TORONTO ADMIRALTY DISTRICT.

THE REID WRECKING COMPANY, LIMITED..... } PLAINTIFFS,

1911
June 9.

AND

THE SHIP "*JOHN B. KETCHAM 2ND.*"

Shipping—Salvage—Repairs and Necessaries—Lien—Dockage.

In a contract for salvage where the parties acquiesce in a change of the place of delivery, a deduction must be made if the distance is shortened by the change.

In order to succeed in an action for repairs, the authority to make the contract must be clear, and when repairs have been made on a foreign ship in a foreign port and by foreign contractors the law of the foreign State as to the existence of a lien therefor must govern.

THIS is an action brought by the plaintiffs, a foreign corporation, against the American steamer *John B. Ketcham, 2nd,* to recover an amount alleged to be due them for salvage services; and also an amount expended on the said steamer for repairs and dockage charges and for other services rendered by them in connection with the said steamer.

The defendants denied the contract and claimed that no lien existed in respect of the claims for dockage and repairs.

The trial of the case took place at Toronto on the 6th of May, A.D. 1911, when after argument judgment was reserved.

F. F. Pardee, K.C., for plaintiffs.

A. H. Clarke, K. C. and *A. R. Bartlet,* for defendants.

GARROW, L. J., now (June 9th, 1911) delivered judgment.

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I have come to the conclusion that it is a proper inference from the evidence that the owner ratified and adopted, if he did not personally authorize, the contract with the plaintiffs, under which the salvage services in question were rendered. I accept Mr. Jones' evidence as satisfactory; what he says is that the owner left the matter in his hands; Mr. Loud's contradiction, if it amounts to that, is at least hesitating and unsatisfactory.

The contract is in terms, in my opinion under the circumstances, a salvage contract, and the option to pay $12,000 instead of 50% of the salvage property was, I think, sufficiently exercised. The contract, however, not having been fully performed by a delivery at the destination agreed upon, there should be deducted a reasonable sum upon that account. What is a reasonable sum so to deduct seems to me to be at least what it cost the owner to forward the cargo to its destination, which he places at $1,842, and I therefore allow that sum out of the $12,000, or $10,158.00 as the proper amount of the plaintiff's claim for salvage.

The owner claimed against the underwriters as for a total loss $57,500. He accepted $35,000 and retained the ship, and gave a bond to indemnity them from the plaintifs' claim under the salvage contract. The services actually rendered required the use of an extensive plant and occupied several days, so that even in the absence of any agreement fixing the price the amount I have allowed would not in my opinion be excessive. The delivery at Port Huron instead of at Niagara Falls was acquiesced in by the owner, and also by Mr Jones. And the subsequent removal of the vessel to Sarnia where the arrest occurred was authorized by Mr. Jones and not objected to by the

owner so far as appears, and was made to place the damaged vessel in a place of safety.

I am unable to see on what grounds I can allow the balance of the plaintiff's claim, which is for dockage and repairs. Slight evidence, or even no evidence at all, may be sufficient to establish a claim to salvage where such services have actually been rendered, but it is quite otherwise with this part of the claim, for which the owner could only be made liable by his own act or by that of his authorized agent. There is no pretence that the owner himself gave any instructions or direct authority to any one to have these things done, and in my opinion Mr. Jones had no general authority from him, or by reason of his position as representing the underwriters, to bind the owner with respect to such matters. And in addition it is in my opinion very doubtful if a lien in respect of such matters exists in law. The ship is, I understand, foreign, the owner resides in the State of Michigan, in which State the docking and repairs were supplied, and by the laws of which the right of lien, if any, would be determined. There is no evidence before me that by the law of that State there would be such a lien under the circumstances, and indeed from what I can gather although I do not, in the absence of evidence, absolutely so determine, the result would be otherwise.

As to the law in England in the case of necessaries supplied to a foreign ship in a British port, see the *Henrich Bjorn* (1)

The plaintiffs should therefore in my opinion have judgment for the above mentioned sum of $10,158.00 and their costs, and for no more; this of course to be without prejudice to any right or remedy the plain-

(1) 11 A. C. 270.

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tiffs may otherwise have against anyone but the ship or the owner in respect to the matters which I disallow.

Nothing was said before me about the cargo or the freight, or as to contribution by them or either of them if claimed. If necessary these matters may be discussed on settling the judgment.

Judgment accordingly.

Solicitors for Plaintiffs: *Pardee, Burnham & Gurd.*

Solicitors for Defendants: *Clarke, Bartlet, & Bartlet.*