

## REPORTS—IN RE TUG "ROBB."

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## MARITIME COURT OF ONTARIO.

(Reported by John Bruce, Esq., Registrar to the Court.)

## IN RE TUG "ROBB."

*Merchant Shipping Act, 1854, Sec. 189—Seaman—Wages or damages.*

*Held*, 1. That the Merchant Shipping Act of 1854 is not to be read in connection with the Vice Admiralty Act of 1863, which gives jurisdiction to the Maritime Court of Ontario, and that therefore this Court has jurisdiction over any claim for wages.

2. That under the facts set out in the petition, the petitioner was a seaman within the meaning of the Acts, and the claim was for wages and not for damages.

[Toronto, Oct. 6, 1880.]

The facts of the case appear in the petition filed by Joseph Dunbar, who made a claim for seaman's wages. This petition was as follows:—

1. "The said tug or vessel, called the tug *Robb*, is a vessel of — tons registered tonnage, and belongs to the port of Toronto, and is now lying in the said port of Toronto, etc., and was during the times hereinafter mentioned engaged in trade and commerce upon, or navigating the rivers, lakes, canals or inland waters, the whole or part of which are in the Province of Ontario.

2. "That on the 9th September, 1880, the master or mate of the said tug *Robb* hired your petitioner, Joseph Dunbar, to work on board the said tug *Robb*, as a deck hand, for the period of one month, including the afternoon of the said 9th September, 1880, and your petitioner went on board the said vessel and commenced working thereon about 4 o'clock in the afternoon of the 9th September, and worked thereon until your petitioner was wrongfully discharged on the morning of the 10th September aforesaid.

3. "That under and by virtue of the said contract of hiring, your petitioner, Joseph Dunbar, was to have his board and lodging in the said vessel over and above the said sum of 15 dollars per month, and your petitioner was on board the said tug under the said contract of hiring, and remained thereon until he was

wrongfully discharged on the morning of the 10th September aforesaid.

4. "That your petitioner, Joseph Dunbar, has received no sum or sums of money on account of said month's wages, and your petitioner was always ready and willing to perform his duties as deck hand aforesaid.

5. "Your petitioner submits that by reason of the wrongful dismissal aforesaid, he is entitled to the sum of fifteen dollars, the amount of his wages under said contract of hiring.

6. "The said tug is now lying as aforesaid at the port of Toronto aforesaid, and will, unless detained by the warrant of this honourable Court, immediately leave the said port and sail elsewhere; and your petitioner fears that, in such case, his said claim will be lost.

"Your petitioner therefore prays," &c., &c.

William Hall, the owner of the tug *Robb*, intervened and demurred to the plaintiff's said petition as follows:

"William Hall, &c., who is the owner of the above-mentioned tug *Robb*, the subject matter of this suit, by A. R. C., his Proctor, hereby intervenes in the cause, and not admitting any of the matters and things in the plaintiff's petition contained to be true in such manner and form as the same are therein set forth and alleged, demurs in law to the said petition, and for causes of demurrer shews:

1. "That it does not appear from the said petition of the plaintiff that the plaintiff was at the time of the alleged hiring a seaman within the meaning of the statutes in that behalf.

2. "That even if the plaintiff were at the time of the alleged hiring a seaman, his claim as set forth in the said petition is not one within the jurisdiction of this honourable Court, being a claim for damages on account of an alleged breach of contract, and not for wages which had accrued due.

3. "That the plaintiff's claim, as set forth in the said petition, is not one within the jurisdiction of this Court, it appearing from the said petition that the said claim is for a less sum than 50 pounds, and it not being alleged that the said William Hall, the owner of the said tug *Robb*, is, or was at the time of the filing of the said petition, adjudged bankrupt or declared insolvent, or that the said tug was at the time of the filing of the said petition under arrest, or was about to be sold by the authority of this honourable