

1876
 ROBERTSON
 v.
 HENNINGS.
 to.

contractu." On these grounds therefore I do not think that the plaintiff's action is barred by the pleas referred to.

Demurrer overruled.

1877
 Aug. 17.

[IN THE VICE-ADMIRALTY COURT.]
 THE DUKE OF EDINBURGH.

Action "in rem."—*Jurisdiction*—*Order in Council, 28th November, 1876*—*Statute 26 Vict. c. 24, ss. 2, 10, 11*—*Statute 24 Vict. c. 10, s. 6*—*Supreme Court Ordinance 1875*—*Damage done by ship*—*Breach of duty by master of ship*—*Costs.*

In an action *in rem.* brought in the Vice-Admiralty Court of Fiji for damages for breach of contract or duty on the part of master and owners of ship, involving injury to cargo.

Held, that the Court had no jurisdiction to entertain the petition, the case not coming within s. 10 of the Vice-Admiralty Court Act, 1863, and the present proceedings could not now be transferred to the Supreme Court of Fiji as it had no Admiralty jurisdiction conferred upon it by the Supreme Court Ordinance 1875.*

As no objection to jurisdiction had been taken on the pleadings, the question of costs was especially dealt with.

The Attorney-General (Mr. Garrick) and *Mr. Truscott* for the petitioner.

Mr. Solomon for the respondents.

At the conclusion of the arguments of counsel, which, together with the facts, sufficiently appear from the judgment, the Chief Justice took time to consider his decision, and on 25th August gave judgment as follows:—

J. GORRIE, C.J. In this case William Hoskins Drew of Kumi, in the island of Vitilevu, owner of cargo (live stock) laden on *The Duke of Edinburgh*, under charter

* See now the *Colonial Courts of Admiralty Act, 1890.*

for a voyage from New Zealand to Fiji for the purpose, and thence to proceed to New Caledonia, has instituted an action against the ship and the owner (John Henderson of Newcastle, in the Colony of New South Wales), and the master (James Thompson, of the same place), for damages for breaches of contract and breaches of duty, which may be generally summed up as: (1) Negligence, carelessness, and dilatoriness in providing necessaries for the cattle and in the prosecution of the voyage by which the cargo has been injured; and (2) Inability to prosecute the voyage from the unseaworthiness of the vessel. At the time of filing the petition an application was made—not only for the arrest of the ship but on representations that the cattle on board were perishing—for an order to land the cattle that they might get pasture, and authority was granted for the purpose. The question of the jurisdiction of the Court to entertain the action is not raised on the pleadings, but the Court directed the attendance of counsel, and the question was thereupon argued, and the decision of the Court reserved, in order that the witnesses who were present might be heard and the whole cause be disposed of by one judgment.

The Vice-Admiralty Court of Fiji is constituted by virtue of an order of Her Majesty in Council, dated 28th November, 1876. It is therefore not one of the Vice-Admiralty Courts enumerated in the Schedule to the statute 26 Vict. c. 24; but by s. 2 of the statute "Vice-Admiralty Court" is defined to mean not only those actually existing at the time of the passing of the Act, but "Any Vice-Admiralty Court which shall hereafter be established in any British possession."

There can be no doubt, therefore, that the measure of the jurisdiction of the Court is that which is

1877

VICE DUKE
OF
EDINBURGH.

1877
THE DUKE
OF
EDINBURGH. embodied in ss. 10 and 11 of that Act relative to Vice-Admiralty Courts in general. In ss. 10 and 11 matters are set forth in respect of which these Courts have jurisdiction, and they are all inapplicable to the grounds contained in the petition in this case, with the exception of one which has been founded upon as giving the Court jurisdiction, viz., “(6), claims for damages done by any ship,” and it was contended that by the practice of the High Court of Admiralty the damage done by any ship included damage to the cargo.

Several cases were cited from the Maritime Reports that the ships had been seized in English Courts and damages given against the owners on account of the condition in which cargo had been brought to England. In addition to those cited there is the recent case of *The Piece Superiore* (1) decided on appeal from the High Court of Admiralty, where, the goods having been carried into an English port, the question of the liability of the ship for breaches of contract was fully considered and the liability of the ship sustained. But this jurisdiction is conferred upon the High Court of Admiralty by the Act 24 Vict. c. 10, s. 6 (1861), and there is no corresponding section in the later Vice-Admiralty Court Act (1863). Indeed the section of the earlier Act is a very special one, evidently intended to meet the case of foreign ships bringing cargo to England for orders, and where the holder of the bill of lading finds the goods to be damaged by the carelessness or unskilfulness of the master and crew. The section is specially limited to goods carried into any port in England or Wales, where at the time of the institution of the cause no owner or part-owner is domiciled. The argument that the words in the Vice-Admiralty

(1) L. R. 5 P. C. 482.

Courts Act "claims for damage done by any ship" covers damage to cargo, is answered by the fact that in the Admiralty Court Act of 1861 there are two sections, the one giving the jurisdiction for damage to cargo—to which I have just referred, and the other (s. 7) giving jurisdiction over any claim for damage done by any ship. It is quite true that these latter words, which are the same as those in the Vice-Admiralty Courts Act, are wide, and that their scope may be determined by jurisprudence. For example, it appears to have been held that not only damage to other ships by collision, or to piers and jetties, but also damage by injury to persons may be tried under this section.* But it would be a very great step to include in this section damage to cargo by the owner or master which is an ordinary question of contract, and in face of the special section in the Admiralty Act of 1861, which is omitted, and no doubt purposely omitted, in the Vice-Admiralty Courts Act of 1863, I am not prepared so to regard the jurisdiction of this Court. Section 6 of the Act of 1861 has moreover been construed to refer to foreign ships only, and not to include colonial ships trading to England.

The other ground of petition is breach of contract from the inability or refusal of the captain to proceed with his voyage, but the statute to which I have referred gives no jurisdiction to Admiralty Courts to judge of this matter. If it were competent for me to do so I would gladly transfer the consideration of this cause to the Supreme Court, and order such alterations of the pleadings as might be necessary to enable the merits of the case to be disposed of. But

* But see *Smith v. Brown* (L. R. 6 Q. B. 729), and *The Franconia* (2 P. D. 163).

1877
THE DUKE
OF
EDINBURGH.

while this power is conferred upon the Supreme Court of Judicature of England, of which the High Court of Admiralty is now a division, the Vice-Admiralty Courts abroad are still separate and distinct courts; the Admiralty jurisdiction being indeed the only branch of authority and power which is not conferred upon the Supreme Court of the Colony by the Supreme Court Ordinance 1875.* The case could not on this account be competently brought before the Supreme Court under the arrest of the ship by the process of the Admiralty Court, the Supreme Court dealing with persons within the Colony or with absent defendants under special rules. There is therefore no course open to me but to discharge the ship from the custody of the marshal, and to dismiss the suit.

As to costs, as the question of jurisdiction was not raised by the defendant in his pleadings, and a considerable amount of costs have been caused in bringing the witnesses, I will order the defendant's bill to be given in and taxed; and I will then consider whether any, and, if so, what amount of modification should be made.

Petition dismissed.

* See now the *Colonial Courts of Admiralty Act*, 1890.