

Mar. Court.]

THE "NITHSDALE."

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issued to Mr. Justice Black and directed to him as "Our Commissary in our Vice-Admiralty Court in Lower Canada."

The Imperial Act 26 Vict., cap. 24, was passed 8th June, 1863. It is entitled :

"An Act to facilitate the appointments of Vice-Admirals and of officers in Vice-Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings to extend the jurisdiction and to amend the practice of those Courts."

The Act is intitled, "The Vice-Admiralty Courts Acts, 1863." The second Section contains the Interpretation Clauses in regard to ships or vessels—"Ships" shall include every description of vessel used in navigation, not propelled by oars only, whether British or Foreign." This Imperial Act in a great measure must govern the rights and remedies contemplated by our "Maritime Jurisdiction Act, 1877."

Whether the *Nithsdale* is a vessel within the meaning of the Dominion Act or the Imperial Act, it may not be out of place to inquire the kind of vessels recognised by Maritime Law as coming within Admiralty Jurisdiction. "Ship" is a general term and, in law, is equivalent to "vessel." It is defined "*a locomotive machine adapted to transportation*" on and over rivers, seas and oceans.

It has been remarked by Benedict, that whether the old tradition that the first idea of the canoe was suggested by the split reed floating on the water, be true, or whether the simple raft was not the first instrument of maritime locomotion and transportation, it is not necessary to enquire; or whether the tiny sail of the *Nautilus* or the web foot of the water fowl suggested the first means of propulsion. It is, however, certain that ships and vessels in all their variety of construction, and all their modes of propulsion, are but the more or less perfect combinations of the canoe or raft, the sail and the paddle, as human ingenuity and science, in the progress of civilisation and art have removed difficulties and suggested new expedients, till vessels are the most perfect and wonderful productions of human art.

Questions have arisen how far size, capacity, shape and purpose, and mode of propulsion

must enter into the definition of a ship or vessel under the Maritime Law. Each nation has its own mode of construction, rigging and navigation, and its peculiar kind of craft; but all are ships or vessels, which are manned by a master and crew, and are devoted to the purposes of transportation and commerce. It is not the form or the construction or the mode of propulsion that establishes the jurisdiction, but the business, purpose and capacity of the craft as an instrument of naval transportation and locomotion on and over rivers, lakes, canals, seas and oceans. Such is a general idea of the kind of craft recognized by maritime law generally. They must have instruments or craft adapted to naval transportation or navigation; but, in the present case, the question seems to be narrowed to the definition of a ship or vessel used in navigation as explained in the interpretation clause of "The Vice-Admiralty Court Act of 1863." In the General Rules formed for the Court of Passage for the borough of Liverpool under the Imperial Act 31 & 32 Vict. cap 71, known as the "County Courts Admiralty Jurisdiction Act, 1868," I find in the interpretation clause the following definition of a vessel: "Vessel shall include every description of a vessel used in navigation," so that vessels within the jurisdiction of the Maritime Court must be adapted to the purposes of navigation and transportation. Is the dredge *Nithsdale* one of this description? The original meaning attached to the word dredge, I believe to be a net or drag for taking oysters: it is now called a machine for cleansing canals and rivers. To dredge is to gather or take with a dredge—to remove sand, mud and filth from the beds of rivers, harbours and canals with a dredging machine. What is here called "dredge" is sometimes called "dredger," which Worcester calls "a sort of open barge used in removing sand, mud, silt, etc., from the beds of harbours, rivers and canals—a dredging machine." In Wright's Dictionary the word "dredger" is used instead of "dredge," and defined to be a sort of open barge for removing sand, silt, mud, or the like, from the beds of rivers, docks and harbours.