

TORONTO ADMIRALTY DISTRICT.

1898

Jan. 22.

WALTER W. BROWN..... PLAINTIFF;

AGAINST

THE SHIP "FLORA"..DEFENDANT.

Seamen's Wages—Watchman—Lien.

The caretaker of a ship not in commission is not a "seaman," and has no lien for his wages.

THIS is an action brought by the plaintiff for services as watchman upon the above named boat during the winter of 1896-7, while such boat was lying dismantled at her dock in Detroit.

The owner did not dispute the claim, but other claimants intervening objected that no maritime lien existed in respect of it.

The facts of the case are set out in the reasons for judgment.

The trial of the action took place at Windsor on the 13th day of November, 1897.

J. Hanna for plaintiff;

W. K. Cameron for other claimants intervening.

MCDUGALL, L.J. now (January 22nd, 1898) delivered judgment.

This is a claim by the plaintiff for acting as watchman upon the *Flora* during the winter of 1896-7, while such vessel was lying dismantled at her dock in Detroit. The duties performed were keeping the vessel clear of snow and pumping out any water that accumulated in the hull. He states he visited the ship every day for some months, and he claims that he is entitled

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to a maritime lien for his wages, no portion of which has been paid to him.

I do not think that for these services he can claim to rank as a seaman, even within the broad lines laid down in the cases. I regard his services as being those of a landsman or shore laborer engaged by the owner to perform the duties of a watchman. The vessel was not in commission or even preparing for a voyage; she was dismantled, portions of her machinery had been removed; she had neither master nor crew and though still a ship in a legal sense was little better than a hulk.

I have been unable to find any express English decisions upon the status of a watchman under these conditions, but have been referred to several American cases, in all of which such claims are declared not to be maritime liens (1).

I must therefore disallow this claim.

Costs will be reserved to be settled in the final decree.

*Judgment accordingly.*

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(1) The *Harriet*, Olcott, (U.S.) *Gurney v. Crockett*, Abb. 490; 229; the *John T. Moore*, 3 Wood. *The Island City*, 1 Lowell (U.S.) (U.S.) 61; *Phillips v. The Thomas* 375. *Scattergood*, 1 Gilp. (U.S.) 1;