

TORONTO ADMIRALTY DISTRICT.

1917

March 1.

THE CANADIAN DREDGING CO. LTD.,
PLAINTIFFS;

v.

THE "MIKE CORRY",
"THE SHIP."
AND THREE OTHER CASES.*Salvage—Wages—Loss of earnings.*

Held. 1. Where the wages of the crew of a ship which has been salvaged are paid by the salvors, a lien therefor attaches, and can be enforced against the salvaged ship.

2. No lien attaches in a case of attempted salvage where the services rendered produced no result, and contributed in no way to the subsequent saving of the boat.

Note.—On the first question decided above reference should now be made to a decision of Hill, J., in "*The Petone*". [1917] P. 198, reported since judgment was given in this case.

THIS was an action brought by the plaintiffs against the ship "Mike Corry", a British vessel, registered in an Ontario port.

The claim was for salvage and also for the declaration of a lien on the ship for the sum of \$215, advanced to the captain of the salvaged vessel to pay the crew's wages and discharge them from the said ship.

The claim of Kean & Milman against the said ship and heard at the same time, was for salvage, but included a claim for services which, as the evidence showed produced no result.

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The claim of Dan Sullivan against the said ship and heard at the same time was for salvage and use of tug but included, as the evidence disclosed, a claim for loss of fishing (his usual occupation) whilst engaged in the salying operation.

The claims of John R. Carr and Alice Carr were dismissed without costs, no one appearing for them at the hearing.

As appears in the reasons for judgment, portions of the claims were allowed at the conclusion of the hearing and judgment was reserved on certain points.

C. M. Garvey, for plaintiffs.

J. Grayson Smith, for Kean & Milman and Dan Sullivan.

No one for the ship.

HODGINS, L.J.A. (March 1, 1917) delivered judgment.

I gave judgment at the close of the case for the salvage services, as follows: The plaintiffs, \$500, Kean & Milman, \$60, and Dan Sullivan, \$79, and I dismissed the action brought by Carrs without costs.

I reserved consideration on two points, (1) Whether the plaintiffs could enforce a maritime lien for \$215, paid by them when the vessel was salvaged and for the wages of the crew so that they might be discharged and sent home. (2) Whether Kean & Milman could recover an additional sum for services rendered on July 18, 1915, which produced no result and contributed in no way to the subsequent saving of the vessel.

On the first point I think the plaintiffs can succeed. While their proper course was undoubtedly to apply to the Court, *The Cornelia Henrietta*,¹ yet that rule has been relaxed in a later case *The Tagus*.² In *Maclachlan on Shipping*, 5th ed., p. 258, it is said that "The lien becomes vested in a person who pays the wages on the credit of the ship." That was the case here.

On the second point I cannot allow any further amount. Success is an essential element in salvage.

I may add that in disallowing in the Sullivan claim any damages for loss of fishing, I am in accord with the decision of Mr. Justice Bargrave Deane in *The "Fairport"*,³ where it is expressly stated that when seamen render salvage services they abandon their ordinary occupation for the purpose of another occupation, which is salvage, and they cannot be paid for both.

The claim included in the Marshal's account for possession money \$194 will be reduced to \$1.25 per day.

Judgment will be entered in accordance with the above. The costs of the action of all three plaintiffs will come next after the Marshal's account, then the judgment of the three plaintiffs for salvage in proportion, unless the money in Court is sufficient to satisfy them in full. If there is any balance, it will be applied on the \$215, that part of the plaintiff's judgment which does not represent salvage.

Judgment accordingly.

¹ (1866), L. R. 1 Adm. & Ecc. 51, 14 W. R. 502.

² [1903] P. 44.

³ [1912] P. 168.

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