

## IN RE TUG. "ROBB"

stituted in the Maritime Court *in rem* was against the *Belle Sheridan*, when the claim was \$129. Several vessels have been arrested and sales effected when the first proceeding *in rem* was for amounts under £50. On the 10th day of November last, 1879, owing to the improper and extravagant use made of the process of the Court in matters of costs in small amounts for wages, the Judge of this Court made the following rule, in addition to former rules, that is to say:—Additional rule 276: "Two or more persons having claims against the same property for wages or for necessities may join against the same property in one petition, and unless the sum or sums adjudged to the claimant or claimants, in a petition in a cause of wages, or of necessities, amount to the sum of \$100 at least, no costs shall be allowed to the claimant or claimants, as the case may be, unless under all the circumstances the Judge or Surrogate Judge thinks proper to allow a sum in gross not exceeding \$10 in lieu of all costs."

This rule was made here on the 10th day of November, 1879, sanctioned by the department of Justice at Ottawa, and approved by His Excellency the Governor-General in Council on the 21st of November, 1879. This rule acknowledges to all intents and purposes that the Maritime Court has jurisdiction when claim for wages is under £50.

I must rule this point against the defendant.

When framing the additional rule 276 in November, 1879, I tried to frame a rule to the effect that no proceeding *in rem* should be instituted in the Court or property arrested under its process unless in case of wages, the claim should amount at least to \$100, or the joint claims of two or more petitioners should in the whole amount to at least \$100, and that power should be conferred on the Police Magistrate or two Justices of the Peace to proceed in a summary manner to hear and determine cases of wages due to seamen, and for necessities when the amount does not exceed \$100. But on consultation I became satisfied that such a rule would be *ultra vires*, and that such a change would require to be effected by legislation, and I hope that a bill will be brought into Parliament to prevent proceedings *in rem* being instituted for wages and necessities when the claim is under \$100.

The next point is that the petitioner is not a seaman within the meaning of the Acts. The Seamen's Act, 1873, and the Seamen's Act, 1875, were cited in support of this contention.

I think there is enough set out in the petition to show that the petitioner was a seaman, hired according to law. It is alleged in the petition that the petitioner was hired by the master of the tug *Robb* as a deck-hand, and by virtue of the said contract of hiring he was to have had his board and lodging in the said vessel, and \$15 a month for wages, and that the petitioner went on board the said tug under the said contract of hiring, and remained therein until he was wrongfully discharged. I do not think it necessary to allege as a matter of pleading that the contract of hiring was in writing.

In declarations on contracts that should be in writing under the statute of frauds and other statutes, it is not necessary to allege that such contracts were in writing. At the trial is the proper time to take objection, and if the contract ought to be in writing the petitioner must fail. It is competent to him on the present petition to prove a contract in writing. It is not necessary to decide here whether the contract specified in the petition should be in writing or not, under the Dominion statutes.

The next and last point urged on behalf of the defendant is that the claim is not a claim for seamen's wages, but a claim for damages for a wrongful dismissal. The head note to the case of the *Great Eastern*, L. R. 1 A. & E., 384, is as follows:—"In a cause of wages, the Court of Admiralty has jurisdiction to entertain a claim by a seaman for compensation in the nature of damages for wrongful discharge before the term of his engagement has expired." Dr. Lushington, the Admiralty Judge, pronounced through the Registrar the following judgment:—"The result is that the Court of Admiralty has, in a cause of wages, jurisdiction to entertain a claim for compensation for wrongful discharge of the seaman during the term of his engagement." *The Blessing*, L. R. 3 Probate Div. 35, was an appeal from the County Court of Durham demurring, for want of jurisdiction, to an action "for wages and wrongful carrying of certain goods." The appeal was argued before Sir Robert Phillimore, who held that the words "any claim for wages," in the 3rd section of the County Court Admiralty Jurisdiction Act, 1868, include a claim for damages for