

Vice Adm. Ct.]

RE TUG "ROYAL."

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necessarily be classed with the \$68, making \$92 for miscellaneous work. The agreement does not appear to have been continued for the season of 1882, but the promoter acted as master until the 15th July, when he was discharged by Burns, for which period there appears to be a balance of wages amounting to \$24.60. This, with the sum due for wages alone in 1880, viz., \$22.50, would make a sum of \$47.10. The question now is can this Court assume jurisdiction, 1st, to enforce the contract, and 2nd, to allow the wages earned as master.

The only authority under which it can be pretended that this Court has jurisdiction with reference to the agreement, is the Imperial Statute, "The Vice-Admiralty Court Act, 1863," 26 Vict. c. 24, s. 10, sub-sec. 2, by which it is enacted that the matters among others in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows:—"Claims for master's wages, and for his disbursements on account of the ship." By the same statute, the jurisdiction is made to extend to "claims in respect of towage." In a case which came before this Court in 1865 (*British Lion*, 2 S. V. A. R., p. 114), it was said by Mr. Black that he had great doubt as to the power of this Court to enforce an agreement to employ a particular tug, either for a definite or indefinite quantity of work. No doubt the Court can under the statute 26 Vict. c. 24 (the Vice-Admiralty Act, 1863), enforce the payment of reasonable towage, but it does not seem that it has power to enforce an agreement to employ a particular tug either for a definite or an indefinite quantity of work; and Dr. Lushington in the case of the *Martha* (Vernon Lush R. 314. See the *City of Petersburg*, 2 S. V. A. R. 343), held the same opinion under the 3rd and 4th Vict., c. 65, s. 6, giving similar jurisdiction to the High Court of Admiralty. The same reasoning applies, perhaps, with additional force to the agreement now under consideration, upon which remuneration is asked for a sub-agency not incident to the duties of a master of a vessel, but one comprising duties analogous to those of a *commisnaire*; and, most assuredly, the terms of the statute, "claims for master's wages," cannot cover those of a runner for a tug boat, or for the miscellaneous offices which the promoter promised to perform. I therefore can exercise no jurisdiction so as to award the \$92, evidently due to the promoter.

The second question, as to the allowance of the \$47.10 due the promoter for wages that have been earned by him as master, is to be determined by the enactments of two statutes, "The Merchant Shipping Act, 1854," ss. 189, 191, and that of the Dominion known as "The Seamen's Act, 1873," 36 Vict. c. 129, ss. 56, 59. By the former, no suit for the recovery of master's wages under the sum of £50 sterling, shall be instituted by or on behalf of a master or seaman in any court of Vice-Admiralty. By the latter, the sum of £50 is reduced to \$200 as respects vessels registered in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia. The Parliament of the Dominion was vested with exclusive legislative powers in all matters classed under "navigation and shipping," by virtue of the British North America Act, 1867. The Seaman's Act, 1873, was passed by it, and after a reservation for the Royal Assent, it came into force on the 27th March, 1874. By it the 189th and 191st sections of the Merchant Shipping Act, 1854, were so far repealed as to reduce £50 sterling to \$200, as I have said with reference to vessels registered in the four Provinces I have named. The 189th and the 191st sections remained in full force as respects all other vessels which had been made subject to them, and have been invariably carried into effect as respects them. These enactments have had a most salutary effect, and remedied grievances of which the shipping interests had great reason to complain, particularly at this port, where suits without foundation for seamen's wages, the levying of blackmail, and in aid of the crimping business, were continually resorted to. Effect was given to these enactments in the case of the *Margaret Stevenson*, 2 S. V. A. R. 192, determined by this Court in 1873. I observe that this decision has been questioned by a Court which, although it is one of a limited jurisdiction, still as an opinion expressed by it, if correct, would unsettle the law in a most important particular, I shall advert to it: (*The tug Robb*, Mar. Court, Ontario, 17 C. L. J. 67). It is stated that the two sections of the Merchant Shipping Act, 1854 (180th, 191st), are not to be read in connection with the Vice-Admiralty Court Act, 1863, leaving it to be inferred that the latter repealed the former. If such were the case, an efficient safeguard to British shipping frequenting not only this port, but all the ports of Her Majesty's dominions, would be removed.