

Mar. Court.]

THE "NITHSDALE."

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My attention was directed to the case of *Everard v. Kendall*, L. R. 5 C. P. 428, where it was held that collision between two barges in the river Thames was not within the jurisdiction of the Admiralty Law. The definition of a ship or vessel in "the Admiralty Court Act of 1861" is the same as given in the Vice-Admiralty Court above stated. These barges were propelled by oars.

Ex parte Ferguson, L. R., 6 Q. B. 280 was cited, where the English Queen's Bench held that a *fishing coble* employed in the herring fishery, being about 24 feet long, 7 feet beam, 10 tons burthen, drawing about 18 inches of water, with a main and mizen mast, and a bowsprit to ship and unship and a jib mainsail and mizensail, was a "ship" within the meaning of the Act. Sir Colin Blackburn in giving judgment said: "It is said the coble cannot be a ship: she is 24 feet long; she is not entirely decked over—she has two masts and a rudder which are removable, and she may be propelled by four oars; she goes out well to sea and though the oars are used to get her out of harbour they are merely auxiliary to the use of sails. It is said on behalf of the Board of Trade, that she is a ship or vessel. The chief argument against the proposition is by referring to the interpretation clause which says 'ship' shall include every description of vessel used in navigation not propelled by oars. And the argument against the proposition is one I have heard very frequently, viz., where an Act says certain words shall include a certain thing, that the words must apply exclusively to that which they are to include. That is not so. The definition given of a 'ship' is in order that 'ship' may have more extensive meaning. Whether a ship is propelled by oars or not it is still a ship unless the words 'not propelled by oars' exclude all vessels which are ever propelled by oars. Most small vessels rig out something to propel them, and it would be monstrous to say that they are not ships. What, then, is the meaning of the word 'ship' in this Act? It is this: that every vessel that substantially goes to sea is a

"ship." I do not mean to say that a little boat going out for a mile or two to sea would be a ship; but where it is the business really and substantially to go to sea, if it is not propelled by oars, it shall be considered a ship for the purpose of this Act. Whenever the vessel does go to sea, whether it be decked or not, or whether it goes to sea for the purposes of fishing or anything else, it would be a ship, you see. The facts stated are that this vessel, though of small size, yet goes out 20 or 30 miles to sea, does go there almost entirely with sails, does stay out many hours, and I think it is probable that it goes out for days and nights. This makes it impossible to say that it is not a sea-going vessel, and consequently a "ship," coming within the 'Act,' without the aid of the interpretation clause."

In *Everard v. Kendall*, already cited, it was held by the whole Court that a barge propelled by oars was not a ship or vessel, within the definition above given. Dredges, or dredgers, like the *Nithsdale*, are described sometimes as scows, other times as barges. According to *Everard v. Kendall* she would not be a ship or vessel over which the Court of Admiralty had jurisdiction. The *Nithsdale* has no internal powers of propulsion; she is not propelled by oars or sails; she is flat-bottomed; she is intended to be used in harbours, rivers and docks; she has to be moved to a distance by means of a tug; she has not power of her own to be moved; she is not and cannot be a sea or lake-going vessel; she is not adapted to be an instrument of transportation on and over rivers, lakes and canals, or used in navigation or naval transportation. In my opinion the petition must be dismissed; but as the question raised is a new one, of considerable importance, it will be without costs.

LAW SOCIETY.

TRINITY TERM, 43RD VICTORIAE, 1879.

The following is a *résumé* of the proceedings of the Benchers during this Term, published by authority.