
BRITISH COLUMBIA ADMIRALTY DISTRICT

COFFIN & O'FLYNN

VS

THE *PROTOCO*

1930
 Jan. 27.

Shipping and Seamen—Admiralty—Jurisdiction—Canada Shipping Act, R.S.C., 1927, c. 186—Sec. 349—Wages of Seamen

Held, that subject to the exceptions mentioned in Section 349 of R.S.C., 1927, c. 186, no suit or proceedings for recovery of wages under the sum of \$200 can be instituted by seamen or apprentices in the Exchequer Court of Canada on its Admiralty side.

Action by two seamen to recover wages.

The action was heard before the Honourable Mr. Justice Martin, at Vancouver.

R. W. Ginn, for plaintiffs.

C. L. McAlpine, for the *Protoco*.

The facts are stated in the Reasons for Judgment.

Martin, L.J.A. now (January 27, 1930) delivered judgment.

This case, to recover the wages of two seamen, though small in amount has nevertheless occasioned me much reflection, but after a careful consideration of it I can only

(1) (1879) 4 Ont. A.R. 267 at 274.

(2) (1896) 27 Ont. R. 341.

(3) (1919) 46 Ont. L.R. 216.

(4) (1928) Ex. C.R. 223-224.

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reach, not without reluctance, the conclusion that the objection taken to the jurisdiction of this Court, founded on s. 349 of the *Canada Shipping Act*, R.S.C. 1927, c. 186, respecting the recovery of wages under \$200 (as explained in *Cowan v. The St. Alice* (1); *Kouame v. SS. Maplecourt* (2), and *Ostrom v. The Miyako* (3)), must prevail and therefore the claims must be dismissed on that ground alone.

Though there is unquestionably a certain substantial balance due to each of these men, which should have been paid to them long ago, I shall not go into particulars thereof because, failing a settlement, it is still open to the seamen to invoke the assistance of the summary proceedings before the special tribunals designated by s. 344 of the said Act, and therefore I do not wish to create embarrassment by premature expressions. I do feel justified, however, in saying, in aid of an understanding to prevent further litigation, that it is clearly established that no final settlement was reached at the meeting in the solicitor's office on Monday, May 20, 1929, as set up by defendant, and also that O'Flynn on May 15 unjustifiably refused to serve on the vessel on the West Coast of Vancouver Island.

The action therefore will be dismissed but in the special circumstances without costs.

Judgment accordingly.