TORONTO ADMIRALTY DISTRICT.

DONALD BEATON, ARCHIBALD GALBRAITH, DONALD McNEIL, MARTIN BELL AND PATRICK KELLY..... PLAINTIFFS;

1907
Oct. 5

AGAINST

THE STEAM YACHT "*CHRISTINE*"

Shipping — Seaman's wages—Jurisdiction — Merchant Shipping Act — Limitation of Actions.

A number of seamen forming part of the crew of a ship to whom separate and varying sums are claimed to be due for wages may combine in one action to recover same.

The limitation of actions to amounts over $200 discussed.

ACTION *in rem* for the recovery of a seaman's wages.

The case came on for trial at Toronto before the Honourable Thomas Hodgins, Local Judge of the Toronto Admiralty District, on the 10th day of September, 1907, and several witnesses were heard and preliminary objections taken to the action. The case was adjourned and shortly afterwards was settled between the parties.

C. W. Thompson, for Plaintiffs.

Frank Denton, K.C., for the Ship.

HODGINS, L.J., now (5th October, 1907) delivered judgment on the preliminary objections raised at the trial.

This is an action *in rem* brought by five seamen, members of the crew of the defendant steam yacht *Christine*, for certain separate balances due to them for their wages up to the 2nd August last. They were engaged in Greenock, Scotland, as part of the crew of the steam yacht *Christine*, and they appear to have left her upon the date mentioned. And the question to be considered is whether

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this Court has jurisdiction to entertain in one action the claims of a number of seamen forming part of the crew of a ship, to whom separate and varying sums are claimed to be due for wages, etc., or whether each seaman must bring his separate action and have his special claim adjudicated upon in such separate action, in the appropriate Court having special jurisdiction respecting such claim.

In the *Royal Arch.* (1), Dr. Lushington, after referring to the wider jurisdiction of the American Courts, added : "The Admiralty Courts in our North American Provinces exercise a fuller jurisdiction than the High Court of Admiralty in England. The reason seems to be that after the revolution of 1640 broke out, there was a great jealousy against the Ecclesiastical Courts; and this was extended to the High Court of Admiralty; and so in Lord Holt's time its jurisdiction was curtailed.", This statement is borne out by an examination of the cases for prohibition from the King's Bench to the Admiralty Court which may be found in the twelve volumes of "Modern Reports" which contain most of the decision of that great Chief Justice who presided in the Court of King's and Queen's Bench from 1689 to 1710. The judicial reason may have been that claims respecting agreements under seal had to be tried before a jury.

Thus in *Opy* v. *Adison* (2), Lord Holt affirmed that mariners' wages were suable in the Admiralty Court, if the agreement was by parol; but *aliter* if the agreement was by a special agreement in writing under seal.

And in *Clay* v. *Snelgrave* (3), the same learned judge held that although a suit might be brought in the Court of Admiralty for a seaman's wages it could not be brought in that court for the wages of a master.

In the *Mariners' Case* (4), a prohibition was suggested because "the contract had been reduced in writing for

(1) [1857] Swab. p. 277.
(2) [1639] 12 Mod. 38.
(3) [1700] 12 Mod. 405.
(4) [1725] 8 Mod. 379.

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the wages." But it was held that if it was a special contract the defendant may plead it in the Court of Admiralty, and if that court did not allow the plea, then it might be proper to move in the King's Bench for prohibition, "for if it should be granted before the plea is disallowed, it would be a pre-judging the justice of that court."

Similarly in *Howe* v. *Nappier* (1), the court held that as the seamen's contract was under seal it was therefore special, and the Court of Admiralty had no jurisdiction to try it.

These distinctions restricted the jurisdiction of the Admiralty Court up to 1861, for the *Debrecsia* (2), disclosed special conditions as to the voyage and the work to be done on board and as to a return home, and Dr. Lushington held the agreement was very special and different from that which the court was in the habit of taking into consideration; and he added: "I am not in a condition to exercise jurisdiction." See also the *Enterprise* (3), and the *Harriett* (4), in which latter case the learned judge said: "I am happy to say that an Act (24 Vict. c 10) is now passing through the legislature which will remedy the defect in the jurisdiction of the court, which, in the present case has operated with such hardship on the plaintiff."

The Admiralty Act of 1861 (24 Vic. c. 10) did away with these distinctions, and provided in section 10 that "the High Court of Admiralty shall have jurisdiction over any claim by a seaman for wages, whether the same be due under a special contract, or otherwise; and also over any claim by the master for wages, and for disbursements made by him on account of the ship." The above section and some unrepealed sections part of the statute law respecting the jurisdiction of the High

(1) [1766] 4 Burr. 1944.
(2) [1848] 3 W. Rob. 36.
(3) [1861] 5 L. T. N. S. 29.
(4) [1861] Lush. 285.

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Court of Admiralty in England became applicable to this Admiralty Court by section 2, subsec. 1, of the Colonial Courts of Admiralty Act of 1890 (53 & 54 Vic. c. 27 (Imp.)

This action is brought under the exceptional privilege accorded to seamen by which any number of them forming the crew of a ship may unite as plaintiffs in one action in the Court of Admiralty for variable amounts due to them individually as wages. The origin of this exceptional privilege dates back to early times.

The first reported case in which this exceptional privilege was acknowledged is *Anonymous* (1), which decided that "a prohibition shall not go to the Admiralty to stay a suit there for Mariners' wages, though the contracts were made on land; for it is more convenient for them to sue there because they may all join." The subsequent cases affirm the same rule. Thus in *Wells* v. *Osmond*, (2) it was held, *Per Cur.*, that the true reason why seamen may sue for their wages in Admiralty is that there the ship is made liable to them; and besides they may all join in the suit, neither of which may be allowed at the common law. And in the *Mariners' Case* (supra) the further reason was given that "it is the cheapest and most expeditious method to recover their wages." See further *Ross* v. *Walker*, (1765) (3) *Howe* v. *Nappier* (1766) (4)

By the 2nd William IV, ch. 51 (1832), the Crown was authorized by Order-in-Council to make regulations respecting the practice of Admiralty Courts abroad; and by s. 15 of an Order-in-Council regulating such practice, the number of seaman who might bring a suit in such Vice Admiralty Courts was limited to six. But this Act was repealed in 1890 by the Colonial Courts of Admiralty Act (c. 27). and with that repeal the limitation prescribed

(1) [1670] 1 Ventris, 146.
(2) [1705] 6 Mod. 238.
(3) (1765) 2 Wils. 264.
(4) (1766) 4 Burr. 1944.

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by the Order-in-Council, became imperative as applicable to Canada.

A proviso to section 10 of the Admiralty Act of 1861 (Supra) enlarging the jurisdiction of the Exchequer Court of Admiralty says: "Provided that in any such cause (actions by master or seaman for wages), if the plaintiff do not recover £50 he shall not be entitled to any costs, charges or expenses, incurred by him therein; unless the judge shall certify that the cause was a fit one to be tried in the said court."

The prior Merchant Shipping Act of 1854 c. 104, sec. 188, authorized seamen to sue in a summary manuer before two Justices of the Peace for any amount of wages not exceeding £50; and by sec, 189 it prohibited suits by seamen for wages under the sum of £50 in the Admiralty or Superior Courts in Her Majesty's Dominions; under certain exceptions which are not necessary to consider here.

The present Merchant Shipping Act of 1894 re-enacts in section 164 the summary proceedings for wages; and in sec. 165 it re-enacts the prohibition of suits for wages not exceeding £50, in the Admiralty or Superior Courts; but by the schedule of the repeals of certain Imperial Acts, section 10 of the Admiralty Act of 1861 is exempted from repeal. By section 260 of the Merchant Shipping Act of 1894, the sections quoted, (164 and 165), are made to apply, "to all sea-going ships registered in the United Kingdom," of which this defendant steam yacht is one.

I must not omit to notice here the conflict of decisions between the Admiralty Court for this province, and that for the province of Quebec respecting actions for seamen's wages. In Ontario it was held that the Admiralty Act of 1891 having conferred upon the court all the jurisdiction possessed by the High Court in England, it could try any claim for seamen's wages, including claims below $200, and that the limitation in R. S. C., c. 75, s. 34

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had been repealed by implication; and that the costs of such action were in the discretion of the court. Ship *W. J. Aikens* (1). In Quebec the above was not followed, and it was held that under R. S. C., c. 74, s. 56, or c. 75, s. 34, the Court had no jurisdiction to entertain a claim for seamen's wages on a Canadian registered ship, below $200; nor under the Merchant Shipping Act of 1894, s. 165, a claim for seamen's wages on a British registered ship under £50; *Gagnon* v. *Ship Savoy*, (2). Since these decisions the limitation clause of the former Canada Shipping Acts have been re-enacted in R. S. C., (3). And as to the statutory conflict between the unrepealed section 10 of the Admiralty Act of 1861, and section 165 of the Merchant Shipping Act of 1894, see *Green* v. *The Queen* (4) and *Garnet* v. *Bradley* (5). But as the parties have settled this case it is not necessary to consider the question of jurisdiction further.

Had the case required the ascertainment of the total amount of the claims of these plaintiff seamen, it would have to follow the decision in *Phillips* v. *Highland Railway Company* (6), where the limitation as to the £50 wages claim was considered by the Judicial Committee of the Privy Council, in an appeal from a Vice-Admiralty Court in Australia by six seamen, where the total amount found to be due to all of them for wages and wrongful dismissal, amounted to £203 19s. 8d., but the amount found due to each seaman was less than £50, it was held by the Judicial Committee that the Vice-Admiralty Court had jurisdiction, and that it was wrong in dismissing the suit for want of jurisdiction, for that the Merchant Shipping Act of 1854 (s. 189) did not take away such right of suit so long as the total aggregate

(1) (1893) 4 Ex. C. R. 7.
(2) (1904) 9 Ex. C. R. 238.
(3) (1906), c. 103, s. 191 and 348.
(4) (1876), 1 A. C. 513.
(5) (1888) 3 A. C. 944.
(6) [1883] 8 A. C. 329.

amount recovered as due to all the seamen exceeded £50.

The parties in this case having adjusted their claims there will be no decree.

Rowell, Reid, Wilkie, Wood & Gibson: Plaintiffs' Solicitors.

Denton, Dunn & Boultbee: Defendants Solicitors.

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