

of a vessel levied upon by defendant as a constable under a warrant issued on a judgment for seamen's wages.

W. F. O'Connor, K.C., in support of appeal.

T. R. Robertson, K.C., contra.

GRAHAM, E. J., delivered the judgment of the Court.

The plaintiff, the master of the schooner "Dorothy Duff," has brought an action for conversion and has replevied the ship from the defendant, a constable, who justifies under a warrant to levy upon the ship for services, wages and expenses under s. 190 of c. 113 of the Revised Statutes of Canada.

There were four seamen in all who took proceedings to recover their wages, but the papers printed in the appeal relate to the case of Henry Ponton who recovered judgment for \$63 and some expenses and costs before a stipendiary magistrate for the county of Cape Breton.

The defendant contends that the wages had not become payable, that the magistrate had no right to treat them as payable by the month but only on the completion of the voyage at another port, and that this is a jurisdictional defect.

I think first that this question was involved in the judgment on the merits of the case and was not collateral thereto and therefore that the matter cannot be attacked in this collateral way.

The proceeding is neither an appeal from the magistrate nor even a writ of certiorari. He has found that the wages were due and payable, and we cannot, no matter how humble the Court, retry it and in effect reverse him. Nothing on the face of the warrant discloses any error of the magistrate of this sort. I refer to *Britain v. Kinnaird*, 1 B. & B. 432; *Mould v. Williams*, 5 Q. B. 469.

And secondly, I think that the warrant being good on its face protects the constable and defeats the action against him. He is not to be made liable for any error in the decision of the magistrate.

The next point taken is that the warrant is not good on its face; that it does not disclose that the magistrate was "acting in or near the place . . . at which the master is or resides:" sec. 187.

In my opinion it can be clearly inferred from the face of the instrument that the master was at that place and