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July 28.

QUEBEC ADMIRALTY DISTRICT.

WILFRED HINE..... PLAINTIFF;

AGAINST

THE OWNERS OF THE STEAM-)
TUG "THOMAS J. SCULLY".....) DEFENDANTS.*Admiralty law—Towage—Salvage—Sufficiency of tender—Costs.*

The steam-tug *T. J. S.*, of 111 tons burthen, bound from New York, U.S.A., to St. Johns, P.Q., was prosecuting her voyage off Cape Chatte, in the Lower St. Lawrence, when a slight accident happened to her boiler in consequence of which her fires had to be extinguished so that the boiler might cool and allow the engineer to make the necessary repairs. At the time she was in the ordinary channel of navigation, and the weather was fine and the sea calm. The accident happened at 8 p.m. Three hours afterwards, and before repairs could be made, the steamship *F.*, of 2407 tons burthen, bound from Maryport, G.B., to Quebec, approached the tug, and at the request of her captain, took the tug in tow. The towage covered a distance of some 230 miles, and continued for a period of thirty hours, during which neither ship was in a position of danger, nor were the crew of the *F.* at any time in peril by reason of the services rendered to the disabled tug.

Held, that as the service to the disabled tug was rendered under the easiest conditions, without increase of labour or delay to the *F.*, it was clearly a towage and not a salvage service.

2. It not being a case of salvage, the officers and crew of the *F.* were not entitled to participate in the amount awarded for the towage, but it belonged to the owners of the ship.
3. The defendants having paid into court an amount sufficient to liberally compensate the plaintiff for the service rendered, they were given their proper costs against the plaintiff.

ACTION for alleged salvage services.

The following is the statement of claim by plaintiff:

"1. The *Forestholme* is a steel screw steamer, the property of the plaintiff Hine, of 2407 gross tonnage

by register, of the value of £19,000 sterling. At the time of the circumstances herein stated she was manned by a crew of twenty-two hands, all told, and was bound on a voyage from Maryport, in England, to Quebec, with a cargo of steel rails and fish plates of great value."

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"2. At about eleven o'clock on the night of the 19th day of May last, the *Forestholme* was about eight miles to the eastward of Cape Chatte, in the lower St. Lawrence. The weather was then hazy and there was little or no wind. Her people then saw, at a distance of about a mile and a half, two bright lights, one over the other, which on nearer approach proved to be those of the steam-tug proceeded against in this cause. Subsequently the people of the steam-tug informed the master of the *Forestholme* that they were in distress, their machinery having broken down and requested him to tow them to Quebec with his vessel, which he agreed to do."

"3. The *Forestholme* then took the tug in tow and towed her up to Quebec, which they reached on Sunday morning between four and five o'clock in the morning, where a tug came out and towed the *Thomas J. Scully* into the basin. The total distance of the towage was about two hundred and thirty miles."

"4. During the night the weather changed and it came on to blow from the north-east with fog. At two o'clock it was blowing hard, and by four o'clock in the morning there was a strong breeze. The current sets from Pointe des Monts on the north shore of the St. Lawrence to the south shore, the current in that direction being about two and a half to three knots an hour. There is no anchorage on the south coast in a north-east gale."

"5. In her disabled condition, in view of the weather, the current and the position of the tug when

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picked up, about two miles off the south coast, she would have gone ashore and been totally lost with her crew had it not been for the services of the *Forestholme*."

"6. The value of the *Thomas J. Scully* has been agreed at \$17,000 currency."

"The plaintiff claims:

(a) The condemnation of the defendants and their bail in such an amount of salvage remuneration as to the court may seem just, and in the costs of this action.

(b) Such further and other relief as the nature of the case may require."

The statement of defence was as follows :--

"1. The defendants say that on the 4th day of May last, (1899) their steam-tug *Thomas J. Scully*, of about 60 tons register, propelled by engines of about 350 nominal horse-power, navigated by a crew of nine hands all told, including her master, left the port of New York, bound for St. Johns, in the Province of Quebec."

"2. At about 8 p.m., on the 19th day May aforesaid, while the said tug *Thomas J. Scully* was prosecuting her voyage off Cape Chatte in the Lower St. Lawrence, a slight accident happened to her boiler, in consequence of which she was stopped to repair the damage; the weather at the time was fine and perfectly calm. The tug *Thomas J. Scully* was at this time in the ordinary channel used by vessels of all kinds navigating the Gulf of St. Lawrence."

"3. About 11 o'clock on the night of the said 19th day of May, the *Forestholme* hove in sight and shortly afterwards approached the *Thomas J. Scully* close enough for those on board of her to hail the *Forestholme*; whereupon, the people of the tug asked the master of the steamship to take them in tow of his vessel, which he agreed to do."

" 4. The defendants admit the 3rd paragraph of plaintiff's statement of claim."

" 5. The defendants deny the 4th paragraph of the plaintiff's statement of claim."

" 6. The defendants deny the 5th paragraph of the plaintiff's statement of claim and allege that the *Thomas J. Scully* was not in any danger whatsoever, she was well equipped with sails and had good ground tackle; that the service for which the plaintiff's claim salvage was performed in fine weather, without difficulty or danger to their vessel the *Forestholme* or her crew; that the wind which sprung up during the night was from the north-east, blowing up the river, favourable to vessels bound to Quebec, whereupon the *Thomas J. Scully* set her sail by reason of which there was very little or no strain on the *Forestholme*, which vessel proceeded on her voyage to Quebec without any loss of time."

" 7. The service rendered by the *Forestholme* to the *Thomas J. Scully* was nothing more than an ordinary towage service, for which the plaintiffs would be entitled to a sum not exceeding \$200, and the defendants declare that they are ready to pay the plaintiff, for this service, the sum of \$600 and his costs, which sum they have paid into court and submit that the same is ample and sufficient.

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The case was heard by Mr. Justice Routhier, Local Judge in Admiralty for the Quebec Admiralty District.

A. H. Cook, Q.C. for the plaintiff: The services were unquestionably salvage. The tug-boat was in distress and had signalled for assistance. Her machinery had broken down and she was helpless within two miles of a dangerous coast towards which the current sets. Possibly by means of her sails and

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ground tackle she might have been prevented from drifting ashore, but there was certainly considerable risk and, as a matter of fact, the weather two hours after she was picked up by the steamer became bad and a strong wind sprung up from the north-east, which would have aided the current in putting the tug ashore. It is true that the service was effected without much risk or danger on the part of the steamer; still there was the chance of risk and danger. Taking into account the value of the steamer and her cargo and the great value of the tug (\$17,000), it is submitted that the tender of \$600 should be pronounced against and a decree entered for a reasonable remuneration at least double the amount deposited in court.

C. A. Pentland, Q.C. for the defendants, cited: *Stewart v. Bernier* (1); the *Clifton* (2); *Cushing's U. S. Admiralty Practice*, vo. "Salvage" (3); the *Graces* (4); the *Glenduror* (5).

ROUTHIER, L. J. now (July 28, 1899), delivered judgment:—

L'action est *in rem* au montant de \$5,500 pour sauvetage (salvage). La défense se résume à dire qu'il n'y a pas eu un vrai *sauvetage*, mais un simple *touage* et la somme de \$600 est offerte et déposée. Voici les faits: Le 19 Mai, 1899, vers les 8 h. p. m., le *Scully* (111 tonneaux) se trouvait un peu en bas du Cap Chatte, remontant le fleuve, lorsqu'un rivet de la bouilloire fut brisé. L'ingénieur pouvait réparer cette petite avarie: mais il fallait pour cela vider la bouilloire et la laisser refroidir. La mer était calme—il n'y avait pas de vent. Le capitaine décida d'attendre au matin pour faire la réparation.—Mais vers 11 hrs. parut

(1) 1 App. C. (Dor.) p. 321.

(3) Vol. 1, p. 355.

(2) 3 Hagg. p. 123.

(4) 2 W. Rob. 300.

(5) L. R. 3 P. C. 589.

le *Forestholme* (un steamer de 2407 tonneaux). Le *Scully* le héla en sifflant. Le *Forestholme* s'approcha, et, à la demande du capitaine, prit le *Scully* à la remorque et le remorqua jusqu'à Québec, où ils arrivèrent le 21 à 4.30 a.m. (le dimanche), c'est-à-dire après environ 30 heures de navigation.

Pas de contestation sur les faits—et la question est de savoir si ces faits constituent en loi un vrai sauvetage (salvage) ou un simple touage. Il s'agit d'appliquer aux faits prouvés les principes de droit qui régissent cette matière.

Posons d'abord les principes et nous en ferons ensuite l'application aux faits établis.

1o. Il est bien reconnu que dans les cas où il y a sauvetage, le service doit être très largement rétribué afin d'encourager et de stimuler le dévouement des marins, dans l'intérêt du commerce et de la navigation. Le touage simple, au contraire, est payé suivant la valeur exacte du travail.

2o. On sait aussi que le plus souvent aucun contrat n'intervient dans le cas de sauvetage. C'est un quasi-contrat, c'est-à-dire un fait d'où naît une obligation légale

3o. Mais quand y a-t-il sauvetage? Quels éléments le constituent?

Beauchamp's Jurisprudence of P. C., page 737 :

"The ingredients of the salvage service are, first, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow creatures and to rescue the property of their fellow subjects; secondly, the degree of danger and distress from which the property is rescued, whether it were in eminent peril, or almost certainly lost, nothing out of it rescued and preserved; thirdly, the degree of labour and skill which the salvors incur and display, and the time occupied.

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Lastly, the value. Where all those circumstances concur a large and liberal reward ought to be given. But where none, or hardly any, then the thing ought to be *pro opere et labore*.

Cette expression d'opinion est reproduite dans plusieurs causes, et je la retrouve dans la cause du *Clifton* (1).

Il semblerait, si nous prenions à la lettre cette autorité, qu'il faut dans le cas de sauvetage : 1re. que le navire sauvé soit exposé à périr ; 2e. que les sauveteurs courent eux-mêmes du danger à opérer le sauvetage ; 3e. qu'ils apportent beaucoup de temps, d'habileté, de travail, à l'opérer.

Mais ce serait là une exagération.

Voici comment s'exprime Jones, *The Law of Salvage* p. 1, sur ce qu'il appelle *les ingrédients requis* pour qu'il y ait sauvetage : "It may be laid down as a "general rule * * * that the plaintiffs in a salvage "suit will be required to establish : 1st., the fact that "the vessel proceeded against was in danger or dis- "tress ; 2nd., that the salvors rendered assistance ; 3rd., "that their efforts were successful." id. page 2, "Dis- "tress is essential."

Le mot *salvage* l'indique lui-même. On ne sauve que ce qui est en danger. On rend seulement *service* aux choses et gens qui ne sont pas en péril : *In re The Sargeant* (2). "No danger, no salvage." Même principe in *The Strathnaver* (3).

Mais faut-il que le danger soit *absolu*, c'est-à-dire sans aucune chance de salut ? Non.

Faut-il qu'il soit imminent ou actuel ? Je ne le crois pas et c'est l'opinion que j'exprimais in *re Chabot vs. Q. S. S. Co.* (4).

(1) 3 Hagg. at p. 121.

(2) 3 Ex. C. R. 332.

(3) 1 App. Cas. 58.

(4) 6 Q. R. C. S. p. 215.

Mais il faut tout de même qu'il y ait un danger sérieux bien constaté. Voici, quels étaient les faits dans le cas du Miramichi :

“ La preuve établit que le 4 mai, 1892, le Miramichi, descendant de Québec à Pictou, a cassé son arbre de couche, auprès du Cap Rosier, côte de Gaspé, qu'il s'est approché de terre à la voile et y a jeté l'ancre, et qu'il a signalé au Cap Rosier, où il y a un phare, qu'il avait besoin d'un remorqueur. Le lendemain, 5 mai, l'*Admiral*, averti, a rebroussé chemin depuis la Pointe St. Pierre et est venu demander au Miramichi s'il avait besoin d'assistance. Sur réponse affirmative, il l'a pris à la remorque et l'a remorqué jusqu'au Bassin de Gaspé, environ 21 milles.”

“ Ce touage a duré environ 10 heures. Dans la nuit du 5 au 6 il y a eu un vent très violent, accompagné de neige, et plusieurs témoins de l'endroit même ont juré que le Miramichi n'aurait pu tenir et aurait été jeté à la côte, s'il ait resté à l'ancre. L'*Admiral* essuya la tempête, ne put faire la connexion avec le chemin de fer et ses malles et ses passagers furent ainsi retardés de 24 heures.”

Comme on le voit :

1er. Il n'y avait pas de réparation possible. 2e Le mouillage était dangereux. 3e. Une tempête était imminente et elle eut lieu. 4e. Le bateau sauveteur eut beaucoup à souffrir du temps et encourut des dommages.

Ici 1o. l'accident est léger et facilement réparable. Les témoins Samson, l'ingénieur, et Mackay (qui a réparé l'avarie pour \$13) le prouvent. 2o. Le vaisseau a une bonne voile et de bonnes ancres ; il a déjà marché à la voile. Le temps est calme. Le lendemain le vent est favorable. Pas le moindre travail de plus à bord du *Forestholme*. La haussière généralement lâche, pas de danger, pas même de retard.

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Les demandeurs ont cité le cas *The Carmona* (1), mais ce steamer était à la côte, échoué, très-exposé à périr, et c'est le travail du *Miramichi* qui l'avait fait flotter et remis en mer.

J'arrive ainsi à la conclusion que *l'élément essentiel* au sauvetage fait ici défaut : il n'y a eu aucun danger sérieux.

Dès lors ce qui est intervenu entre les parties, c'est un *louage de service* dont le prix n'a pas été fixé. Les paroles échangées n'indiquent pas autre chose : "Will you tow us up?" Et là-dessus le "steam-tug" lui remet le câble de remorque sans préciser ni prix, ni endroit de destination et sans aucune explication.

Le touage s'accomplit dans les conditions les plus faciles, sans danger, sans surcroît de travail, sans retard. C'est évidemment un *touage* et non un *sauvetage*. Qu'elle en est la valeur? Quatre ou cinq témoins disent environ \$200. Mais c'est le prix d'un *touage ordinaire*. Ici, il vaut plus, parce qu'il est fait par un navire de fort tonnage et de grande valeur qui n'en a pas fait métier.

Les défendeurs l'ont compris et ils ont offert \$600 c'est-à-dire trois fois le touage ordinaire. *In re Chabot* (2) je disais :

" Dans l'estimation, il faut considérer * * *
 " 1er. le mauvais temps et le danger couru par les
 " sauveteurs ; 2e. le danger couru par le navire sauvé ;
 " 3e, le travail et l'habileté des " salvors " et le temps
 " employé ; et 4e. la valeur de la propriété sauvée.
 " Quand tous ces éléments concourent, la valeur du
 " sauvetage peut atteindre un chiffre énorme ; quand
 " quelques éléments manquent, la somme est beau-
 " coup moindre, suivant les éléments manquants.
 " Quand il n'y en a aucun, ce n'est pas un sauvetage,

(1) Cook 350.

(2) 6 Q. R. C. S. at p. 215.

“ et l'on ne doit accorder que le prix d'un touage ordinaire.”

Ici rien de tel. Les offres me paraissent dans cette cause amplement suffisantes.

Maintenant, cette somme doit-elle être divisée entre le propriétaire, le capitaine et l'équipage? Non, puisque ce n'est pas un sauvetage. Le touage est dû au demandeur W. Hine qui est propriétaire du vaisseau *sauveteur*.

Sur la question de frais les demandeurs ont cité le cas du “*Lotus*,” comme leur donnant droit aux frais même dans le cas où les offres sont jugées suffisantes (1). C'était un cas *exceptionnel*. Le juge déclara les offres *strictement suffisantes mais pas libérales*; il accorda les frais *jusqu'aux offres et consignation*, et ne décida rien quant aux frais *subséquents*, c'est-à-dire qu'il ne les accorda pas aux défendeurs contre les demandeurs.

Mais ici les offres me semblent suffisamment *libérales* et dès lors, il n'y a pas de raison pour mettre de côté la règle 136ème. de cette cour qui condamne aux dépens la partie qui a refusé des offres jugées suffisantes.

Judgment accordingly.

Solicitors for plaintiff: *W. & A. H. Cook.*

Solicitors for defendants: *Caron, Pentland & Stuart.*

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(1) 7 P. D. 199.