

TORONTO ADMIRALTY DISTRICT.

1897

Oct. 29.

JOSEPH A. McELHANEY AND OTHERS..PLAINTIFFS;

AGAINST

THE SHIP "*FLORA*".....DEFENDANT.*Seamen's Wages—Lien—Musician.*

In the absence of a contract to pay him wages a musician is not a "seaman" within the meaning of *The Merchant Shipping Act*, and therefore is not entitled to a maritime lien for his services.

THE plaintiff and five others were musicians and had an arrangement with the Master of the boat that they should have the privilege of meals and staterooms on the boat, and the right to collect from passengers gratuities for musical entertainment furnished.

The owner did not dispute the claim, but other claimants intervened and objected that the plaintiffs had no maritime lien and were not seamen within the Act.

The trial of the case took place at St. Thomas on the 29th day of October, 1897.

J. A. Robinson for plaintiffs.

W. K. Cameron for other claimants intervening.

McDougall L.J., delivered judgment as follows:—

This is a claim by Joseph McElhaney and five other plaintiffs to recover for their services on the *Flora* as musicians during part of the season of 1897.

The evidence shows that they had an arrangement with the Master of the boat that they should have the privilege of meals and staterooms on the boat and the right to collect from passengers gratuities for musical entertainment on board the boat. No evidence was

1898 given to show that there was any contract to pay them
McELHANEY wages, and I must therefore hold that they are not
v. seamen within the meaning of *The Merchant Ship-*
THE SHIP ping Act, and are not entitled to claim any sum for
FLORA. their services on the said boat nor are they entitled to
Reasons set up a maritime lien.
for
Judgment.

Judgment accordingly.
