

THE NOVA SCOTIA ADMIRALTY DISTRICT.

1904
 March 22.

PICKFORD & BLACK STEAMSHIP } PLAINTIFFS;
 CO., (LIMITED)..... }

AGAINST

THE SCHOONER "FOSTER RICE."

Shipping—Salvage services—Mail steamer—Sailing ship.

In this case salvage services were rendered a distressed sailing ship on the high seas by a mail steamer. At the time the latter performed the salvage services she was valued at \$100,000, and besides passengers and mails, she carried a cargo estimated to be worth \$7,000. The time occupied in the performance of such services was about two and one half days, the weather being fine and no risk or danger threatening the steamer except some chance of collision with her tow through a narrow channel of some thirteen miles in length. On account of the delay occasioned by the services the steamer was obliged to consume additional coal to the value of \$360 in making up her schedule time on the voyage. The sailing ship was in a position of peril when sighted by the steamer, having been dismasted and at the time drifting broadside at the mercy of the seas. Her cargo was worth \$13,727.23, and her freight, as per bill of lading, \$1,332.26. The value of the saved ship when taken into port in her damaged condition was placed at \$2,290. The amount of salvage in respect of cargo and freight was settled before action brought.

Held, that the sum of \$400 was a fair salvage award in respect of the ship alone.

THIS was an action for salvage services.

The facts of the case are stated in the reasons for judgment.

January 7th, 1904.

The case was heard before the Local Judge for the Nova Scotia Admiralty District at Halifax, N.S.

W. B. A. Ritchie, K.C. and *T. R. Robertson* for the plaintiffs.

H. Mellish, K.C., for the ship.

MCDONALD, (C.J.) L.J. now (March 22nd, 1904), delivered judgment.

This is an action for salvage services rendered by the steamship *Ocamo* to the sailing vessel *Foster Rice*.

On the morning of the 29th of July, 1903, the *Ocamo*, then on a voyage from Halifax to Bermuda and other West Indian ports, sighted the *Foster Rice*, then nearly in her track and distant about 350 miles from Bermuda and about the same distance from the coast of Nova Scotia. The *Ocamo* is a freight and passenger steamer plying regularly on the route upon which she was at that time sailing. She is a ship of 1,900 tons gross register, and of the value of \$100,000. At the time referred to she carried a cargo of the value of \$45,000 and 14 passengers besides His Majesty's mails.

Her freight was valued at \$7,000. Her crew numbered 35.

The *Foster Rice* is a two masted schooner. At the time she was picked up by the *Ocamo* she was on a voyage from Arroya, Porto Rico, to St. John, N.B., laden with a cargo of molasses. The net cash value of the cargo at St. John, N.B., was \$13,727.32, the freight as per bill of lading \$1,332.26, the value of the vessel at Bermuda, where she was taken by the *Ocamo*, as hereinafter detailed, was, in her then damaged condition, £450 or about \$2,290. Her value when repaired was about \$7,000.

Five days before the *Foster Rice* was spoken by the *Ocamo* she encountered a hurricane and was very much damaged by its force. The masts were carried away, the foremast completely, and the mainmast to within about 30 or 35 feet of the deck. What was left of the mainmast was sprung about 6 feet from the deck and thereby weakened. When the foremast was

1904

PICKFORD
& BLACK
STEAMSHIP
Co.

v.
THE
SCHOONER
FOSTER RICE.

Reasons for
Judgment.

1904
 PICKFORD
 & BLACK
 STEAMSHIP
 Co.
 v.
 THE
 SCHOONER
 FOSTER RICE.

Reasons for
 Judgment.

carried away its step broke out eight planks of the deck, and over the hole so made planks had been laid and nailed down, while over the planks again canvas had been stretched and fastened. The jib-boom was carried away with all attached. After the gale had subsided, tackles were put to the stump of the main-mast to hold it in place and stays were fastened to the remains of the mast for the purpose of putting such sails on as could be set. These jury sails were not of very much use, as the evidence shows she could sail no closer to the wind than 8 points—practically a broadside course, and that, during the time that elapsed before the arrival of the *Ocamo* she had made practically no headway at all. On the contrary she was drifting gradually to the eastward under the compulsion of the currents. The wind was at that time light. The *Foster Rice* was on the lookout for one of the steamships of the Pickford & Black line in order to obtain assistance, and excepting from this line of boats they did not know where assistance was to come from. After the hurricane no vessel was sighted before the *Ocamo*.

There was no doubt but that the *Foster Rice* was, at the time the *Ocamo* spoke her, in a position of much peril. Had another hurricane struck her, and according to the evidence that might have happened at any time, in her then disabled condition there cannot be much question that she would not have been able to weather it out, and day by day she was drifting along from the regular course of steamers and therefore into greater danger still. For five days before she was taken in tow she was practically helpless and at the mercy of the sea.

She was taken in tow early on the morning of the 29th July, the sea at that time being smooth and the weather fine. This condition of wind and sea con-

tinued practically throughout the time salvage services were rendered. No special or unusual difficulty or danger was incurred throughout the performance of the services. The hawser was fastened without trouble and the same hawser lasted until the vessels arrived at Hamilton, Bermuda, on the morning of 31st July, having anchored during the night of the 30th so that entrance could be made to the harbour at Hamilton through the tortuous channel from St. George's to that place by daylight, as is customary with all vessels. Care had to be taken at this time that the hawser should not foul the propeller of the *Ocamo* and to avoid this, as well as the risk of collision, the *Ocamo* was kept moving throughout the night. There appears also to have been some risk of collision and of the hawser fouling during the passage through the channel from St. George's to Hamilton, a distance of 13 miles.

Owing to services rendered to the *Foster Rice* the *Ocamo* was behind time at Bermuda about 24 hours; at St. Lucia, her next port, about six hours and at Barbados she arrived practically on time. This time was made up by an extra expenditure of coal amounting to 60 tons, valued at \$360, and by the necessarily extra work of the officers and crew. The hawser used in the towing operations was of little use afterwards.

In considering the amount of the salvage awarded it must be remembered that the *Foster Rice*, owing to her disabled condition, at that time of year and in that latitude, was in great danger. There was no danger of her immediate loss, but there was danger that, if she had been left to her own resources, she would have become a total loss. The ship, cargo and freight of the total value of about \$17,349, was undoubtedly placed in safety by the salvors and they should be adequately recompensed. The weather,

1904
 PICKFORD
 & BLACK
 STEAMSHIP
 CO.
 v.
 THE
 SCHOONER
 FOSTER RICE.
 Reasons for
 Judgment.

1904
 PICKFORD
 & BLACK
 STEAMSHIP
 Co.
 v.
 THE
 SCHOONER
 FOSTER RICE.
 ———
 Reasons for
 Judgment.
 ———

during the time the services were rendered was favourable, but it might well have been otherwise. It must also be remembered that the salving vessel is a passenger and mail carrying steamship, and that delay in landing passengers and mails at their destination in the usual time might be attended with risk to the owners. It is said that some extra strain was put upon her machinery, but this I think is a small matter and scarcely worth consideration. The total value of the *Ocamo* for freight and cargo was \$152,000.

Before this action was brought the amount of salvage in respect of freight and cargo was settled by private arrangement. There is, therefore, only to be considered the salvage in respect of the salved vessel, and that I fix at \$400 to be apportioned as follows :

To the ship	\$200 00
“ captain.	25 00
“ engineer.	20 00
“ firemen.....	20 00
“ crew according to their rating.....	135 00

For which amount there will be a decree, with costs.

*Judgment accordingly.**

Solicitor for plaintiff: *H. C. Borden.*

Solicitor for ship: *W. H. Fulton.*

(1) REPORTER'S NOTE.—On appeal to the Judge of the Exchequer Court, this judgment was affirmed and the appeal dismissed with costs (June 6th, 1904).