

made under the authority of that Act, referred the case to be adjudged by this Court, and the following judgment was this day pronounced.

JUDGMENT.

THE COURT.—I am called upon in this case to enforce indirectly, —by refusing to the promoter wages for the services rendered by him to the ship,—his executory contract to Great Britain, as the ultimate port of discharge in the articles which have been produced, those articles not being signed by the master. The law respecting the reducing to writing in shipping articles the agreement between the seamen and the master is but a part of the law, as well common as statute, which relates to this important object, and to form a right adjudication upon any branch of it, it is necessary to have in mind the whole scope and policy of the one and the other law upon that head. Without touching upon this branch of law further than is necessary for the question immediately under consideration, it is to be observed that one of the ends and objects of that law is to ascertain with certainty,—for the protection of a class of persons who, from their habits of carelessness and over-confidence are often over-reached,—the contract into which they enter, both as to the amount of remuneration that they are to receive, the description of the service; and the penalties to which they render themselves liable by any dereliction of the duties which are imposed upon them. The Ship's articles, and the signing of them by the seamen, are therefore of importance as settling the terms of the contract and rendering present to the mind of the seaman, as a conventional obligation upon him,—with the binding force of which he is better acquainted than that of statutes which he does not read,—the necessity of obedience to the master, and of the faithful discharge of his duty; adding at once a promise to perform it, and an agreement to suffer all the penalties which the law imposes in case of failure. To attain this end the legislature has prescribed a certain form of articles; they have conferred upon the master, upon his observing these forms, summary and extraordinary means of enforcing this contract, otherwise a simple contract *locati conducti*; and they have on the other hand subjected him to pecuniary penalties for taking into the service of the ship a seaman without executing regular articles. This contract stands not then upon the footing of an ordinary contract *locati conducti*. The provisions just adverted to are provisions of a great maritime power, in the discipline and order of whose seamen is to be found not only the foundation of its merchant navy, but also that of its national navy.

With an object in view of such high importance, and to use the words of the preamble of the statute, to promote the increase of the number of such seamen, and to afford them all due encouragement and protection, on a large, constant and ready supply of whom the prosperity, strength and safety of the United Kingdom and of Her Majesty's dominions do greatly depend, it is enacted, "That it shall not be lawful for any master of any ship of whatever tonnage or description belonging to any subject of Her Majesty, proceeding to parts beyond the seas, or of any British registered ship of the burden of eighty tons or upwards, employed in any of the Fisheries of the United Kingdom, or in proceeding coastwise, or otherwise, from one part of the United Kingdom to another, to carry to sea any seaman as one of his crew or complement (apprentices excepted,) unless the master of such Ship shall have first made and entered into an agreement in writing with such seaman, specifying what wages such seaman is to be paid, the quantity of provisions he is to receive, the capacity in which he is to act or serve, and the nature of the voyage in which the ship is to be employed, so that such seaman may have some means of judging of the period for which he is likely to be engaged; and that such agreement shall be properly dated, and shall be signed by such master in the first instance, and by the seamen respectively at the port or place where they shall be shipped; and that the signature of each of the parties thereto shall be duly attested by one witness at the least, and that the master shall cause the agreement to be read over and explained to every such seaman in the presence of such witness, before such seaman shall execute the same." (a.) The statute confers summary remedies in various cases for enforcing this contract against the seamen, and subjects the master to a penalty of ten pounds for every seaman he shall carry out to sea without having entered into the agreement required by the statute. (b.) The signing is not a mere *solemnitas juris*, but it has substantially this effect, that it is evidence against and binds the master personally whether he goes with the ship or not. In an action for the penalty under the last mentioned clause of the statute, it is apprehended that it would be no defence to such an action for the master to shew as the articles required by the statute, articles which were not signed by him. The form in which instruments of this nature are to be executed having been directed by the statute, it is not easy to believe that in settling this form such a condition should have been required without consideration; it is one of the provisions taken from Sir James Graham's Act, (c.) not found in the previous statutes in this matter; (d.) and an additional reason is here afforded that this provision is not without an object.

The Statute thus requiring Ship's articles to be signed by the master, and the articles in question in this cause not being so signed, the master has voluntarily put himself out of the provisions of the statute law on this head, and it is impossible for the Court to afford him any aid in enforcing a contract which he has not invested with the forms which the law requires. If the Court were to enforce this contract it would indirectly enforce the carrying of the promoter to sea, without the ship's articles required by the Statute,

and be aiding the master in contravening the Statute. Now, it seems to be a good general rule, that wherever a contract has for its basis the performance or omission of some act, the doing or omitting of which would contravene the provisions of the statute law, the agreement is invalid, no less than it would be where in any similar case the provisions of the common law might be infringed by the agreement made. (e.)

The suit is for wages earned for services up to the arrival of the ship at this port, the defence is a subsisting contract, and the evidence offered of this contract is an instrument not possessing the characters which the law requires for such a contract.—Under these circumstances the Court has but one duty to perform, which is to award the amount of the wages for the services actually rendered to the ship. It has no power to enforce indirectly and prospectively a contract entered into without receiving its proper completion, by the fulfilment of the forms and conditions which the law, from high motives of policy and justice, has required for contracts of this nature.

DUNBAR ROSS, Esquire, for Seamen.
JOHN MAGUIRE, Esquire, for Ship.

(a) 7 & 8 Viet. c. 112, s. 2. (b) Ib. s. 4. (c) 5 & 6 Wm. 4, c. 19, s. 2. (d) 2 Geo. 2, c. 36. 37 Geo. 3, c. 73. *The Baltic Merchant*, Edwards's Rep. 87. (e) Lord Holt in *Bartlett vs. Vinor*, Carth. 252. Lord Tenterden in *Wetherell vs. Jones*, 3 B. & Adol. 226, and Lord Kaims's Principles of Equity, Book 1, part 1, p. 63.

MONTREAL, Nov. 13th.—*Singular and Important Discovery of a Gang of Brigands.*—Our readers will remember that several robberies of sacred plate have lately taken place in Churches, in the District of Montreal. On Monday morning, a boy about fifteen, named George Hick, was arrested on suspicion; and in the evening his brother Samuel was also taken. In consequence of their information, a farther arrest was made by the Serjt. M'Cormack on the day following, of a man named O'Donnell, who was lately tried and acquitted, for the murder at the Race Course. On Wednesday, Heinrich Goring, another party implicated by the information of the boys, and who was convicted of sacrilege last February, but released by Government, for revealing the plot to shoot Sheriff Coffin and Judge Day, was taken by Captain Wily, in St. Thérèse Street, as he was coming out of a cab. It is worth remarking, that both these desperate men, when taken, were armed with pistols, ready loaded, and capped. The principal charge against Goring is that of stealing a horse at Carillon, on Thursday, 4th inst., on his way to Montreal from Chatham, where the gang had a haunt, at the house of the mother of the Hicks'—another customer of Her Majesty's Criminal Courts, recently sentenced to a months' imprisonment for stealing grain from a neighbour's barn. O'Donnell is believed to be the party who robbed the churches of Saint Andrews, Point aux Trembles, and Saint Martins. His object in coming down on this occasion, is now well ascertained from the testimony of the two boys, Hicks', to be the robbery of the church at Varennes, one of the oldest and richest in the District.—*Herald.*

The last fever victim of note is Colonel Calvert, who accompanied M. Ledoyen to this country for the purpose of testing the efficacy of the Fluid invented by the latter gentleman, and who expired last night, shortly before seven o'clock. Colonel Calvert has fallen a victim to his energetic and untiring perseverance in endeavouring to prove the value of this discovery, as a mitigant of disease, and a preventive to its spread. He declared himself to be actuated by philanthropic motives purely; and if self-exposure in a cause of danger be any guarantee of integrity of purpose, that justice must be accorded to his memory. Early, morning, noon, night and midnight, he was in attendance at the hospital, and while he essayed the virtues of the Fluid, he studiously sought to promote the comforts of the patients, and did secure to them every necessary—nay even to delicacies—which their case seemed to him to require. He not only pampered them—if we may use the expression—but clothed them; and when money was needed his purse was ever generously opened. He was truly philanthropic, warm-hearted, courteous and kind; seeking but to do good. Like others, he may have had his faults, but in Quebec, at least, acts of goodness alone remind us of his loss. He believed in the value of the discovery to which he devoted his entire time, and perished in the cause he had so generously undertaken and so faithfully fulfilled to the last.

We speak from a personal and intimate acquaintance with the deceased.—*Quebec Mercury.*

From the Head Quarters, 1st December.

SAINT ANDREW'S DAY.—Yesterday being the anniversary of the Tutelar Saint of Scotland, the Members of the Society of St. Andrew in this City, and their Guests, celebrated the day by dining together in the Albion Hotel. At 6 o'clock the company, amounting to nearly forty persons, sat down to a good Dinner and excellent Wine, provided by Mrs. Welch, and enjoyed themselves until a late hour in a most harmonious and appropriate manner.

The Chair was occupied by Dr. Robb, Professor of King's College, the President of the Society; and John Simpson, Esquire, Queen's Printer, the First Vice-President, conducted matters at the lower end of the table.

After the cloth was removed, the Chairman rose to give the first toast, briefly remarking that there were three good and substantial reasons why it should be drank by the Society with all the honors.