

Province of British Columbia.

SUPREME COURT.

Full Court.] ALASKA PACKERS' ASSOCIATION v. SPENCER. [July 29.
New trial—Direction to jury—Obligation of a judge to apply facts to law—Sailor's right to have questions submitted to jury—Exclusion of jury during exceptions to charge—Mode of trial—Scientific investigation.

In an action by a ship owner against a tug owner for damages for negligence on the part of the tug in allowing the ship to drift ashore while attempting to tow her from a dangerous position, the judge in his charge to the jury explained the law applicable to the issues, but he did not point out to the jury the bearing of the facts in evidence upon the questions to be determined:—

Held, that the charge was incomplete and was misunderstood by the jury, and that there must therefore be a new trial. The judge is bound to submit questions to the jury if requested to do so.

Per HUNTER, C.J. 1. A jury is not suited to try a dispute involving questions as to what were the proper nautical manoeuvres to be performed under peculiar conditions, and the new trial should be held before a judge without a jury.

2. The court has jurisdiction to order a new trial without a jury, although the appellant in his motion for a new trial does not so ask.

Per MARTIN, J. 1. It is the duty of the judge under section 66 of the Supreme Court Act, 1904, to instruct the jury upon all leading groups of evidence and apply to them the law as affecting the issues arising out of such evidence.

2. The jury should not be excluded from the court room during the discussion on an application by counsel for further direction by the judge.

3. The plaintiffs have an inherent right to a jury, and mere complexity of fact is no ground for depriving them of that right.

Judgment of IRVING, J., set aside and new trial ordered, DRAKE, J., dissenting.

Redwell, K.C., for appellant. *Davis*, K.C., and *C. E. Wilson*, for respondent.