

The Inland Waters Seamen's Act (R.S.C., c. 75, s. 2 (f)). By an amendment of that Act made on the 1st of April, 1893, it is provided that "the master of any ship subject to the provisions of this Act shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages, and for the recovery of disbursements properly made by him on account of the ship, and for liabilities properly incurred by him on account of the ship, as by this Act, or by any law or custom, any seaman, not being a master, has for the recovery of his wages." (56 Vict., c. 24.)

The appellants, who were mortgagees of the ship, and who in August, 1894, took possession of her and dismissed the master, contend that under the circumstances of this case the master has no maritime lien in respect of any liability incurred by him on account of the ship; that she was registered and employed in the Province of Ontario, and that the owner was at the time domiciled there; that recourse could have been had to him, and that the master had no authority to incur liabilities for necessities for the ship, or, if he had such authority, that he could not by incurring them create a maritime lien for such necessities. The owner could not himself so contract for necessities for the ship as to create any such lien, and it was argued that his agent in a home port was, in this respect, not in any better position. It is clear, of course, that there is no maritime lien for necessities supplied to a ship, and that the owner has no power to create any such lien. The High Court of Admiralty in England has jurisdiction over any claim for necessities supplied to any ship elsewhere than at the port to which the ship belongs, unless it is shown to the satisfaction of the court that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales (24 Vict., c. 10, s. 5) Imp.

This court has, in a like case, a like jurisdiction where there is no owner or part owner domiciled in Canada (The Colonial Courts of Admiralty Act, 1891, s. 2, s-s. 3 (a), Admiralty Rules No. 37 (b)). But the person supplying such necessities has no maritime lien on the ship, whether they are ordered by the owner or the master. That, however, is not the question at issue in this case. The question is, Has the master, by virtue of the amendment of The Inland Waters Seamen's Act (56 Vict., c. 24), a lien for disbursements properly made by him, and for liabilities properly incurred by him on account of the ship, and is his claim to be preferred to that of the mortgagee? The language of the statute is that, so far as the case permits, he is to have the same rights, liens, and remedies for such disbursements and liabilities as a seaman has for the recovery of his wages. In the case of a seaman's wages there is such a lien, and it has priority of any claim by the mortgagee. That is not disputed, and there can be no doubt.

I think that the object of the amendment to which I have referred was to give the master of a ship navigating the inland waters of Canada, above the harbour of Quebec, a lien for disbursements made and liabilities incurred by him on account of the ship in the cases in which, prior to the case of *The Sara*, 14 App. Cas. 209, it had been thought that he had such a lien for his disbursements. The amendment is founded upon and follows closely in that respect the first section of The Merchant Shipping Act, 1889 (52 & 53 Vict. c. 46 Imp.). It was passed after a construction had been put upon the latter statute in the case