

3. *That the refusal or neglect of the captain to provide a sailor with necessary food, and his incarceration in the ship's cells, where he was put into irons, and afterwards triced up by the thumbs, justify reasonable apprehension of danger to his life if he were to remain on board.*

Tupper was a sailor on board the *Alpheus Marshall*, a British registered ship. His engagement was made at New York, 6th September, 1883, for 3 years at \$14 a month. After a long voyage to Yokohama, Japan, the ship came into the port of Montreal. Here Tupper laid an information against the captain, accusing him of cruelty, and claiming to be discharged from his engagement and to be paid a certain sum for wages.

PER CURIAM. The information, taken under the 190th section of the Merchant's Shipping Act, alleges: That the complainant is duly articulated with the defendant to serve as a seaman on board the vessel *Alpheus Marshall*, a British registered ship; that owing to ill-treatment he has received at the hands of the defendant, he apprehends danger to his life if he remains on board said ship, and concludes, to be released from his said engagement, and paid the amount of his wages now due, viz., \$120.

The evidence establishes that on the 3rd of September last, when the said ship had been at sea since about four and a half months, on its way from Japan to Montreal, all the crew was put on short rations. Bread was reduced very near one half; meat (beef and pork) about one-third; tea and coffee about one-half; lime-juice, about five-sixths; flour, entirely suppressed. The short allowance lasted for about 40 days; all the men were weak from hunger, and one man (during the short allowance period) fainted at the wheel, apparently from weakness and want of food.

Defendant had already, on a former occasion, started on a sea voyage with insufficient provisions (deposition of Roberts, boat-swain).

On the 15th September last, when the crew had been for twelve days on short rations, as above, on a very hot day, the complainant and four others refused to turn to their duty, alleging that they were too weak to continue their work for want of

proper food. It appears that this was at a time when they had been in the habit of enjoying rest, even when they had been feeding on full allowance, and the work then to be done was not necessary for the safety of the ship. Defendant told them they would have to turn to or that they would be put in irons. Complainant, as well as the four others, said that they would submit to be put in irons, as they felt too weak to resume work, especially at a moment allotted for rest.

Defendant had them put in irons, and without notice, immediately caused them to be triced or strung up by the thumbs, until almost the whole weight of their bodies rested on their thumbs, their toes only touching the ground, and left them there, saying that they might remain in that position until their arms left their bodies, or until they would consent to turn to work. In that position they remained for fifty-two minutes, when all asked to be unstrung and said that they would go to work, which they did.

Several witnesses have sworn that they believe that Tupper was effectually too weak at that moment to go to work, having already worked all morning, and they judge of that from their own weakness and hunger. It is also proved that the vessel passed no less than six accessible ports during the period of short allowance, in which defendant could have re-provisioned his ship if he had been willing.

The *Alpheus Marshall* also met several ships but never hailed any of them. It appears really that if defendant had desired to re-provision his ship he could easily have done so.

It has been contended that Tupper and his four associates raised a mutiny against the captain. But nothing of that is proved, nor even attempted to be proved; all that these men did or said was, we are too weak to work, and immediately submitted to the disgrace of being put in irons without a movement or a remark.

I find in Maude & Pollock's Law of Merchant Shipping, edition of 1881, vol. 1, page 126, "Whilst his vessel is afloat, the master is bound to maintain order and discipline on board under the guidance of justice, moderation and good sense. His authority over his crew has been compared to that of a parent over his child, or of a master over his appren-