

## BRITISH COLUMBIA ADMIRALTY DISTRICT.

1913  
 Oct. 28  
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THE VICTORIA MACHINERY DEPOT  
 COMPANY LIMITED, . . . . PLAINTIFF; (No. 2)

AGAINST

THE STEAMSHIPS CANADA AND TRIUMPH.

*Shipping—The Admiralty Courts Act, 1861 (U.K.) sec. 5—Construction—Repairs to fishing vessel—"Necessaries".*

Alterations in the structure and equipment of a vessel in order to change her from one style of fishing craft into another are "necessaries" within the meaning of section 5 of *The Admiralty Court Act, 1861*, (24 Vict. (U.K.) c. 10). *Williams v. The Flora* (1897) 6 Ex. C. R., 137, and *The Riga*, (1872) L. R. 3 Ad. & Ec. 516, followed.

THIS was an action *in rem* against a ship for necessaries.

The facts are stated in the reasons for judgment.

October 28, 1913.

The case was heard before the Honourable Mr. Justice Martin, Local Judge for the British Columbia Admiralty District, at Victoria.

*E. V. Bodwell*, K.C., and *E. B. Ross*, for plaintiff.

*A. McLean*, K.C., and *M. B. Jackson*, for defendants.

MARTIN, L. J., now (October 28th, 1913) delivered judgment.

At the hearing judgment was given against *The Triumph* for \$906.25 for what could only, according to the evidence, be regarded as necessaries, but the claim for necessaries against *The Canada* was reserved for future consideration so far as it relates to the work done and materials furnished in the spring of 1913; no

objection can be taken to that part of the claim which relates to charges for repairing and making her seaworthy in October, 1912, after her arrival in Victoria via Cape Horn.

She was brought here to engage in fishing as a trawler but it was decided after some experience in that work to change the method of fishing and fit her out to fish with boats—dories. This necessitated certain alterations and additions to bunks for increased accommodation for her crew, and otherwise, and it is objected that this work being to some considerable extent at least of a structural nature, cannot properly be classed as necessaries. In the judgment I delivered on the interlocutory motion herein on the 24th of September last I cited the principal authorities on this question, and I now refer to them adding thereto the case in this Court of *Williams v. The Flora* (1) and noting with approval the statement in Roscoe's Admiralty Practice (1903) p. 265, that the term necessaries, "though primarily meaning indispensable repairs. . . . has now it is clear a wider signification, and "has been and is being gradually amplified by modern "requirements."

The position of the ship at bar is that her owners having engaged her in a particular service (fishing) in a particular way found it desirable to continue her in the same service in another way, and to do so it became necessary to make certain alterations in her structure and equipment. Now the general rule is that which was established in *The Riga* (2) as follows, p. 522:—

"I am of opinion that whatever is fit and proper  
 "for the service on which a vessel is engaged, what-  
 "ever the owner of that vessel, as a prudent man,  
 "would have ordered if present at the time, comes

(1) (1897) 6 Ex. C. R., 137. (2) (1872) 1 Asp. 246; L. R. 3 A. & E., 516.

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“ within the meaning of the term ‘necessaries’, as  
 “ applied to those repairs done or things provided  
 “ for the ship by order of the master, for which the  
 “ owners are liable.”

I am unable to see why this rule does not apply to what was done here. Surely if a ship carrying a cargo of grain came to this port and got a return charter to carry long sticks of timber which necessitated the cutting of new ports to get them into her hold, such alterations, structural though they would strictly be, could only be said to be necessaries. And here it was necessary, for the effective business of fishing, to turn this trawler into a dory fisher, just as it was to turn the grain ship into a lumber carrier. In the case of *The Flora* above cited, a passenger steamer, her owners were without means to fit her out or operate her, so they entered into a contract with a railway company which agreed to advance the money to fit her out to carry freight and passengers for the season of 1897, and the sum of “\$2,000 was expended in painting, repairing, furnishing and outfitting the steamer,” and it was held, on the authority of *The Riga*, that what was done came within the definition of “necessaries.” There is no substantial distinction between that case and this, and I see no obstacle to prevent judgment being entered in favour of the plaintiff against *The Canada* for the full amount of the claim, \$3,217.37, all of which I hold to be necessaries in the circumstances.

*Judgment accordingly.*

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