

Mar. Ct.]

ONTARIO REPORTS.

[Mar. Ct.]

edies and liens for the recovery of his wages, whether by this Act or by any law or custom, any seaman, not being a master, has for the recovery of his wages. As at present advised I must hold this petitioner to have a right to recover here.

A question was raised as to the power of the Court to deal with mortgages. The Vice-Ad. Ct. Act of 1863, confers jurisdiction upon those Courts as to claims in respect of mortgages when the ship has been sold by a decree of the Vice-Ad. Court, and the proceeds are under its control. Our Maritime Court Act gives this Court the same jurisdiction as is conferred upon that Court. But I do not quite see how this question comes in; the mortgagee here merely intervenes, upon the filing of a petition *in rem*, and disputes the petitioner's claim.

Upon the whole case, then, I am of opinion, that there should be a decree in favour of the petitioner for the sum of \$160, *i. e.*, the sum of \$180, 3 months' wages in 1881, less the sum of \$20 received on account, together with his costs of suit.

Gamon and A. Horvell, for petitioner.

O'Connor, for intervener.

THE TUG MAYTHAM.

Suit for wages, proceeding in rem—Mortgagee intervening—Hiring of petitioner by two only of the three joint-owners, the third being the master of the vessel—Mortgagee not bound by such a hiring if wages excessive.

This was also a proceeding *in rem* (against the same vessel as in the last case), in which the petitioner was Walter McNabb, a son of the petitioner in that suit. David Moore, a mortgagee intervened here also, and filed his answer disputing the claim of the petitioner, or at least a portion of it. The claim was for \$120, three months' wages from the 1st day of July, 1881, at \$40 per month.

ARDAGH, S. J.—The petitioner, who did not appear at the trial, was a young man of 21, who appears to have been hired by James and John McNabb, two of the owners. The first witness called for the petitioner was John McNabb, who produced a small piece of paper, written with pencil, signed by the parties, by which John and James McNabb agreed to give the petitioner, Walter McNabb, the sum

of \$40 a month. Witness states that petitioner was to do all the work of fireman and deck hand. This witness states that \$18 to \$20 was the wages usually paid to firemen that season.

One Clark, called by the petitioner, said that what the petitioner did was not worth \$40. Captain Alex. Cameron, also called for the petitioner, admitted, in cross examination, that \$20 to \$25 would be fair wages for what the petitioner did. On the other hand, Fred. Love, engineer on this boat at the same time, was called by the respondent, and said: "Walter McNabb was on board all the time, on and off, as he was wanted. Can't tell what he was worth. He was a smart man. He was worth all that, \$40." James Morrow stated that he worked at the same work in 1876, and got only \$16 a month, and that wages were then as good as now. One Campbell, part owner of a steam barge, said that firemen were paid \$20 a month in October, deck hands \$15, \$18 and \$25. There were one or two other witnesses on either side, but the above ones I consider as giving the most positive evidence.

I am asked to disregard the agreement put in evidence, and the equitable powers of this Court are invoked to prevent the petitioner enforcing what is said to be an unconscionable bargain.

At the hearing I was impressed with the difficulty of getting over a regular written agreement made with the petitioner. On considering the matter, however, I have come to the conclusion that the petitioner as to part of his claim must be postponed to the intervener. The agreement was no doubt made with the petitioner, but with two of the owners only; the third owner, and the one who ought to have had most to say in hiring hands as being the master, not being a party to it. It was expressed to be made on the 1st July, though it appeared in evidence that the petitioner had been working before that time on the vessel. It appears, too, to have been signed by one of the McNabbs at Owen Sound, and by the other at Collingwood. I cannot help saying that looking at the document itself, the manner of the two McNabbs in giving evidence, the absence of the petitioner, and all the attendant facts and circumstances, I have grave doubts as to this agreement having been executed on the day it was said to have been.

I was impressed with the argument that one