1926

Sept. 14.

BRITISH COLUMBIA ADMIRALTY DISTRICT

JANSEN ET UX.....PLAINTIFFS;

v.

THE "TEX".....DEFENDANT.

Shipping—"Steamship"—Interpretation—Canada Shipping Act—Master

The defendant ship was a gas boat of registered gross tonnage of 21.02 tons, and was used chiefly in towing barges.

Held, that, as the ship in question did not come within the exceptions mentioned in section 100 of the Canada Shipping Act [R.S.C. (1906) ch. 113] as amended by section 1 of c. 51 of 2 Geo. V, she was a "steamship" or "steamer" within the meaning of section 72, ss. (c), and was required to have a certificated master.

ACTION for wages by plaintiffs against the defendant ship.

Vancouver, September 8, A.D. 1926.

Action now tried before the Honourable Mr. Justice Martin.

C. M. Woodworth for plaintiffs.

Roy Ginn for the defendant.

The facts are stated in the reasons for judgment.

MARTIN L.J.A., now this 14th September, A.D. 1926, delivered judgment.

This is an action for wages, the male plaintiff claiming $668 as master, and his wife $161.33 as cook on the defend-

ant ship which is a gas boat of the registered gross tonnage of 21·02 tons, and used chiefly in towing barges.

The matter was fully gone into and much of the evidence is of a conflicting nature, and the only point of general importance is the submission advanced by plaintiffs' counsel that it was not necessary for a ship of this kind, not being a sailing ship or steamship, to have a master who "possesses a valid certificate" under sec. 96 of the Canada Shipping Act, cap. 113, R.S.C. It is clear, however, that the interpretation of sec. 72 (*c*) is wide enough to cover vessels of this class because it declares that "unless the context otherwise requires"—

(*c*) "Steamship" or "steamer" includes any ship propelled wholly or in part by steam or motive power other than sail or oars.

There being nothing in the context to exclude this definition from applying to this vessel, she therefore, not being within the exceptions mentioned in sec. 100 as amended by sec. 1, cap. 51, of 1912, should have had a certificated master which the plaintiff was not, though he acted in that capacity, and there is not sufficient evidence to establish the charge that he was negligent in the performance of those duties.

The owners allege that he represented himself to be a duly certified master at the time his services were engaged at $4 per day and his keep, and the view I take of what happened at that time is that he did express himself in such a way that the managing owner, Ragan, did derive that impression, but I also find that shortly thereafter, when Ragan clearly understood the true position, he elected to waive the disqualification and the said plaintiff continued in his employment without objection till he received sufficient notice upon New Year's day that his active engagement would forthwith terminate, pending an improvement in the owners' business affairs, but that he and his wife could remain on the vessel at their own charges in the meantime; therefore he is not entitled to wages after the 2nd of January.

I allow the owners' set-off according to their statement, less $5, thus leaving it to stand at $122.

1926

JANSEN
v.
THE *Tex*

Martin
L.J.A.

As to the wife's claim as a cook, I find that it has not been established, because not only is the direct evidence in support of it unsatisfactory, but having regard to all the circumstances of the case the account of the matter given by the owners is more in accord with the probabilities.

There will be judgment in pursuance of these findings with costs for the master, the claim of the wife being dismissed with costs.

The costs of the motion to re-open the judgment will go to the defendants; while it is true that the motion was irregularly made in chambers yet no objection was taken to it on that account and the irregularity was cured when it was, at its conclusion, transferred into court for formal adjudication.

1926

March 26.

Judgment accordingly.