

of the legacy stands, the party seeking the issue shall pay the additional costs, unless for good reason he is excused by the trial Judge. If no issue, costs of application to all parties out of the estate.

BOYD, C.

DECEMBER 7TH, 1903.

TRIAL.

HACKETT v. COGHILL.

Lien — Repair of Ships — Possessory Lien — Parting with Possession—What Amounts to—Floating Ships on Navigable Waters—Caretaker for Owners.

Action to recover the value of work done in repairing vessels and to establish a lien therefor on the vessels.

R. C. Clute, K.C., and W. H. B. Spotton, Wiarton, for plaintiff.

L. V. McBrady, K.C., for defendants.

BOYD, C.—The single issue which came before me for trial was, whether or not plaintiff had a lien for his charges to any extent upon the dredge and scows owned by defendants. Plaintiff's claim is in respect of repairs done upon these vessels when they were hauled out in the harbour at Wiarton. After the work was done the vessels were respectively restored to the water and taken first to the dock belonging to Castner and afterwards to the old dock erected by the town, which was in common and public use even after the erection of a new dock by the town about two years ago. When lying at the old dock plaintiff put lock and chain upon the dredge and notified the owners, but before this he says that he had tied up the vessels at this dock and claimed to be in possession of them.

The evidence shews that plaintiff had permission from the owner to use Castner's dock, and from the town authorities to use the old dock, by verbal license, for the purpose of his business in repairing vessels. The legal possession of the water lots on which the mooring existed at the time of the dispute as to possession which is now being litigated, was vested in the Crown. . . . It is further in evidence that the owners had a person in possession of the dredge for the purpose of looking after it and keeping the machinery in proper order, and he was on the boat at the time it was chained up by plaintiff.

Upon this state of facts it appears to be impossible to support the claim of plaintiff to a lien on the vessels. His