

IN RE TUG "ROBB."

Court, or that the claim of the plaintiff had been referred to be adjudged by this honourable Court, by any justices acting under the authority of the Merchant Shipping Act of 1854, or that neither the owner of the said tug *Robb*, nor the master thereof, was or resided within 20 miles of the place where the plaintiff alleges that he was discharged.

"Wherefore, and for divers other good causes of demurrer appearing in the said petition, the defendant demurs thereto, and prays judgment whether he ought to be compelled to make further or other answer to the said petition, and he prays to be hence dismissed with his costs."

McCarthy, Q. C., appeared to support the demurrer.

The Court has no jurisdiction at all in a matter of the amount stated in the petition. The Maritime Jurisdiction Act, 1877, creates the Court, the first section of which defines the jurisdiction in the following words: "Save as by this Act excepted, all persons shall after this Act comes in force in the Province of Ontario, have the like rights and remedies in all matters (including cases of contract and trust, and proceedings *in rem* and *in personam* arising out of or connected with navigation, shipping, trade or commerce on any river, lake, canal or inland water, of which the whole or part is in the Province of Ontario), as such person would have in any existing British Vice-Admiralty Court, if the process of such Court extended to the said Province." The jurisdiction of a Vice-Admiralty Court is defined in the Merchant Shipping Act of 1854, sec. 189, which was to the effect following: "No suit or proceeding for the recovery of wages under the sum of £50 shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Sessions in Scotland, or in any Superior Court of Record in Her Majesty's Dominion, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of such Court, as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor the master is or resides within 20 miles of the place where the seaman or apprentice is discharged or put ashore." Section 188 of the Merchant Shipping Act of 1854, gives seamen the power to go before two justices of

the peace to recover small amounts, and it is only when the amount exceeds £50 that there is a necessity for proceedings *in rem*. The section 188 is in force here now, and is the proper authority under which proceedings should be taken to recover small amounts. The Imperial Act, 26-27 Vict., cap. 24 (The Vice-Admiralty Courts Act, 1863) is to be read in connection with the existing laws, and in connection with section 189 of the Merchant Shipping Act of 1854. The repealing clauses in the Vice-Admiralty Courts Act, 1863, make no reference to section 189. See *The Margaretta Stevenson*, 2 Stuart's Reports 192. This claim is not a claim by a seaman for wages within the meaning of the Acts, but is in the nature of damages. The petitioner signed no articles, and cannot invoke the jurisdiction of this Court: see *The City of St. Petersburg*, 2 Stuart, 343; *Tecumseth*, 3 W. Rob. 109; *Mona*, 1 W. Rob. 137; *Riby Grove*, 2 W. Rob. 61; *City of London*, 1 W. Rob. 88; *Deorecsia*, 3 W. Rob. 33.

Hall for the petitioner. In 1861 the Merchant Shipping Act was amended so as to give the Court jurisdiction in all cases, only reserving the question of costs. See 24 Vict. cap. 24, sec. 10. The Vice-Admiralty Courts Act, 1863, must govern the contention. The preamble of the Act shows that the jurisdiction of the Vice-Admiralty Courts is to be extended and their practice amended. By section 10 the Act declares that the matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows, amongst others:—Claims for seamen's wages, &c., without any restriction or limitation as to amount whatever. The Imperial Act, 26-27 Vict. cap. 24, and the Vice-Admiralty Courts Act, 1863, were passed for the purpose of extending the jurisdiction of the Vice-Admiralty Courts, and it must be considered that this Court has jurisdiction in regard to seamen's wages. As to the case of *The Margaretta*, The Vice-Admiralty Act, 1863, is not mentioned or referred to in the judgment of the Court or otherwise. The point made that the petitioner is not a seaman within the Acts is not tenable: see *Seamen's Agreement Act* of 1875. The master of the vessel having violated the law, cannot defend himself against the wages of the petitioner. On the question of wages being claimed when the seaman is dismissed, see *The Great Eastern*, 1 Ad. R.;