

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1915

Sept. 17.

BECK

v.

THE SHIP "KOBE."

Seamen—Wages—Master of ship—Jurisdictional amount.

Under the *Canada Shipping Act* (R.S.C. 1906, c. 113, s. 194) the master of a ship is put upon the same basis as a seaman as regards the jurisdictional amount for the enforcement of claims for wages.

MOTION to set aside warrant of arrest of ship for want of jurisdiction.

Heard by the Honourable Mr. Justice Martin, Local Judge of British Columbia Admiralty District, at Victoria, B. C., September 8, 1915.

C. M. Woodworth, for motion.

W. F. Hansford, contra.

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

This is a motion by the defendant to set aside the writ and warrant of arrest for lack of jurisdiction. The defendant ship, of Canadian registry, is under arrest to satisfy a claim of the master for wages amounting to \$190, an amount which on the face of the proceedings is too small to give this court jurisdiction under sec. 191 of the *Canada Shipping Act*,¹ in the case of "any seaman or apprentice," according to the recent decision of this court in *Cowan*

¹ R.S.C. 1906, c. 113.

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*v. The St. Alice.*¹ But it is submitted that a master is not within the scope or prohibition of that section, and reliance is placed upon the following definition of "seaman" in interpretation sec. 126 of Part III. of the said Act, dealing with "seamen," in the group of sections from 126 to 325 inclusive:

" 'Seaman' includes every person employed
 " or engaged in any capacity on board any ship,
 " except masters, pilots and apprentices duly
 " indentured and registered."

This is essentially the same as the definition in the *Imperial Merchant Shipping Act* of 1854, sec. 2.

It is also pointed out that sec. 215 of the same, cap. 113, relating to expenses for injuries, draws a distinction between "the master or any seaman or apprentice." And in sec. 10 of the *Admiralty Court Act*, 1861, a like distinction is drawn between the claims of seamen and masters for wages and disbursements, the High Court of Admiralty being given jurisdiction over both, which this court possesses. The history of various Imperial enactments on the point is considered in, *e.g.*, *The Sara*² (particularly Lord Macnaghten's judgment) *Morgan v. Castlegate Steamship Co.*,³ and *The Arina*,⁴ wherein it is said by Brett, J., that the master "*ex hypothesi* is not a seaman."

It is urged that while the "same rights, liens and remedies" as a seaman are given a master under sec. 194, "for the recovery of his wages, and for the recovery of disbursements properly made

¹ (1915) Ante. p. 207, 21 B.C.R. 540.

² (1889) 14 App. Cas. 209.

³ [1893] A.C. 38 at 46-8, 51.

⁴ (1887) 12 P.D. 118 at 127.

by him," yet these are in addition to and not in derogation of his other pre-existing rights. But it is submitted for the defendant that even though a master would in general be excepted from said sec. 191, yet because of sec. 194 he can be in no better position than a seaman or apprentice when he resorts to the "Mode of Recovering Wages," as the significant heading runs to this particular group of secs. 187-195. Sec. 194 is as follows:

"Every master of a ship registered in any of the provinces shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages, and for the recovery of disbursements properly made by him on account of the ship and for liabilities properly incurred by him on account of the ship, which, by this Part or by any law or custom, any seaman, not being a master, has for the recovery of his wages."

And *cf.* the similar sec. 167 (2) of the *Imperial Merchant Shipping Act*, 1894, c. 66, which is in substance the same as sec. 1 of the *Imperial Merchant Shipping Act*, 1889 (52 & 53 Vic., c. 46), under which a lien for disbursements was first given the master: *Morgan v. Castlegate S.S. Co.*, *supra*.¹ After a careful consideration of the various statutes and authorities cited, *e.g.*, *Abbott on Merchant Ships*;² *Temperley on Merchant Shipping*;³ *Maclachlan on Merchant Shipping*;⁴ *Halsbury's Laws of England*;⁵ *Maude and Pollock on Merchant Shipping*,⁶ and Wil-

¹ p. 51.

² (1901) 14th ed. 185, 296, 1130.

³ 2nd ed. 89.

⁴ (1911) 5th ed. 218-9, 237 (n); 258.

⁵ Vol. 26, p. 53.

⁶ (1881) 4th ed. 122, 240.

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liams & Bruce's Admiralty Practice,¹ I can only bring myself to hold that it is the clear intention of the legislature in the enactment of this little group of nine sections dealing with one subject matter and which ought to be read together, to put the master upon the same basis as a seaman in respect of recovery and remedy as well as of substantive rights. There is nothing in the circumstances which renders it improper to apply the statutory restriction to the facts before me, as "the case permits" it, to quote the words of the statute, which expression has been considered in two of the English cases I have cited. The matter is, in short, given valuable rights, but they must be asserted in the same way as others are required to assert them who possess the same rights, or some of them. The reason which actuated parliament to place by sec. 191 such a restriction upon these actions for wages, and which I have alluded to in *Cowan v. The St. Alice*, *supra*, applies with even greater force to the claim of a master than to that of a seaman or apprentice.

It follows that this court has no jurisdiction to entertain this action and therefore it must be dismissed, and the warrant for arrest set aside. I see no good reason why the usual order for costs should not be made in favour of the successful party.

Motion granted.

¹ (1902) 3rd ed. 208-10, 216.