

1896

QUEBEC ADMIRALTY DISTRICT.

Mar. 17.

N. K. CONNOLLY, OF THE CITY
OF QUEBEC, AND MICHAEL
CONNOLLY, OF THE CITY OF
MONTREAL, OWNERS OF THE
STEAMBOAT *EUREKA*..... } PLAINTIFFS;

AGAINST

THE STEAMSHIP *DRACONA* AND HER CARGO.

*Maritime law — Salvage agreement — Validity of — Undue influence—
Quantum meruit—Evidence.*

Where an agreement for salvage services has been entered into between the master of a stranded ship and the master of a tug, unless it appears that the latter has taken advantage of the distressed condition of the stranded ship to make an extortionate demand, the court will enforce such agreement and not decree a *quantum meruit*.

2. In such a case the agreement is valid *prima facie*, and the *onus* is upon the defendant to show that the price stipulated for was unjust and exorbitant, and the promise to pay it extorted under unfair circumstances.

THIS was an action for salvage services alleged to be due upon a special agreement.

The facts of the case appear in the reasons for judgment.

The case was tried in March, 1896, before the Honourable George Irvine, Local Judge of the Quebec Admiralty District.

C. A. Pentland, Q.C. for the plaintiffs ;

A. H. Cook for the ship.

IRVINE, L. J., now (March 17th, 1896) delivered judgment.

The steamer *Dracona* sailed on a voyage from Middlesburgh to Montreal on the 4th August last

(1895). In the course of her voyage she ran ashore at a place called Pointe Jaune, near Fame Point, in the River St. Lawrence. It appears to have been a very dangerous and exposed position. The master went ashore and proceeded to Fox River and telegraphed to the agents of the ship in Montreal, who immediately took steps to send assistance.

A telegram was forwarded to the *Eureka* then lying at Caribou Island, by her agent in Quebec, who had heard of the accident, directing her to go to the assistance of the *Dracona*, which she immediately proceeded to do, arriving there on the morning of the 15th August.

Some discussion took place between the captain of the steamer and the agent of the tug as to the charge the tug should make for rendering assistance. It was then understood by both the tug's agent and the master of the *Dracona* that the powerful tug *Lord Stanley* with wrecking apparatus was on her way down to assist the wrecked vessel and would probably reach her on the following day. The *Eureka's* agent asked \$1,000 to stand by the ship to give all necessary assistance until eleven o'clock the next day, which was supposed to be the period when the *Stanley* would arrive.

The *Avalona*, a vessel belonging to the same owners, then came in sight, when the *Dracona* signalled to her to stop, and the *Eureka* took the master of the *Dracona* and the tug's agent on board the *Avalona*. The master said that he went on board for the purpose of consulting the other master on the position in which he was placed and particularly as to the claim for payment made by the tug. After considerable discussion as to the price, they returned on board the *Dracona*, when they finally agreed upon \$350 a day, to be paid to the *Eureka* until the wrecked vessel was either condemned or got off.

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It is claimed, 1st: That this charge is exorbitant, and, 2nd, that it was made under coercion—the agent of the tug taking advantage of the position of the master of the *Dracona* to force from him an agreement for more than his services were worth. The pressure alleged to have been brought on the master of the *Dracona* was a statement made by the master and agent of the *Eureka* that their business was the towing of vessels, and that they were then occupied in looking out for such work; that there were vessels then in sight who would require their services, and that remaining alongside the *Dracona* would be a loss of time and money to them unless they were adequately remunerated.

An agreement was then entered into which, however, was not reduced to writing for some days after.

In the meantime the *Stanley* did not arrive as soon as was expected, and the *Eureka* remained alongside the *Dracona*, keeping steam up and rendering what assistance was necessary, until the 21st of the month. In the meantime the ship had been condemned, and the *Eureka*, being about to leave her, obtained from the master a written acknowledgment of his claim, which was dated the 15th although only made on the 21st.

The question to be decided is whether the agreements made for the remuneration of the *Eureka* were fair and reasonable, or, whether they were extorted by an undue advantage being taken of the circumstances in which the *Dracona* was placed.

I shall always be disposed in cases where I am of opinion that a vessel in distress had been subjected, on the part of the salving vessel, to extortionate demands which have led to the making of a contract for the payment of excessive salvage services, to set aside such

contract, as I did in the case of *The Ismir* (1), ashore on the Island of Orleans in 1888.

The rules which govern such cases have been very clearly laid down in a recent case in the Probate Division of the High Court of Justice of England, that of the *Strathgarry* (2). It is there said :

The fundamental rule of administration of maritime law in all courts of maritime jurisdiction is that, whenever the court is called upon to decide between contending parties upon claims arising with regard to the infinite number of marine casualties, which are generally of so urgent a character that the parties cannot be truly said to be on equal terms as to any agreement they may make with regard to them, the court will try to discover what in the widest sense of the terms is, under the particular circumstances of the particular case, fair and just between the parties.

* * * If the parties have made an agreement, the court will enforce it, unless it be manifestly unfair and unjust, but if it be manifestly unfair and unjust, the court will disregard it and decree what is fair and just. This is the great fundamental rule. In order to apply it to particular instances, the court will consider what fair and reasonable persons in the position of the parties, respectively, would do or ought to have done under the circumstances.

A number of cases have been cited during the argument, in some of them slightly different language has been used by the judges—sometimes the word exorbitant has been used—sometimes the word inequitable, but in substance all the cases are, I think, consistent with the rule laid down in *Akerblom v. Price*, 7 Q. B. D. 129 at pp. 132, 133, as the fundamental rule.

I cannot go so far as the counsel for the defendant appears to do when he said that under no circumstances can parties situated as those in the present case, be considered to be so far in an equal position that would justify a contract being made between them, but that the salvor can only be entitled to a *quantum meruit*. I look upon a contract of the nature of the one made in this case as being *prima facie* binding, and that the onus of proof is thrown on the defendant to show that the price stipulated was unjust and exorbitant and the promise to pay it extorted under unfair circumstances.

(1) 14 Q. L. R. 353.

(2) [1895] Prob. 270.

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1st. I hold in this case that there was no undue influence exercised on the master of the *Dracona*. He was not dependent on the *Eureka* for assistance, he had within easy access another vessel belonging to the same owners who might have every opportunity of aiding him had there been a necessity for immediate assistance; and he made the arrangement after consulting with one of his own fellow-masters over the circumstances of the case; and, moreover, after several days reflection he confirmed the arrangement in writing without remonstrance or protest.

2nd. There has been in my opinion no convincing evidence that the arrangement was either unfair or unjust, the only testimony on that head has been that others might have done the work for less; but one of the defendant's own witnesses has, on cross-examination, admitted that the charge was fair.

I am, therefore, prepared to decide that there is nothing to justify the setting aside of the agreements which were made after due reflection and after consultation with others who were in the employment of the defendant owners, and very competent to decide; and that the agreement in itself was not unfair or unjust.

I award the plaintiffs the amount of the demand, with costs.

Judgment accordingly.

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

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