

Fremantle Police Court. (Before J. G. Slade, Esq. R.M. and J. F. Stone, Esq.; SATURDAY, 18th APRIL; 1874. James Toohill v. H. M. Downing.-In this case the plaintiff, a pensioner on the Enrolled Force, claimed the sum of £11 2s., being amount of wages due to him for 111 days at the rate of 2s. per day, from the defendant, who is captain of the 'Naval Brigade'. Mr. Howell appeared for the plaintiff, and Mr. Leake for the defendant. Mr. Howell very briefly opened the case, laying before the bench the nature of the work performed by his client, and the principal facts which had brought about the present action, and in support of which he called : James Toohill, who sworn, said :-I am a pensioner on the Enrolled Force, coming out in the ship 'Naval Brigade,' and was a pensioner on the Enrolled Force in Ireland. I had my name placed in the pension office at Limerick to emigrate to Western Australia. Having been informed that I was approved of, I left Limerick and proceeded to Gravesend, at which place I was quartered in barracks-one half of which was occupied by soldiers. In Ireland a printed circular was handed me, and in it I was informed what I should require for the passage. I was supposed to find the whole of my own clothes - the ship finding bedding and mess utensils. I, with the other pensioners who came out with me embarked on board on the 31st October, 1873, having received pay at the rate of 1s. 3d. per day, and rations, from the time I left Limerick till the date of embarkation. While in barracks at Gravesend some of the men asked the staff officer of pensioners (Major Richmond) whether great coats would not be required for the passage he then communicated with the War Office, and the answer received was, that the men not going out as convict guards would have no duty to perform, save looking after the cleanliness of their families. The following day after going on board, we were fell into watches by the Sergeant Major. Some days after being out at sea, I refused to carry water, and I was immediately brought by the Sergeant of the watch before the Captain and to him I repeated my refusal, saying that I thought it was illegal to make us work in the manner he was doing. He said it was in his power to make us work, and he would do so, that if I had any demands to make he would meet me in Fremantle with respect to them. We commenced our watch at 10 o'clock in the morning, and were not relieved till 10 o'clock the following day. At 20 minutes to six in the morning we commenced washing decks, assisted sometimes by two, sometimes by three seamen ; this took till breakfast time. After breakfast we commenced carrying water, bringing up coals, in fact doing anything we were required to do. We carried water for the use of the condenser, and for cooking purposes I have on several occasions been called out of bed to help to put the ship about, and on one night in particular I received orders to be in readiness at 12 o'clock for this purpose. I swear that I have heard the captain give the Sergeant of the watch orders, and those orders were repeated to the watch. Cross-examined by Mr. Leake :-I was in the 69th and 63rd regiments, and receive 1s. per day pension. It was not till I arrived at Gravesend that I knew what I was coming out for. From the instructions in the circular I received I knew the Sergeant Major was to be the officer in charge. On the morning we arrive Major Finnerty came on board and inspected us, he also told us what duties we would have to perform-he was in uniform. No instructions were given me that I was to be under the command of Mr. Elliott, neither was any paper read with regard to duties on board troop ships. I have been on troop ships before, but as a soldier receiving pay and my service counting. My passage was free, I was not in any way charged for it. I was under the control of the Sergeant Major while in Gravesend barracks. Edward Killington, said he was a pensioner on the Enrolled Force, and came to this country with the last witness, in the ship 'Naval Brigade.' He recollected leaving Gravesend, the captain was on the deck at the time; the men were fell in, and the Sergeant Major divided them into watches, telling them at the same to pay attention to the captain and obey his orders. This witness generally corroborated the evidence of the foregoing witness relative to the work performed. Owing to repeated complaints being made by the men, they were fell in on the poop, and the captain read one or two paragraphs from a circular (circular produced)-" Conditions of service for pensioners as convict guards." William Harrison, a seaman, was called, and stated that the captain dismissed three men at Gravesend, and that the crew of the ship was insufficient for the working of her, Mr. Leake claimed a non-suit on the ground that the plaintiff had failed to establish or prove any contract, and therefore the claim was void. Mr. Howell objected, and the following evidence was adduced : Edward James, said-I was Sergeant Major of pensioners on board the ' Naval Brigade.' I know the pensioner James Toohill, he was under my command, and I received that command from the War Office authorities. I was under the orders of the captain. I have been on board troop ships before, and the men in my opinion did no more than would have been required of them had they been on such a ship. Major Finnerty was then called, and in his opinion the men had done no more than was necessary for their own comfort and convenience, and the claim of this man was simply an imposition. The Solicitors having addressed the Court on behalf of their respective clients, the Court after consulting for a brief space, gave judgment for one shilling a day (for 111 days) and costs.