

BRITISH COLUMBIA ADMIRALTY DISTRICT.

BETWEEN

1909
 Mar. 9.

R. DUNSMUIR & SONS. PLAINTIFF ;

AND

THE STEAMSHIP *OTTER*.

Shipping—Salvage—Meritorious service—Award—Value of res—Rule as to percentage of depreciation in British Columbia—Practice.

The *O.*, a freight steamer, fully laden with coal, had gone ashore on Danger Reefs at the northerly end of Thetis Island, and about 7½ miles, by ships' course, from Ladysmith, B.C. She had sprung a leak and the water had put out her fires. About ten feet of her forefoot were on the rock, while her stern was in deep water. The *P.* sighted the stranded vessel in the night time and went to her relief, taking in a hawser passed to her by the *O.* and waiting for the tide and daylight. Just before 6 o'clock in the morning the *P.* started to pull straight ahead at half speed, and shortly succeeded in getting the *O.* off the reef. The *P.* then cut the *O.*'s hawser, so as loose no time, backed up to the *O.* and made fast to her with the *P.*'s hawser, and succeeded in towing her under forced draught into Ladysmith, where the *O.* was tied up to a wharf in a position of acknowledged safety.

Held, that the services performed by the *P.*, while without the specially meritorious features of saving human life, or danger to herself and crew, were as skilfully conducted as the nature of the case permitted, and valuable, and as such were entitled to corresponding recognition, even though they were of short duration.

Salvage awarded in an amount of \$2,200.

2. In finding the value of the ship and cargo the District Registrar allowed a yearly depreciation in the value of the ship of 7 per cent., following a practice with reference to wooden vessels said to prevail in British Columbia.

Held, that whatever may be said of the allowance of such a depreciation in the case of wooden vessels as a rule, it must always very largely depend upon the manner in which the vessel was originally constructed, and the care she had subsequently received; but, in any event, it could not be applied to the ship in respect of which salvage services were rendered in this case.

THIS was an action for salvage services rendered near Ladysmith, B.C., by the tug *Pilot*, of which the plaintiffs are the owners.

The trial took place in Victoria, B.C., before Mr. Justice Martin, the Local Judge for the British Columbia Admiralty District, on the 10th, 12th and 14th days of February, 1908, and was adjourned until report made by the District Registrar as to the value of steamer.

On 7th April, 1908, the District Registrar filed his report, and both sides having filed objections to said report, argument to vary report and on the whole case took place on 29th April, 1908.

E. V. Bodwell, K.C., for plaintiff cites the *Antelope* (1) the *Abbey Palmer*, (2).

J. E. McMullen for the Ship, cites, as to value, the *Hermonides*, (3) the *Hohenzollern*, (4) *Sedgwick on Damages*, (5).

As to salvage, the *Werra*, (6) the *Amérique*, (7) the *Chetah*, (8) the *Lancaster*, (9).

MARTIN, L. J., now (March 9th, 1909,) delivered judgment.

This is a claim for salvage services rendered by the tug *Pilot* (136 feet long) to the steam freighter *Otter* (232 tons, net) on the morning of the 27th of September, 1907, at which time, about half past one or two, the *Pilot*, on her way from Nanaimo to Victoria, sighted the *Otter*, aground on Danger Reefs, at the northerly end of Thetis Island, and about seven and a half miles, by ships' course, from Ladysmith. The *Otter* was laden with a full cargo of 292 tons of coal, and about ten feet of her fore-foot were on the rock, with her stern in deep water; and

(1) 4 Ad. & Ecc., 33.

(2) 8 Ex. Ch., 446.

(3) (1903) P., 1.

(4) (1906) P., 339.

(5) Vol. 2, s. 595.

(6) 12 P. D., 52.

(7) L. R. 6 P. C., 468.

(8) L. R. 2 P. C., 205.

(9) 8 P. D., 65 and 9 P. D., 14.

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the water from the leaks rose so high in her engine room that it put out the fires. The night was calm but dark and misty, and the sea smooth. The tide had begun to flow shortly before the *Pilot* arrived, but it was too dark to do anything except to take in a six inch line which the *Otter* passed to her, and anchor, after putting the stern of the *Pilot* as near the stern of the *Otter* as possible. The vessels were kept in that position till daylight, just before six o'clock, when, after the tide had risen considerably, the *Pilot* began to pull straight ahead on the hawser at half speed, and after doing so for about a quarter of an hour, more or less, the *Otter* came off, and the master of the *Pilot* immediately cut the *Otter's* hawser, so as to lose no time, backed up to the *Otter*, and made fast to her with the *Pilot's* hawser and started to tow her to Ladysmith under forced draught, and did succeed in bringing her up alongside the City wharf at that place at a quarter to eight, where after being tied to the wharf, she was in a position of acknowledged safety because the water was so shallow that she could not sink much lower, even if she filled (as her master admits), there being only 18 to 19 feet of water at that wharf at high tide. During this run, the Chief Engineer of the *Otter* admits that she sunk lower in the water by four or five inches, and when she reached Ladysmith there were between 7 and 8 feet of water in the engine-room.

After thus accomplishing her object, the *Pilot* left the *Otter*, and the master of the latter put a sail over her bows to stop the leak as well as possible, and about half an hour later the steamer *Trader* came alongside and began to siphon out the *Otter* and unload her cargo, and though the *Otter* was rising in the water as the result of the *Trader's* operations, yet about an hour later a small steamboat, the *Stetson* (17 tons) also was engaged to assist in and expedite the work, by means of her siphon. Still

later, about 6.30 the same evening, a third steamer, the *Salvor* (561 tons) which is always kept ready for salvage purposes and equipped with a salvage plant, arrived from Esquimalt, and put a large pump to work with the result that the *Otter* was pumped dry next morning at eleven o'clock.

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Since the trial I have carefully re-read and re-considered all the evidence, and I am satisfied, without here entering into particulars, that the matter must be dealt with by me on the assumption that had not the *Pilot* given the *Otter* the assistance she did, the latter would have sunk in deep water. It is true that as the *Pilot* was towing the *Otter* to Ladysmith she met the *Stetson*, with a scow, about two miles from Danger Reefs, on the way to the *Otter's* assistance, in response to a request sent by a boat from the *Otter*; but I am clearly of opinion that the *Otter* was, in view of all the circumstances, in such a dangerous position that the master pursued the only proper course in trusting himself to the *Pilot* and making the attempt, successful as it turned out, to reach Ladysmith. It then remains to be decided, what is the proper amount to be awarded to the *Pilot* for her valuable services. So far as the other vessels are concerned, they have already been settled with by the *Otter's* owners before this action was begun as follows: *Trader*, \$600; *Stetson*, \$400; *Salvor*, \$1,500. But I can derive practically no assistance from that settlement because, in the first place, this Court had nothing to do with it, and in the second place, I think it was wrong in principle, for the services rendered by the *Stetson* and *Salvor*, however valuable they may have been, clearly do not properly partake of the nature of salvage at all, whatever may be said of those of the *Trader*, into which it may be possible that some element of salvage may enter, though it is not necessary to decide the point. Therefore I shall proceed to make my award without regard to the said unsatisfactory settlement and apportionment, and deal

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with the *Pilot's* claim on its own merits without reference to others. Now, while the services she rendered were without those specially meritorious features of saving human life, or danger to herself or crew, yet they were as skilfully conducted as the nature of the case permitted of, and valuable, and are entitled to corresponding recognition, even though they were of short duration. I am informed that the *Otter's* owners tendered the sum of \$1,500 in satisfaction of said services, but in my opinion that sum is not sufficient and should be increased by \$700, making the award amount to \$2,200, for which sum let judgment be entered, the costs following the event.

In arriving at this conclusion I have taken into consideration the value of the ship which was fixed by the Registrar, under order of reference, at \$18,364.94, and the cargo, 292 tons of coal at \$3 50 = \$1,022, in all ship and cargo valued at \$19,386.94. Objection is taken to the fact that in arriving at the value of the *Otter* the Registrar in his report allowed a yearly depreciation of seven per cent. Now, whatever may be said of the allowance of such a depreciation in the case of wooden vessels on this coast as a rule, it must always very largely depend upon the manner in which the vessel was originally constructed and the care she has subsequently received. In the case of the *Otter*, I do not think such a rule could be fairly applied. She is, according to the evidence, a better built ship than the average and has been well cared for and maintained. She cost in 1900 \$41,128, and at the time of the accident, I am satisfied by the evidence as a whole, that for the purposes of this award her value must be taken to be at least \$30,000, even after giving due, but not unreasonable weight to the evidence on behalf of her owners, that she is a vessel of a type which is not so profitable, under existing conditions, to operate on this coast as others of more recent construction, which fact would of course affect her market value. The further fact that

she is insured for six thousand pounds is a useful guide to her owners' opinion. Taking this view it is not necessary to consider the other objections to the Registrar's report.

Judgment accordingly.

Solicitors for plaintiff: *Bodwell & Lawson.*

Solicitor for ship: *J. E. McMullen.*

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