

## IN RE TUG "ROBB."

*The Blessing*, L. R. Prob. Div. 35; *The City of London*, 1 W. Rob. 88; Roscoe's Practice 40.

McCarthy, Q. C., replied.

MACKENZIE, Co. J. (JUDGE OF MARITIME COURT). The Merchant Shipping Act of 1854 came into operation on the 1st of May, 1855. The Vice-Admiralty Courts Act, 1863, passed on 8th June of that year. The Dominion Act, 40 Vict. cap. 21—the Maritime Jurisdiction Act, 1877—under which this Court was established and organized, was passed on 28th April, 1877. The Court was organized under and by virtue of a proclamation of the Governor in Council on the eighteenth day of February, 1878. It is proper to bear in mind those dates in determining the question of jurisdiction as affected by the Merchant Shipping Act of 1854.

The first point presented on behalf of the defendant is that this Court cannot entertain a claim for wages under £50, under section 189 of the Merchant Shipping Act of 1854. The words of the section are, "No suit or proceeding for the recovery of wages under £50 shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty," and section 188 points out how seamen may proceed to recover in a summary way before two Justices of the Peace for wages under £50.

It is admitted that the Merchant Shipping Act extends to this Province, and is in force here. On reading sections 188 and 189, pure and simple, without looking elsewhere, and to subsequent legislation, only one conclusion could be arrived at, namely, that this Court should rule that the petitioner had no lawful right to institute the present proceeding in the Maritime Court of Ontario. But subsequently to the Merchant Shipping Act, that is in 1863, the Imperial Parliament passed "The Vice-Admiralty Courts Act, 1863," intitled "An Act for facilitating the appointment of Vice-Admirals, and of officers in Vice-Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings, and to extend the jurisdiction, and to amend the practice of these Courts." The 10th section of this Act defines the matters in respect of which the Vice-Admiralty Courts have jurisdiction, amongst others, as follows:

1. Claims for seamen's wages.
2. Claims for master's wages, and for

his disbursements on account of the ship, &c.

In the last edition of Roscoe's Admiralty Practice at page 86, I find the following note in regard to seamen's wages:—"A suit for wages under £50 cannot be maintained in the Vice-Admiralty Court by section 189 of the Merchant Shipping Act; but the Act of 1863 (the Vice Admiralty Courts Act, 1863) contains no such limitation." The words used in section 10 are:—"The Vice-Admiralty Courts shall have jurisdiction in respect of claims for seamen's wages." The enacting words are without limitation or restriction. The Act was passed to extend, not to limit, the jurisdiction. And were it not for the judgment pronounced in the Vice-Admiralty Court of Quebec in the *Margaretta Stevenson*, I would see my way clearer than I do. The head note to the printed report is as follows:—"The Merchant Shipping Act, 1854, excludes the Admiralty jurisdiction in suits for wages, etc., where the amount is less than £50." That is good law so far as it goes. The Merchant Shipping Act certainly excludes this jurisdiction; but on reading the printed report of the case, I find no reference to the Vice-Admiralty Courts Act, 1863, in any shape or form. It is possible the 10th section was not brought under the consideration of the Court; and it does not appear that the point now contended was argued before the learned Judge at all. If this was a judgment of the Supreme Court on the point in question, I would yield my own opinion at once; but it is the judgment of the Vice-Admiralty Court of another Province, not binding here, although entitled to every respect and consideration. But I feel bound to pronounce the law as I understand it, that the Court has jurisdiction over causes for wages for sums less than £50 under section 10 of the Vice-Admiralty Courts Act, 1863. The Act was in force when the Maritime Jurisdiction Act, 1877, passed, and the Maritime Court under it organized. The Maritime Court of Ontario, under section 2, has in all matters enumerated in section 1 such jurisdiction as belongs in similar matters to any existing British Vice-Admiralty Court in similar matters within the reach of its process.

I may add as matter of information that this Court has acted upon the idea that it had jurisdiction in respect of claims for wages for amounts under £50. The first proceeding in-