

NEW BRUNSWICK ADMIRALTY DISTRICT.

FREDERICK C. LAHEY, PATRICK }
EGAN, CARL KEMP AND RICH- } PLAINTIFFS;
ARD CALLAGHAN }

1898
Feb. 26.

AGAINST

THE YACHT "MAPLE LEAF."

Yacht dragging anchor in public harbour—Salvage—Jurisdiction—R. S. C. c. 81 sec. 44—Application.

A yacht, with no one on board of her, broke loose from anchorage in a public harbour during a storm, and was boarded by men from the shore when she was in a position of peril, and by their skill and prudence rescued from danger.

Held, that they were entitled to salvage.

2. The plaintiffs claimed the sum of \$100 for their services.

Held, that inasmuch as the right to salvage was disputed, the provisions of sec. 44 (a) of R. S. C. c. 81 did not apply, and that the court had jurisdiction in respect of the action.

THIS was an action for salvage.

The yacht *Maple Leaf* on October 17th, 1897, was lying at anchor off Rodney Wharf, in the harbour of Saint John. A heavy northwest gale of wind came up during the early part of the day increasing rapidly in violence and reaching a velocity of sixty miles an hour. At about eleven o'clock in the forenoon, when the gale was at its highest, the yacht broke loose from her anchorage, and commenced to drift out of the harbour, no person being on board. After the yacht had moved about three quarters of a mile, and when nearly opposite the beacon light at the harbour entrance an anchor she was dragging caught and she was brought to. At this time the plaintiffs who had put off to save the yacht were a short distance from her, and regarding

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her still in a position of danger kept on and boarded her. In about half an hour's time, the yacht meanwhile pounding very heavily and straining at her anchor, the anchor rope broke. The plaintiffs then sailed the yacht to a wharf at Partridge Island outside the harbour, where she was made fast. The plaintiffs were unable to return to the city until the morning of the next day. On the evening of the 17th the owner of the yacht came to the island and was given possession by the plaintiffs, a conversation having first been had between them as to an allowance to the plaintiffs for their services, and they having expressed a willingness to take \$25 he assented to it as fair. This sum he subsequently declined to pay, but offered \$10. The salvors thereupon commenced this action and claimed by their writ \$100. The value of the yacht was at the time of her salvage about \$400. The case was heard without pleadings. At the trial the defence was set up that the yacht was not in a position of peril at the time the salvors boarded her and that the plaintiffs had been guilty of misconduct and negligence in taking the yacht to the island wharf, and that while there she had grounded and had been injured, and had also been injured from exposure to the action of the high wind and seas, that she could have been beached without damage at the flats inside of the breakwater at the mouth of the harbour, or that there were other convenient and safe places to which she could have been navigated, or that she could have been brought back into the harbour, and that the salvors had needlessly and with wrongful intent, cut the yacht adrift when lying at the beacon light. These defences the learned judge negatived, and held that the merits of the action were in the plaintiffs' favour. He reserved judgment, however, for further argument on a question raised by counsel for the owner that the court had no

jurisdiction to try the action, the amount claimed not exceeding \$100, and therefore that the claim should have been made before the receiver of wrecks under *The Wrecks and Salvage Act*, R. S. C. c. 81, s. 44.

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J. R. Dunn, for the yacht: I submit that under *The Wrecks and Salvage Act*, R. S. C. c. 81, s. 44, there is no jurisdiction in this court to try the action. The language of the section is susceptible of this construction. If I cannot go this far, since sec. 56 appears to save the court's jurisdiction, I am clearly entitled to ask that the plaintiffs be refused costs, and that they be condemned in costs.

W. H. Trueman, for the plaintiffs: The Act cited has no application where negligence or misconduct are charged against the salvors. Where a contest is made involving an inquiry into the judgment and seamanship of the salvors, and the propriety of their conduct in addition to the grave criminal imputation made against them, the action must be heard before a competent tribunal and not entrusted to the decision of a layman. In England, under Acts similar in their provisions to the Act relied on, the jurisdiction of the Admiralty Court has always been upheld where the charges of negligence and misconduct are made. (*The John* (1); *The Fenix* (2); *The Comte Nesselrood* (3). Rule 224 of the Admiralty rules, 1893, contemplates that an action may be brought in this court though the sum claimed or the value of the *res* is small. Rules 132 and 133 having left costs in the discretion of the court s. 44 (2) of c. 81 R. S. C. has been repealed so that the question is now entirely whether the plaintiffs should be allowed costs. (See *Garnett v. Bradley* (4). Attention

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 Argument
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(1) Lush. 11.

(3) 31 L. J. Ad. 77.

(2) Swa. 13.

(4) 3 App. Cas. 944.

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is also called to the *W. J. Aikens*, (1) which supports the view that c. 81 R. S. C is repealed by *The Colonial Courts of Admiralty Act* (2), 1890 (Imp.), and *The Admiralty Act* 1891 (3). Costs now being in the discretion of the court, it is submitted they should be allowed the plaintiffs. Though the amount claimed is small this court was alone open to us, for had the action been brought before the receiver of wrecks it could have been successfully contended that he had no jurisdiction. The owner has made grave and unfounded charges, and has offered an unreasonable contest. That the Act R. S. C. c. 81 could not have been intended to apply to the case, or be given the construction sought for, it is clear from the fact that its provisions could be evaded by the plaintiffs placing their claim in excess of \$100.

McLEOD, L.J., now (February 26th, 1898) delivered judgment.

I reserved my decision in this case as I wished to consider the question raised as to the court's jurisdiction. The amount to which the salvors would be entitled must be very small, and as the expenses to suitors in this court is heavy I would have been very glad to accede to the contention made by counsel for the owner that a less expensive procedure could have been employed for enforcing the claim made here. I find myself, however, unable to give the reading to the Act R. S. C. c. 81 that he has contended for. I think the Act must be taken to apply where there is no question in dispute between the parties except as to the amount of the salvage to be awarded. If the right to salvage is disputed the Act has no application. In this action the owner contested the

(1) 4 Ex. C. R. 7.

(2) 53 & 54 Vict. 27.

(3) 54 & 55 Vict. c. 29.

right of the plaintiffs to salvage, claiming that they had forfeited it by their improper seamanship and defective judgment, and also denying that the claim for salvage could be made, on the ground that the yacht was not in a position of danger when boarded by the plaintiffs. He also made a very serious charge against them of having cut the yacht adrift. These defences I have had no difficulty of disposing of as being without foundation. It has been established to my satisfaction that the yacht was in peril, and that the salvors acted with prudence and skill. The question as to whether the yacht should have been taken to some other place than the wharf at Partridge Island is at the most a question of speculation about which experts examined before me have differed. The plaintiffs are experienced sea-faring men, well acquainted with the harbour, and capable of exercising a sound judgment as to the safest place of refuge for the yacht under the circumstances in which they were acting. But while I am bound to find the facts in the plaintiffs' favour and to award them salvage and costs, I desire to keep the expense to the owner as low as possible. The yacht has been run by him in the interests of aquatic sports and without profit to himself. He is not a man of means and, as he must make a loss, I desire to make it as light as I possibly can for him. I, therefore, will award the plaintiffs the amount they originally asked, namely \$25, and will also award them costs in a like sum.

Judgment accordingly.

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