

NOVA SCOTIA ADMIRALTY DISTRICT.

BETWEEN:

1913
February 12.

HAROLD BURKE, BERTIE O'HARA,
FREDERICK W. FANNING, COLE-
MAN LATHAM, ROLAND O'HARA
AND CECIL LANGLEY.....PLAINTIFFS;

AND

THE SHIP *VIPOND*..... DEFENDANT.

*Shipping—Action for Seamen's Wages—Jurisdiction—Joinder of Claims—
Aggregate amounting to over \$200.—Costs.*

Although the claims of a number of seamen for wages do not amount to the sum of \$200 individually, yet, where the aggregate of such claims exceeds that sum, the claims may be joined and sued for in the Exchequer Court on its Admiralty side. *Beaton v. "Christine,"* 11 Ex. C.R. 167, approved. *Philips v. Hyland Railway Company* (1883), 8 A.C. 329, followed.

2. Held, further, that upon such joinder of the claims and judgment therefor, the plaintiffs were entitled to their costs.

ACTION for seamen's wages.

The plaintiffs as seamen on board the Ship *Vipond* claim the sum of five hundred dollars and fifty six cents for wages due to them as follows:—

To Harold Burke, cook, for wages from the 28th day of November, A.D., 1912 to the 31st day of January, A.D., 1913, \$83.84.

To Bertie O'Hara, Engineer, for wages from the 28th day of November, A.D., 1912, to the 31st day of January, A.D., 1913, \$116.48.

To Fred. W. Fanning, able seaman, for wages from the 29th day of November, A.D., 1912, to the 31st day of January, A.D., 1913; \$72.56.

To Coleman Latham, able seaman, for wages from the 29th day of November, A.D., 1912 to the 31st day of January, A.D., 1913, \$69.56.

To Roland O'Hara, able seaman, for wages due from the 29th day of November, A.D., 1912, to the 31st day of January, A.D., 1913, \$82.56.

To Cecil Langley, able seaman, for wages from the 29th day of November, A.D., 1912, to the 31st day of January, A.D., 1913, \$75.56 and for costs.

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The action was tried before the Honourable Mr Justice Drysdale, Local Judge, at Halifax.

C. J. Burchell, K.C., and *J. L. Ralston* appeared for the plaintiffs; *James Terrell*, appeared for the Ship.

The evidence of the plaintiffs was that they were hired by Captain Fraser, who was in charge of the defendant Ship, that they went on fishing voyages in said Ship, that they were not on shares but on wages, that they served the time for which they charged, that they did not sign articles, and that they duly credited all sums received thereon, and that the amounts claimed were still due them. No evidence was given on behalf of the defendant.

It was admitted that the defendant Ship was owned by the Dominion Fisheries Company, that she was registered and was under 80 tons burthen.

Mr. *Terrell*, who appeared under protest, took objection to the jurisdiction of the Court, as the account due each seaman was under \$200.00, and it was not shown that the owner of the Ship was in insolvent circumstances or the Ship was under arrest. Sec. 191 Cap. 113, R. S. of Canada.

The plaintiffs had an efficient remedy under sec. 187 of cap. 113 R.S., 1906, by going before magistrates and getting judgment without costs in a summary proceeding. *Phillips v. Highland Railway Company* (1).

(1) (1883) 8 A.C. 329.

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Under section 15 of the order in council made by His Majesty King William IV under the authority of an Act of Parliament passed in the second year of his reign, a number not exceeding six seamen could join in an action for wages if the amount due exceeded £50, but this order in council has since been repealed, by *The Colonial Courts of Admiralty Act*, sec. 17.

Where there are articles signed they can sue together, but not where there are none as here.

The Judicature Act applies to the Admiralty Court in England but not to our Court here.

Howell at page 24, rule 29, deals with it. They do not here arise out of the same matter, nor are their interests of the same nature, but each plaintiff has a separate and distinct contract and claim.

Assuming this is a Vice-Admiralty Court the last Act in England does not apply. The *City of Petersburg* (2).

The plaintiffs should be deprived of their costs under sec. 192 of cap. 113 Revised Statutes, 1906.

Mr. *Ralston* for the plaintiffs:—

The *Petersburg* case was decided in 1865 and since then the statute has been changed, and the Act under which it was decided has been repealed. Rule 29 of the Rules and Practice at present in force gives this right of any one or more joining together and bringing the one action as plaintiffs. These rules are made in pursuance of the provisions of *The Colonial Courts of Admiralty Act*, 1890, and of *The Admiralty Act*, 1891.

The plaintiffs' interests are of the same nature and arise out of the same matter as required by Rule 29.

They all worked on the same ship, were employed in the same fishing venture, were hired by the same

(1) Howells 'Adm. Prac., 189.

(2) Young's Adm. Dec. I.

captain and their employment terminated at the same time and place.

In *Phillips v. The Highland Railway Co.*, (1) the plaintiffs were held entitled to sue and were allowed their costs.

The case of *Beaton v. The Steam Yacht "Christine,"* (2) is similar to the present case. The law is fully discussed by Hodgins, L. J., there.

We had no ample remedy before a magistrate. We should not be expected to pay our own costs, if there is a Court of competent jurisdiction in which we can get both our debt and costs, as here.

DRYSDALE, Local Judge. It was objected here that as the individual claims of the seamen were under \$200. the six plaintiffs could not join and sue in Admiralty, although the total amount of the joint claims is much in excess of \$200.

I am clear this point is not well taken. I agree with the reasoning of Hodgins, L. J. in *Beaton v. The Christine* (2) on this point, and since the decision in *Phillips v. Hyland Railway Company* (1) in my view the point is not open.

It was urged that under section 192 of cap. 113 Revised Statutes of Canada, the plaintiffs should be deprived of costs, but I think not. If the plaintiffs have the right to join and secure the whole amount due them in this one proceeding, it cannot be said they had as effectual a remedy by complaint to a magistrate, to whom they must go singly in separate suits or proceedings.

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(2) 11 Ex. C.R. 167.

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Judgment.

I find for plaintiffs for the respective amounts proved, and will settle the same before decree.

Amount settled at \$500.56 and costs; and decree in accordance therewith.
