

# CASES

DETERMINED BY THE

## EXCHEQUER COURT OF CANADA.

ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY  
DISTRICT.

Between

THE VERMONT STEAMSHIP CO. } APPELLANTS ;  
(Limited). (PLAINTIFFS).....:..... }

1904  
~~~~~  
May 25.  
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AND

THE SHIP " *ABBY PALMER* " } RESPONDENT.  
(DEFENDANT) .....:..... }

*Appeal in Salvage action—General Rules 159 & 162—Exchequer Practice—  
Remission of case to Local Judge to take further evidence.*

Under the provisions of Rules 159 & 162 of the General Rules and Orders regulating the practice and procedure in Admiralty cases in the Exchequer Court of Canada, the court, in entertaining an appeal from a Local Judge in Admiralty in a salvage case, may direct that further evidence be taken before the Local Judge in order to dispose of an issue raised on the appeal. In such a case the appeal is by way of rehearing.

**A**PPEAL from a judgment of the Local Judge in Admiralty for the District of British Columbia in a salvage action.

The appellants asked that the amount of salvage awarded be increased.

The facts of the case are stated in the judgment of the Local Judge (1).

(1) NOTE :—Reported in 8 Ex. C. R. 446.

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April 27th, 1904.

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Argument  
of Counsel.

The appeal now came on for hearing at Ottawa.

*Dr. J. Travers Lewis*, for the appellants, contended that the salvage services were performed under circumstances involving great risk to the ship belonging to the appellants. There was a high sea running at the time, a gale was blowing and the rescued vessel was drifting upon a dangerous lee shore. Besides this the appellants' ship was delayed ten days in prosecuting her voyage by reason of the services rendered the respondent ship. The award of the learned trial judge is only 6 per cent. of the value of the *res*. It should be increased here. He cited *Williams & Bruce's Admiralty Practice* (1); *The Accomac* (2); *Kennedy on Civil Salvage* (3); *The August Korff* (4); *The City of Berlin* (5); *Roscoe's Admiralty Practice* (6); *The Glendunor* (7); *The Clifton* (8); *The William Beckford* (9); *The Industry* (10); *The Ella Constance* (11); *The True Blue* (12); *The Messenger* (13).

*C. Robinson, K. C.*, for the respondent, argued that in such a case a court of appeal must be persuaded that the award is unjust to the salvors before it is warranted by the cases to interfere with the award. (He cited *Green v. Bailey (The Neptune)* (14); *Gann v. Brun (The Clarisse)* (15). The salving ship had no right to waste ten days in giving evidence, and charge the delay to the respondent. The appellants could have proceeded on their voyage with small interruption. The award is fair under all the circumstances.

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|---------------------------------|-------------------------|
| (1) 2nd. ed. pp. 152, 153, 184. | (8) 3 Hagg. Adm. 117.   |
| (2) [1891] P. 349.              | (9) 3 C. Rob. 355.      |
| (3) p. 139.                     | (10) 3 Hagg. Adm. 203.  |
| (4) [1903] P. 166.              | (11) 33 L. J. Adm. 191. |
| (5) 3 Asp. M. C. N. S. 491.     | (12) L. R. 1 P. C. 250. |
| (6) 3rd. ed. p. 117.            | (13) Swab. 191.         |
| (7) L. R. 3 P. C. 589.          | (14) 12 Moo. P. C. 346. |

(15) 12 Moo. P. C. 340.

*D. M. Eberts, K.C.*, followed for the respondent, citing the *Amérique* (1); *The Glengyle* (2); *The Auguste Legembre* (3); *The Inchmaree* (4); *The Janet Court* (5); *The Hestia* (6); *The Edenmore* (7); *The Rialto* (8); *The Mark Lane* (9); *The Monarch* (10); *The Werra* (11); *The Laertes* (12); *The Lancaster* (13); *The Kenmure Castle* (14); *The Cleopatra* (15); *The Glenduror* (16); *The I. C. Potter* (17); *The Chetah* (18); *The Scindia* (19). He contended that in view of the awards in these cases, varying from 2½ per cent. of the value of the *res* to 40 per cent., that the salvage awarded to the appellants was a fair and proper amount, excluding the claim for ten days delay in prosecuting the voyage, which in no way could be charged to the respondent.

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*Dr. Lewis* replied.

THE JUDGE OF THE EXCHEQUER COURT now (May 25th, 1904) delivered judgment.

The appellants contend that the amount of salvage allowed in this case by the learned Judge of the British Columbia Admiralty District is not sufficient in view of the services rendered and the expenses incurred and losses sustained in rendering such services. Otherwise no complaint is made in respect of the judgment appealed against, as it is favourable to the appellants.

The value of the steamship "Vermont" by which the salvage service in question in this case was rendered is said to be two hundred thousand dollars, and

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| (1) L. R. 6 P. C. 468. | (10) 12 P. D. 5.          |
| (2) [1898] P. 97.      | (11) 12 P. D. 52.         |
| (3) [1902] P. 123.     | (12) 12 P. D. 187.        |
| (4) [1899] P. 111.     | (13) 8 P. D. 65.          |
| (5) [1897] P. 59.      | (14) 7 P. D. 47.          |
| (6) [1895] P. 193.     | (15) 3 P. D. 145.         |
| (7) [1893] P. 79.      | (16) L. R. 3 P. C. 589.   |
| (8) [1891] P. 175.     | (17) L. R. 3 A. & E. 292. |
| (9) [1890] P. 135.     | (18) L. R. 2 P. C. 205.   |
|                        | (19) L. R. 1 P. C. 241.   |

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the value of her cargo at the time the service was performed was one hundred and fifty thousand dollars. The value of the salvaged property was found to be twenty eight thousand dollars, and the amount of salvage awarded was four thousand two hundred dollars.

The main ground on which it is argued that this amount is inadequate is that it is not more than sufficient to cover the actual outlay of the salving ship during the interruption of her voyage, and the losses incurred in rendering the services for which salvage is claimed; and that it does not afford any sufficient reward for such services. In support of this the appellants rely upon the evidence of Captain Haynes of the steamship "Vermont" that his voyage was interrupted for ten days; that the daily expense of the "Vermont" is about one hundred pounds; that in rendering the service he lost a wire rope hawser valued at one hundred pounds and that he had to purchase additional coal of the value of five hundred and thirty six dollars. If that is to be accepted as an accurate statement of the expenses and losses incurred by the "Vermont," then it does appear to me that the amount of salvage awarded is not sufficient. But in answer to that contention counsel for the respondent argue that there was no occasion for so long an interruption of the salving ship's voyage; and that Captain Hayne's evidence ought not to be accepted as an accurate statement of the expenses and losses incurred by the "Vermont".

The question thus raised is one that cannot, it seems to me, be satisfactorily disposed of without taking further evidence. The appeal comes before the court by way of rehearing and the court has power to direct such further evidence to be taken (General Rules 159 and 162). But to take it here would be more incon-

venient and more expensive than to take it at Victoria where persons of experience in such matters could, no doubt, without difficulty, be found to give evidence on the question of what would under the circumstances have been a reasonable interruption of the *Vermont's* voyage, and what her expenses and losses were during such interruption.

The appeal will be allowed, and [the award of salvage, so far as respects the amount of it, set aside, and the matter remitted to the learned Judge of the British Columbia Admiralty District to take such further evidence as may be offered on the question mentioned, and to award such an amount of salvage as in view of all the circumstances he thinks to be just.

The question of the costs of the appeal will be reserved until after the award has been made.

*Judgment accordingly.\**

Solicitors for appellants: *Bridwell & Lawson.*

Solicitors for respondent: *Robertson & Robertson.*

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\*REPORTER'S NOTE:—Upon a further hearing of the case in pursuance of the above direction, the learned trial judge increased the amount of salvage first found by him by the sum of \$1,300, making in all a salvage award of \$5,500. The costs of such rehearing were made costs in the cause.

Upon application to the JUDGE OF THE EXCHEQUER COURT under the above reserve as to the costs of the appeal, such costs were allowed to the appellants. The costs of printing the case on appeal to the Exchequer Court from the judgment of the local judge were ordered to be included in the costs of appeal so allowed to the appellants.