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 Sep. 1.

JACQUES COUETTE, ALFRED }  
 GOULET AND HENRY BROWN } SUPPLIANTS;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*Maritime law—Salvage—Government vessel—Special contract.*

A steam-ship belonging to the Dominion Government went ashore on the Island of Anticosti, and suppliants rendered assistance with their wrecking steamer in getting her afloat. The service rendered consisted in carrying out one of the stranded steam-ship's anchors, and in taking a hawser and pulling on it until she came off. For carrying out the anchor it was admitted that the suppliants had bargained for compensation at the rate of fifty dollars an hour, but whether the bargain included the other part of the service rendered or not, was in dispute. The service was continuous,—no circumstances of sudden risk or danger having arisen to render one part of the work more difficult or dangerous than the other.

*Held*, that the rate of compensation admittedly agreed upon in respect of carrying out the anchor must, under the circumstances, be taken as affording a fair measure of compensation for the entire service.

2. A petition of right will not lie for salvage services rendered to a steam-ship belonging to the Dominion Government.

PETITION OF RIGHT for salvage services alleged to have been rendered to a Government ship.

The facts of the case are recited in the judgment.

April 11th and 12th, 1892.

*Pentland*, Q.C. (with whom was *Stuart*, Q.C.) for the suppliants, cites *Jones on Salvage* (1); *Pritchard's Admiralty Digest* (2); *Stewart v. Brewis* (3); *The Isabella* (4); *The Bomarsund* (5); *Kay on Shipping* (6); *Parsons on Shipping* (7); *The Monkwearmouth* (8); *The Reward*

(1) pp. 1, 23.

(2) Vol. 2, chap. 8, p. 1854.

(3) 1 Dor. 319.

(4) 3 Hagg. 428.

(5) 1 Lush. 77.

(6) Vol. 2, p. 1017.

(7) Vol. II. p. 309.

(8) 9 Jur. 72.

(1); *Atwater v. The Importers & Traders Co.* (2); *The Favourite* (3).

*Cook*, Q. C. (with whom was *Angers*, Q. C.) for the Crown, cites *The Undaunted* (4); *Maude & Pollock on Shipping* (5); *Pritchard's Admiralty Digest* (6); *The Victory* (7); *The America* (8).

*Pentland*, Q. C. in reply, cited *The Carmona* (9); *The Palmerine* (10); *Jones on Salvage* (11); *Hudon Cotton Co. v. Canada Shipping Co.* (12); *The Sovereign* (13); *The Princess Royal* (14); *The Fortitude* (15).

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BURBIDGE, J. now (September 1st, 1892) delivered judgment.

The suppliants *Couette* and *Goulet* are owners of the *Annie McGee*, and the suppliant *Brown* of the *Florence*. Both are steam wrecking-vessels. For themselves and for the crews of the vessels the suppliants, by their petition, claim from the Crown the sum of five thousand dollars for salvage services rendered to the Government steam-ship *Alert*.

To this claim the Crown answers that :—

- (1.) A petition of right will not lie for salvage services ; and—
- (2.) That the suppliants agreed to perform the services rendered for a sum of fifty dollars per hour, amounting in all to three hundred and fifty dollars, which amount the Crown tendered to the suppliants before the petition was filed in the Court, and which it is still ready to bring in.

(1) 1 Wm. Rob. 174.

(2) 31 L. C. J. 52.

(3) 2 Wm. Rob. 255.

(4) 1 Lush. 90.

(5) 4th. ed., p. 638.

(6) Pp. 2094, 2095 & Nos. 1289 & 1300.

(7) Cook Adm. Rep. 335.

(8) Stu. Adm. Rep. 2nd ser. 214.

(9) Cook Adm. Rep. 350.

(10) *Ib.* 358.

(11) P. 81.

(12) 13 Can. S.C.R. 417.

(13) 1 Lush. 85.

(14) 9 Jur. 434.

(15) 2 Wm. Rob. 224.

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The first objection taken must, I think, be maintained. In England the practice has been where salvage services of a meritorious character have been rendered to naval stores carried as cargo in a merchant vessel against which a salvage suit has been instituted, for the Admiralty Proctor to enter an appearance for the Lords of the Admiralty in respect of the cargo and submit to an award of salvage, (1) and it is thought that a similar course would probably be taken in the case of valuable salvage services having been rendered to a Queen's ship and the assistance of the Court being desired for the purpose of assessing the amount which the Crown would be willing to pay to the salvors.

But in such a case neither the ship nor the cargo is liable to arrest, and it cannot be doubted, I think, that no action could be taken against the Crown itself in respect of the salvage service (2).

A petition of right will lie in the High Court of Admiralty where the subject matter of the petition arises out of the exercise of any belligerent right on behalf of the Crown, or would be cognizable in a prize court if the same were a matter in dispute between private persons. But that is an exception created by statute (3). Whether or not the Exchequer Court in the exercise of its Admiralty jurisdiction might in an action against the commander of a Government vessel, the Crown appearing and submitting to the assess-

(1) Williams & Bruce, Admiralty Practice, 1886, p. 250 (K), citing *The Marquis of Huntley*, 3 Hagg., 246; *The Lulan*, Adm. Div. Feby. 8, 1883.

(2) *The Comus* cited in *The Prins Frederik*, 2 Dods. 464; *The Lord Hobart*, 2 Dods. 100; *The Athol*, 1 Wm. Rob. 374; *The Volcano*, 3 No. of Cas. 210; *Lipson v. Har-*

*rison*, 22 L. T. 83; *Wadsworth v. The Queen of Spain*, 17 Q.B. 171, 196; *The Constitution*, L.R. 4 P.D. 39; *The Parlement Belge*, L.R. 5 P.D. 197; *The Schooner Exchange*, 7 Cranch 116; *The Thomas A. Scott*, 10 L.T.N.S. 726; *Briggs v. Light Boat Upper Cedar Point*, 11 Allen 157.

(3) 27 & 28 Vic. c. 25 s. 52.

ment, award compensation to salvors for services rendered to such vessel, need not now be considered. It is clear, I think, that in the present proceeding it has no such jurisdiction.

That brings us to the second ground of defence which is to be decided with reference to the contract that was made between the parties or is to be inferred from what passed between them.

On the 12th October, 1891, about six o'clock in the morning, the steam-ship *Alert*, then engaged in supplying the lighthouses in the Gulf of St. Lawrence with provisions, ran aground near Heath Point, at the eastern end of the Island of Anticosti. There was on board the steam-ship some supplies for the suppliants, who, as partners and with the vessels mentioned, were employed a few miles distant in saving the cargo of the wrecked ship *Circe*. Couette, when starting with the *Annie McGee* to go to the *Alert* for the supplies, noticed that something was wrong with the steam-ship, and having called Brown's attention to the fact, the latter accompanied him, leaving his men to continue their work with the *Florence*. Couette anchored the *Annie McGee* near to the *Alert*, and went on board for his provisions. At the time Koenig, the captain of the *Alert*, was about to get out his port anchor and on Couette's offer to assist he engaged him to carry it out with the *Annie McGee*, agreeing to pay for the service the sum of fifty dollars per hour. After the anchor had been carried out, Couette with the *Annie McGee* took a hawser which was made fast to the port-bow of the *Alert*, and assisted in towing the latter off. Whether he did this at Koenig's request or on his own offer, and whether it was part of the service for which he had agreed to accept fifty dollars per hour, is in dispute. The whole time he was engaged in respect of the two services was

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seven hours. The *Florence* rendered no actual assistance. But when Couette took the hawser, he, of his own motion, signalled the *Florence* which came near to and stood by his vessel, ready to aid if necessary.

With reference to the difference between the parties as to what was covered by the express agreement made, Koenig and his chief officer, Morin, say that it covered the entire service; Couette and Brown that it was limited to carrying out the anchor. In the view I take of the case it makes little difference in the result whether credence is given to the former or the latter. The service was continuous. The hawser was taken as soon as the anchor had been dropped. With the exception of putting a strain on the anchor and ascertaining that it, and not the steam-ship, moved, there was no change in the position of affairs. There was no new or sudden danger to render improbable the exercise of the care that the captain of the *Alert* had shown in having the value of the services settled before he accepted them.

Brown says that, at the time the hawser was being taken on board the *Annie McGee*, he said to Couette: "This is a different arrangement, we had better go and have an arrangement for it," and that the latter answered that they would settle that afterwards. Whatever Couette may have had in his mind, he certainly gave Koenig no intimation that he considered his bargain at an end, and that he was then entering upon an entirely different work for which he would expect a more liberal remuneration. But, as I have said, the difference is not important. If the arrangement made was limited to carrying out the anchor, then there is to be inferred, I think, from the acts of the parties, an undertaking on the part of the suppliants to continue their assistance at the rate previously agreed upon and even if it were open to me to determine the value of

such services rendered, I should not, in this proceeding and apart from considerations to which effect are given in actions for salvage, assess such value at a higher amount than that which the Crown offers to pay. The evidence as a whole shows that the one service was not more difficult or dangerous than the other. For carrying out the anchor the suppliants by their offer and agreement to accept fifty dollars per hour established a measure of compensation that might with great propriety be applied to the later service.

There will be judgment for the suppliants Couette, Goulet and Brown for three hundred and fifty dollars. The Crown under the circumstances is entitled to costs.

*Judgment for suppliants; costs  
to respondent.*

Solicitors for suppliants: *Caron, Pentland & Stuart.*

Solicitors for respondent: *O'Connor, Hogg & Balder-  
son.*

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