

NOVA SCOTIA ADMIRALTY DISTRICT.

BETWEEN

1912
Nov. 1.

PICKFORD & BLACK, LIMITED, PLAINTIFFS.

AGAINST

THE STEAMSHIP "LUX".

Shipping—Salvage—Practice—Joinder of Master and Crew of salving Ship, as Co-Plaintiffs with Owners.

In this case salvage remuneration was fixed in the sum of \$4,500, and apportioned as follows:—\$3,750 to the owners of the salving ship, \$250 to the master and \$500 to the crew; the master and crew being ordered to be joined as plaintiffs in the action so that they might have the benefit of the award and the question of their compensation be made *res judicata* by the action.

THIS was an action by the plaintiffs as owners of the steamship *Boston* for \$12,000 for salvage services rendered by them to the steamship *Lux* from the 4th day of October to the 6th day of October, A.D., 1912.

The following statement of facts was agreed upon by counsel for the plaintiffs and defendant, respectively, and submitted to the Court:—

The steamship *Boston* left Turk's Island, West Indies, on the 28th day of September, 1912, loaded with a cargo of sugar and fruits, a part of the latter being perishable goods, bound for Halifax. The *Boston* had 10 passengers.

On Friday the 4th of October 1912, at 10.15 a.m. lat. 41.30 N. long. 64.12 W., the *Boston* sighted a steamer which was found to be the English tank steamer *Lux*, apparently disabled, being by the head, and a stage out over the stern. The *Boston*

proceeded close to her and asked what was the matter. They replied, "Rudder damaged". The *Boston* asked if they could be of assistance and the *Lux* replied that they were repairing the damage. Three other steamers were in sight when the *Boston* came alongside, one of which was the *Idaho*, a Wilson liner, and the other two were New York passenger liners. The *Lux* was in the line of steamers. The *Boston* then proceeded. Shortly afterwards the *Boston* noticed that the *Lux* had hoisted a signal asking if the *Boston* could tow them, to which the *Boston* agreed. The *Boston* steamed as close alongside as possible and two hawsers belonging to the *Lux* were run from her stern to the bow of the *Boston*. The boats of the *Lux* carried the hawsers to the *Boston*. The hawsers were made fast to the bitts of the *Boston*. These bitts were not constructed for the purpose of towing but were primarily intended for mooring the ship. One of the hawsers of the *Boston* was used the first day as a bridle and was afterwards carried away. As soon as they were fast, 1.30 p.m., the *Lux* started for Halifax, the *Boston* steering. Strong breeze and choppy sea. At 2.15 p.m. the hawser on the port side carried away, but they proceeded with only one hawser until 7.30 p.m., when, owing to increasing wind and sea, accompanied by rain the remaining hawser carried away. Owing to the darkness, rain and heavy sea, it was impossible to establish connection that night. The *Boston* laid by all night and on the 5th of October, daylight, the sea having moderated, the *Boston's* boat was launched to run another hawser which was finally accomplished and the towing resumed at 8 a.m.

October 6th, 3.30 a.m. sighted Sambro and slowed down. 9.15 a.m. took a pilot and proceeded up the harbour to Quarantine Ground where the *Lux* was

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safely anchored at 10.45 a.m. The *Boston* arrived at Pickford and Black's wharf at 11.15 a.m.

On examination found one wire hawser broken and a piece lost, also a quantity of manilla rope and heaving lines used for lashings cut and destroyed. A piece of the main rail on the starboard side forward carried away and a hatch strong-back, which was used for a fender on the bow, damaged.

The bulwark forward on the starboard side was somewhat strained. To repair all the damage suffered by the *Boston* and to substitute new rope would cost about \$250.00.

The tonnage of the *Boston* is 738 registered, gross 1,168.

That of the *Lux* is 2,621 gross and 1,634 net. The valuation of the *Lux* in her damaged condition is £18,468.

The value of the *Boston* is £15,000. Her cargo was valued at \$20,030.00, freight at \$2,192.47.

The distance towed is 200 miles and the *Boston* was engaged in the service forty-eight hours, of which thirty-four hours was actual towing.

H. McInnes K.C. for the plaintiffs.

The sole question is the amount to which the plaintiffs are entitled. The *Boston* was on her way from Turk's Island, West Indies to Halifax. Her value was about £15,000 or \$75,000.00. She had a cargo of sugar and fruits and 10 passengers. The *Lux* was an English tank steamship and was then empty. Her value was about \$90,000. The *Lux* rudder was out of order and the *Boston* acted as a rudder in steering her. She was in the track of steamer. The services rendered were more meritorious than towing. The control was in the *Lux* as she was ahead and proceeded under her own steam. Had the hawsers parted it is

uncertain which might have been sunk. The weather was bad and stormy and we were subject to heavy risk.

The *Boston* being smaller than the *Lux* greatly helped and minimized the risk, lessening the jerking and straining in the heavy sea. Had the *Boston* been greatly injured heavy damage could have been awarded. The size of our ship was very important. A rudderless ship is always in danger and more so when in the track of other ships. The work was efficiently done. We had to pay out \$250.00 for actual repairs. The amount awarded should be reasonable (1).

In estimating the value of salvage services, circumstances, among others, to be considered by the Court are, the degree of danger to which the vessel was exposed, and from which she was rescued by the salvors, the mode in which the services of the salvors were applied, and the risk incurred by the salvors in rendering the services (2)

Where no special risk has been incurred by the salvors, salvage reward is allotted upon a calculation

(1) He relied upon the following cases:—The *Glenfruin*, Pritch. Adm. D. 2032.; The *Sappho*, Pritch. Adm. D. 2031; The *Middleton*, Pritch. Adm. D. 2026; The *Grantully*, Pritch. Adm. D. 2025.; The *Miranda* Pritch. Adm. D. 2012; The *City of Brussels*, Pritch. Adm. D. 1998; The *Gorji*, Pritch. Adm. D. 1984; The *Isis*, Pritch. Adm. D. 1967; The *Ayrshire*, Pritch. Adm. D. 1965; The *Inchrhona*, Pritch. Adm. D. 1959; The *Lord O'Neil* Pritch. Adm. D. 1953; The *Osiris*, Pritch. Adm. D. 1950; The *Memphis*, Pritch. Adm. D. 1949; The *Glamis Castle*, Pritch. Adm. D. 1947; The *Sussex*, Pritch. Adm. D. 1942; The *Verona*, Pritch. Adm. D. 1941; The *Rhynland*, Pritch. Adm. D. 1935; The *City of Berlin*, Pritch. Adm. D. 1934; The *Republic*, Pritch. Adm. D. 1932; The *France*, Pritch. Adm. D. 1931; The *City of Richmond*, Pritch. Adm. D. 1925.

(2) The *Chetah*, 38 L.J. Ad. 1; L.R. 2 P.C. 205.

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of a fair remuneration for time and trouble to the owners of the salving vessel and to each hand engaged. (1)

In estimating the amount of a salvage remuneration the Court takes into consideration, first, the value of the property saved, and next the actual perils from which it has been saved. In considering the perils, the possibility of assistance being rendered to the vessel in peril must be taken to lessen the amount to be awarded. (2)

Reference is also directed to the case of the SS. *Lydia* against the SS. *Millwall* decided by Sir Samuel Evans in the Admiralty Division on October 18th 1912, not yet reported, but published in an English newspaper called *Fairplay*, Oct. 24th, 1902.

W. A. Henry, K.C., for defendant.

It is less meritorious where the relieving steamer is a tow as in this case. Where the relieving steamer uses her own motive power it is more meritorious. The danger was nothing. The *Boston* could easily get out of the way in case of a breakdown.

The danger of running into the towed vessel is too remote.

Nothing indicates that the size of the *Boston* was the proper size for acting as a rudder for the *Lux*.

If there was no great strain on the *Lux* there was likewise none on the *Boston*, and vice versa.

There was no deviation nor delay to the salving steamer. She was bound to Halifax and arrived with very little, if any, delay.

We did the towing and thus saved the *Boston* her coal. A vessel which has steam is in less danger than without it.

(1) The *Otto Hermann*, 33 L.J. Ad. 189.

(2) The *Werra*, 56 L.J. Ad. 53; 12 F.D. 52; The *Edenmore* (1893) Prob. 79

The *Lux* was in no danger as she was not drifting around. She only required to be steered while her rudder was being repaired. She was in the line of steamers and could be reported by wireless. She was not in a stormy sea as in the case of the *Millwall*. The *Boston* in consequence lost no time from Turk's Island to Halifax. The time occupied was forty-eight hours from the time she connected until arrival in Halifax. The distance was less than 200 miles. The amount allowed should be very little more than for tonnage.

In The *Gorji* (1) the amount allowed is less than asked here.

Mr. *McInnes* replied.

DRYSDALE, L. J., now (November 1st, 1912,) delivered judgment.

The services here are Admiralty salvage services, the only question in controversy being the amount the salvors should be awarded.

The value of the ship salvaged is about \$90,000.00.

The *Lux* was in latitude 41. 30 North, longitude 64. 12 West on October 4th last in distress with a damaged rudder. She was in the track of ships, but in such a condition that she sent up distress signals and called for aid. The plaintiffs' ship, the *Boston*, went to her assistance and either steered or staid by her for forty-eight hours until she was safely landed in Halifax. The services, I think, were somewhat difficult as the weather was such as to part the hawsers, and laying by all one night was necessary in the effort to bring the *Lux* in.

The value of the salving ship, her cargo and freight was about \$96,000.00 and I must be guided as near as I can by the authorities in salvage awards.

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Taking all the circumstances into consideration and guided by the modern precedents, I am of opinion that fair and just salvage remuneration ought to be fixed at the sum of \$4,500.00, to be apportioned as follows:—\$3,750.00 to the owners of the *Boston* and \$750.00 to the master and crew; of this \$750.00 the sum of \$250.00 is awarded the master and the other \$500 to be divided between the other officers and crew according to their rating.

The master and crew are directed to be joined in the action in order that they may get the benefit of this award and to make the question as regard their award *res adjudicata*. I understood the parties in the hearing to consent to this joinder and to have the whole matter disposed of in this award.

Judgment accordingly.
