

NOVA SCOTIA ADMIRALTY DISTRICT.

CHARLES BRISTER..... PLAINTIFF;

1913
Nov. 25.

AGAINST

THE STEAMSHIP *BJORGVIU*, HER CARGO
AND FREIGHT.*Shipping—Salvage—Efficient service—Reasonable Award.*

A steamship of the approximate value of \$45,000, carrying a cargo of deals of the value of \$25,000 in respect of which the freight when earned would have amounted to \$13,375, went aground on a shoal on the coast of Prince Edward Island, and lay in an exposed and dangerous position. The plaintiff sent his salvage steamers to the grounded ship, pumped water from her hold, and set a gang of men to jettison part of the cargo, which was boomed and towed ashore where it was afterwards sold. It was agreed between the agent of the underwriters and the plaintiff that if the plaintiff failed to get the defendant steamship off the shoal the plaintiff would get \$1,500 for loss of gear, but no arrangement was made in the event of success. The plaintiff succeeded in getting the steamship afloat some three days after she grounded. The steamship then proceeded under her own steam to Halifax, but one of the plaintiff's steamers stood by her until she was docked.

Held, that under all the circumstances and considering the respective values of the ship and cargo, the plaintiff was entitled to a salvage award of \$8,000.

THIS was an action for salvage services.

The plaintiff as the owner of the steamship *Bridgewater* and ship *Harry* claimed the sum of \$30,000 for salvage services rendered by the plaintiff and by the said steamship and ship, their masters, and crews to the SS. *Bjorgviu*, her cargo and freight, between the 6th and 11th days of October, 1913, at and from Indian Rocks off the coast of Prince Edward Island and to and at Halifax Harbour.

The evidence was taken before the Registrar of the Nova Scotia Admiralty District on November 19th,

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A.D. 1913, and the case was argued before the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District at Halifax, N.S., on November 22, 1913.

W. A. Henry, K.C., for the plaintiff.

Hector McInnes, K.C., for the defendant ship.

The evidence showed that the steamship *Bjorgviu* left Pugwash, N.S., on the 4th day of October, 1913, with a cargo consisting of 1,104 standard of deals for Dublin, Ireland, the freight on which was 55 shillings 6 pence per standard. The steamship's tonnage was 785 net and her value about \$45,000. The value of her cargo was about \$25,000 and her freight when earned would be about \$13,375. On the morning of the 5th of October the defendant steamship went aground on an exposed shoal at or near Indian Rocks on the south coast of Prince Edward Island and about one mile and a half from the mainland, there being a channel between where she lay and the shore. She was headed S. S. E. on an exposed shoal, with the shoal outside of her and the channel inside.

The plaintiff is the owner of the steamer *Bridgewater* which is specially fitted with pumps, etc., for salvage purposes, and also of the schooner *Harry* which is used as an auxiliary. On October 6th the plaintiff received word that the defendant ship was ashore and he at once communicated with the captain of the *Bridgewater*, which was then at Louisburg, N.S., engaged in salving the gear of the steamer *Evelyn* and the schooner *Winnie Hazel* there. The *Bridgewater* arrived at the scene of the wreck on the morning of October 7, and her captain went on board the *Bjorgviu*, found from 5 to 7 feet of water in her, nearly up to the shafting. The captain of the defendant ship asked to have a pump placed as soon as possible in the engine

room as the water was gaining. The *Bridgewater* was brought near, coming by the inner channel, and about 4 o'clock in the afternoon a six-inch centrifugal pump was put on board and set working, being connected at first from the *Bridgewater*, and kept working about all night, and the following day it was connected with the donkey engine of the *Bjorgviiu*. This pump reduced the water some. The plaintiff's diver was sent down to examine the ship's bottom and the bottom on which she lay. He reported very little damage to the ship and that she lay on a hard rocky shelving bottom. The *Bridgewater* was brought up under the bow of the *Bjorgviiu* and both the port and starboard anchors were run out to a distance of about 100 fathoms each on both sides, so as to prevent the latter ship from getting further on the ledge if it breezed up.

On the afternoon of October 8th the plaintiff and the underwriters' agent arrived on the tug *Arcadia* via Pictou. A three-inch duplex pump was put on board to draw off the water which the larger pump would not take. A gang of men, including the two ships' crews and also men from the shore, were employed to jettison part of the cargo, in order to lighten the ship. They put a boom around it at the side of the ship, made it into a raft, fastened it with ropes and it was towed to Wood's Harbour, about half a mile distant, by the tug *Arcadia* which was employed by the plaintiff for that purpose. This part of the cargo was afterwards sold by the underwriters' agent. It was agreed between the agent of the underwriters and the plaintiff that if the plaintiff failed to get the defendant steamer off that the plaintiff should get \$1,500 for loss of gear, but no arrangement was made in the event of success. On October 6, the plaintiff at Halifax received word from the captain of the *Bridgewater* (which was then at the

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wreck) to bring the auxiliary *Harry* (which was in Halifax) with pumps and gear. The *Harry* was got ready, with pumps, etc., and boilers, the latter brought for the occasion, and started and got as far as Sheet Harbour, N.S., when she received orders to return to Halifax as she was not required.

At noon on October 9th, the plaintiff placed on board the *Bjorgviu* three large sheave purchase blocks with a four-inch rope through them, one end of this rope being fastened to the ship's windlass and the other end made fast to the anchor that was taken off the star-board bow and run aft. A towing 10-inch hawser was also put from the defendant ship to the *Bridgewater*. The windlass and *Bridgewater* were then started and continued until four o'clock in the afternoon when the ship came off. Another examination was made of her bottom by the plaintiff's diver and the following morning the two steamers started for Halifax arriving there at one o'clock the following day (October 11th). The *Bridgewater* stayed by her until she docked on October 13th or 14th, the diver making another examination.

H. McInnes, K.C. for defendant ship:—This is not a case for a large salvage award. The defendant ship was not in great danger except if a storm came up. The weather was fine. She could have obtained other assistance.

The fact that the plaintiff was to be paid if he did not succeed in getting her off must be taken into consideration in fixing the amount of salvage (1).

If the award is to be on a percentage on the valuation basis, the freight which amounted to \$13,375 was not earned and could not be taken into account(2).

(1) *Kennedy on Civil Salvage*, p. 163; "*The Lepanto*," (1892) *Prob.* 122 at p. 130.

(2) *Kennedy on Civil Salvage*, p. 218.

The salving steamer was never in a dangerous position when performing these services, and the plaintiff should be paid a reasonable allowance for himself, his men and his ship and salvage gear. They were employed at the work less than a week.

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W. A. Henry, K.C., for plaintiff:—There should be a substantial amount allowed the plaintiff for his services. The value of the property salvaged was \$83,375, which includes the freight. The ship was in a dangerous place and if a storm came up she was bound to be a total loss, as she was exposed on four sides. We put the ship in a position to earn the freight after she had been repaired and she will then earn it. We salvaged the part of the cargo which has been jettisoned. We acted promptly and succeeded in the shortest possible time as we had all the appliances necessary for the work and did it most expeditiously. Time was of great value here not only on account of storms, but also to prevent the water reaching the engine and machinery, for had it done so the machinery would have been a total loss. The *Bridgewater* with her equipment was worth \$20,000, and this was in danger when manoeuvring near the defendant ship in taking off the anchors.

The plaintiff keeps a complete salvage outfit for such purposes only, and the cases requiring it are so few that he should be encouraged by a good award.

DRYSDALE, L. J., now (November 25, 1913) delivered judgment.

The question here is one of salvage and I think the only thing involved is a question of amount. It is undoubtedly salvage—the services were undoubtedly salvage services; but in considering the amount I think the fact that some allowance was guaranteed in

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the event of failure ought to be taken into consideration. Nevertheless the services were valuable and the ship and cargo saved, in their damaged condition, were worth about \$70,000 with a right to continue the voyage and earn upwards of \$13,000 freight. Part of this freight may be and, I think, should be, considered as already earned. At least the owners were put in the position to continue the voyage and earn the freight after it had been fairly entered upon.

The ship was ashore near Bell Point on the southern coast of Prince Edward Island. When the services were rendered she was laying on a ledge of rock about a mile and a half from the shore and at least a long distance from any safe harbour. She was I think in an exposed position and, to my mind, no real question arises on the point of the ship and cargo being in grave danger.

The plaintiff keeps a salvage outfit in the way of tugs, and at the time his services were requested was in active work on the coast of Cape Breton. He promptly responded with the tug *Bridgewater* with the necessary salvage gear. Chiefly through promptly furnishing powerful pumps the defendant ship was put in a position to be saved. By the jettison of cargo and other necessary steps the defendant ship was lightened and taken off the shoal, and was enabled to arrive at the port of Halifax, the *Bridgewater* in company standing by.

Looking at the whole circumstances and considering the respective values I think it is a case for a substantial award, and, in my opinion, the plaintiff is entitled to have the salvage services in this case assessed at the sum of \$8,000. I have gone over the cases cited with some care, and I think by analogous English cases this sum is a reasonable one under all the circumstances. I fix and assess the amount herein at \$8,000 and costs.

Judgment accordingly.