

JURISDICTION IN SALVAGE CASES.

No question of jurisdiction is probably more interesting than the novel one that is sometimes raised over salvage. In fact, the question has been so rarely up for decision that I shall have to take you somewhat into the realm of speculation in this article, as many of the questions that I shall suggest have never been decided.

If a disabled vessel is found, abandoned, and is brought in by salvors, admittedly an action to recover salvage would have to be brought in the United States District Court. For the action would have to be *in rem* against the vessel, which is purely an Admiralty right, no common law court having the power to grant such an action. The situation would be the same if the disabled vessel had a crew on board if no one made an agreement for the service of rescuing the vessel.

If, however, the owners of the vessel or the captain should agree to pay to be taken in, a contract would have been made and the owner of the salving vessel would probably have the right to proceed at common law against the captain and owners of the vessel saved, as well as the right to proceed either *in rem* or *in personam* in Admiralty.

The Judiciary Act of 1889, Section 9, U. S. Revised Statutes, 1878, Section 563, Clause 8, defining the jurisdiction of the District Courts of the United States, provides:—

Of all causes in Admiralty and Maritime jurisdiction *saving to suitors in all cases the right to a common law remedy* where the common law is competent to give it.

It is true that the Supreme Court has prepared rules governing procedure and practice in Admiralty, and its Rule 19 says this of salvage:

In all suits for salvage the suit may be *in rem* against the property saved or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

But this rule in no way abrogates the clear right given by the Judiciary Act to a common law remedy where the common law is competent to give it.

Is not the common law competent to give a remedy to a suit on a contract to work on a disabled vessel and try and rescue her for an agreed price? Where would be the difference between such a contract and one to build a lighthouse for an agreed price? Would the situation be different if the contract to work on a disabled vessel with the hopes of saving her was to be paid for at so much a day? It wouldn't be if it were applied to the building of a lighthouse—why should it then when applied to the vessel? Both are contracts. But it may be said such work is dependent upon success for pay, so it is in a purely salvage suit, but just because compensation for the rescuing of a vessel where no contract has been made is dependent upon success and the saving of some property, it is no reason either by analogy or otherwise, why, where one agreed to pay either a lump sum or by day's pay for trying to bring in a disabled vessel that it should be dependent upon success unless success were made part of the contract.

Men who go out under a contract for trying to tow in a vessel stranded on the coast are popularly termed salvors, but they are really only workmen and are in no different position in the law from stone masons who go out to build a lighthouse.

There is no logical reason why the pay of one in such a case should any more depend upon success than the pay of the other. If the lighthouse should blow down after being nearly completed, through no fault of the stone masons, they would be entitled to their pay just the same. In what different position, then, would the men be who went out to try and rescue the vessel even if they were not successful? They would be just as much entitled to pay under their contract as the stone masons would under theirs. But they would be entitled to no reward if successful as the element which enters into salvage cases is entirely eliminated by the contract.

It would therefore seem that if a vessel is rescued, no contract being made, the action would be exclusively in the Admiralty Court, but where a contract is made it may be either prosecuted in the Admiralty Court or in a Court of Common Law.

A little different situation arises where a vessel is sunk in a harbor or bay within easy access to the shore and no element of danger enters into the work in rescuing her. In such cases it has been held that the services rendered were not salvage services and that no lien for such services could be had against the vessel.¹

If such services were rendered without contract, undoubtedly under these decisions, the case would have to be brought *in personam* in the Admiralty Court, but if a contract had been made the courts holding that in such cases the services were not salvage services, the action could certainly be brought at common law if the party so elected.

If the reasoning of these two cases² is applied to the supposed case of the vessel stranded on the coast, and she were rescued without danger to the workmen and the vessel employed in the work, it would not be a salvage service and no lien would lie against the salvaged vessel, but it cannot be that the court intended these two cases to imply that the law goes quite so far as to say that in every case, even in a harbor, where a vessel is rescued, no lien attaches for the work, for if an unknown vessel is sunk in a harbor and is raised without the slightest danger to the workmen, they at the time not knowing to whom she belongs, they would only have an action *in rem*.

Note: The cases cited below are not meant, in every instance, to fully support the text, but should be read for a thorough understanding of the subject.

De Lovio v. Boit, 2 Gallison, 398-421-2.

Insurance Company v. Dunham, 11 Wall. 1.

The Susan, 1 Sprague, 499.

The Ida L. Howard, 1 Low, page 2.

Marvin on Wreck and Salvage, page 127, Sec. 118.

Parson's Shipping and Admiralty, Vol. 2. Pages 260-267-292.

Ship Versailles, 1 Curtis, page 360.

The Independence, 2 Curtis, 350-57.

The Louisa Jane, 2 Low, 302.

¹*Merritt & Chapman Derrick & Wrecking Co. v. Morris & Cummings Dredging Co.*, 137 Fed. R. C. C. A., 2nd Cir., page 780.

²*The Paul L. Bleakley*, 146 Fed. R. D. C. 570.

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