

Judgment of the Lords of the Judicial Committee on the Appeal of Phillips and others v. The Highland Railway Company (The "Ferret"), from the Vice-Admiralty Court of the Colony of Victoria; delivered March 7th, 1883.

Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

THIS was a suit brought by six seamen, in the Vice-Admiralty Court of Melbourne, to recover wages and compensation for wrongful dismissal. The suit was brought by the six seamen jointly, the amount claimed for each being a larger sum than 50l.; but the Judge reduced the amount due to each of the Plaintiffs to a sum less than 50l., the total, however, amounting to 203l. 19s. 8d.

The first question to be considered is whether the Judge had jurisdiction. That depends upon the 189th section of the Merchant Shipping Act of 1854. Previously to the passing of that Act His late Majesty King William IV., by an Order in Council made under the authority of an Act of Parliament passed in the second year of his reign, ordained certain rules and regulations to be acted upon by the Vice-Admiralty Courts abroad. One of those rules was contained in section 15. It stated that any number of seamen, not exceeding six, may join in one action in a Vice-Admiralty Court to recover their wages. It was, therefore, at the time of the passing of the Merchant Shipping Act of 1854, lawful for six seamen, if they pleased, to join in one action in the Vice-Admiralty Court to recover their wages; and

compensation falls under that rule. The 188th section of that Act enacted that " Any seaman or
" apprentice, or any person duly authorised on his
" behalf, may sue in a summary manner before
" any two justices of the peace acting in or near
" the place at which the service has terminated,
" or at which the seaman or apprentice has been
" discharged, or at which any person upon whom
" the claim is made is or resides, for any amount
" of wages due to such seaman or apprentice, not
" exceeding 50*l.* over and above the costs of any
" proceedings for the recovery thereof." Section
189, which is the section relied upon, enacted
that " No suit or proceeding for the recovery of
" wages under the sum of 50*l.* shall be instituted
" by or on behalf of any seaman or apprentice in
" any Court of Admiralty or Vice-Admiralty, or
" any Court of Session in Scotland, or in any
" Superior Court of Record in Her Majesty's
" dominions, unless the owner of the ship is
" adjudged bankrupt or declared insolvent, or
" unless the ship is under arrest or is sold by the
" authority of any such Court as aforesaid, or
" unless any 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 20 miles of the
" place where the seaman or apprentice is dis-
" charged or put ashore." The question then is
whether this enactment prevents several seamen
from joining in one suit in a Vice-Admiralty Court
to recover wages when the total amount of the
wages claimed exceeds 50*l.* and the wages of
each is less than 50*l.* Having reference to the
Interpretation Act, 13 & 14 Victoria, chapter 21,
which was in force when the Merchant Shipping
Act of 1854 was passed, and by which it is
enacted that words in the singular number shall
include the plural, their Lordships are of opinion
that they may read section 189 as if it had said,

“ No suit or proceeding for the recovery of wages under the sum of 50*l.* shall be instituted by or on behalf of any seaman or seamen.”

It was contended that the section could not be read in that way, inasmuch as it speaks of actions brought in any of Her Majesty's Courts of Record, in which six seamen cannot join; but it does not follow that, because six seamen cannot join in a suit in one of Her Majesty's Courts of Record, they are not to join in a suit in the Vice-Admiralty Court under the provisions of the rules to which allusion has already been made. Their Lordships think that the 189th section must be read *reddendo singula singulis*, and that if six seamen join in a suit in a Vice-Admiralty Court, where six seamen may join, and the total amount of the wages due to the six exceeds 50*l.*, they may proceed in that suit although the wages of each included in the amount sought to be recovered are less than 50*l.*

It was agreed that the Judge, instead of sending the matter to the registrar to assess the amount, should himself ascertain it; and he found with regard to each of the six that the wages and compensation due was a sum less than 50*l.*, but that the total amount due to the six was 203*l.* 19*s.* 8*d.* Their Lordships think that the Judge had jurisdiction, under the rule and the section to which allusion has already been made, to award that sum of 203*l.* 19*s.* 8*d.*, partly for wages and partly for wrongful dismissal.

In the first place, there was a contract entered into by Watkins, who was the duly authorised master of the owners at Cardiff. He entered into a contract with the seamen, and they were hired, at certain fixed amounts, for a period of three years, for a certain voyage. It appears that the master left the ship at the Cape, and that a man named Wright, who was then the mate, took possession and ran away with it for the

purpose of stealing it. When the ship arrived at Melbourne on the 22nd of April in the year 1881 the Government seized it, on behalf of the owners, upon the ground that it was in the possession of men who had stolen it, and they put the seamen ashore. Three days afterwards, on the 25th of April, the ship was delivered up by the Government to the agent of the owners. The agent took possession, and the owners must be bound by his act; by taking possession of the ship they ratified what the Government had done in taking possession of it on their behalf and putting the seamen ashore.

The seamen contended that they were entitled not only to their wages up to the time of the seizure, but to compensation for being turned out of the ship after it arrived at Melbourne. If the seamen had been *participes criminis*, if they had joined Wright in endeavouring to steal the ship, of course they would not have been entitled either to wages or to compensation; but that defence was never made. The seamen, although they were at first arrested, were never tried for the offence of complicity. They were discharged, and no defence was set up in the suit in the Vice-Admiralty Court that the Plaintiffs were not entitled to their wages upon the ground of complicity. A sum, not including compensation, was tendered to them for their wages up to the date of the seizure of the ship. Nothing was offered by way of compensation for the wrongful dismissal. The learned Judge who tried the case said: "In consequence
" of information received by the Government,
" the steamer had been seized by the officers of
" customs. The master and mate were arrested,
" and the seamen removed from the vessel,
" some of the crew being kept under the sur-
" veillance of the police as witnesses awaiting
" the trial of the master and mate. The sea-

“ men required as witnesses were paid by the
“ Government; the others were placed in the
“ Sailors' Home, and offered a certain allow-
“ ance. Several accepted this allowance, and
“ were engaged as seamen on board vessels
“ in the port. The promoters refused the
“ amount offered them, and instituted the present
“ proceedings.”

Their Lordships are of opinion that under the circumstances, (no defence having been set up that the Plaintiffs were guilty of complicity,) they were entitled to recover their wages and a reasonable and proper amount for compensation. The Judge fixed the amount which he would have awarded if he had had jurisdiction at 203*l.* 19*s.* 8*d.*, but he dismissed the suit upon the ground that he had no jurisdiction inasmuch as the suit was for wages under the amount of 50*l.* Their Lordships ought to give the same judgment as the Judge would have given if he had considered that he had jurisdiction, and had referred it to the registrar to assess the amount, and the registrar had fixed it at 203*l.* 19*s.* 8*d.* and the Judge had confirmed the report of the registrar.

Several other points were made, and amongst others that Wright was the substituted master, notwithstanding he took the command after Watkins left for the purpose of stealing the ship; and that although in jail for stealing the ship, he was residing within 20 miles of the place where the seamen were discharged within the meaning of the 189th section. Their Lordships consider that the point on which the judgment has already been pronounced is sufficient to decide the case, and that it is not necessary to express an opinion upon the other points.

Under these circumstances their Lordships will humbly advise Her Majesty that the judgment of the Judge be reversed, and that, instead thereof, a decree be given in the suit for the Plaintiffs

for the sum of 203*l.* 19*s.* 8*d.*, to be distributed amongst the several Plaintiffs in the manner in which the learned Judge has divided the total amount amongst them, with costs, in the Lower Court. The Respondents must pay the costs of this Appeal.