

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1914

November 23.

Reasons for
Judgment.

Martin L.J.A.

THE HUMBOLDT.....PLAINTIFF;

VS.

THE ESCORT No. 2.....DEFENDANT.*Shipping—Salvage services—"Derelict"—Abandonment.*

Held: That a ship does not become a "derelict" in law until she has been abandoned by her crew, and as the defendant ship had not been abandoned when the salvage services were rendered the value of such services should be fixed in the ordinary way, and not on the basis of the ship being a derelict.

APPLICATION for salvage services rendered the defendant tug by the plaintiff.

October 30th, 1914.

Action heard before the Honourable Mr. Justice Martin at Vancouver.

C. P. MacNeill, K.C., for plaintiff.

Mr. Alexander, for defendant.

The facts are stated in the reasons for judgment.

MARTIN L. J. A. this 23rd November, 1914, delivered judgment.

This is a claim for salvage services rendered to the tug *Escort No. 2* (137.37 tons gross) which on the 22nd November, 1913, had become disabled owing to her propeller being broken, and had got into such a

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position (a little to the S.E. of Hannah Bank, in the Sea Otter Group, Smith Sound) that she would beyond any reasonable doubt in the state of the wind and tide, have become a total wreck within a very short time, had not the S.S. *Humboldt* come to her assistance at 1.15 p.m. in response to her danger signals. The *Humboldt* finally took her in tow at 2.20 after about an hour's manœuvring which placed the *Humboldt* in a position of peril to an appreciable degree, because when she did make fast to the *Escort* and take her in tow she was between half and three-quarters of a mile from the reef. Owing to the heavy swell it was then impossible to take the master and crew (consisting of 11 souls, all told) off the *Escort* and they had before the arrival of the *Humboldt* made preparations to abandon her and take to their boat and make the somewhat hazardous attempt to reach land at Cape Calvert some 15 miles away which was the most favourable point to reach in the circumstances.

The *Humboldt* is a wooden steamship of 1,075 tons gross, valued at \$150,000, with a crew of 46 men all told and had 50 passengers on board and a cargo of \$8,725, and gold bullion to the amount of \$142,032. She towed the *Escort* to Alert Bay, about 50 miles distant, and the only safe port in the circumstances, at night, arriving there at 4 a.m. the following day, after being further delayed about three hours by fouling the hawser (which had to be cut out of the wheel) in bringing the *Escort* up alongside when nearing Alert Bay. In performing this service the *Humboldt* did not have to diverge from her regular course more than five miles.

A conflict arose as to the value of the *Escort* and much evidence was given on both sides and I have found difficulty in determining this often vexed

question and the conclusion that I can arrive at which is nearest to my own satisfaction is to fix her value at \$10,000. As to which see, *Dunsmuir v. The Otter* (1); *Vermont S.S. Co. v. The Abbey Palmer* (2); *The Iron Master* (3); *The Harmonides* (4); *The Marpessa* (5); and *The Hohenzollern* (6).

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It was submitted that the *Escort* should, in the circumstances, be considered to be a derelict as she was in a hopeless position and on the point of being abandoned by her master and crew who were about to take to their boat when succour arrived, and therefore a large award should be given, a moiety being asked for, and the cases of *The Hebe* (7), and *The Livietta* (8), were cited in support of the submission. But they do not assist the plaintiff because it was admitted that the respective vessels were in fact derelicts in each of these cases. I have been unable to find any authority in support of the contention that a vessel should be deemed to be a derelict before it has been abandoned. The general rule is stated in Lord Justice Kennedy's work on Civil Salvage (2nd ed. 1907) at p. 61-2, where the cases are cited:—

“‘Derelict’ is a term legally applied to a thing which is abandoned and deserted at sea by those who were in charge of it, without hope on their part of recovering it (*sine spe recuperandi*), and without intention of returning to it (*sine animo revertendi*). It is in practice usually applied only to a vessel, but it might properly be used of cargo also apart from a vessel. The question whether a vessel is or is not

(1) [1909] 18 B.C.R. 435.

(2) [1904] 8 Ex. C.R. 446.

(3) [1859] Swab 441

(4) [1903] P. 1; 9 Asp. 354.

(5) [1906] P. 14¹

(6) [1906] P. 339; 76 L.J. Adm. 17

(7) [1879] 4 P. 217.

(8) [1883] 8 P. 24.

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to be adjudged a derelict is decided by ascertaining, not what was actually the state of things when she was quitted by her master and crew, but what were their intention and their expectation when they quitted her.”

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In the case at bar it is therefore clear that from no point of view could the *Escort* be regarded as a derelict as there was no abandonment, and therefore I shall deal with the value of the salvage services in the ordinary way and have decided to award the sum of \$2,000 and the value of the damaged hawser, \$270, as a fair remuneration therefor, deducting however the amount received from the sale of the damaged hawser, said amount to be proved by the affidavit of Max Kalish, at his company's expense, pursuant to his undertaking given in that behalf. Judgment will be entered accordingly, with costs.

Judgment accordingly.
