

Vice Adm Ct.]

RE TUG "ROYAL."

[Vice Adm. Ct.]

where the duties to be performed are miscellaneous and not incident to the situation of a master.

(2) That by the Dominion Statute, "The Seamen's Act, 1873," the jurisdiction of this Court as respects vessels registered in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia being restricted to claims for master's and seamen's wages over \$200, the 189th and 191st sections of the Imperial Merchant Shipping Act, 1854, were so far repealed as to reduce £50 sterling, to \$200.

(3) That the "Vice-Admiralty Court Act, 1863," has not in any other way affected or repealed the 189th and 191st sections of the "Merchant Shipping Act, 1854."

(4) That in a suit for ship's disbursements brought by the master who became liable upon condition that if the owner did not pay them he would, there must be a demand on the owner before suit.

(5) Where a master sues for ship's disbursements, without first presenting his accounts he cannot recover costs.

[QUEBEC, April 6, 1883.]

The facts fully appear in the judgment of Hon. G. OKILL STUART, J.—This is a suit of Pierre Raphael Baron, who was master of the steam tug *Royal*, a vessel registered in this Province, and owned by Helena Maria Kelly, wife of John Griffin Burns, against that vessel for wages as master, for work, and by reason of liabilities for necessities, on the following statement:—

For the season of navigation in 1880 (1st May to 22nd November), less one month, wages at \$45 a month, \$258 ;	
less \$151 paid on account	\$107 00
For the season of 1881, at \$45, \$307.50 ;	
less \$283.50 on account	24 00
For part of the season 1882 (1st May to 15th July)	111 50
1882, July—18 cords of firewood purchased at Batiscan	40 50
8 tons of coal purchased at Sorel	50 00
Duchesneau, blacksmith	13 62
Boy, "	7 00
	\$353 62

The libel states the services of the promoter as master, for the seasons of 1880-1, and part of 1882, and continues to allege that he acted as pilot, agent, carpenter, and performed numerous other duties.

There is a plea to the jurisdiction to which the respondent excepts, upon the ground that

the promoter was not engaged as master but as an agent for the tug *Royal* and the tug *Challenger*, to secure employment for these vessels, at \$45 a month. That he discharged this duty for the *Royal* until the 16th of August, 1880, and for the rest of that season he was employed for the *Challenger*, for which it is admitted that there is a balance of \$68 due to him. For the season of 1881, it is alleged that the *Royal* was chartered by the Quebec and Levis Tow Boat Company, and that by them the promoter was paid in full \$40 a month, and as respects the season of 1882, the promoter acted as master at \$40 a month, on account of which he has received \$46, leaving due to him, \$24.60.

The jurisdiction is not excepted to as respects the liabilities, for what were really disbursements and not necessities, as stated in the libel. If they were the latter, this Court could not award them owing to the residence of the parties in the same locality. The respondent denies her liability for the disbursements, and has pleaded that the promoter has not paid them.

There can be no doubt that the agreement was for the promoter to act as sub-agent for the tugs, and as master or pilot when and if required. Indeed, it so appears from the evidence of the promoter. In the season of 1880, until the 14th of August from the 9th May, he discharged his duty under the agreement for the *Royal*. He then became master of the *Challenger* for a month or more. One Joseph Flamand had been master of the *Royal* until the 24th September. He then left her; the promoter took his place as master for about two weeks, when her pilot, Dubuc, was appointed, and so continued through the rest of the season. The exclusive duty as master for the period he so served, would entitle the promoter to \$22.50 as master's wages.

For the season of 1881, the agreement was continued, but the *Royal* being under charter to a company, they would not give the promoter more than \$40 a month, which he took under protest. The additional \$5 a month he would be entitled to under the renewal or continuation of the agreement of the previous year, making \$24, but not as master, for during this season it appears that he acted as carpenter, as painter, painting the tug himself, and as watchman. Having been paid for the entire season by the company, except the \$24, it is impossible to say that this was master's wages. It would thus