

Mar. Court.]

RE THE TUG "KATE MOFFATT."

[Mar. Court.

CANADA REPORTS.

ONTARIO.

MARITIME COURT.

(Reported for the LAW JOURNAL by J. BRUCE, Esq., Registrar).

RE THE TUG "KATE MOFFATT."

Jurisdiction.

Held, that the Maritime Court of Ontario has no jurisdiction in respect of claims that accrued before the proclamation bringing into force the Maritime Court of Ontario.

This was a cause of wages instituted in this court by John Hand against the American tug *Kate Moffatt*, to recover the sum of \$568.15. The defence set up was, that a portion of the plaintiff's claim accrued before the issue of the proclamation bringing into force the Maritime Jurisdiction Act of Ontario.

Brough, for petitioner.

W. R. Muloch, for defendants.

MACKENZIE, J. M. C. O. :—The Maritime Jurisdiction Act, 1877, received the Royal Assent on the 28th of April, 1877, and the Act came into full operation, under the authority of a proclamation of the Governor in Council, on the 18th of February, 1878. The plaintiff's claim accrued on the 6th of December, 1876. It has already been decided in this Court, in the cause of the *Edward Blake*, that a contract for wages entered into before the passing of the Maritime Jurisdiction Act, but not completed until after the passing of the Act, came within the jurisdiction of the Court, and that the balance of wages then due formed a maritime lien on the ship; a similar doctrine was recognised by the English Court of Chancery, in *Page v. Bennet*, 29 L. J. Ch. 398. But a balance of wages falling due a year and a half before the passing of the Act and the formation of the Court itself is a very different thing. Mr. Brough contended that the Maritime Jurisdiction Act was a remedial statute, and was retrospective in its operation, and cited Maxwell on

Statutes, pp. 199 and 202, the case of the *Alexander Larsen*, 1 Robinson A. R. 288, and the case of the *Ironsides*, 31 L. J. N. S. P. M. & A. cases, 129, and other authorities. The jurisdiction of this Court rests upon the 1st section of 40 Vict. chap. 21, which enacts that, "save as by this Act excepted, all persons shall, after this Act comes into force, have in the Province of Ontario the like rights and remedies, including cases of contract and tort, and proceedings *in rem* and *in personam*, arising out of or connected with navigation, shipping, trade or commerce, on any river, lake, canal, or inland water of which the whole or part is in the Province of Ontario, as such person would have in any existing British Vice-Admiralty Court if the process of such Court extended to the said Province." By section 2 it is enacted, "For the enforcement of such rights and remedies the Maritime Court is constituted, and shall have, as to the matters aforesaid, all such jurisdiction as belongs in similar matters within the reach of its process to any existing British Vice-Admiralty Court." By section 21, "so much as relates to the appointment of the Judge, Surrogate Judges and Officers, and the making of general rules and tariffs, shall come in force on a day to be appointed by proclamation of the Governor in Council; and the residue of this Act shall come in force on a subsequent day, to be also appointed by such proclamation." It is not to be lost sight of, in deciding the question of jurisdiction, that the Maritime Jurisdiction Act did not come into operation immediately after its passing. In discussing the merits of *Marsh v. Higgins*, 9 C. B., 551, the learned author of Maxwell on Statutes remarks, "Some stress also was laid on the circumstance that the Act did not come into operation until eight months after its passing." The Dominion Maritime Jurisdiction Act did not in reality come into force for ten months after its passage; that did not appear on the face, yet still enough appeared to show that it could not come into operation for several months. Has the Maritime Jurisdiction Act retrospective operation?