

BRITISH COLUMBIA ADMIRALTY DISTRICT

1952
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 Dec. 20
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 Dec. 22
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BETWEEN:

Owner, Master and Crew of the Ship } PLAINTIFFS;
BONABELLE }

AND

The Ship *HAZEL* DEFENDANT.

Shipping—Salvage.

Held: That where a ship is in some, though perhaps not immediate danger, another ship towing it to harbour is performing more than a mere towage service and is entitled to a salvage award.

ACTION by plaintiffs claiming an award 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.

R. D. Plommer for plaintiff.

J. A. MacInnes, Q.C. for defendant.

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

SIDNEY SMITH D.J.A. now (December 22, 1952) delivered the following judgment:

The plaintiffs claim a salvage award for towing the defendant vessel a distance of 5 miles into Horse Shoe Bay, Howe Sound, the destination of both the tower and the towed. This was on the evening of 7th November, 1951.

The *Bonabelle*, then valued at \$45,000, is a passenger motor vessel of 131 tons gross, carried a crew of five, including the Master, and had on board 65 passengers, together with mail and cargo.

The *Hazel* is a power landing barge valued at \$4,000 with a speed of 8 knots. On board her on this occasion were her two owners and five logger employees.

The weather was fine but very dark. The *Bonabelle* proceeding south on her usual run from Britannia Beach, had seen a series of flashes (apparently from a flash light to attract attention) 2 to 3 points on her port bow, made towards them, and came up to the *Hazel* which had unfortunately struck a log and lost her propeller some half hour previously. The *Hazel's* position then was one-quarter

to one-half mile from the mainland which was there steep and rugged. The tide was ebbing and an eddy was setting to the north, and towards the shore.

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The *Bonabelle* took the *Hazel* in tow and deviated somewhat to pick up the *Hazel's* dinghy, with two of the loggers. They had gone on shore and telephoned from a house on the mainland to Horse Shoe Bay, requesting a water-taxi be sent to their aid.

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The time occupied in the towage service was 1 hour. The *Bonabelle* was due to leave Horse Shoe Bay on her return trip at 7.30 p.m., but did not get away till 8.21 p.m. On this return trip she carried 29 passengers.

There is little dispute on the facts, notwithstanding that the incidents recorded took place over a year ago. I think it proper however to say that in my opinion the flashes were quite likely directed to the *Bonabelle* as a signal for assistance and that that vessel responded willingly, promptly and efficiently. Moreover, there is no satisfactory evidence that a water-taxi was then on its way out to them, as suggested by one of the witnesses: although no doubt help would have been available from Horse Shoe Bay sooner or later. The subsequent discussion at Horse Shoe Bay is irrelevant.

It was pressed upon me that this was merely a towage service, but I hold that the *Hazel* was in some, though perhaps not immediate, danger and that the plaintiffs are entitled to a salvage award. The authorities have recently been considered by the Lords in *The Troilus* (1). In all the circumstances I think an award of One hundred dollars (\$100) would meet the plain requirements of justice.

There will be judgment for that sum, with costs.

Judgment accordingly.