

VICE-ADMIRALTY COURT OF BRITISH COLUMBIA.*

1891

Feb. 19.

THE COSTA RICA.

*Salvage—Ordinary service performed at request of master of stranded ship—
Jurisdiction of Vice-Admiralty Court to award compensation for same.*

A ship was stranded on a rocky shore with a point of rock protruding through her hull. H. was employed to blast it away and so free the ship.

Held, that this was not a salvage service.

2. That the Vice-Admiralty Court had jurisdiction to award reasonable remuneration in respect to the same.

The Watt (2 W. Rob. 70) referred to.

THIS was a claim of \$5,000 for salvage.

The following are the facts of the case :—The *Costa Rica*, a large vessel, insured for \$60,000, had been run ashore inside Beechy Head just beyond Royal Roads, in a partially sheltered position about ten or eleven miles from Victoria, B. C. A pointed rock, always covered at high water and always exposed at low water, had penetrated her hull some two or three feet, about twenty feet from her stem, and held her nailed to the reef. She was not otherwise injured, nor in any immediate danger unless the wind had shifted, when her position would have been critical. The captain engaged Hagarty, the plaintiff, to go on board and blast away the rock which held her. Hagarty, misunderstanding the dimensions of the rock, took ten men, (enough for three gangs of blasters,) with iron drills, dynamite, &c. The operation required, evidently, considerable judgment and experience for regulating the direction of the drills, the amount of explosive, &c. The whole work was successfully per-

*This case was decided before 54-55 Vic. c. 29 (*The Admiralty Act*, 1891) came into operation.

1891
 THE COSTA
 RICA.
 Statement
 of Facts.

formed and the plaintiff and his party returned to Victoria within thirty-six hours from the first summons to Hagarty, the *Costa Rica* being forthwith hauled off by a tug and towed into the dry-dock in Esquimalt harbour. The ship would certainly have gone to pieces sooner or later if she had not been freed from this rock; but the Dominion hull inspector in his evidence thought that she could have been got off by milder means, *viz.*, by employing camels. The defendants paid \$109 into court, calculated at \$3 for a day's work for each of the ten men, \$24 for material, and \$50 for Hagarty himself. The plaintiff alleged that he had allowed each man 50 cents per hour for the whole thirty-six hours he himself had been engaged, and that the material used was worth \$25.

19th February, 1891.

Wilson for plaintiff;

Pooley, Q.C., for the *Costa Rica*.

Sir MATTHEW B. BEGBIE (C.J.) J.V.A.—This may be, perhaps, termed a salvage service in this sense—that the removal of the rock was a *sine quâ non* for the safety of the ship; though this is denied by the witness Colliser, who considers that a simpler and less dangerous plan would have been to raise the ship from off the rock that held her transfixed. But this does not make the blasting a salvage service so as to earn a salvage reward. It was equally necessary, after the rock was blasted away, to tow her off the shore, to navigate her to a place of safety, to receive her into the dry-dock, and repair her there. The labourers of Mr. Hagarty would have failed of success—*i.e.*, the ship would have sunk notwithstanding his labours—if the dockers had refused to work. Are all these salvage services? But none of them have sued. And if these were salvage services,

all the men were salvors and the salvage remuneration is divisible among them all ; but they have all been paid ordinary wages, with something extra for working overtime and on a Sunday. There was no enterprise of peculiar risk ; the men were at their ordinary work, only instead of blasting the foundation for the new hotel, they were blasting this point of rock in the hold of the *Costa Rica*. The work was well and energetically performed and with good success, and they deserve a reward, as in *The Watt* (1), and *The Favourite* (2), and *The Chetah* (3). I shall allow \$240, including \$109 paid into court, for services and materials. I think the plaintiff was quite right in taking down an abundant force of men, more, as it happened, than could be utilized. But time was all important,—a single tide might have lost the ship.

1891
 THE COSTA
 RICA.
 Reasons
 for
 Judgment.

As to costs: the only justification for coming into this court, rather than the County Court, is that it is a case of salvage. As in my opinion the plaintiff has made an extremely exaggerated demand, and in fact fails to prove salvage at all, I might dismiss the action with costs. But on the other hand I clearly have jurisdiction (as in *The Watt*, *The Chetah*, and other cases) to award reasonable remuneration, and the \$109 paid into court by the defendant I think too little. Both parties fail in some particulars, and I shall leave each to pay his own costs.

Judgment accordingly.

(1) 2 W. Rob. 70.

(2) 2 W. Rob. 255.

(3) L. R. 2 P. C. App. 205.