



1948
May 11 & 12
May 19

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

FALCONER FISHING FLEET } PLAINTIFFS;
LIMITED ET AL..... }

AND

THE SHIP *ISLAND PRINCE*.....DEFENDANT.

Admiralty—Salvage—Award should be liberal—Cost of bail paid by plaintiff when excessive amount demanded.

Held: That upon the facts disclosed plaintiffs' vessel performed a salvage service, at no little risk to the salvaging vessel, which resulted in extricating the defendant salvaged vessel from a position of danger to one of complete safety; the service contained in some degree all the many and diverse ingredients of a salvage service and the reward to plaintiff on the ground of public policy should be liberal though not extravagant.

- 2. That when a plaintiff has demanded and obtained bail for an excessive amount it must pay the cost of the whole bail.

ACTION for salvage.

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

J. Howard Harman for plaintiffs.

A. Bull, K.C. and *Vernon Hill* for defendant.

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

SIDNEY SMITH D.J.A. now (May 19, 1948) delivered the following judgment:

This is a claim for salvage services rendered to the defendant ship *Island Prince*. It is brought by the owner, master and crew of the fishing vessel *Glendale V*.

The *Island Prince* is a steam screw cargo vessel 123·5 feet long, 28·8 ft. beam, of 415·99 gross and 266·35 register tonnage, and having a speed of 8 knots. There was conflicting evidence as to her value, but I think \$50,000 would not be far from the mark. In fixing this amount I do not wish to reflect in the slightest on the integrity of the witnesses to value, for on this there is room for wide variance of opinion. She was partially laden with a mixed cargo, part of which consisted of lumber stowed on deck; and was in the course of a voyage from Vancouver via various ports to Port Alice.

The *Glendale V* is a motor screw vessel of 27·57 register tonnage, fitted with a diesel engine, and engaged in purse seine fishing. She had a complement of three—master, mate and engineer. Her value is approximately \$20,000.

On 21 April, 1947, at about 4 p.m., while proceeding to the fishing grounds at Goose Island, the Master of the *Glendale V* intercepted a radio-telephone message to all ships in the vicinity to the effect that the *Island Prince* was in difficulties and required assistance. The *Glendale V* was then in the neighbourhood of Hardy Bay, at the North end of Vancouver Island, and had in mind seeking shelter for the night. The position of the *Island Prince* was some 10 miles west (mag.) of Pine Island at the entrance to Queen Charlotte Sound, and therefore about 24 miles distant from the *Glendale V*. This signal, repeated some fifteen times during the afternoon and originating in a

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radio-telephone report from the Master to his Owner, was also intercepted by other vessels in the neighbourhood, notably the *Dinamac* and the Tug *La Pointe* (with two barges in tow), but these vessels had their own difficulties, and were thus unable to respond; although they kept in touch with developments by radio-telephone. The *Glendale V* proceeded through head seas to the assistance of the *Island Prince* and about 8.15 p.m. made up to her. This latter vessel had lost her rudder and in the course of rigging a jury rudder, had got her propeller fouled by a wire, thus losing both steering and motive power.

The situation of the *Island Prince* is well described in the following entry from her log-book:

12 40—Lost the rudder. All hands spent the afternoon rigging a jury rudder. After it was rigged the wire on the starboard side fouled the propeller and we were unable to use it. A sling load of 2" x 4"s was streamed from the bow to act as a sea-anchor. At 20.15 the fish boat *Glendale V* arrived and took us in tow. Sling load of 2" x 4"s had to be cut loose. Heavy seas were running causing the vessel to roll heavily. The excessive rolling did considerable damage to various parts of the vessel and cargo. Contacted the tug *Petrel* who is going to pick us up somewhere below Noble Id.

This is borne out by the oral evidence except as to the damage to the vessel, which was not elsewhere mentioned. I find the wind was from the North West, blowing with a force of approximately 25 to 30 miles per hour, with heavier gusts; and that the vessel was then in exposed waters, and in a position of appreciable though not actual or imminent danger. The log reference to the Tug *Petrel* concerned an arrangement made by the respective owners that this tug should tow the *Island Prince* either from Shushartie Bay or Hardy Bay to Vancouver. The tug was in such a position that had she proceeded north of these places to the exposed waters in which the *Island Prince* found herself, she could not have reached that vessel until 2 a.m.

The *Glendale V* succeeded in taking the *Island Prince* in tow, using for this purpose two of her own wires, and in due course reached Hardy Bay at 1.45 a.m., where she handed over her charge to the waiting *Petrel*. The voyage was not without adventure. The following wind and sea was of assistance; but some water came over the stern and there was risk of the tow overrunning the towing vessel.

One wire parted at the entrance to Christie Passage, and the *Glendale V.* had a hard tussle to make the entrance: but in the end all was successfully accomplished.

There is little to be gained by canvassing the evidence in detail. It will suffice to state my conclusions. But I think it right to say that I was impressed by those on board the *Glendale V.* I thought their evidence was refreshingly given to under-statement, rather than over-statement. I think this was undoubtedly a salvage service—a volunteered service, gallantly undertaken and skilfully executed; performed at no little risk to the salvaging vessel; and resulting in extricating the salved vessel from a position of danger to one of complete safety; and so containing in some degree all the many and diverse ingredients of a salvage service.

What should be the reward? On the ground of public policy it should be “liberal”, though not “extravagant”. Bearing in mind these factors, together with the values of the two ships, and the fact that money has not now the value it had a quarter of a century or so ago, I think an appropriate amount would be \$2,500; and it is so ordered.

One other point calls for mention. The plaintiffs admittedly demanded security for an excessive amount. In the circumstances I think a bail bond of \$4,000 or even \$5,000 was all that could have been reasonably exacted. They demanded and obtained bail for \$50,000, later reduced to \$10,000. Following the practice of the Court in such cases, they must therefore pay the cost of the whole bail. I have always thought this rather a harsh rule. It seems to me that justice would be done by requiring the plaintiffs in such a case to pay the cost of the excess over what in the event would have been reasonable bail. But the practice has been too long established to be disturbed by me now; *The Race Rock* (1). All I can do is once more to point out that the Court will mark its disfavour of demanding excessive bail by dealing with the cost thereof in the manner indicated.

There will be judgment accordingly with costs, less the cost of bail.

Judgment accordingly.

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