

TORONTO ADMIRALTY DISTRICT.

1914
 May 12.

THE PENINSULAR TUG & TOW-
 ING COMPANY, LIMITED. PLAINTIFFS.

AGAINST

THE SCHOONER *STEPHIE*.

Shipping—Salvage—Relative Liability of Ship and Cargo—Specific Agreement

Where no specific agreement is made for a sum certain, the rule in a salvage action is that the interests in the ship and cargo are only severally liable, each for its proportionate share of the salvage remuneration. *The Mary Pleasants* (1857) Swab. 224; *The Pyrennee* (1863) Br. & L. 189; *The Raisby* (1885) 10 P.D. 114, referred to.

ACTION *in rem* for salvage services.

The case was tried at Sarnia before the Honourable Mr. Justice Hodgins, Deputy Local Judge of the Toronto Admiralty District, on the 4th day of May, A.D., 1914.

The facts appear in the reasons for judgment.

R. V. LeSueur, for the plaintiffs.

F. F. Pardee, K.C., for the ship.

HODGINS, D. Lo. J., now (May 12, 1914) delivered judgment.

It is admitted that the services were actually rendered, and that the amount charged therefor, \$1,080.63, is reasonable. The sole question is whether the ship is liable for the whole amount or only for her proportion, having regard to the fact that the salvage preserved the cargo and enabled the ship to earn the freight.

This depends upon whether there was an agreement for a specific sum or whether the ship merely accepted the services of the salving vessel.

No evidence was given that any sum had been agreed upon. The bargain, whatever it was, was made not by the master or owner, but by Lomer, acting for the insurers of the cargo, and no details of it were vouchsafed at the trial. The ship therefore cannot be made liable as upon any express contract by its owner or master. The *Cumbrian* (1); the *Prinz Heinrich*. (2)

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 Reasons for
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The rule where no specific agreement is made for a sum certain is that the interests in the ship and cargo are only severally liable, each for its proportionate share of the salvage remuneration. See the *Mary Pleasants* (3) (1857) The *Pyrennee* (4) The *Raisby* (5).

The values given for the ship and cargo at the trial were \$2000 and \$12,000 respectively and the freight earned and paid is agreed by the parties to be \$661.93. Upon that basis the plaintiffs will be entitled to judgment for proportion of their claim based on a valuation of the vessel and freight at \$2,661.93, as against the value of the cargo at \$12,000; in other words, to judgment for \$240.00.

As the importance of the exact values of vessel and cargo were probably not, in this view, present to the minds of counsel, either party may apply to me on affidavit to vary them before the 18th of May.

The plaintiffs should have their costs of action and will be entitled to a like proportionate part of them from the cargo on the adjustment under the general average bond.

Judgment accordingly.

(1) (1887) 6 Asp. M.L.C. 151.

(3) (1857) Swab. 224.

(2) (1888) 13 P.D. 31.

(4) (1863) Br. & L. 189.

(5) (1885) 10 P.D. 114.