

[HIGH COURT OF AUSTRALIA.]

AUSTRALIAN STEAMSHIPS PROPRIETARY }
 LIMITED } APPELLANT;
 DEFENDANT,

AND

ABBOTT RESPONDENT.
 PLAINTIFF,

ON APPEAL FROM A DISTRICT COURT OF
 NEW SOUTH WALES.

H. C. OF A. *Shipping—Seaman landed by reason of illness—Claim for wages until return to*
 1927. *home port—Judgment in District Court for wages—Right of appeal to High*
*Court—Navigation Act 1912-1920 (No. 4 of 1913—No. 1 of 1921), secs. 92, 132.**

SYDNEY,
 April 1.

Knox C.J.,
 Isaacs, Higgins,
 Powers and
 Starke JJ.

The provisions of sec. 92 of the *Navigation Act 1912-1920* apply to a claim for wages alleged to be due by virtue of the provisions of sec. 132 (1) (b), and therefore no appeal lies to the High Court from a judgment of a District Court upon a claim for such wages.

APPEAL from a District Court of New South Wales.

David Abbott, a seaman, sued the Australian Steamships Pty. Ltd. in the District Court at Sydney to recover £36 0s. 3d. for wages

* Sec. 92 of the *Navigation Act 1912-1920* provides that "(1) Where any sum not exceeding fifty pounds is due for wages to any seaman . . . he . . . may sue for and recover it in a County Court, District Court, or Local Court of a State or a Court of summary jurisdiction, in or near the place . . . (c) where the person from whom the wages are due is, or resides. . . . (3) Every judgment or order made under this section shall be final and without appeal." Sec.

132 (1) provides that "Where a seaman . . . belonging to a ship registered in Australia is left on shore at any place in Australia . . . by reason of illness or accident in the service of the ship incapacitating him from following his duty, he shall be entitled . . . (b) if landed at a port other than his home port, to receive, after his recovery, . . . a free passage to his home port, with wages, at the rate fixed by his agreement, until arrival at that port," &c.

due from the defendant to the plaintiff from 21st August 1924 to 29th October 1924. It appeared from the evidence that the plaintiff was employed as a trimmer on board the defendant's ship *Cooma*, which traded between Australian ports; that on a voyage from Brisbane to Melbourne the plaintiff became ill and was landed in Melbourne on 21st August 1924 and was discharged from the ship on that day; that he then went into a hospital where he remained for some time; and that he got back to his home port, Sydney, on 29th October 1924. The District Court Judge found that the plaintiff was left on shore at Melbourne by reason of illness in the service of the ship and was incapacitated from following his duty, and therefore that he was, in accordance with the provisions of sec. 132 of the *Navigation Act* 1912-1920, entitled to recover the wages claimed. Judgment was accordingly entered for the plaintiff with costs.

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From that decision the defendant appealed to the High Court.

Brissenden K.C. (with him *Fuller* and *Rainbow*), for the appellant.

E. M. Mitchell K.C. (with him *H. G. Edwards*), for the respondent, took a preliminary objection. This was a claim for wages under sec. 132 (1) (b) of the *Navigation Act* 1912-1920 and, the amount claimed being under £50, the judgment is by virtue of sec. 92 (3) of that Act final and without appeal. This appeal is therefore incompetent (see *Edgecombe v. Australian Steamship Pty. Ltd.* (1)). An appeal from the District Court to the High Court only lies subject to the same conditions as if the appeal were to the Supreme Court (*Judiciary Act* 1903-1926, sec. 39 (2) (b); *Rules of the High Court*, sec. IV., r. 1). An appeal from the District Court to the Supreme Court lies only upon a point of law raised and determined at the trial (*District Courts Act* 1912 (N.S.W.), secs. 142-145). No points of law were raised and determined at the trial.

Brissenden K.C. The provisions of sec. 92 of the *Navigation Act* 1912 did not apply to the sum which was payable under sec. 132 as it stood in that Act, for what was then payable was a sum equal to

(1) (1922) 22 S.R. (N.S.W.) 653.

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the wages the seaman would have received if he had not been left on shore. It was not intended, when the new sec. 132 was enacted by sec. 40 of the *Navigation Act* 1920, to alter that position. Sec. 92 should be construed as referring to wages earned on board ship whether under a special contract or otherwise, and should not be extended to cover a sum of money which has not been earned but is a compensation to the seaman, although the new sec. 132 calls it wages.

PER CURIAM. We think that the first point raised by Mr. *Mitchell* with respect to the appeal is good. It seems to us that sec. 92 covers every claim for wages not exceeding £50. This is, on its face, a claim for wages. The sum is claimed because the Act says it is wages, and it is admitted that the defendant is or resides in New South Wales. It appears to us that under sec. 92 the judgment is final and without appeal.

Appeal struck out with costs.

Solicitors for the appellant, *Ebsworth & Ebsworth*.
Solicitors for the respondent, *Sullivan Brothers*.

B. L.