BRITISH COLUMBIA ADMIRALTY DISTRICT.

1915
July 17.

COWAN

v.

THE SHIP "ST. ALICE."

Seamen—Wages—Jurisdictional amount.

The jurisdiction of the Exchequer or Admiralty Court under the *Canada Shipping Act* (R.S.C. 1906, c. 113, s. 191), over claims for seamen's wages, depends upon the amount of recovery, not the amount sued on. Where the amount of recovery is less, although the amount sued on is more than $200, the Court is without jurisdiction. Several such claims may be consolidated into one action in order to confer jurisdiction.

ACTION for seamen's wages.

Tried before the Honourable Mr. Justice Martin, Local Judge of the British Columbia Admiralty District, at Vancouver, B. C., May 11, 1915.

H. B. Robinson, for plaintiff.

R. M. Macdonald, for defendant.

MARTIN, Loc. J. (July 17, 1915) delivered judgment.

An important question, of interest to all seamen, is raised by this action, which was brought to recover the sum of $225 for wages, by an action *in rem,* against the defendant ship, registered at Vancouver, B. C., with the result that after hearing several witnesses judgment was entered for $88 only, the question of costs being reserved for further argument. It is submitted by the defendant that the effect of

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sec. 191 of the *Canada Shipping Act*,[1] is that when it was found at the trial that the plaintiff can only recover a sum less than $200 the court should thereupon dismiss the action with costs, leaving the plaintiff to pursue his remedy in the proper forum, where it should originally have been brought, because this court can only entertain and adjudicate upon claims in excess of the specified amount, which amount should be determined, not by a fictitious sum wrongly sued for, but by that which is and was really due for the wages earned at the time suit was begun.

Said section provides:

"No suit or proceedings for the recovery of "wages under the sum of two hundred dollars "shall be instituted by or on behalf of any sea- "man or apprentice belonging to any ship regis- "tered in any of the provinces in the Exchequer "Court on its Admiralty side, or in any Superior "Court in any of the provinces, unless—"
"(here follow certain immaterial exceptions.)

And sec. 192 is:

"If any suit for the recovery of a seaman's "wages is instituted against any such ship, or "the master or owner thereof, in the Exchequer "Court on its Admiralty side, or in any Su- "perior Court in any of the provinces, 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 com- "plaint to a judge, magistrate or two jus- "tices of the peace under this Part, the judge "shall certify to that effect, and thereupon no "costs shall be awarded to the plaintiff."

[1] R.S.C. 1906, c. 113.

For the plaintiff it is urged that where, as here, a plaintiff *bonâ fide* believes he is entitled to recover a sum above the statutory amount he is entitled to invoke the aid of the court to determine that matter and there is no lack of jurisdiction.

I have found it necessary to examine at length a very large number of authorities bearing directly and indirectly on the point, including *The Ann*,[1] *The Margaretha Stevenson*,[2] *The Robb*,[3] *The Royal*,[4] *The Monark*,[5] *Brown v. Vaughan*,[6] *Phillips v. Highland Ry. Co. The Ferret*,[7] *Beattie v. Johansen*,[8] *The W. B. Hall*,[9] *The Jessie Stewart*,[10] *The Bessie Markham*,[11] *The W. J. Aikens*,[12] *Gagnon v. The Savoy*,[13] *Beaton v. The Christine*,[14] *Abbott on Shipping*,[15] *MacLachlan on Merchant Shipping*,[16] *Williams & Bruce Admiralty Practice*,[17] *Roscoe's Admiralty Practice*,[18] *The Blakeney*,[19] and *The Harriet*.[20] Fortunately the last named case, decided by Dr. Lushington, exactly covers the question and decides it in favour of the present defendants. That was a case where a mate sued for wages as being over the prescribed amount (£50) under the

1 (1871) Young 104.
2 (1873) 2 Stuart 192, Stockton 83-4.
3 (1880) 17 C.L.J. 66.
4 (1883) Cook (Quebec) 326.
5 *Ib.* 345.
6 (1882) 22 N.B. 258.
7 (1883) 8 App. Cas. 329.
8 (1887) 28 N.B. 26.
9 (1888) 8 C.L.T. 169.
10 (1892) 3 Can. Ex. 132.
11 cited by Stockton, p. 85.
12 (1893) 4 Can. Ex. 7, Stockton 690.
13 (1904) 9 Can. Ex. 238.
14 (1907) 11 Can. Ex. 167.
15 (1901) 14th Ed. 1129.
16 (1911) 5th Ed. 116 (Note) 264.
17 (1902) 3rd Ed. 210, 214, 216.
18 (1903) 3rd Ed. 263.
19 (1859) Swab. 428.
20 (1861) Lush. 285.

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corresponding sec. 189 of the *Merchant Shipping Act* of 1854 (which is essentially to the same effect as our sec. 191, except that the prescribed amount is greater), but at the conclusion of the hearing the amount due him was found to be below £50, whereupon the Court said, p. 291, in language which was cited with approval in the *Margaretha Stevenson* case, supra:

> "I regret that this decision not only deprives "the plaintiff of wages which he has justly "earned as purser, but must also bar him from "recovering in this court the wages he has earn- "ed as mate. His claim, reduced to a claim for "mate's wages only, does not amount to the "minimum of £50 which the statute requires for "a proceeding for seamen's wages in a Superior "Court, except in certain contingencies, which "are not applicable to this case. It is true that "the words are 'No suit or proceeding for the "recovery of wages under the sum of £50 shall "be instituted,' and that here a claim, and a *bonâ* "*fide* claim, has been made for a sum exceeding "£50, but I must interpret the statute to require "a recovery of £50. I dismiss the case, but I do "not give costs."

The learned judge added:

> "I am happy to say that an Act is now pass- "ing 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."

This paragraph refers to the *Admiralty Act*, 1861, assented to May 17th of that year (the judgment be-

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ing delivered on March 21st), as to which I shall speak later. The result of that decision as applied to this case is that the same prohibition and restriction extend to cases where the amount sued for, as well as recovered, is less than the prescribed amount, the only difference being that in the former case the lack of jurisdiction appears on the face of the proceedings and in the latter case it is determined by the result of the trial, and will only be determined there at and not by means of a preliminary investigation; *The Nymph.*[1] One curious result of the unusual wording of the section is that where a sum in excess of the statutory amount is claimed it is impossible to object to the jurisdiction till after the case has been decided on the merits, to the extent at least of determining the question as to whether or not the plaintiff can recover up to the said amount.

But the further question remains as to whether or not this court is prevented by sec. 191 from entertaining the action. In other words, is its jurisdiction to entertain claims for any amount still unfettered? On that point there is a regrettable conflict of authority in this court (referred to in *Beaton v. The Christine*[2]), one of the learned judges thereof, in the Toronto District, having held, after consideration of the said *Admiralty Act* of 1861 and other statutes, in *The W. J. Aikens, supra,* that the court has jurisdiction, and another learned judge, in the Quebec District, declining, in *Gagnon v. The Savoy, supra,* to follow that decision, thus leaving the matter in a very unsatisfactory state. In these unfortunate circumstances what is my duty as a judge of the same court, though in another district? I find

[1] (1856) Swab 86.
[2] (1907) 11 Can. Ex. 167, 171.

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a safe guide in the judgment of Mr. Justice Channell, who was placed in a similar position in *North v. Walthamstow Urban Council*,[1] and took this view of it:—

> "Of course, where two cases are inconsistent, "the judge who is considering them is entitled, "if his opinion inclines to one or the other, to "follow the one that he prefers; but where he "has no very clear opinion upon the point, I "think it is his duty to consider which of the two "is the higher authority and therefore the one "which ought to be followed, and that, in my "view, depends upon whether the second case "is a decision given with knowledge of the ex- "istence of the first, and with a deliberate dis- "regard of it, or not. If it is, then the second "case is the one of greater authority. But if, "on the other hand, as sometimes happens, the "second case is a decision given in ignorance of "the first, then the first is the greater authority, "and the second must be treated as having been "given inadvertently."

Compare also *Knowles v. Bolton Corporation*.[2] Now, after a very careful consideration of all the authorities on the point (many of which are cited *supra*) I confess the result is that I have "no very clear opinion upon" it, though if I may be allowed so say so with every respect, in neither of the conflicting judgments did the court, apparently, have the benefit of an adequate argument, nor were many authorities cited that would have been of assistance. But I can go no further than to say that if I had been in the position of the learned judge who decided the

[1] (1898) 67 L.J.Q.B. 972 at 974.
[2] (1900) 2 Q.B. 253 at 258-9.

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latter case, I should have felt it my duty to adhere to the salutary rule "*stare decisis,*" but since he has felt it his duty to assume the responsibility of going to the unusual length of departing from it, I do not think I would be justified in the circumstances in making confusion worse confounded by delivering another judgment, differing, possibly, in part at least, from both my learned brothers, so, in the public interest, I formally adopt the latter decision as the greater authority, and leave it to the court above, or Parliament, to take steps, if any, that may be necessary to change the law. I would not, however, have it understood that I think any change is necessary or desirable, because the reason for placing this restriction upon what are sometimes the oppressive and vexatious proceedings *in rem* of small claimants is set out in the case of *The Monark, supra,* and by the Supreme Court of New Brunswick *in banco* in *Beattie v. Johansen, supra,*[1] wherein the "complete and adequate scheme of relief" under the Act and its special appropriate remedies are considered, particularly in the judgment of Mr. Justice King, p. 31, who furthermore points out that sec. 57 (now 192), relating to the judge giving his certificate for costs, applies to the excepted cases under sec. 56 (now 191), but there is no need for me to express my opinion on sec. 192, as the case is disposed of by 191.

The result is that the action should be dismissed, but in the circumstances, owing to the conflict of authority, without costs, following in that respect *The Harriet,* and the *Margaretha Stevenson, supra.*

[1] p. 30.

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I note by way of precaution that it has been settled that the separate claims of seamen for wages may be combined in one action so as to confer jurisdiction: *The Ann, supra; The Ferret, supra; Beaton v. The Christine, supra,* followed by *Burke v. The Vipond*[1].

Action dismissed.

[1] (1913) 14 Can. Ex. 326, 14 D.L.R. 396.