

THE PARTHIAN.

THE AYR.

BOSTON & PHILADELPHIA S. S. Co. v. SCOTT, (two cases.)

(Circuit Court, D. Massachusetts. November 28, 1891.)

ADMIRALTY APPEALS—QUESTION OF FACT—CONFLICTING EVIDENCE.

On appeal in admiralty, the circuit court will not reverse the decision of the district judge on a question of fact depending upon conflicting evidence, unless it clearly appears to be against the weight of evidence.

In Admiralty. Libel by Nathaniel C. Scott against the steam-ship Parthian for damages for a collision with the schooner Ayr, and cross-libel by the Boston & Philadelphia Steam-Ship Company as owners of Parthian against the Ayr. Decree in the district court for Scott against the Parthian. The steam-ship company appeals. Affirmed.

Shattuck & Munroe, for appellant.

C. T. & T. H. Russell, for appellee.

COLT, J. These two cases are cross-libels involving the same collision between the steam-ship Parthian and the schooner Ayr, and they come here on appeal from the district court. The cases turn wholly upon questions of fact concerning which the evidence is conflicting. The district judge, having the advantage of seeing the witnesses and judging from their appearance, ordered a decree in the first case in favor of the libelant, and against the steam-ship Parthian, in the sum of \$1,750.15, damages, and costs of suit, and dismissed the cross-libel. It is the established rule of this court that it will not reverse the conclusion reached by the district court upon a controverted question of fact, where the evidence is contradictory, unless it clearly appears to be contrary to the preponderance of evidence. *The Grafton*, 1 Blatchf. 173; *The Sampson*, 4 Blatchf. 28; *The Florida*, Id. 470; *The Sunswick*, 5 Blatchf. 280; *Guimaraes' Appeal*, 28 Fed. Rep. 528; *Levy v. The Thomas Melville*, 37 Fed. Rep. 271. Upon a review of the testimony, I am satisfied that the decision of the district court was correct, and therefore the decrees are affirmed.

THE ALBANY.

POST v. BOSTON & PHILADELPHIA S. S. Co.

(Circuit Court, D. Massachusetts. November 30, 1891.)

1. APPEAL IN ADMIRALTY—REVIEW BY CIRCUIT COURT—QUESTION OF FACT.

On appeal in admiralty the circuit court will not reverse a decision of the district judge upon a question depending on conflicting testimony, unless it clearly appears that the decision was against the weight of evidence.

2. SAME—AMOUNT OF SALVAGE.

Nor will the circuit court interfere with the amount of salvage allowed, unless it is strikingly out of proportion to the service or damage.

In Admiralty. Libel by the Boston & Philadelphia Steam-Ship Company against the coal-barge Albany for salvage services. Decree by the district court for \$4,000. 42 Fed. Rep. 64. Aaron Post, claimant, appeals. Affirmed.

Eugene P. Carver, for claimant, appellant.

Shattuck & Munroe and *L. S. Dabney*, for libelant.

COLT, J. On an appeal in admiralty to the circuit court involving questions of fact dependent upon conflicting testimony, the decision of the district judge, who has had the opportunity of seeing the witnesses and judging from their appearance, should not be reversed unless it clearly appears that the decision was against the weight of evidence. *The Grafton*, 1 Blatchf. 173, 178; *The Sampson*, 4 Blatchf. 28; *The Florida*, Id. 470; *The Sunswick*, 5 Blatchf. 280; *Levy v. The Thomas Melville*, 37 Fed. Rep. 271; *Guimaraes' Appeal*, 28 Fed. Rep. 528. Nor will this court interfere with the amount of salvage allowed by the district court, unless it is strikingly out of proportion to the service or damage. *The Narragansett*, 1 Blatchf. 211; *The Hope*, 10 Pet. 108, 119; *Cushman v. Ryan*, 1 Story, 91; *The Yankee v. Gallagher*, 1 McAll. 467, 479. I have carefully examined the record in this case, and I find no sufficient ground for disturbing the conclusion reached by the district judge. Though the amount awarded, —\$4,000,—was large, I do not think, under the circumstances, it was excessive. *The Mary N. Hogan*, 30 Fed. Rep. 381; *The Lahaina*, 19 Fed. Rep. 923; *The Benison*, 36 Fed. Rep. 793. The decree of the district court is affirmed.