

1921

NEW BRUNSWICK ADMIRALTY DISTRICT.

November 28.

ALBERT KOUAME.....PLAINTIFF;

AND

STEAMSHIP	MAPLECOURT	} DEFENDANTS.
AND OWNERS.....		

Shipping and seamen—Exchequer Court in Admiralty—Jurisdiction—Canada Shipping Act, R.S.C. 1906, ch. 113, section 191—Seaman's wages—Amount of recovery under \$200.00.

Held, that, subject to the exceptions mentioned in section 191 of the Canada Shipping Act, (ch. 113, R.S.C. 1906), in an action for seaman's wages, earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than \$200.00, the Exchequer Court in Admiralty is without jurisdiction.

The Savoy and *The Polino* (1904) 9 Ex. C. R. 238, referred to, and *Cowan v. The St. Alice* (1915) 17 Ex. C. R. 207 followed.

THIS was an action for seaman's wages and extras commenced by a summons *in rem*. The endorsement claimed the sum of \$277.28 for wages due as cook, and also a sum of money by way of viaticum to enable him to return to his home in Newport News. There was a further claim to have an account taken.

November 24th, 1921.

The case was now tried without pleadings before the Honourable Mr. Justice Sir Douglas Hazen, L.J.A., at St. John.

The facts and points of law involved are set out in the reasons for judgment and the argument of counsel.

F. R. Taylor, K.C., for defendant.

The action is premature, in that the shipping master has not approved of the amount due the plaintiff and the Captain has not refused to discharge him. If, however, the Court is of the opinion that the action is properly brought, the plaintiff cannot recover more than \$200.00. In that event the action will not lie. *The Harriett* (1); Mayer's Admiralty Law and Practice, 100, 101 and 102; R.S.C. (1886) C. 75, Sections 57-58 *Cowan v. The St. Alice* (2); *The Savoy* and *The Polino* (3); *Beck v. The Kobe* (4).

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Argument of
Counsel.

J. F. H. Tweed, for plaintiff:

It is true that R.S.C. 1886, Cap. 75, sec. 56 provides that no suit for wages under the sum of \$200.00 shall be instituted by any seaman, but the following section, 57, provides that where suit is instituted for seamen's wages, and it appears that the plaintiff might have had as effectual a remedy by a complaint to the stipendiary magistrate then a court shall certify to that effect and thereupon no costs shall be awarded to the plaintiff. In this action as the original claim was beyond the jurisdiction of a magistrate, the claimant was obliged to proceed in the Admiralty Court or a superior court. The Admiralty Court therefore had jurisdiction, notwithstanding it should be found that less than \$200.00 is owing, and the plaintiff is at least entitled to judgment for the amount due whether or not he is entitled under the section to costs. It is true that the plaintiff took his discharge in England, but did so on condition he would be signed on again,

(1) [1861] Lush 285.

(3) [1904] 9 Ex. C. R. 238.

(2) [1915] 17 Ex. C.R. 207; 21 B. C.R. 540.

(4) [1915] 17 Ex. C.R. 215; 24 D. L.R. 573.

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and when it was found he was not qualified under the rules existing in England for signing on as cook, the discharge became inoperative, and the voyage for which he had originally signed on at Newport News revived and would not terminate until arrival at a Canadian port.

Hazen L. J. A. now this (28th November, 1921) delivered judgment.

The claim as endorsed on the summons *in rem* was for the sum of \$277.28, for wages due the plaintiff Albert Kouame, as cook. And the plaintiff also claimed a sum of money by way of viaticum to enable him to return to his home in Newport News, and it was stated that his claim also included a claim to have an account taken. No evidence was given under the claim for money by way of viaticum, but at the trial the amount actually claimed by him was not \$277.28, but \$335, and it was understood that the statement endorsed on the summons *in rem* would be amended in that respect.

[His Lordship here sets out the facts and discusses the evidence as to the amount to be allowed and finally decides that the amounts to be deducted from the amount claimed reduces the claim of the plaintiff below the sum of \$200 and His Lordship then proceeds].

The question arises whether under those circumstances the plaintiff is entitled to recover at all in this court. Section 191 of the Canada Shipping Act, R.S.C. 1906, Cap. 113, is as follows:

“No suit or proceedings for the recovery of wages under the sum of two hundred dollars shall be instituted by or in behalf of any seaman or apprentice

belonging to any ship registered in any of the Provinces, in the Exchequer Court on its Admiralty side, or in any superior court in any of the provinces unless—”

Then follow certain exceptions, none of which are of importance in the present case.

This matter has received consideration at the hands of other Canadian courts. In 1909 in the case of *The Savoy* and *The Polino* (1), it was held that subject to the exceptions mentioned in sec. 56 of the Seamen's Act (R.S.C. 1886, Cap. 74) the Exchequer Court on its Admiralty side has no jurisdiction to entertain a claim for seamen's wages under the amount of \$200 earned on a ship registered in Canada.

Attention was called by the learned counsel for the plaintiff to the fact that in *The Savoy case* (1), the amount claimed was under \$200, and that in that respect it was different from the present case in which the amount claimed was in excess of that amount.

In 1908 in the case of *The Christine* (2), judgment was given by Mr. Justice Hodgins, the Local Judge of the Toronto Admiralty District, in which he refers to the conflict of decisions between the Admiralty Court for Ontario and that for Quebec respecting seamen's wages, and points out that 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. has been repealed by implication. This view, however, has not been taken by other judges in Canada, and in the year 1915 in the British Columbia Admiralty District in the

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(1) [1904] 9 Ex. C.R. 238.

(2) [1907] 11 Ex. C. R. 167.

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case of *Cowan v. The St. Alice* (1), it was held by Mr. Justice Martin, local judge of the British Columbia Admiralty District, that the jurisdiction of the Exchequer or Admiralty Court under the Canada Shipping Act (R.S.C. 1906, c. 113) the section of which I have previously quoted, 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, it was held, is without jurisdiction. I agree with this judgment of Mr. Justice Martin, for the reasons given by him. He points out that in that case it was urged on behalf of the plaintiff, as has been urged in this case, that where a plaintiff *bona 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. The learned judge made a most careful examination of a very large number of authorities bearing directly and indirectly upon the point, one of which cases was *The Harriett* (2). In regard to that he says:

"That was a case where a mate sued for wages as being over the prescribed amount (£50) under the corresponding section 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:

'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

(1) [1915] 21 B.C.R. 540; 17 Ex. C. R. 207. (2) [1861] Lush. 285.

wages he has earned 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 *bona 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.' "

I think that in following the decision of Doctor Lushington the judge of the local court in British Columbia is standing on safe ground and I concur entirely in the conclusions which he has reached. That being the case I have decided that the action in the present case should be dismissed.

Judgment accordingly.

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