

TORONTO ADMIRALTY DISTRICT.

1897  
Dec. 11.

THE SHIP OWNERS' DRY DOCK }  
 COMPANY, &c., AND J. T. WING } PLAINTIFFS ;  
 & COMPANY..... }

AGAINST

THE SHIP "FLORA" AND ROSE }  
 D. BROWN ..... } DEFENDANTS.

*Necessaries—Maritime Lien.*

In the absence of a contract expressed or implied to build, equip or repair within the meaning of section 4 of 24 Vict. 10 (Imp.), the court cannot entertain a claim for necessaries against a foreign vessel, when such necessaries are supplied in the home port of the ship where the owner resides.

THIS is a claim by one of the plaintiffs in the above action for supplies furnished to the ship *Flora* consisting of oils, rags, lamps, paints, hose, hardware, carpets, bed linen, table linen, &c.—all articles coming within the meaning of the term "necessaries." No express or implied contract was shown to exist on the part of the plaintiffs to build, equip or repair within the meaning of the statute.

The owner did not dispute the claim but other claimants intervened and objected on the ground that the court had no jurisdiction, the supplies having been furnished in the home port of the ship, and in the city where the owner resided.

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

*W. K. Cameron* for plaintiff ;

*C. J. Leggatt* for other claimants intervening.

1897 *McDougall*, L.J., now (December 11th, 1897) delivered  
 WING & Co. judgment.

v.  
 THE SHIP  
 FLORA.  
 ———  
 Reasons  
 for  
 Judgment.  
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This is a claim by J. T. Wing & Co., one of the plaintiffs in the above action for articles supplied the *Flora* consisting of paints, oils, rags, lamps, hardware, hose, carpets, bed linen, table linen, chinaware, &c., &c. These are all articles coming within the meaning of the term "necessaries." They are therefore recoverable only under section 5 of *The Admiralty Court Act* 1861, and being supplied to the owner in Detroit, the home port of the *Flora* where the plaintiffs J. T. Wing & Co. also reside and carry on business, they come within the express exception stated in the statute, and there is no jurisdiction in this court to entertain the claim. The plaintiffs were not in possession of the ship at any time nor did they possess any lien upon the vessel recognized by this court. They were simply merchants supplying on the order of the owner from day to day the various goods and articles enumerated in the bundle of invoices filed. There was no contract express or implied on the part of the plaintiffs to build, equip or repair within the meaning of section 4 of the Act of 1861.

Such a claim cannot be allowed.

*Judgment accordingly.*

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