

APPEAL FROM NOVA SCOTIA ADMIRALTY DISTRICT.

1911
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 Dec. 14.

CHARLES KANE, (PLAINTIFF) APPELLANT.

AGAINST

THE SHIP "JOHN IRWIN".

Shipping—Necessaries supplied in home port—Credit to ship—Liability of master.

Where necessaries are supplied to a ship in a home port and the facts show that they were supplied on the credit of the ship, the liability therefor is that of the owners and not that of the master who has ordered the goods at the request of the owners.

APPEAL from the judgment of the Deputy Local Judge for the Nova Scotia Admiralty District in an action for necessaries supplied to the ship.

The grounds of the appeal are stated in the reasons for judgment of the Judge of the Exchequer Court.

August, 15th 1911.

The following reasons for judgment were delivered by the Deputy Local Judge.

DRYSDALE, D.L.J.

There are two questions here, first, can the captain of the ship recover wages or damages for wrongful dismissal, and secondly, can he recover as for liabilities incurred by himself to Crowell Bros., and Mitchell & Shaffner? The two last named firms supplied goods to the ship and charged them in the case of Mitchell & Shaffner to the ship and owners, and in the case of Crowell Bros. to the ship, *John Irwin*. The goods were supplied in the home port of the ship, the master having ordered the stuff after being directed by the

manager of the owners to get the goods. The master was a new hand, he apparently enquired of the engineer where the owners were accustomed to deal and being given the name of the said merchants ordered the supplies. The manager of the company (the ship's owners) admits he told the captain to order the goods and charge them to the ship, and this is apparently what was done. Under these circumstances can it be said the master has incurred a personal liability for the goods that enables him to enforce a statutory lien. Therefore, I ask myself to whom was the credit given when I come to test this question. The goods were charged in one case to the ship and owners and in the other to the ship. A charge to the ship in a home port when there is no lien for supplies means a charge to the owners, it cannot, I think, be fairly said to mean anything else. The merchants were not examined and no evidence given to establish a liability on the part of the master personally.

It seems the firms mentioned drew directly on the company (the owners) for the amount. As to Crowell's bills the master states they were paid for by a note. Whose note or when it was given or any of the circumstances connected therewith are not stated. And I think under the case as presented I am left to determine the question of the captain's liability on the state of facts as shewn, viz: That the captain had authority to order the goods for the owners, that he did so, that they were charged to the owners by the merchants and not to the captain at the home port, and where the merchants had been accustomed to furnish supplies for the owners. Under these circumstances I see no personal liability incurred by the master, and I feel obliged to hold that he has failed to shew that these two bills are matters as to

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which he incurred a personal liability, and by reason of such a position can enforce a lien therefor.

On the other point in the case I am of opinion the master was improperly dismissed.

Taking his own story of the grounding of the vessel it may have been a matter so slight that he innocently and properly did not think it a matter worth mentioning to his owners. He seems to have so treated it and I cannot say he was wrong. Considering the fact that he got other employment in a week or so at fifteen dollars a week he has not suffered much. I think fifty dollars (\$50) would amply compensate him, and so fix the damages at that sum.

The question of accounts on the crew's supplies I did not go into inasmuch as any small balance in the captain's hands in respect to the daily supplies would seem to about square the money shortage which on the whole evidence he may, I think, be entitled to.

The decree will condemn the bail in fifty dollars and costs.

November, 27th., 1911.

The arguments of counsel were, by consent of the court and agreement of parties, submitted in writing.

J. Terrell, for the appellant, cited the *Ripon City*; (1) *The Limerick* (2); *Maclaghlan on Shipping* (3); *Kay on Shipmasters and Seamen* (4); *The Marco Polo* (5); the *Chieftain* (6); *Williams & Bruce's Adm. Prac.* (7); *Rich v. Coe* (8); *Curtis v. Williamson* (9); *The Huntsman* (10); *The Justitia* (11); *Palace Shipping Co. v. Caine* (12).

(1) (1897) P. 226 at p. 231.

(2) L.R. 1 P.D. 292; 411.

(3) 5th ed. p. 150.

(4) 2nd ed. p. 47-116, 120, 218.

(5) 1 Asp. N.S. 54.

(6) B. & L. 212.

(7) 3rd. ed p. 196.

(8) Cowp. 639.

(9) 10 Q.B. 57.

(10) (1894) P. 214.

(11) 12 P.D. 145.

(12) (1907) A.C. 386.

H. Mellish, K.C., for the respondent cited *Howell's Admiralty Practice* (1); *Macdonnell on Master and Servant* (2).

Mr. *Terrell*, in reply, cited *Halsbury's Laws of England* (3).

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CASSELS, J. now (December 14th) delivered judgment.

I have carefully considered the evidence adduced before the learned Judge who tried this case, and have also considered the factums of the appellants and respondents. After the best consideration I can give to the case, I am of the opinion that the learned trial Judge could have come to no other conclusion so far as the claims of Mitchell & Shaffner and of Crowell Brothers are concerned. I have perused all of the authorities cited by the appellants in the factum. In this particular case the facts are so strong in favour of the view that the credit was given to the ship or the ship owners and not to the master, that if this were not so the plaintiff should have proved his case. It would have been quite easy to have produced the note which I am asked to assume was drawn by the master. In the case of *The Ripon City* the ship was in a foreign port, and it was proved as a fact that the bills had been drawn by the master. In the case under review it is shown that the note was drawn on the owners. The master was directed by the agent of the owners to procure the goods on the credit of the ship. The inference from the facts is that he did what he was told. It is quite true that there may be a liability both against the owners and the master, but this depends entirely upon the facts. Here, according to Mr. Law's evidence, the master was

(1) At p. 271.

(2) 2nd ed. pp. 140, 157.

(3) Vol. 1, p. 219.

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directed to purchase what he needed in the cheapest way, and to charge the ship in the usual way. This was the master's first venture in the ship. The goods in question were obtained prior to the ship sailing and for the purposes of repairs. The course of business down to the period when the master took charge was to have the goods purchased and charged to the vessel. The master having received these instructions naturally went to the engineer to ascertain from him from whom they were in the habit of purchasing goods, no doubt following Mr. Law's instructions. The goods are furnished, the ship is charged in the usual way, and no claim has been put forward upon the part of these two parties who furnished the goods against the master. It would have been very easy for the plaintiff had the facts been otherwise and any liability existed as against him to have proved affirmatively this fact, but in the face of all that took place it seems to me that the onus was shifted to him. The proper inference is that he did what he was told and incurred no personal liability.

In regard to the claim for wages, all that the captain was entitled to was reasonable notice. The Judge in his discretion has allowed the sum of fifty dollars and costs. It is quite evident from the learned Judge's reasons for judgment that he was desirous as far as he properly could to assist the plaintiff. The appeal is dismissed with costs.

Appeal dismissed.