

ON APPEAL FROM THE NEW BRUNSWICK ADMIRALTY DISTRICT
 THE SHIP *SENECA* (DEFENDANT) APPELLANT;

1923
 April 9.

AND

W. N. MACDONALD, OWNER OF THE }
 SHIP *CURLEW* (PLAINTIFF) } RESPONDENT

*Shipping and seamen—Salvage services—Quantum—Discretion of Court
 —Appellate Court.*

Held (affirming the decision of the Local Judge of the New Brunswick Admiralty District, reported p. 13, ante) that the services rendered by the respondent were in the nature of salvage services and entitled him to compensation assessed on that basis.

2. That the amount of salvage reward is in the discretion of the Court, and, unless the same is excessive, an appellate tribunal ought not to interfere.

APPEAL from the decision of the Local Judge of the New Brunswick Admiralty District (1) allowing salvage award for \$4,081.35 against the appellant herein.

March 9, 1923.

Appeal now heard before the Honourable Mr. Justice Audette at Ottawa.

M. G. Teed, K.C. for appellant.

F. R. Taylor, K.C. for respondent.

The facts are stated in the reasons for judgment.

AUDETTE, J. now (9th April, 1923) delivered judgment.

This is an appeal from the judgment of the Local Judge of the New Brunswick Admiralty District (1) pronounced in a salvage action, on the 10th day of November, 1922, and allowing a reward of \$4,081.35.

The facts of the case and the circumstances under which the present claim arises are clearly set out in the reasons for judgment of the learned trial judge and I am therefore relieved from the necessity of repeating them here on appeal. (2).

The case, in the result, resolves itself into a comparatively narrow compass. The appellant sets out, *inter alia*, as an outstanding ground of appeal, that the amount awarded by the judgment *a quo* is excessive and assessed upon a wrong principle and that there is error in assessing on the basis of an engaged and not of a volunteer salvaging ship. However, in his reasons for judgment, the learned

(1) [1923] Ex. C.R. 13.

(2) [1923] Ex. C.R., p. 13.

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trial judge clearly states "that the services rendered were salvage services and that the *Curlew* is entitled to the ordinary salvage award on the usual salvage consideration."

The *Seneca* was a crippled vessel caught in the ice, with two blades of her propeller broken and unable to extricate herself. The Government steamer, the *Montcalm*, endeavoured to free her from her critical position and did not at first succeed. The *Seneca* had no wireless equipment, but the *Montcalm* had. The *Seneca* directed her to send for the *Curlew* and the radio of the 4th May, 1922, recited in full in the trial judge's reasons, is sent. Then follows the second radio; the ice becoming too heavy, the *Curlew* is dissuaded or discouraged from venturing out.

The evidence of the delivery of the second radio is unsatisfactory and so found by the trial judge; and no solid or satisfactory conclusion can be built upon it.

However, be that as it may, in the result, we have all the elements of salvage and a distinct case made thereunder. The very word "salvage" connotes salvor's services and salvor's reward.

The *Seneca*, a vessel in distress is calling for help, is asking the *Curlew* to come to her rescue with a cable. Whether or not the second radio dissuading or discouraging the *Curlew* to come on account of heavy ice was duly delivered, matters not; because when the *Curlew* ultimately arrived alongside the *Seneca* she was not told that her services were not required; nor were they repudiated. Quite to the contrary, she was sent to the *Montcalm* to work in unison with her. Her cable is accepted, used and broken. She stands by, ready to perform any services or assistance that circumstances would suggest. Her cable used by the *Montcalm* proved of great service since the *Montcalm* was thereby able to start the *Seneca*, enabling her ultimately to be saved. 26 Hals. 562,564; Roscoe 4th ed. p. 158.

There was no contract of any kind entered into as between the *Seneca* and the *Curlew*. The services rendered by the latter were essentially independent of contract and performed with absolute voluntarism and were in their very essence in the nature of salvage and cannot be attributed to any legal obligation. Such services and assist-

ance were at no time refused or declined by the *Seneca* when in the ice. Had the second radio meant a refusal of the *Curlew's* services the *Seneca* could and would have followed it up, had she seen fit, by refusing and declining any assistance so actually proffered and rendered by the *Curlew*. Moreover, if the *Seneca* said nothing on the arrival of the *Curlew* and allowed her to render assistance, it is not now in the mouth of her owners to refuse to pay a proper remuneration.

The *Curlew* went out of harbour in a fog, when large and thick sheets of ice were to be encountered at a dangerous season, and at great risk to herself and crew. Having at great risk, time and expense, rendered continuous salvage services, the *Curlew*, under the very spirit of Admiralty Law, is entitled to compensation assessed on the usual basis in such cases. The reward involves a mixed question of private rights and public policy. Kennedy, 2nd ed. 7. And upon public consideration the interest of commerce, the benefit and security of navigation, the lives of seamen operate in favour of allowing a reward upon a more enlarged and liberal scale. *Idem* 17. Even in doubtful cases as to the effectiveness of the services rendered, the courts, upon the policy of encouraging salvage services, lean to the view that the services were of some benefit. But here, the services were so beneficial that they contributed to the successful result which might not have been attained without such services, and no doubt arises in this respect. Maclaghlan, on Merchant Shipping, 5th ed. 704; *The Melpomene* (1). Furthermore, when a vessel like the *Curlew* is especially equipped and maintained for the purposes of rendering prompt and efficient services, the broad principles recognized by the court as a guidance in assessing salvage remuneration—the general interests of navigation and commerce of the country—will lead to a consequent increase in the award. Roscoe, 4th ed. 177.

Moreover, the amount of salvage reward is entirely in the discretion of the court and unless the remuneration is excessive, an appellate tribunal ought not to interfere. The remuneration should not leave the salvor any poorer than he was before and he should be compensated for his ser-

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vices and assistance. SS. *Baku Standard*, (Master and owners of) and SS. *Angèle*, (Masters and owners of) (1). In the result I am of opinion that the learned trial judge was justified upon all the facts and the law in fixing the amount of the salvage award at the sum of \$4,081.35, and that the judgment appealed from should stand. The appeal is dismissed with costs.

Appeal dismissed.

(1) [1901] A.C. 549.