

"Swan," a steamboat of 25 tons, registered in Canada and employed in navigating the River Ottawa, by the defendant, acting as master of the vessel, and that on the 30th August last the defendant abandoned his vessel. The plaintiff has brought suit for the recovery of a balance of \$34 due to him on his wages, and has seized the vessel on a writ of attachment before judgment.

The defendant is stated to reside in Ottawa, but the writ was served on board the vessel, speaking to one of the seamen; and the defendant has made default to appear.

Woodburn, the registered owner of the steamboat, who also resides in Ottawa, has intervened; and he pleads the nullity of the seizure, alleging in the first place that there are fatal irregularities in the proceedings, and then that the plaintiff could not enforce his claim for wages due to him by the defendant against the vessel, which was the registered property of the intervener and had only been leased to the defendant for the season.

The certificate of registry and the lease have been filed; and the plaintiff's engagement by the defendant and the latter's abandonment of the vessel have been proved.

Under the law regulating merchant shipping, both the owner and the master are liable for the plaintiff's wages, and he has also a maritime lien for their recovery on the vessel.

But is the mode adopted in this case the proper one, and has this court jurisdiction in the matter?

In the assignment of subjects made by the British North America Act, navigation and shipping fall under the exclusive legislative power of the Parliament of the Dominion; and all matters respecting seamen employed on steamboats of more than twenty tons, and on other vessels of more than fifty tons, registered in Canada and used in navigating the inland waters of Canada above the harbor of Quebec, have been regulated by chapter 75 of the Revised Statutes of Canada, known as "The Inland Waters Seamen's Act." Section 30 prescribes the mode of recovering from any master or owner the wages due to any seaman or apprentice to an amount not exceeding \$200; and section 33 provides

how in default of sufficient distress such wages may be levied on the vessel on board which they were earned.

Summary jurisdiction for the recovery of such wages is conferred on any judge of the Superior Court, any judge of the Sessions of the Peace, any stipendiary magistrate, and also on any two justices of the peace, acting at or near the place where the service of the complainant has terminated, or where he has been discharged, or where the master or owner is or resides; and power is given to such judge, magistrate or justices to cause the amount of the wages awarded to be levied by the distress and sale of the goods and chattels of the person condemned, and in default of sufficient distress by the sale of the vessel.

And it is in fact specially enacted that no suit for the recovery of wages under the sum of \$200 shall be instituted or had in any Superior Court, unless the vessel is under arrest or has been sold by process of such court, or unless the case has been referred by the summary court to such court for adjudication, or unless neither the master nor the owner is or resides within twenty miles of the place where the seaman or apprentice has been discharged or put ashore.

In the present case the exceptions above mentioned do not apply, and the Circuit Court clearly has no jurisdiction in the matter; the parties must therefore be dismissed out of court. But as the intervener has not pleaded the incompetency of the court, I will not allow any costs.

The judgment will be recorded as follows:—

"Le tribunal se déclare incompétent, et renvoie les parties sans frais."

Rochon & Champagne, for plaintiff.

Arthur McConnell, for intervener.

COUR D'APPEL DE PARIS.

25 janvier 1887.

Présidence de M. MULLE.

LAGARDE V. LAPAYRE.

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