

1948
June 8
June 9

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

ALEXANDER ET AL.....PLAINTIFFS;

AND

THE SHIP *GAMBIER ISLE*.....DEFENDANT.

Shipping—Salvage—Service rendered at risk of salvor—Cost of bail bond paid by plaintiffs when exorbitant amount demanded.

Plaintiffs on board the fishing vessel *Col. Roy* found defendant ship deserted and adrift and at some risk took her in tow, which towage was continued for some minutes when the mate of the *Col. Roy* succeeded in starting the engine of the *Gambier Isle*, which then proceeded under her own power to Long Bay, a distance of five miles, escorted by the *Col. Roy* and was then made fast.

Held: That plaintiffs performed a salvage service which was well and successfully carried out, the *Gambier Isle* being in actual danger, from which danger she was snatched by the timely efforts of and at some risk to the *Col. Roy*.

- 2. That plaintiffs having demanded and obtained bail for an exorbitant amount must pay the costs of the bail bond.

ACTION for salvage award.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

Herbert R. Barclay for plaintiffs.

Vernon R. Hill for defendant ship.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH D.J.A. now (June 9, 1948) delivered the following judgment:

This action for a salvage award is brought by the plaintiffs for services rendered on the morning of 17th September, 1947, to the fishing vessel *Gambier Isle* 31·7 ft. long; 9·3 ft. beam; and of 10·31 tons gross. There is little or no dispute about the facts.

The motor-vessel *Col. Roy* (length 43 ft.; beam 11·6 ft.; fitted with an 82 horse-power diesel engine; gross tonnage 16·8 tons) is owned by the plaintiff Alexander; and at the time in question was operated by Alexander as master and the plaintiff McDougall as mate. Its usual occupation is that of salvaging logs, but on this occasion the vessel was in the course of an intended voyage from Long Bay, Gambier Island, to Horse Shoe Bay. On account of the weather this was abandoned, and it was decided to proceed down Collingwood Channel and thence to Vancouver. The weather was not good; the wind, known locally as a "squamish", was blowing with a force of admittedly 30 miles an hour, if not more. There was also some sea running. When off Hope Point those on board the *Col. Roy* discerned a vessel, which afterwards proved to be the *Gambier Isle*, apparently adrift. They made up to her and McDougall, at some risk, jumped on board. He found her deserted; but it was quite clear that she had been blown away from her anchorage, for anchor and cable were hanging from the bow. As it turned out, she had been anchored just North of Halkett Point—some 6 miles to windward. She was now in a position about 200 yards off Cotton Point, Keats Island—a dead lee shore. McDougall tried to haul up the anchor, failed, and so cut the anchor rope. The *Col. Roy* then took her in tow, and towage continued for 15 or 20 minutes. Meanwhile McDougall went into the engine room and succeeded in getting the engine to operate, and the vessel then proceeded under her own power. She was escorted to Long Bay, 5 miles distant, by the *Col. Roy* and there made fast. The whole operation did not occupy more than an hour or two.

I am satisfied this was a salvage service and that it was well and successfully carried out. I think the *Gambier Isle* was in actual danger off Cotton Point, and that she was snatched out of this danger by the timely efforts of, and at some risk to, the *Col. Roy*. In the prevailing weather and in that locality the anchor would have been of little avail. I think she might quite easily have become very seriously damaged, if not totally lost, had the *Col. Roy* not lent her aid. The value of the *Gambier Isle* is approximately \$7,000; the value of the *Col. Roy* much the same, or perhaps a little more. The sum of \$300 was paid into

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Court as being sufficient for the services rendered. In view of the real danger to the *Gambier Isle* I think that this is on the low side. In my view, in all the circumstances, an adequate award would be \$500, and I so find.

The plaintiffs demanded and obtained bail for an exorbitant amount; and therefore must themselves pay the costs of the bail bond. (See the *Island Prince* recently decided in this Court.) Subject to this, plaintiffs will have their costs.

Judgment accordingly.