

1921

July 6.

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN

HERNANDEZ

v.

THE *BAMFIELD*.

*Shipping—Tariff—Practice—Marshal's fees on sale by auction—
Municipal license.*

The tariff of fees in force for marshals and sheriffs provides that "if the marshal, being duly qualified, acts as auctioneer, he shall be allowed a double fee on the gross proceeds."

Held: That the word "qualified" here used must be given its wider sense of competence and ability to perform the duties of auctioneer, and should not be restricted to a person "duly licensed" as such by the municipal authorities; and that where the marshal has such competence and ability, though not a duly licensed auctioneer, he will be entitled to the fees provided for in the said article of the tariff.

APPEAL by marshal for the British Columbia Admiralty District from the decision of the District Registrar disallowing the double fee in the sale by auction of a vessel under order of the court.

July 6th, 1921.

Appeal heard before the Honourable Mr. Justice Martin at Victoria.

The Marshal in person.

S. T. Hanky, contra.

MARTIN, L. J. A., this (6th day of July, 1921) delivered judgment. This is an appeal by the marshal in person from the taxation by the registrar of his fees and the question is was he right in disallowing the auctioneer's charges made by the marshal in selling the power vessel *Bamfield* by order of the court. The appropriate item in the table of fees, No. 5, declares that "If the marshal, being duly qualified, acts as auctioneer, he shall be allowed a double fee on the gross proceeds."

1921
 HERNANDEZ
 v.
 THE
 BAMFIELD.
 ———
 Reasons for
 Judgment.
 ———
 Martin L.J.A.

The registrar ruled that the expression "being duly qualified" should be construed as "duly licensed" as auctioneer by the City of Victoria, in which place the sale was held and as it was admitted that the marshal had not applied for or received an auctioneer's license, therefore his claim for a double fee was disallowed, but, with all due respect to the learned registrar's views, I am of the opinion that "qualified" is here used in the wider sense of competence, or, standard of ability, to perform a duty which it is conceded, had often been adequately performed by the marshal. The sense I think in which the expression is here employed is well illustrated in Crabbs English Synonyms, sub title, "Competent, Fitted, or Qualified," wherein it is said:—"An acquaintance with the matter to be done and expertness in the mode of performing it constitutes the qualification." On this ground alone I am therefore of the opinion that the appeal should be allowed, but it is desirable to note for further consideration when necessary, that I am not unmindful of a further reason in favour of such construction which might be advanced, namely, that it appears to be a strange thing in that any municipal requirement could intervene between the Court and

1921
HERNANDEZ
v.
THE
BAMFIELD.
Reasons for
Judgment.
Martin L.J.A.

its officers in disposing of any matter and by what agency it saw fit to direct of the property within its custody and control. It would seem to be an anomaly, that any officer of the Court who would be, by experience, qualified to dispose of its property throughout its entire jurisdiction over this province, should nevertheless be restricted in the performance of that duty by a local municipality.

Appeal allowed.
