

NOVA SCOTIA ADMIRALTY DISTRICT

1921

December 31.

VENOSTA, LIMITED..... PLAINTIFF;

v.

THE SHIP MARY MANSON GRUE- } DEFENDANT.
NER AND HER CARGO AND FREIGHT }

Shipping and seamen—Salvage services—Towage.

On the 8th November, 1921, the defendant ship was lying anchored by her port anchor in the breakers near the Cape Breton shore at the northern entrance of the Strait of Canso, very near to the beach, and in shallow water, the wind blowing at from 50 to 60 miles an hour from the north west. She had previously been through rough weather and her sails were in bad condition. She was in a position of great peril, and was only kept from stranding by the back-wash from the beach.

At 9.45 a.m. on the same day the plaintiff steamer hearing of defendant's difficulties, left Port Hastings and went to her assistance, and, at considerable danger to herself, as the schooner could only be approached from the port side, sent two lines aboard the schooner and succeeded in making fast two steel hawsers, finally towing her to safety. No other means of salvage was reasonably available at the time.

Held, on the facts, that the services so rendered were in the nature of salvage and not of mere towage.

ACTION by the plaintiff ship claiming the sum of \$25,000 for salvage services rendered to the ship *Mary Manson Gruener* on or about the 8th day of November, 1921, on the shore of Cape Breton, near the strait of Canso, Nova Scotia, which said service consisted of the pulling of said ship off the rocks on said shore and towing said ship in safety to Port Hawkesbury.

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December 24th, 1921.

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v.
THE
SHIP MARY
MANSON
GRUENER
AND HER
CARGO AND
FREIGHT.

Case now heard before the Honourable Mr. Justice Mellish, L.J.A., at Halifax, N.S.

W. A. Henry, K.C., and Thomas Notting, K.C., for plaintiff.

Statement of
Facts.

L. A. Lovett, K.C., for defendant.

The evidence of the plaintiff showed that the plaintiff's steamer the *Venosta* was a steam trawler of 350 tons gross, and in the month of November, 1921, was fishing out of Port Hawkesbury and up in the North Bay in the Gulf of St. Lawrence.

In the morning of November 8th, 1921, the *Venosta* left Port Hawkesbury for Port Hastings intending to coal at the latter place before proceeding on her usual fishing trip. At Port Hastings the Captain learned of the defendant's ship being in distress about seven miles north and without taking in coal, left to render her assistance, with only enough coal on board for twenty-four hours. Steaming north of the Gut of Canso, she reached the plaintiff's schooner, which was lying in the breakers with her anchor down, a little north of Cape Jack on the Nova Scotia side of the strait.

The plaintiff's Captain was asked by the Captain of the defendant's ship "to take the latter's ship out as quick as he could."

The first boat launched from the plaintiff's vessel in the attempt to put the hawser on defendant ship filled and sank.

Later, at about one o'clock that day, the steel hawser was got aboard and made fast. In starting the tow boat one of the hawsers of the plaintiff strained and parted.

As plaintiff's ship was drawing 16 feet of water and as the water at this place was only 19 feet in depth, she bumped on the bottom three or four times, during the start in towing.

She did not have the weight of the defendant ship then, but had the weight of the steel cable on the starboard quarter and was moving ahead broadside to the wind and the lee shore right along side and quite near the breakers. The defendant ship was lying 10 or 15 feet from the rocks on her quarter with her sails all torn or lost. Port Hawkesbury was reached that night about dark, and they anchored in a place of safety, in the range of the harbour, for the night, and the next day the defendant ship was moved to a better anchorage.

The towing began about 1.30 p.m., and was finished shortly after 4 p.m. on the same day.

When the hawser was attached, the plaintiff ship took up her anchors and started ahead to get the weight on her hawser. The wind was then northwest and the defendant schooner was heading up N.N.W. right along the beach, with a terrible tide running at the time. When plaintiff's anchors were taken up, the ship was turned to get the wind on the port bow and to sheer in to the shore as close as possible, so as to start ahead as straight as possible, the wind then blowing boisterously, and the breakers quite near them.

Mr. Lovett, K.C.: This is a case for a towage award and the amount should not be large. The plaintiff's ship was never in peril, but could at any time when in danger from getting on the rocks have shipped her anchor and avoided them. Also it was not a case for percentage award in the value of the plaintiff's and defendant's ships.

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Argument of
Counsel.

Cited *Brister v. S.S. Bjorgviu* (1); *Die Deutsche Amerikanische v. S.S. Berwindmoor* (2); *Mayers Admiralty* (3).

Mr. Henry, K.C.: All the elements were present in this case for a substantial salvage award, viz.: the danger to the plaintiff's ship when being attached to the defendants' schooner in close proximity to the rocks and in shallow water, the danger to her crew on account of the storm then raging and the dangerous position of the defendant ship being then amongst the breakers and in the event of a change in the direction of the wind would become a complete wreck. Also that plaintiff's ship being specially equipped for such salvage operations, should have a substantial award.

Cited, *Kennedy on Salvage*, 133; *Pritchard's Digest*, Number 76,435 and 525.

MELLISH, L. J. A. now (this 31st December, 1921) delivered judgment.

This is an action for salvage brought on behalf of the owners of the S.S. *Venosta* and the crew against the schooner *Mary Manson Gruener* and her cargo and freight.

On the morning of 8th Nov. last the schooner was lying in the breakers near the Cape Breton shore at the northern entrance to the strait of Canso a little north of Cape Jack on the Nova Scotia side.

The wind was blowing from 50 to 60 miles per hour from the N.W.

(1) 15 Ex. C. R. 105.

(2) 14 Ex. C. R. 23.

(3) 177 and 184.

The schooner had her port anchor out; she was not heading directly to the wind but N.N.W., being apparently kept in this position by the strong tide or current which was running along said shore and southerly through the strait. As I understand the evidence the anchor was grounded at a point on her starboard bow. She had been through rough weather previously and her sails were in bad condition. She was very near the beach and was only kept from stranding by the back wash from the beach, and was in my judgment in a position of great peril. The value of the schooner has been appraised at \$15,000, her cargo at \$16,500, and her freight at \$3,134.81. Under the foregoing conditions the trawler *Venosta* a steamer of 350 tons gross and appraised at \$45,000, came to the assistance of the schooner. The steamer was apparently an easy one to handle and in respect of engine power equipment and strength of build seems to have been well fitted for the purpose.

The steamer left Port Hastings on the salvage service about 9.45 a.m. on the 8th day of Nov. and proceeded to where the schooner was lying 6 or 7 miles away and took steps to bring the schooner to a place of safety by towing. Two steel hawsers from the steamer were made fast to the schooner. To enable this to be done lines had to be sent aboard the schooner. This involved considerable danger especially as the schooner could only be approached on the port side. In salving the schooner the steamer had one steel hawser broken and strained. This hawser cost new \$1,000. She also had ropes damaged to the extent of \$100 and a boat and equipment damaged to the same extent. The schooner was brought to Hawkesbury about 4 p.m. and moved to a safe anchorage by the steamer on the following morning.

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Reasons for
Judgment.

Mellish L.J.A.

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I am not satisfied that any other means of salvage was reasonably available at the time. The details of the salvage operations, I need not mention further than to say that they appear in the testimony of the steamers' masters, which I see no sufficient reason to describe.

Reasons for
Judgment.

Mellish L.J.A. I award \$4,000 salvage, which will be apportioned as agreed at the trial after hearing counsel, and costs.

In regard to the method of appraisement, I was requested by counsel to give some opinion.

I think I can only usefully say, that whatever may have been the practice heretofore, there appears to be no authority under the rules for the appointment of appraisers by the parties.

Judgment accordingly.
