

*THE SEAMEN'S ACT.*

A very interesting case under The Seamen's Act, 1873, *Clarke & Chauveau et al.*, was decided at Quebec on the 8th of last month. Clarke, the appellant, was convicted in his absence of an offence supposed to be under the statute, by the Judge of Sessions of Quebec. The complaint did not pursue the provisions of the act in many essentials. The appellant applied for a writ of prohibition on both grounds, 1st, that he had no jurisdiction, 2nd, that if the statute gave him jurisdiction, it was a special power that was conferred, and that he had not followed the act. The Court of Appeals confirmed the judgment, namely, Tessier, Cross and Baby, JJ.; the Chief Justice and Ramsay, J., dissented. We regret that we are unable to give a complete report of the case, but as the Minister of Justice has introduced a bill on the subject, we hasten to publish Mr. Justice Ramsay's opinion, which criticizes the law severely, and points out its dangers.

RAMSAY, J. After what has fallen from the Chief Justice, it is not perhaps necessary for me to say anything; but the case is one of so great public importance, as affecting the liberty of the subject, the statutory provision before us is so dangerous and exceptional that it appears to me to be a duty to draw attention to it, so that the Legislature may not unwittingly leave such a monument of barbarism longer on the statute book. Section 86 of "The Seamen's Act of 1873" is in the following words:

"86. No person (other than any owner, agent of owner, or consignee of the ship or cargo, or any person in the employment of either of them, or any officer or person in Her Majesty's service or employment, harbor master, deputy harbor master, health officer, custom house officer, pilot, shipping master or deputy shipping master,) shall go and be on board of any merchant ship arriving or about to arrive from sea at the place of her destination before or previous to her actual arrival in dock, or at the quay or place of her discharge, or while she remains in port, without the permission and consent of the master or person in charge of such ship; and if any person (other than aforesaid) goes on board any such ship before or previous to her actual arrival in dock, or at the quay or place of her discharge, or while she remains in port, without the permission and consent of

the master or person in charge of such ship, he shall, for every offence, be subject to imprisonment in the penitentiary for any period not less than two years nor more than three years, if such person be unarmed at the time of committing the offence; or five years, if such person be armed with or carries about his person any pistol, gun or other firearm, or offensive weapon at the time of committing the offence; and for the better securing the person of such offender, the master or person in charge of the ship may take any person so offending, as aforesaid, into custody and deliver him up forthwith to any constable or peace officer, to be by him taken before any Judge of a County Court or any Stipendiary Magistrate, Police Magistrate or Judge of the Sessions of the Peace, to be dealt with according to the provisions of this Act."

In short, if any one, save any one of the persons enumerated, goes on board a merchant ship before it arrives or when it is lying in port, without the consent of the master or person in charge of such ship, he shall "for every offence" be subject to imprisonment in the penitentiary for any period not less than two years nor more than three years, or five years if such person be armed. So if a merchant's clerk goes on board the wrong vessel by mistake, he may, and if the law is one which should be executed, he ought to be sent to the penitentiary for two years, and if, by chance, he had a pistol in his pocket, for five years. Criminal intent to give character to the innocent act was far beyond the ken of the modern Draco to whom we owe this law.

If such a law had been decreed in Russia, there would have been a shriek of indignation at its barbarity. That it passed through both Houses of Parliament unobserved, and, at all events, unconsidered, is more than likely. It is one of the inconveniences of printing that it permits and encourages the reproduction of rubbish to such an extent, that it is almost as hard to discover what one desires to see, as it is to find the proverbial needle in the bundle of straw. The author of this section, however, deserves some share of the immortality which belongs to those reckless legislators who are willing to destroy the liberties of the people for the gratification of a whim. Providentially, his execution is as faulty as his conception is dangerous. I do not allude to the general