

v.42F, no.1-5

THE ALBANY.

District Court, D. Massachusetts.

April 17, 1890.

SALVAGE—COMPENSATION.

As the steamer P. was entering Massachusetts bay, at sunrise, the coal-barge A. was sighted three miles to the windward, apparently in distress. The P. changed its course, and took the A. in tow. The A. had been left at 1 o'clock in the morning by the B., it being the rear of a tow being taken to Boston, and the hawser having broken in the rough sea. When found the wind was high, her rudder was disabled, her sails useless, heavy seas were washing over her, and her hatches in danger of being carried away. She was towed by the P. to a place of safety, and left; the B. having returned and met them. The cargo of the P. was worth \$147,000, and she was delayed 11 hours. The A. and cargo were worth \$20,700, and was towed with great difficulty, from the roughness of the sea and the loss of her rudder. *Held*, that the P. should be allowed \$4,000, the amount being increased by the attempted defenses that the A. was not in great peril, was not taken to a place of safety, and that the P. agreed to bring her in at towage rates, which were shown to be false by the testimony of the master, who, though swearing to the answer, said he did not know it contained such statements.

In Admiralty.

Shattuck & Munroe, for libellant.

E. P. Carver, for claimant.

NELSON, J. As the steam-ship Parthian, of the Boston & Philadelphia Line, was entering Massachusetts bay, at sunrise on the morning of November 3, 1889, bound for Boston, the wind being southerly, the chief officer sighted from the bridge, about three miles to windward,

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the coal-barge Albany, alone, and apparently in distress. The course of the Parthian was thereupon changed, and she bore up until she came within hailing distance of the barge, and, after some interchange of inquiries between the officers of the two vessels, the barge was taken in tow by the Parthian, and brought into Boston harbor, arriving inside Boston light about 6 o'clock P. M. When off the Hardings, the steam-tug Britannia was met, which assisted in the towage from that point. It appeared that the Albany left New York on October 28th, having on board 1,200 tons of coal, together with other coal-barges, in tow of the steam-tug Britannia, bound for Boston. At about 1 o'clock on the morning of November 3d, when off Race point, the sea being rough, and the wind blowing a heavy gale, the hawser parted. The Albany being the rear barge of the tow, and it being extremely difficult to make a new connection, the tug proceeded on her way to Boston with the other barges, leaving the Albany adrift, intending afterwards to return and bring her in. In the mean time she was found by the Parthian, as above stated.

The answer sets up that at the time the Parthian came up, the barge was proceeding towards Boston under sail, and was not in any great peril; that the Parthian did not finally leave her in a place of safety, but left her in a much worse position than when she first took her in tow; and that the master of the Parthian agreed to tow her in at towage rates. These statements were false, and were disproved by all the evidence in the case, including the testimony of the master of the barge, by whom the answer was sworn to. The master testified at the hearing that he was not aware, when he made oath to the answer, that it contained those statements, but the proctor for the owners informed the court that the answer was prepared from the master's own account of what occurred. The barge was in the greatest peril. The wind was blowing a gale, and the sea was very rough. She was lying in the trough of the sea, her rudder disabled, the small sails which she carried useless. Heavy seas were washing over her deck, and her hatches were in danger of being carried away. Her men were exhausted and discouraged. She was drifting and being blown out to sea. The barge was left by the Parthian inside Boston light, in smooth water, on good anchorage ground, in a place of perfect safety, and in charge of the tug. The hawser was finally cast off at the request of the master of the barge. The Parthian rendered the assistance at the request of the master of the barge, and without any agreement whatever as to the compensation she was to receive. It is manifest from all the evidence in the case, and especially from the testimony of the master of the barge, that the answer was not made in good faith, but was well known to the owners to be false and misleading. This certainly indicates a purpose of concealing from the court the magnitude of the peril in which the barge was placed. The towing by the Parthian was a matter of extreme difficulty, owing to the sheering of the barge from side to side, from want of a rudder to keep her in the wake of the steamer. A nine inch hawser was parted in the towing. The Parthian was a

large and valuable ship, and her cargo was valued at \$147,000. Her voyage was delayed 11 hours. The value of the Albany and

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her cargo were \$20,700. Considering the peril the Albany was in, and also being of opinion that the compensation should be considerably enhanced on account of the extraordinary character of the defense, I fix the salvage at \$4,000. A decree is to be entered for the libelants for that amount with costs. Ordered accordingly.