the boat was not where he had left it on the beach at Solomontown.

The S.M.: Didn't he leave the boat in care of anyone? He might have been away for years or in fact he might never have come back.

Alleged Use of Boat.

Mr. Warren replied that the informant was at that time a single man, and the boat would be no use to him if he did not come back. Limbek suspected the defendant of taking the boat, and Nicholas replied: "The boat is at the bottom of the river; it was no good, and it has sunk." Limbek asked him what right had he to put the boat in the water, and Nicholas replied that he was entitled to do so as he had put in labor on the boat. Limbek said the defendant had done only a few hours' work compared with days spent by the informant. The latter returned in September, 1918, and found that the boat was missing. From information he came to the conclusion that Nicholas had it, and Limbek had been looking for him ever since, but had not set eyes on him until last Friday. The boat was afloat up to the time Limbek returned to Pirie on furlough, and it was afloat a week later, and had been cruising about the gulf

and had been cruising about the gulf ever since in charge of the defendant. The only alterations in the boat were that the well had been enlarged, the rudder altered, and new sails and rigging had been affixed. The defendant had taken a mean and paltry advantage of the informant's absence at the war to steal the boat.

The S.M.: You are not charging him with stealing. You should not make

statements which you do not intend to substantiate.

Mr. Warren: Very well, I will withdraw the remark. The informant was looking for the defendant, but had been unable to catch him as he used to hoist sail and get out of port.

The S.M.—Is it a fast boat?

Mr. Warren: It is a 30ft. cutter. I would suggest an inspection be made of the boat.

Mounted Constable Murphy, of Cowell, gave evidence as to the arrest of the defendant in Franklin Harbor. At the time Nicholas was sitting in the boat. Witness had known him for 12 months, and knew that he rarely missed calling in at Cowell every week. Witness thought the defendant was using the same boat all the time.

To Mr. Sweeney: The defendant was very quiet and well behaved. In April last an enquiry was made by counsel for the informant regarding the whereabouts of the defendant. About the end of June he received a telegram from Mr. Warren asking whether Nicholas still called in at Cowell on Thursday.

To Mr. Warren: The telegram may have read: "Can you locate Nicholas?"

The court adjourned for an inspection of the boat, and upon returning the S.M. said he had come to the conclusion that the design of the boat had been completed by the defendant and improved by him.

Mr. Warren: The defendant had made some trifling alterations, but had not interfered with the design.

Evidence of Informant.

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Jack Lambek, laborer, residing at Resdon Park, gave evidence on the lines of his counsel's explanation. He said he and the defendant were Esthonians. The boat was built by him in 1911. The well had been enlarged, and the boat fitted with new masts and rigging, anchors, mainsail, staysail, and jib. He understood there had been an alteration to the keel. The ribs had been damaged, having been sawn off to the level of the deck. He had never tested the boat, and could not say whether the alterations had improved it or not. They were boarding together in Pirie West, and made it their business to build the boat together as partners.

Mr. Warren: Did you actually go into partnership?

Witness: No. He ordered the timber at Bowden's, and was accompanied by Nicholas. Witness went into the office and paid the lad. The timber was bought in his name, and the receipts were left in his portmanteau in Nicholas' room, together with his naturalisation papers. He obtained possession of the latter in 1914, but did not know what became of the receipts. At the start they did the same amount of work, but he took some days off work to complete the boat in quicker time, with the result that he was put off at the Smelters. He then did the biggest part of the work on his own. The defendant only worked in his spare time. Witness paid for the whole of the material until the boat was ready for launching. He asked the defendant to share in the payments, but the defendant refused, saying the boat was no good. Witness told him to leave the boat on the beach if he would not pay his share.

The S.M.—Did you pay the defendant anything for his labor?

Witness—No. On my return from the war in 1919 the boat was missing. I went to Cowell last Tuesday, and saw the defendant sailing in with the boat. I saw the police, and after the defendant was arrested I sailed the boat from Franklin Harbor to Port Pirie. A distance of 60 miles. The

boat from Franklin Harbor to Port Pirie, a distance of 90 miles. The value of the boat was £120. Prior to my enlisting the defendant made no claim to partownership of the boat.

To Mr. Sweeney—He had not always been short of money except during the bad times lately. He denied having borrowed money from the defendant while they were boarding at Honan's. He did not think the masts, gaff, and boom were made by the defendant at the back of the Federal Coffee Palace in Florence street in 1915. Witness made all the masts at Honan's. Part of the tools belonged to Nicholas.

Mr. Sweeney—If Nicholas had paid you the half-share for the cost of the boat, you would have been quite satisfied?

Witness: Yes. I would be more than satisfied now if he paid me for half share of the boat and half the profits he has made, as it would run into over £900.

To Mr Sweeney: He paid £15 for the sails, £4 for nails, £30 for lumber, £3 for paint and putty, and £10 for wire and blocks. He left the Smelters in September, 1915.

The S.M.: What would be the condition of the boat if it were left on the beach until you came back from the war?

Witness: It could have been caulked up.

The S.M.: Would it not have been better to use the boat as the defendant did than to leave it on the beach at the mercy of the weather for several years?

Witness: I admit it was better for someone to look after the boat. It would be more reasonable for the defendant to have looked after the boat if he had paid his share of the cost.

Mr Sweeney: Then it resolves itself into a dispute between you and the defendant on money matters?

Witness: Yes. I did not hear that the boat was on Burgoyne's slip for three weeks in August last. I did not see the defendant at Anderson's boardinghouse after my return from the war, nor did he give me

any message after my return from the war, nor did he give me some fish near the Federal Wharf. I sent messages to him, but never got a chance of seeing him.

Magistrate Suggests Conference.

The S.M., at this stage, stated that the case appeared to be one for a civil action and not for a criminal prosecution. He suggested that the parties should confer and settle their differences, and that in the meanwhile the boat should be placed in the custody of an independent party.

Mr Warren said he was amenable to this course, as informant only wanted his rights.

Mr Sweeney objected to this procedure after the atrocious action of arresting the defendant.

John Jacobson, laborer, residing in

David street, gave evidence as to seeing the boat afloat at the back of the Baltic Wharf while Limbek was in camp. The boat was under water when Limbek was on furlough. About a week later he saw it afloat again. Witness had seen the defendant two or three times in Pirie after Limbek's return from the war, and told him that Limbek wished to see him.

Arthur Denham, yardman at Bowden and Sons, deposed that some years ago Limbek bought some timber from the firm, which he thought was for a boat. He had also seen Nicholas in the yard, and had supplied him with timber.

Richard John Bowden, timber merchant, produced a copy of a ledger account, showing timber supplied to Jack Limbek in 1915, and payments received. He had also seen the defendant in the office.

Mr Sweeney, in an address to the bench, said possession of the boat had been with the defendant ever since the boat had been able to sail. It had been shown in evidence that the two men started in partnership, and there was nothing to show any dissolution of the partnership. The proper course for the plaintiff was to

per course for the plaintiff was to have brought a civil action for a statement of accounts and a share of the profits, instead of resorting to a criminal prosecution.

The S.M. said it seemed peculiar that the defendant had been going in and out of Cowell every week for provisions, and that no attempt had been made by the plaintiff to bring him to book.

Question of Possession.

Mr Sweeney remarked that no demand had been made upon the defendant for a return of the boat. He asked for a dismissal on the ground that the prosecution had not discharged the onus thrown upon them of showing a reasonable suspicion that the boat had been unlawfully obtained.

The S.M.: I think I am with you there. All that the prosecution has shown is that the defendant has some interest in the boat.

Mr Sweeney contended that the length of time that had elapsed in bringing the action was in favor of the defendant in the matter of possession. It was going a long way back to raise reasonable suspicion of unlawful possession eight years ago.

Mr Sweeney further contended that the parties were tenants in common, and had unity of possession. There were civil remedies for trespass or detention. He contended that there was no case to answer.

Mr Warren replied that Limbek had made every endeavor to find Nicholas, but was unsuccessful. If there had been a partnership it had been terminated by the defendant's action in not paying his share of the cost.

The S.M. said the court should not encourage the putting into operation of criminal proceedings when there was a remedy by civil action. When the war broke out, one man had gone to the war, and the other had taken the boat. The defendant's treatment of the boat was far preferable to what the informant had suggested.

Mr Warren said that if the case

WHAT THE INFORMANT HAD SUGGESTED.

Mr Warren said that if the case were dismissed, he would advise his client to take possession of the boat.

The S.M.: The case will be dismissed with £2 2 counsel's fee.