

1914

BRITISH COLUMBIA ADMIRALTY DISTRICT

March 24.

Reasons for
Judgment.

Martin L.J.A.

BROWN *ET AL.*..... PLAINTIFFS;

VS.

THE *ALLIANCE No. 2*..... DEFENDANT.*Shipping and seamen—Responsibility of master for gear, etc.*

Held: That the master of a fishing vessel carrying only a master, mate, chief and assistant engineer, cook and one seaman (not counting fishermen) must personally account for the property of the owner entrusted to his charge, such as tackle, boats, gear, etc.

ACTION for wages and counter claim.

February 25th, 1914.

Action heard before the Honourable Mr. Justice Martin at Victoria.

J. P. Walls, Jr., for plaintiffs.

P. C. Elliott, for defendant.

The facts are stated in the reasons for judgment.

MARTIN L. J. A. (March 24th, 1914), delivered judgment.

These are consolidated actions for wages against the ship *Alliance No. 2*, an auxiliary gas boat, 95 feet long, engaged in the halibut fishing. Four of the claims are those of fishermen and they were disposed of at the trial, that of Davis being settled when called on for hearing, and judgment being given in favour of Armstrong, William Brown, and Milne for the full amount claimed. I was asked not to give said Brown and Armstrong their costs of suit as their conduct on

the vessel had not been satisfactory, and was open to suspicion as regards the missing fishing gear, and their threats against Larsen, the chief engineer, with respect to the same, but though I felt justified in giving them a warning in open court I do not, on further consideration, think I would be justified in taking the extreme step of depriving them of costs.

Judgment was reserved on the claim of the Master, Daniel Brown, but a few days after the trial was over, a motion was made to re-open the case and, in effect, to allow the master to give further evidence to account for the missing gear in his charge which his employers, the owners of the ship, sought to make him liable for. Such an application is an unusual one which should only be granted in a very special case and also in circumstances which would, in any event, not put the other party at a disadvantage or in an unfair position. The matter was fully argued and I have come to the conclusion that the application should be refused in the circumstances before me. The attention of the plaintiff was sufficiently drawn to the point by the pleadings, on the evidence at the trial, and during the argument; there has been no surprise and the fact that the evidence in his favour was not more fully brought out when it might, possibly, have been is not enough to re-open the case; he had the opportunity but did not take advantage of it. The application will therefore be dismissed, with costs.

Then as to his claim and the counter claim. I allow him his wages and give him judgment therefor, but hold him responsible for the value of the missing gear, \$349.59, less two skates thereof at \$17.00 each, which were lost and tardily accounted for at the trial. I am unable on the evidence to allow any further deduction. The vessel was amply outfitted

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with fishing gear, new and additional gear to the value of \$349.59 having been put on board before sailing, which was admittedly in the custody of the master and which he must account for. In a small vessel of this description which carried only a master, mate, chief and assistant engineer, cook, and one seaman (not counting the fishermen who were not shipped as seamen and therefore did not perform seamen's duties) the master must personally account for the property of the owner entrusted to his charge whatever may be said as to his responsibility in larger vessels where property may be entrusted to the custody of various officers. It would never do for this court to encourage the opinion that a well equipped fishing vessel may leave a port in charge of a master and return with, *e.g.*, missing tackle, boats, gear, etc., and the master escape any responsibility simply by omitting to give any reasonable explanation of what has become of said property; on the contrary it is his duty to give it to his owners at the first opportunity, and in the present case he should have done so when his attention was directed to the shortage in the gear and his wages refused on that account, instead of which he did nothing, treating the matter, in effect, as one in which he had no deep concern.

The result of the adjustment of the accounts and opposing claims is that the plaintiff is indebted to the owners in the sum of \$76.52, for which sum said owners will have judgment against the plaintiff over and above his claim against them. The costs of claim and counterclaim will be allowed in the ordinary way, and the reserved costs of the adjournment of the trial will be costs in the cause.

Judgment accordingly.