NOVA SCOTIA ADMIRALTY DISTRICT.

1913
July 4.

CHARLES BRISTER & SON, LIMITED, PLAINTIFF;

AGAINST

THE STEAMSHIP *URANIUM*.

Shipping—Salvage—Extravagant claim—No tender or money paid into Court—Costs.

Where plaintiff named an extravagant sum for salvage services in his statement of claim, but the services were meritoriously rendered and the defendant did not tender or pay into Court any moneys to cover the demand, the Court declined to deprive plaintiff of costs although awarding a sum quite disproportionate to the amount claimed.

ACTION for salvage, and work done and materials supplied.

The plaintiff's action was begun for the sum of $30,000.00 for salvage services rendered by them to the Steamship *Uranium* her owners, underwriters, cargo and freight on the 16th and 17th days of January, A.D., 1913, at or near Chebucto Head in the County of Halifax, Nova Scotia, and for costs.

The case was tried at Halifax, N.S., on July 3rd, 1913, before the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District.

J. Terrell, for plaintiff;

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

At the opening of the case it was agreed between the parties that the plaintiff should be permitted, and an order was made allowing it to amend the claim against the defendants in this action by adding an additional claim of $2,187.50 for work and labor done and performed and materials furnished and supplied

1913

BRISTER AND SON v. STEAMSHIP URANIUM.

Reasons for Judgment.

by the plaintiff to the defendant at its request, $100.00 of which amount was for the hire of a large anchor.

Counsel for the defence admitted the plaintiff's claim for $2,187.50 but asked that the claim for $30,000.00 for salvage services should be dismissed with costs and the defendant should have the costs of defending the action as there clearly was no claim for salvage when the action was commenced.

It is admitted that the only claim for salvage is in respect to the anchor, and as the defendants hired this anchor for a definite period for a certain sum and anything in the nature of salvage was when the defendants had it under said contract of hire, it is clear that salvage cannot be charged or allowed.

Plaintiff contended that the evidence showed that this anchor materially assisted in pulling or floating the defendant ship off the rocks and salvage should be allowed therefor. The amount claimed by plaintiff for such salvage was not large considering the value of the steamer and her cargo.

The danger of the plaintiff's vessel, the *Bridgewater* in getting near the defendant ship to affix the latter's chain to the plaintiff anchor and paying it out, must also be taken into consideration. The plaintiff contract was merely for the hire of the anchor only.

DRYSDALE, Lo. J. now (July 4, 1913) delivered judgment.

The plaintiff's claim to the extent of $2,087.50 is not contested. The real contest herein is in respect to the use of an anchor supplied the defendant ship by the plaintiff. There was a contract to the effect that plaintiff should supply and make fast defendant's port cable and anchor, then carry the same out astern and

1913

BRISTER AND SON. v. STEAMSHIP URANIUM.

Reasons for Judgment.

drop it. This was to be done for an agreed sum of $100.00. The plaintiff contends that the contract was not performed inasmuch as the Captain of the defendant's ship would not permit plaintiff to make fast to his (plaintiff's) own anchor chain but required plaintiff to shackle the anchor direct to defendants' port cable, that this was something different from the contract and ought to be the basis of a salvage award. If this view of the plaintiff's case were taken there could be no recovery in respect to the anchor because a perusal of the whole evidence satisfies me that the anchor was in no sense a factor in the salving of the defendant's ship. I do not think, however, that the situation can properly be viewed in the light of the contention above referred to. I think the facts very clearly establish a contract to supply and make fast an anchor for a stated remuneration of $100.00, that in pursuance of this contract the plaintiff supplied and made fast the anchor that in so doing the method of fastening was assented to by plaintiff and his work in this respect can only be properly referable to his contract for which he was to receive $100.00, and this sum he ought to recover.

I am asked to deprive plaintiff of costs because of the exorbitant claim herein, but considering all the circumstances I am not inclined to do this. It is quite true that a foolish sum is named in the endorsement but plaintiff's outside of the anchor question have an undisputed right to $2,087.50, and I do not think the exorbitant sum endorsed in the claim has caused defendant's any serious harm. Defendant could have tendered or paid into court moneys to cover the demand. As this was not done I am not inclined to deprive plaintiffs of costs. There will be judgment for $2,187.50 with costs.

Judgment accordingly.