

second Tuesday of the succeeding quarter." The section does not say that every Justice of the Peace shall make his returns quarterly on or before the second Tuesday, etc., but "that the returns required by the said seventy-sixth section . . . shall be made," etc.; thus it appears to me, retaining and recognizing some of the conditions and circumstances surrounding and bearing upon the returns mentioned in that seventy-sixth section. Furthermore the new section provides that "every such return shall include all convictions . . . not included in some previous return." Now the form of return prescribed (that in the old Act being still retained) seems to contemplate *monthly* returns, as the heading of it is "Return of convictions made by me in the month of ——— 18—," and the Act says the Justice *shall* make his return "in the following form." Still, as the new section says that returns now shall be quarterly and that every such return shall include all convictions not included in some previous return, it would appear that *one* return for the quarter is sufficient. Is a justice then to wait till the expiration of the last day before the second Tuesday in each of the several months mentioned, before he begins to make up his quarterly return? Under the old Act he had *twelve days* at least to make such return, now he has not as many hours unless he encroaches upon the hours of his natural rest. It seems to me it would be unreasonable to require a Justice of the Peace to delay making up his return till midnight of such a day, which he must do if he wishes to be certain that he will not be called upon to make more than one return, as he is liable at any time of the Monday before such second Tuesday to be called upon to perform magisterial duties.

The question may arise as to what is meant by *making* a return? Does it mean that the return shall be in the hands of the Clerk of the Peace on the second Tuesday, or would it be sufficient if the return should be deposited in one of Her Majesty's post-offices at some hour, even the latest on such Tuesday. If the former, as might reasonably be contended, then it would be requiring an impossibility from this defendant to comply with the statute in this particular case, and the law does not require impossibilities from any man. Looking at the case then in these several aspects, I have come to the conclusion that if any straining of the Act is to be

done at all it should be in favour of the defendant, that being the tendency of all recent legislation. And as I cannot, from any of the cases reported, find that this particular point has been settled, I prefer, as far as my light goes, to lean in favour of protecting this defendant against whose *bona fides* in the matter I see no ground for any charge. The judgment and the execution thereon will be set aside, and the money received by the sheriff be paid into Court till further order be made respecting the same, upon payment by the defendant of the costs of entering said judgment, the costs of the execution and sheriff's fees thereon, and the costs of this application, within fifteen days, within which time the defendant is to plead to the action.

MARITIME COURT OF ONTARIO.

(Reported for the LAW JOURNAL.)

THE TUG MAYTHAM.

Suit for wages, part of which accrued more than 90 days before petition filed—Custom of hiring—Covenant by master and part-owner against overdue wages—Meaning of the word seaman—Mode of hiring—Power of Court to deal with mortgages.

This was a proceeding *in rem*, in which Alexander McNabb was petitioner. The answer was filed by D. Moore (mortgagee of the vessel) who intervened. The pleadings were filed in Toronto, and the cause ordered to be heard before the Surrogate Judge of this Court at Collingwood.

ARDAGH, S. J.—The petitioner, Alexander McNabb, claims to be allowed the sum of \$300 for 5 months' wages, at \$60 a month, up to the 1st September, 1880, and a further sum of \$180 as 3 months' wages from 1st July to 1st September 1881. But he admits having received some \$45 out of the earnings of the boat, about \$25 or \$30 of this sum in 1880.

The petitioner's evidence, which was uncontradicted, is that in 1880 his wife, Jane McNabb, and their two sons, John and James, were the owners of this tug, that the two latter hired him as captain or master for \$60 a month, to be paid out of the earnings of the boat, that he took charge of her about the 1st April and continued in charge till the 20th August, when she was