

Mar. Court.]

THE "NITHSDALE."

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made by one of the other companies for an injunction to restrain the licensees from disturbing their possession, and which on notice was granted, and a motion made to dissolve the writ was (by Proudfoot, V. C.) refused with costs; on re-hearing this order was affirmed by the full Court with costs.

## CANADA REPORTS.

### MARITIME COURT OF ONTARIO.

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

#### THE "NITHSDALE."

"Dredge" not within Act.

The owner of the Dredge *Nithsdale* was indebted to the petitioner for services performed on board the said dredge, and this cause was instituted against the dredge to recover the amount due.

The owner of the dredge set up, as a defence, that a dredge was not a ship or vessel within the meaning of the Maritime Jurisdiction Act of 1877, and that the Maritime Court of Ontario had no jurisdiction *in rem*.

Held, That the Maritime Court of Ontario had no jurisdiction.

[Toronto, 19th Feb. 1879.

MACKENZIE, Co. J.—This is a cause of wages instituted in this Court by Robert McGraw to recover \$757.00 against the dredge *Nithsdale*. The owner, William Pearce, who intervenes as a defendant, alleges, among other things, for answer that the dredge *Nithsdale* is not a ship or vessel within the meaning of any of the Acts of Parliament giving jurisdiction to this Court. The *Nithsdale* is represented as a scow, partially covered with deck, containing boiler, engine and machinery for raising mud, sand, and dirt from the bottom of harbours and waters; she is not propelled by sails, oars, or engine. She has to rely upon tugs or external aid for locomotion, and she has no internal power in herself for navigation. Captain Wyatt states she has propelling powers in harbours, but not *outside* them in open lakes.

The jurisdiction of the Maritime Court is given by 40 Vict., cap. 21. By Section 1 it is enacted:—

"Save as by this Act excepted, all persons shall have, in the Province of On-

tario, the like rights and remedies in all matters, 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 persons would have in any existing British Vice-Admiralty Court if the process of such Court extended to this Province;" and by Section 2, "The Court, &c., 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."

The nearest existing British Vice-Admiralty Court is that of Lower Canada, now the Province of Quebec; also, in the Provinces of New Brunswick and Nova Scotia, the jurisdiction of the existing Vice-Admiralty Courts must be gathered from the Royal Commission creating the Vice-Admiralty Courts and the Letters Patent appointing the Judges thereof, and from the Imperial Statutes passed to regulate the jurisdiction and practice of such Courts explained by adjudicated cases. I have before me a copy of the Imperial Commission directed to "our beloved James Murray, our Captain General, and Governor-in-Chief in and over our Province of Quebec," dated 19th March, 1764.

This Commission gives the Governor jurisdiction to investigate Maritime Causes according to the Ordinances and Statutes of the High Court of Admiralty in England, within the ebbing and flowing of the sea or high water within the maritime jurisdiction of the Province.

I have also copy of Letters Patent issued in the High Court of Admiralty of England, dated the 27th October, 1791, appointing Hon. Henry Black, Commissary or Judge of the Vice-Admiralty Court in the Province of Lower Canada. The jurisdiction is in substance the same as that given to Governor Murray; there was but one Province of Quebec; but afterwards in 1791, the Province of Quebec was divided under the Imperial Act, 31 Geo. III. cap. 31, into Upper and Lower Canada. Hence Letters Patent