

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.

THE WILMINGTON.

WOOD v. THE WILMINGTON.

(District Court, D. Maryland. October 25, 1880.)

1. ADMIRALTY—MARITIME CONTRACT—CHARTER OF CANAL-BOAT FOR USE IN HARBOR.

A person engaged in the business of furnishing to the grain elevators in the port of Baltimore barges suitable for carrying grain to be used principally for storage when the elevators were full, and incidentally to carry the grain to ships loading in the harbor, chartered a canal-boat for 60 days, agreeing to pay for the first calking thereof, the master thereafter to keep her in thorough repair, and to man and furnish her with all appliances. The purpose for which she was to be used was understood by both parties, but was not expressed in the charter-party. *Held*, that this was a maritime contract.

2. SAME—STIPULATION FOR CONTROL—LIABILITY IN REM.

Notwithstanding that the charterer had control of the boat for the period of the contract, the boat was liable *in rem* to him for an injury to the cargo caused by the master's failure to keep her in thorough repair.

3. SAME—LEAKING—EVIDENCE OF UNSEAWORTHINESS.

Before the boat was used, her deck was recalced at the charterer's expense, which the master said was all the repairs she needed. After a short period of use, she was found to be leaky, and rejected, whereupon the master took her away, had her repaired, and brought her back, saying he had found the leak, and fixed it. She was again loaded, and shortly after sprung a leak which caused an injury to the cargo. She was then taken to a dry-dock, where the oakum was found to be out of her seams in several places. *Held* sufficient to show that the injury was due to a breach of the agreement to keep her in thorough repair, and she was therefore liable for the damages.

In Admiralty. Libel by John Wood against the canal-boat Wilmington.

MORRIS, J. The libellant, Wood, made a contract for the use of the canal-boat Wilmington, which is as follows:

"CHARTER-PARTY.

"I, John Wood, on this 19th day of July, 1880, charter from Dominick Magrudy the boat known and called the Wilmington, (of which the said Magrudy is master and owner,) for the term of sixty days from date. The said John Wood agrees to pay the said Magrudy the sum of two hundred and fifty dollars for the above-named sixty days. The said John Wood agrees to pay for the first calking of the said boat, after which the said Magrudy agrees to keep said boat in thorough repair, and to man and furnish her with all appurtenances."

The testimony shows that the libellant's well-known business was to furnish to the grain elevators in the port of Baltimore barges suitable for carrying grain, which they needed when the elevators were full, and which they used principally for storage, and incidentally to carry the grain to ships which they desired to load in different parts of the harbor. This was the purpose for which the barge was to be used in the present case, and was well understood by both parties. The owner of the barge lived in Philadelphia; but the master of the barge, who had brought her to Baltimore, had authority to make the contract. Under this contract her deck was recalced at the libellant's expense, which the master said was all the repairs she required. She then was twice loaded with