

6FED.CAS.—39

Case No. 3,262.

THE COSTA RICA.

[3 Sawy. 610.]¹

District Court, D. California.

May 7, 1876.

SALVAGE—TOWAGE.

Ten thousand dollars awarded as salvage compensation.

[Applied in *The Sirius*, 6 C. C. A. 621, 57 Fed. 858.]

W. W. Crane, Jr., and Jas. T. Boyd, for libellant.

Delos Lake and Milton Andros, for claimant

HOFFMAN, District Judge. At about one o'clock on the morning of the 26th of October, 1874, the steamer *Costa Rica*, of the burden of about 1475 tons, bound on a voyage from Panama to San Francisco, became suddenly disabled by the breaking of the shaft of her propeller. She was then about one hundred and thirty miles to the southward of San Diego, and about twenty-five miles off shore. Soon after the accident the mate was dispatched in a boat with orders to proceed to San Diego and thence telegraph to the Pacific Mail S. S. Co.'s agents at this port for assistance. At about noon of the same day, and while proceeding on his way, he was overtaken when about four miles from San Diego by the steamship *Newbern*, of about 943 tons and belonging to the libellants. The mate was recognized by the officers of the *Newbern* by the aid of their glasses, and the steamer bore down to his boat and he was invited on board. On being informed of the accident Capt. Metsger, master of the *Newbern*, inquired of the mate if the master of the *Costa Rica* desired to be towed into port, to which the mate replied that he did not know, that his orders were to go to San Diego. He also declined to advise Capt. Metsger to go to the assistance of the *Costa Rica*, telling him that Capt Nolan intended to work his ship into Cape Colnette. Capt. Metsger, however, determined to turn round and see if Capt Nolan required assistance. This he did at about half past twelve o'clock, and reached the *Costa Rica* about half past four the same afternoon. The distance run back was about twenty-five miles. As soon as the *Newbern* was seen by the *Costa Rica* the sails of the latter vessel were clewed up and furled. When the *Newbern* arrived alongside of the *Costa Rica*, Capt. Nolan was already in his boat and immediately came on board, and a conference took place between the commanders.

Some attempt was made to come to an agreement for a specific sum to be paid for towing the vessel into San Diego, but it was finally agreed that the service should be performed, leaving the compensation to be settled by the two companies in San Francisco. The *Newbern* at once took hold of the *Costa Rica*, and at about nine o'clock on the evening of the succeeding day arrived with her in tow, off the mouth of the harbor of San

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Diego. As no pilot presented himself the vessels remained outside until about half past seven of the succeeding day, when Captain Metsger determined to enter the port, and at about nine o'clock brought the Costa Rica to anchor along the Pacific Mail S. S. Co.'s wharf. He shortly afterwards proceeded on his way to San Francisco, where he arrived at about eight o'clock on the evening of the thirtieth of October. The distance run by the Newbern, after turning back, was, as above stated, about twenty-five miles. The distance towed was about one hundred and ten miles. The hawsers used in towing belonged to the Costa Rica. The time consumed in the service was about forty and one-half hours, but to this must be added the time employed in running back twenty-five miles, about four hours. But it is to be remembered that the Newbern, while towing the Costa Rica was still proceeding towards her port of destination, though not by the most direct course, nor at her usual rate of speed. The service was attended by no particular difficulty or danger. The weather was fair and the sea smooth. At

the time the Newbern took hold of the Costa Rica the latter was in no immediate danger. With favorable winds she could probably have reached Cape Colnette, where there was safe anchorage, in eighteen or twenty hours, and San Diego in four or five days. But at that season of the year no reliance could reasonably be placed on having favorable winds, or, indeed, any winds at all, and any estimate of the time a vessel so imperfectly rigged for sailing as the Costa Rica, with a propeller dragging at her stern, would have taken to reach either of the ports mentioned, is purely conjectural. If a gale had occurred, her propeller, which had been secured by chains passed under it from the stem of the vessel and made fast above, might have been a source of danger. But the probability of encountering gales sufficient to create a sea heavy enough to tear the propeller from its fastenings was remote, and the danger from that source was hardly appreciable. Captain Metsger testifies that when he came down to the Costa Rica her ensign was at half mast Captain Nolan denies that this was done by his orders, if at all. And he states that such a signal would indicate death and not distress, the proper signal in the latter case being an ensign with union down.

The value of the Costa Rica was about \$145,000; that of the cargo, including treasure, \$93,000; freight to be earned, \$6,756.64; total, \$244,756.64. The value of the Newbern was \$100,000; that of her cargo, \$7,000; treasure on board, \$185,400; total, \$242,000. The value of the coal consumed by the Newbern, while performing the service, was about \$800. The case of *The Ellora*, Lush. 550, bears a striking resemblance to the case at bar.

On the eleventh of June, 1862, the *Ellora*, a screw steamer of 1,070 tons, belonging to the Peninsula & Oriental Nav. Co., then between Alexandria and Malta, and bound to Malta, Gibraltar and Southampton, carrying passengers and the mail, suddenly lost her screw, which broke off and sunk. By this accident her steam-power became entirely useless. She was in all respects fully equipped as a sailing ship, and she at once made sail. The weather was fine but the wind was light and adverse. Between the time of the accident and the morning of the fourteenth of June, the *Ellora* beat up to the windward 130 miles. The *Juno* then hove in sight and, being signalled, bore down to the *Ellora*. The *Juno* was bound with cargo to Hull, and it was agreed between the masters of the two ships that she should tow the *Ellora* to Malta. She thereupon took the latter in tow and on the seventeenth the two vessels reached Malta; the weather being throughout quite moderate. During the passage two outward bound vessels of the Peninsula & Oriental Co. were met and signals exchanged. The *Ellora* was also passed during the passage by another of the company's steamers, then bound from Alexandria to Malta. On the arrival of the *Ellora* at Malta her mails were transferred to the *Juno*, which conveyed them to Southampton and then completed her voyage to Hull. The value of the *Ellora* was in dollars, \$250,000; net passage money, \$2,500; mail money, \$4,750; total, \$257,250. The value of the *Juno* and her cargo was \$175,000. Dr. Lushington awarded \$6,000. It will be

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noted that the value of the Ellora, her passage money, etc., was slightly in excess of that of the Costa Rica. The value of the Juno and her cargo was less than three fourths of that of the Newbern. The duration of the service was more than one-third longer than in the case at bar. The Ellora was fully equipped as a sailing ship and had proved her qualities as such by beating up 130 miles against light and adverse winds. She was therefore in no greater danger, either immediate or prospective, than any sailing ship under similar circumstances. In both cases aid from other sources was attainable. In that of the Ellora from other vessels of the company which met or passed her. In that of the Costa Rica from the Arizona which had been dispatched to her assistance, and which arrived at San Diego on the morning after the two vessels reached that port. I do not feel bound to strictly adhere to the rate of allowance adopted by Dr. Lushington. The great difference in the cost of coal, labor, etc., the higher rate of interest on capital, the large profits expected and usually obtained from undertakings of all kinds on this coast, justify a higher compensation for services like those in the case at bar, than would be allowed in England.

I shall award the sum of ten thousand dollars.

¹ [Reported by L. S. B. Sawyer, Esq., and here reprinted by permission.]