

## ROYAL WEST INDIA CO. v. THE CITY OF PARA.

(District Court, U. D. Virginia. August 14, 1895.)

**SALVAGE—COMPENSATION.**

A regular passenger steamship, running on time, due to arrive at New York March 23d, and to leave there March 30th, picked up, 300 miles out at sea, and out of the course, after a gale had abated, but while the sea ran high, and while there were cross seas, a deeply-laden passenger and mail steamship, which had lost the blades of her propeller, but which had a sailing apparatus useful for steadying purposes, and skillfully towed her to Hampton Roads, without meeting any other steamer, losing  $3\frac{1}{2}$  days by the deviation, though being able to leave New York on time. The values risked were \$325,000, and those saved \$335,000. *Held*, that \$6,000 over the actual expenses of the service was a proper compensation.

This is a libel by the Royal West India Company against the Pacific Mail steamer City of Para to recover a reward for salvage service. Decree for libelant.

This libel is brought to recover a reward for salvage service rendered by the libelant's Dutch steel steamship Prins Willem IV., Herman Sluiter, master, to the Pacific Mail steamship City of Para, James B. Lockwood, master, in March, 1895. On Friday morning, the 22d of that month, the latter steamer was seen to be in a helpless condition, flying a signal of distress, in the Atlantic Ocean, in  $74^{\circ} 21'$  W. longitude, and  $32^{\circ} 04'$  N. latitude, which is a point some 400 miles due east of the port of Savannah, Ga. The Prins Willem was running on schedule time, was bound to and due to arrive at the port of New York on the 23d, and to leave there for Amsterdam on the 30th of March. She was a regular passenger steamer, and had 24 passengers on board at the time. The values which she carried were as follows: Of the ship, \$100,000; of cargo, \$224,000; and of freight money (apportioning \$4,000 to the West Indies for Hampton Roads), say \$1,250; these values aggregating \$325,250. Her gross tonnage was 1,724 tons; her length, 281 feet; beam, 36; and depth in water,  $21\frac{1}{2}$  feet. Her full rate of speed is 14 knots an hour. The City of Para was bound south. The two steamers were far out to the east of the course of vessels coming up from Cuba and ports of the mainland for New York and to the north of Hampton Roads. The Para's gross tonnage was 3,582; her length, 345 feet; beam,  $38\frac{3}{4}$ ; and depth in water, 29 feet. She was running as a mail and passenger steamer on scheduled time, and had on board about 40 passengers. Her value was \$197,000, her cargo was worth \$116,000, and her freight money \$22,000; the aggregate value of the property saved being \$335,000. The Willem promptly bore down towards the Para, upon observing her condition and seeing her signal. She was found to have lost the blades of her propeller, which was entirely useless. Her sailing apparatus, though good of its kind, was such that she could have made but little headway by using them, though they were useful to her for steadying purposes. She was deeply laden with a full cargo of merchandise and a large supply of coal. Before the morning of the 22d there had been gales of wind and high seas. On the morning of Friday, when the two vessels first saw each other, the wind had blown a gale, and the sea had run high. On this Friday morning there was still a large swell of the sea, which continued, though abating gradually, during the first two days and nights of the towing. There were also cross swells of sea. This condition of the water made the towing of so heavy and massive a ship as the Para an arduous labor, attended constantly by more or less risk of accident. As soon as practicable after the Willem had borne down to the Para, on Friday morning, the 22d of March, hawsers were rigged and made fast to the two vessels, and the towing commenced. The towing line consisted first of the Para's anchor chain, 30 fathoms long; next of a new Manilla hawser, belonging to the Para, 90 feet long; and last of a new wire hawser, belonging to the Willem, 100 to 120 feet long. The sea was not so rough as to prevent the use of a yawl boat back and forth between the two ships in rigging hawsers. There was necessarily a great strain upon the

hawser line during the whole time of this towing, in consequence of the great weight of the Para and roughness of the sea. On two occasions the hawser line broke, and delay was incurred in refitting it. The Para's master requested at first to be towed back to New York, but it was soon agreed that she should be taken into Hampton Roads. The towing was off the dangerous coast of the Carolinas, passing Capes Lookout, Fear, and Hatteras, and near to and abreast of Currituck Sound, 16 miles out. The towing was done with care and skill on the part of the Willem, her master and engineer. Most of the labor connected with the hawsers was done by the crew of the Para, in consequence of their being more numerous, and less occupied otherwise than the crew of the Willem, and were directly and deeply interested in the success of the salving operations. The towing lasted until the afternoon of Monday, the 25th of March, when the two ships, having passed safely into Hampton Roads, came to anchor there at about 5 o'clock p. m. No other steamer had been met or sighted during the trip. The engines of the Willem were kept at their fullest speed throughout the towing service. The distance traversed was 325 miles. The Willem lost 3½ days by deviating from her course, but she was able, nevertheless, to leave New York on her outward voyage on the 30th of March, her scheduled time. At the conclusion of the towing, by some inadvertence, the wire hawser slipped from the Willem, but was caught and secured by the Para. It was returned to the owners of the Willem in New York, and it is conceded at the trial that it was injured by the service it had performed to the amount of \$240. The actual expenses and outlay of the Willem in and about the towing amounted to the sum of \$1,314, and are not contested.

Mr. Putnam, for libelant.

Sharp & Hughes, for respondent.

HUGHES, District Judge (after stating the facts). The question in the case is as to the amount of award over and above actual expenses and costs, aggregating \$1,554, which should be granted to the Willem for deviating from her course, undertaking this service, and encountering the serious and numerous risks which the enterprise involved. The fact that the Para was in a helpless condition, far out in the ocean, with no other ship than the Willem in sight or in reach, constituted this a salvage service. The prompt, efficient, and successful manner in which the service was rendered, attended by much necessary risk, and by a delay almost necessarily injurious and prejudicial to a passenger steamer running on schedule time, made this a highly meritorious service. If the values risked by the libelant and saved to the respondent were small, I should be constrained to fix the bounty due for the service at a comparatively small figure. But in this case the value of the property taken hold of, hundreds of miles out at sea, in a boisterous season of the year, on a stormy coast, was \$335,000, and the value of the property risked in undertaking this service was \$325,000. I think that these extraordinary values, and the other facts of the case, justify me in fixing the bounty to be awarded the libelant at \$6,000; and I will sign a decree in favor of the libelant for \$7,554 and costs.

## PLACE v. STATE OF ILLINOIS ex rel. WILKINSON.

(Circuit Court of Appeals, Seventh Circuit. June 14, 1894.)

No. 167.

## REMOVAL OF CAUSES—CITIZENSHIP—QUO WARRANTO—CORPORATIONS.

A quo warranto suit to test the defendant's title to office in a corporation organized under the laws of the state in which the suit is brought is not removable on the ground that the defendant and the relator are citizens of different states.

Quo warranto by the state of Illinois on the relation of Reuben Wilkinson against Orrin F. Place to determine defendant's title to the office of president of the Crowned King Mining Company, a corporation organized and existing under and by virtue of the laws of the state of Illinois. The suit was begun in the circuit court of Christian county, Ill., and was removed on petition of the defendant on the ground that defendant was a citizen of Arizona, and relator a citizen of Illinois. There was judgment of ouster. Defendant brings error.

J. C. McBride and Crawford & Blair, for plaintiff in error.

Taylor & Abrams and John G. Drennan, for defendant in error.

Before HARLAN, Circuit Justice, WOODS, Circuit Judge, and BUNN, District Judge.

No opinion. Reversed, with instructions to remand to state court.

## LA CHAPELLE v. BUBB, United States Indian Agent, et al.

(Circuit Court, D. Washington, E. D. April 19, 1895.)

## 1. PUBLIC LANDS—HOMESTEAD RIGHTS—JURISDICTION OF COURTS—INJUNCTION.

A homestead settler whose land has been included by the government in allotments made to Indians in fulfillment of treaty stipulations, but who has not perfected his right by making proof in the land office of full compliance with the law, is not entitled, in a suit against certain Indians and an army officer, who threatens to put them in possession, to a decree declaring him to be the owner of the land, and quieting his title. But, as a bona fide settler and owner of the improvements, he is entitled to an injunction protecting him in his possessory rights until the questions of law involved can be determined in a court of competent jurisdiction.

## 2. INJUNCTION—TRESPASS BY ARMY OFFICER.

Injunction may issue from a federal court to restrain an army officer from committing a trespass on lands, where he justifies his proposed action on the ground that he is simply obeying the orders of his superiors.

This was a bill by Alfred W. La Chapelle against Capt. John W. Bubb, United States army, as Indian agent of the Colville Indian Agency, in the state of Washington, and certain Indian defendants, for an injunction to restrain said Indian agent from forcibly ousting the complainant from certain lands, which he claims as a settler under the homestead laws. The lands in question had been included by the government in allotments made to the Indians in fulfillment of treaty stipulations.