

City of Windsor on their books. The master gave notes or acceptances for some of the accounts, and in a few other cases acknowledgments or agreements to be personally responsible for the charges. The City of Windsor made, with one or two exceptions, all her trips to Canadian ports.

It was admitted that there is due and unpaid in respect of all the mortgages as against The City of Windsor about \$9,700. Beyond this amount Mr. Hudson, the receiver of the Third National Bank, made an advance of about \$600 to Reeves, the owner, to enable him to fit out. The receiver also advanced, further, about \$1,700 on August 27th, 1894, to pay off the crew and certain claims then settled. They contend that these advances should be treated as covered by the mortgages.

*Canniff* for the plaintiff.

*Fleming* and *Howell* for the intervening defendant.

MCDUGALL, Local Judge in Admiralty: One question arises in this action which it is necessary to decide before entering upon any consideration of the various liabilities alleged to have been incurred by the master on account of the ship, and before I deal with his own personal claim for wages: Is the plaintiff entitled to a maritime lien on the said ship for the liabilities alleged to have been incurred by him as master? By 56 Vict. (Dom.), c. 54, entitled, An Act to amend the Inland Water Seaman's Act, assented to on April 1st, 1893, it is provided by s. 35 (a) as follows: "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 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, and, if in any proceeding in any court possessing admiralty jurisdiction in any of the said provinces touching the claim of a master for wages any right of set-off or counter-claim is set up, such court may enter into and adjudicate all questions, and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance that is found to be due." The section above quoted is practically a transcript of the Imperial statute, 52 & 53 Vict., c. 46, s. 1, and the courts in Canada are aided in construing its provisions by several very recent English decisions upon the section defining its legal effect and meaning.

The first is *Morgan v. The Castlegate Steamship Co.*, L.R. 1893, A.C. 38, and *The Orienta*, L.R. Pro. 1894, 271, as qualified by the judgment of the Court of Appeal, L.R. Pro. 1895, p. 49. The Imperial statute of 1889 was passed immediately after the decision in the House of Lords in the case of *The Sara*, L.R. 14 A.C. 209, and in consequence of the decision of the House of Lords in that case. The effect of the decision in *The Sara* was to hold that the provisions of the Admiralty Court Act, 1861, did not give a master a maritime lien on the ship for disbursements or liabilities incurred by him. The contrary of this had been held in a long series of cases commencing with *The Mary Ann*, L.R. 1 A. & E., p. 8, decided in 1865, and ending with *The Sara* in the court below, until that case was reviewed in the House of Lords and all the previous decisions declared to be unsound, and the judgment of the court