

TORONTO ADMIRALTY DISTRICT.

1893

Oct. 20.

THE SHIP "W. J. AIKENS."

Maritime law—Seamen's wages—Action for—Jurisdiction of Exchequer Court—R.S.C. c. 75, s. 34—Costs.

A seaman, the engineer of a tug, took proceedings in the Exchequer Court, Admiralty side, on a claim for \$136 wages, and arrested the ship. On the trial it was contended that the court had no jurisdiction to try a claim for less than \$200, the owner not being insolvent, the ship not being under arrest, and the case not referred to the court by a judge, magistrate, or justice pursuant to R.S.C. c. 75 s. 34, *The Inland Waters Seamen's Act*.

Held, that *The Admiralty Act*, 1891, conferred upon the Exchequer Court all the jurisdiction possessed by the High Court, Admiralty Division, in England as it stood on the 25th July, 1890, the date of the passing of *The Colonial Courts of Admiralty Act*, 1890, and that the Admiralty Court in Canada could now try any claim for seamen's wages, including claims below \$200; and that s. 34 of R.S.C. c. 75 was repealed by implication (not having been expressly preserved) to the extent, at any rate, that it curtailed the jurisdiction of the Admiralty Court to entertain claims for seamen's wages below \$200 in amount.

Held, as to the costs of any such action, that they were in the discretion of the judge trying the cause under Rule 132 of the Admiralty Rules of the Exchequer Court of Canada.

This was the practice and rule in England on July 25th, 1890, and since. *Tenant v. Ellis* 6 Q.B.D. 46; *Rockett v. Clippingdale*, (1891) 2 Q.B. 293; *The Saltburn*, (1892), Prob. 333 referred to.

THIS was an action brought to recover an amount claimed for wages by the plaintiff as engineer of the tug *W. J. Aikens*. The total original claim was \$149.33, reduced by an admitted cash payment of \$12.50, leaving the net balance sued for, \$136.83.

The case was tried before His Honour Judge McDougall, Local Judge for the Toronto Admiralty District, at Collingwood, on the 20th October, 1893.

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Moberly for the plaintiff;

G. W. Bruce for the ship.

After hearing all parties the learned judge adjusted the account as follows:—

The original claim should be—

Three months' wages as engineer at	
\$40 per month.....	\$120
Some extra labour pumping in the	
tug in Spring.....	10
	10
Total	\$130

He also found that various payments prior to action had been made, amounting in all, to \$100; leaving a balance due plaintiff of \$30.

MCDougall, L.J.—The principal question raised upon the whole case was that of jurisdiction. It was contended that the present action could not be brought in the Exchequer Court, as the amount claimed and found to be due was below the sum of \$200, and ss. 34 and 35 of *The Inland Waters Seamen's Act*, R.S.C. c. 75, were relied upon.

These sections are as follows:—

Sec. 34. "No suit or proceedings for the recovery of wages under the sum of \$200 shall be instituted by or on behalf of any seaman or apprentice belonging to any ship subject to the provisions of this Act, in any Court of Vice-Admiralty, or in the Maritime Court of Ontario, or in any Superior Court, unless the owner of the ship is insolvent within the meaning of any Act respecting insolvency, for the time being in force in Canada, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any judge, magistrate, or 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 twenty miles of the place where the seaman or apprentice is discharged or put ashore."

Sec. 35. "If any suit for the recovery of a seaman's wages is instituted against any ship, or the master or owner thereof, in any Court of Vice-Admiralty, or in the Maritime Court of Ontario, or in any Superior Court in Canada, and it appears to the court, in the course

“of such suit, that the plaintiff might have had as effectual a remedy for the recovery of his wages by complaint to a judge, magistrate or two Justices of the Peace under this Act, then the judge shall certify to that effect, and thereupon no costs shall be awarded to the plaintiff.”

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No doubt that prior to the passage of *The Admiralty Act*, 1891, these sections of *The Inland Waters Seamen's Act* prevailed, and no action for the recovery of an amount less than \$200 for seamen's wages could have been properly brought in the Maritime Court of Ontario, unless the case came within some one of the exceptions named in section 34. Has the passage of *The Admiralty Act*, 1891, altered the law? Section 3 of that Act declares that, “in pursuance of the powers given by *The Colonial Courts of Admiralty Act*, 1890, aforesaid, or otherwise in any manner vested in the Parliament of Canada, it is enacted and declared that the Exchequer Court of Canada is and shall be, within Canada, a Colonial Court of Admiralty, and as a Court of Admiralty shall, within Canada, have and exercise all the jurisdiction, powers and authority conferred by *The Colonial Courts of Admiralty Act*, or by *The Admiralty Act*, 1891.

Section 4 declares that: “Such jurisdiction shall be exercised by the Exchequer Court throughout Canada and the waters thereof, whether tidal or non-tidal,” etc.

Now, let us see what is the jurisdiction conferred by *The Colonial Courts of Admiralty Act*, 1890. Section 2, sub-section 2, states: “The jurisdiction of a Colonial Court of Admiralty is to be (subject to the provisions of this Act) over the like places, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction, in like manner and to as full an extent, as the High Court in England,” etc., etc.

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Section 3 enacts that the legislature of a British Possession may, by any Colonial law, declare any court of unlimited civil jurisdiction, whether original or appellate, in that Possession, to be a Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit, territorially or otherwise, the extent of such jurisdiction.

Now, our statute, *The Admiralty Act, 1891*, in its preamble, recites the powers conferred by the English Act of 1890, and that the Exchequer Court of Canada is a court of law in Canada, with unlimited civil jurisdiction, and then proceeds, by virtue of the powers conferred by the English Act, to declare the Exchequer Court to be a Court of Admiralty. It defines the extent of the jurisdiction by section 3, as we have seen, to be all the powers conferred by the English Colonial Courts of Admiralty Act, 1890, as well as by *The Admiralty Act, 1891*, itself.

It limits the jurisdiction territorially by section 13, by making the action to be in the local territorial court:—

(a.) Where the ship, the subject of the suit, is within the local district;

(b.) When the owner, or owners, of the largest part of the shares reside in the district;

(c.) The port or registry of the ship is in the district; or

(d.) Where the parties agree, in writing, that it shall be tried in the district.

Section 9 enacts that every local judge shall have and exercise all the jurisdiction, and all the powers and authority relating thereto, within his district, that the Judge of the Exchequer Court could have or exercise in respect of the admiralty jurisdiction of the court.

Section 20 gives the judge of the Maritime Court of Ontario all the powers of a local judge in the Toronto Admiralty District.

Section 23 abolished the Maritime Court, saving all pending actions, and preserved the existing rules and practice till new rules were made.

The 189th section of *The Merchants' Shipping Act*, 1854, was in terms precisely the same as section 34 of *The Inland Waters Seamen's Act*, and doubtless the section in the latter Act was taken from it.

Section 10 of *The Admiralty Court Act*, 1861, reads as follows: "The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, etc., etc. Provided always, that if in any such cause 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 9th section of *The County Courts Admiralty Jurisdiction Act*, 1868, conferred upon the Court of Admiralty power to order proceedings which might without agreement have been taken in a County Court having admiralty jurisdiction to be taken in a Court of Admiralty, and this power was transferred and vested in the Admiralty Division of the High Court of Justice. It has been held that the effect of this section was to restore to the Court of Admiralty its inherent jurisdiction over the actions therein mentioned, whenever such jurisdiction had been taken away by previous legislation; and consequently in England, at the date when *The Colonial Courts of Admiralty Act*, 1890, was passed and became law, the Admiralty Division had admiralty jurisdiction in all actions of wages, irrespective of the smallness of the plaintiff's claim (1).

Upon the question as to the right of the plaintiff to recover costs where he brought his action in the Court of Admiralty for an amount which he could have re-

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covered in a County Court having admiralty jurisdiction, it has been expressly held that the provisions of Order 55 of the English Judicature Act has impliedly repealed all the restrictions imposed by section 9 of *The County Courts Admiralty Jurisdiction Act, 1868*, in reference to costs, and that therefore no judge's certificate is required; but that the costs in each case rest in the judge's discretion. This was expressly decided, first, by the Queen's Bench Division in 1880, in the case of *Tenant v. Ellis* (1), approved by the Court of Appeal in *Rockett v. Clippingdale* (2), and also affirmed in *The Saltburn* (3).

Upon turning to the rules of practice adopted under *The Admiralty Act, 1891*, and approved by an order of Her Majesty in Council, we find by Rule 132 that costs are left in the discretion of the judge. Rule 224 directs that, where the sum in dispute does not exceed \$200, one-half only of the fees (other than disbursements) set forth in the table annexed to the rules shall be charged or allowed. Rule 228 directs "That in all cases not provided for by these rules the practice for the time being in force in respect to admiralty proceedings in the High Court of Justice in England shall be followed."

From the foregoing I conclude that it is quite clear that in England, at the date of the passage of *The Colonial Courts of Admiralty Act, 1890*, the Court of Admiralty had jurisdiction in all cases of wages, salvage, or otherwise, regardless of the amount involved; that with reference to clauses in previous statutes purporting to limit that jurisdiction, such clauses had been repealed by implication by the latter statutes enlarging the jurisdiction of the Court of Admiralty; and that clauses in statutes which purported to have for their

(1). 6 Q.B.D. 46.

(2). (1891) 2 Q.B. 293.

(3) (1892) Prob. 333.

aim the compelling of suitors claiming small amounts to proceed in inferior courts having admiralty jurisdiction, and depriving them of costs if they brought their action in the Court of Admiralty, were also to be treated as repealed, and costs in such cases, though brought in the Court of Admiralty, were, nevertheless, in the discretion of the judge.

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I also conclude that this jurisdiction, with all the foregoing consequences, was conferred upon the Exchequer Court by our Admiralty Act, 1891, and a wider jurisdiction was conferred by this latter Act upon the Exchequer Court than that existing in the Vice-Admiralty Courts of the Dominion or the Maritime Court of Ontario prior to the passage of the Admiralty Act. That sections 34 and 35 of *The Inland Waters Seamen's Act* (1), and the limitations therein contained not having been expressly preserved have been impliedly repealed, so far at any rate as they affect the jurisdiction of the Exchequer Court to entertain an action for wages under \$200.

In my opinion, therefore, the Exchequer Court of Canada, in the exercise of its admiralty jurisdiction, can entertain a claim for seaman's wages without any limit as to amount, and that in every such case the determination of the question of costs rests in the discretion of the judge trying the case.

In the present case I find a verdict for the plaintiff for \$30, being for the balance of wages due him, and under Rule 133 I fix the costs of the plaintiff at the lump sum of \$30 in lieu of taxed costs.

Judgment accordingly.

Solicitors for plaintiffs: *Moberley & Gannon.*

Solicitors for the ship: *Bruce & Fair.*

(1). R.S.C. c. 75.