

1892

Feb. 26.

THE NEW BRUNSWICK ADMIRALTY DISTRICT.

STEPHEN S. HALL AND CHARLES } PLAINTIFFS;
 H. FAIRWEATHER..... }

AGAINST

THE SHIP "SEAWARD."

Maritime law—Action of account between co-owners—The Colonial Courts of Admiralty Act, 1890—The Admiralty Act, 1891—Jurisdiction—Practice.

The Exchequer Court has jurisdiction to hear and determine actions of account between co-owners of a ship.

Semble,—That in an action by the managing owner of a ship against his co-owner, the indorsement on the writ need not show that there was any dispute as to the amount involved.

MOTION to set aside a writ of summons on the ground that the court had no jurisdiction to deal with the cause of action relied on therein.

The plaintiffs, as part-owners of the ship *Seaward*, sued the defendants, as part-owners thereof, for the recovery of \$728.74 for moneys paid and disbursements made by the plaintiffs, as managing and part-owners of said ship, for said defendants.

The defendants appeared under protest, objecting to the jurisdiction of the court and asking to have the writ set aside on the grounds (1st) that co-owners could not come to the court for an account, or for the recovery of any amount thereunder in cases where the plaintiffs kept the accounts themselves; and (2ndly) because it did not appear from the indorsement of the writ that there was any dispute as to the amount.

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The motion was argued before Mr. Justice Tuck, Local Judge for the Admiralty District of New Brunswick.

McLean, in support of motion, contended :

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1st. The statement of claim as endorsed on the summons is for a debt due from the defendants to the plaintiffs. This is not such a matter as the court has jurisdiction over under section 10 of subsection 9 of *The Vice-Admiralty Courts Act*, 1863.

2ndly. The said statement of claim does not set out that there is a dispute between the owners of the ship *Seaward* touching the ownership, possession, employment or earnings of such ship.

3rdly. The claim for an account to be taken cannot be entertained by the court. The plaintiffs claim \$728.74 for moneys paid and disbursements made by plaintiffs as managing and part-owners of said ship, which amount they allege is now due and payable. It is not alleged that said debt is disputed nor is there any reason given why plaintiffs' own accounts should be taken, nor is it alleged that defendants dispute said accounts. In other words, the managing owners cannot ask to have their own accounts taken without giving a sufficient reason therefor.

4thly. A suit cannot be commenced in this court to take accounts. The account can only be taken as ancillary to other matters over which the court has jurisdiction.

Stockton, Q.C., *contra*, pointed out that *The Vice-Admiralty Courts Act*, 1863, had been repealed by *The Colonial Courts of Admiralty Act*, 1890, (53-54 Vic. c. 27). This latter act has been given effect to in Canada by the statute 54-55 Vic. c. 29; so that the laws relating to the jurisdiction of the High Court of Admiralty in England—including the Imperial statute 24 V. c. 10—are now in force in Canada. By section 8 of 24 Vic. c. 10, the High Court has jurisdiction to decide all questions arising between co-owners, or any of them, touching the ownership, employment or earn-

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ings of any ship registered in England and Wales, and to settle all accounts in relation thereto between the parties.

As the claim sued for in this suit is one arising out of the employment of the ship *Seaward*, registered in Canada, and is outstanding and unsettled, the court clearly has jurisdiction to adjudicate in the case. The jurisdiction of the Colonial Courts of Admiralty, by 53-54 Vic. c. 27, sec. 2, subsec. 2, may be exercised in like manner, and to as full an extent, within Canada, as the High Court of England, with a few exceptions not material to this case. There is nothing in the objection that the court cannot entertain a suit for the purpose of taking an account,—the court will order accounts to be taken either as a step in the cause or in a suit having the taking of accounts for the sole object. (He cites the *Idas* (1); *Roscoe Ad. Pract.* (2); the *Lady of the Lake* (3); the *Meggie* (4).

TUCK, L. J.—I think the court has jurisdiction and that the action has been properly brought. I, therefore, dismiss this application, and order the defendants to appear absolutely. The costs of this application will be costs in the cause.

Motion dismissed.

Solicitors for plaintiffs: *Stratton & Hazen*;

Solicitor for the ship: *H. H. McLean*.

(1) Br. & Lush. 65.

(2) (2nd Ed.) 50.

(3) L. R. 3 Ad. & Eccl. 32.

(4) L. R. 1 Ad. & Eccl. 77.