

ADMIRALTY DISTRICT OF NOVA SCOTIA.

1891

Nov. 5.

THE SHIP "QUEBEC."

Salvage of ship and cargo—Principal and agent—Power of attorney given by crew to agent of owners of salvaging vessel for purpose of adjustment of salvage claim—Construction of.

A crew of a fishing schooner had performed certain salvage services in respect of a derelict ship and gave the following power of attorney respecting the claim for such services to the agent of the owner of the schooner: "We, the undersigned, being all the crew of the schooner *Iolanthe* at the time said schooner rendered salvage services to the barque *Quebec*, do hereby irrevocably constitute and appoint Joseph O. Proctor our true and lawful attorney with power of substitution for us, and in our name and behalf as crew of the said schooner, to bring suit or otherwise settle and adjust any claim which we may have for salvage services rendered to the bark *Quebec* recently towed into the port of Halifax, Nova Scotia, by said schooner *Iolanthe*; hereby granting unto our said attorney full power and authority to act in and concerning the premises as fully and effectually as we might do if personally present, and also power at his discretion to constitute and appoint, from time to time, as occasion may require, one or more agents under him or to substitute an attorney for us in his place, and the authority of all such agents or attorneys at pleasure to revoke."

Held, that this instrument did not authorize the agent to receive the salvage payable to the crew or to release their lien upon the ship in respect of which the salvage services were performed.

2. That payment of a sum agreed upon between the owners of such ship and the agent and the latter's receipt therefor, did not bar salvors from maintaining an action for their services.

ACTION for salvage.

The facts of the case are recited in the reasons for judgment.

October 14th, 15th, 16th, 17th, 19th, 23rd and 24th and November 2nd, 1891.

The evidence was taken before the Registrar.

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Reasons
for
Judgment.

Morrison and Smith for salvors ;

Ritchie for owners of ship *Quebec*.

MCDONALD (C.J.) L.J., now (November 5th, 1891) delivered judgment.

This is an action for salvage by the plaintiffs, the crew of the schooner *Iolanthe* of Gloucester in the United States of America, against the British ship *Quebec*, her cargo and freight. The *Quebec* was abandoned at sea on the LaHave Banks, off the coast of Nova Scotia, on the 8th September last, and on the same day was boarded by the salvors or some of them. On boarding the vessel they found the vessel making water rapidly through two auger holes which had been bored in her side. These they plugged, and stopped the leak. They then started to tow the ship to Halifax, where they arrived with her on the 12th September. It is admitted that the vessel was derelict, and that ship and cargo were saved by the exertions of the plaintiffs. The schooner *Iolanthe* was owned by one Joseph O. Proctor, junior, of Gloucester, who by deed dated 14th September, 1891, authorized and empowered his father, Joseph O. Proctor, senior, as his attorney "to bring suit or otherwise settle and adjust any claim which I may have for salvage services rendered to the barque *Quebec* recently brought into the port of Halifax, Nova Scotia, by my said schooner *Iolanthe*," and on the 16th of the same month the master and crew of the schooner executed a power of attorney to the same Joseph O. Proctor "for us and in our name and behalf as crew of the said schooner, to bring suit, or otherwise settle and adjust any claim which we may have for salvage services rendered to the barque *Quebec* recently towed into the port of Halifax, Nova Scotia, by said schooner *Iolanthe*, hereby granting unto our said attorney full power and authority in and concerning the premises as fully and

effectually as we might do if personally present." Acting under this power of attorney, Joseph O. Proctor, agreed with the owner of the *Quebec* to accept the sum of \$1,680 in full of salvage for the ship, and that amount was paid to him by the agents of the owner on the 19th September. The salvage on the cargo was reserved for negotiation with the owners of cargo. The only evidence as to the arrangement for salvage on cargo is that given in the testimony of George S. Campbell, of the firm of Corbett & Co., agents for the owners of the cargo. He says:—

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I had several conversations with Joseph O. Proctor, senior. He brought me the powers of attorney to him at the first interview I had with him, on the authority of these papers I treated with him as to salvage of the cargo. We made a settlement on 22nd September in the forenoon, we were to pay the parties represented by Proctor \$1,300 in full. This settlement was based on the supposition that the cargo was in perfect order. Proctor offered to take \$1,300. We accepted subject to approval of our principals. Before that approval was obtained the power of attorney to Proctor was cancelled. The notice of cancellation to us was after the arrangement with Proctor.

A release from Proctor, senior, was put in evidence dated the 19th September which acknowledges receipt of \$650 in settlement of the claim of the owner of the schooner on the salvage of the cargo, and \$46.43 for the claim of the master of the schooner on the same fund, which I assume was paid to him by Corbett & Co. The plaintiffs did not receive their money and became dissatisfied with the conduct of Proctor, and, on the 22nd September, they revoked and cancelled their power to him, of which due notice was given to Proctor, the owner of the ship and his agents and to the agents for the owners of the cargo. Negotiations for a settlement of the plaintiffs' claims were continued, but without success, and on the 8th October the ship was arrested under process from this court, and appearance was en-

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tered for the owners of the ship and cargo on the 9th October, and on the 22nd October the owners of cargo paid \$603.57 into court. The defendants contended that the payment to Proctor and his release and receipt for the money received by him is an answer to the plaintiffs' claim, while the plaintiffs contend: 1st.—That their signatures to the power of attorney were fraudulently obtained, that they did not know the nature of the paper they were signing and that it was not read over or explained to them—and 2ndly. That assuming the paper to be duly executed, it only authorized Proctor to settle and adjust the amount to be paid by the defendants, but did not authorize him to receive or them to pay to him the money payable to the plaintiffs, nor did it authorize him to adjust and settle the proportion of the salvage to be paid respectively to the owner of the schooner and the plaintiffs, and that the payment to him did not release their lien on the ship and cargo. As to the first point, I am of opinion that the men signing the power of attorney understood what they were doing and clearly comprehended the fact that they were, by executing the instrument, delegating power to Proctor to act for them to the extent of the power expressed by the words of the instrument. They were all, with two exceptions, able to read and write, and they admitted that the paper was read over to them, and I am satisfied from the evidence of Creed and the master of the schooner that the men intended to authorize Proctor to arrange with the owners of the ship and cargo the gross amount of salvage to be paid. But whether they authorized or intended to authorize him to settle and adjust their proportion of the salvage as between the owner of the schooner and themselves and release their lien, is a different and more difficult question. That question must be settled by a reasonable construction of the written instrument, as there

is certainly, no evidence outside of the written paper to lead the court to any such conclusion. Let us first discuss the right of Proctor to release the lien of the plaintiffs on the cargo. It will be remembered that the authority of Proctor to act for plaintiffs was cancelled on the 22nd September, and Campbell swears that the conditional agreement to accept and pay \$1,300 for the cargo was made between himself and Proctor on the same day, but before he had notice of cancellation. Campbell does not say when the \$650 was paid, whether before or after the notice of cancellation, and it is a somewhat significant fact that the release or discharge purporting to be made to the owners of the cargo is dated on the 19th September, three days before the day on which Campbell swears the agreement to accept \$1,300 was made. This curious discrepancy was not explained, and in connection with the exceedingly improper conduct of Proctor towards these men, for and to whom he was bound to act with the utmost good faith, necessarily leaves an unfavourable impression upon the mind. Apart, however, from these circumstances it is clear from the evidence of Mr. Campbell that, up to the time Proctor's authority was cancelled and notice of such cancellation given to Campbell, no agreement was made in relation to the cargo binding on either Corbett & Co. or Proctor. The amount agreed to was subject to the approval of the owners of the cargo; that approval was not given, if at all, till after the plaintiffs had resumed the right to control their own interests, and in my opinion they have not lost their lien upon the cargo and have a right to enforce it in this action. The payment of the salvage on the ship was made on the 19th and before notice to the owner or his agents that Proctor's authority was revoked. The only question, therefore, in that case is whether Proctor had

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authority under the instrument in question to release the lien which the law conferred upon these men. It is quite clear from the evidence that the plaintiffs did not intend to abandon their lien on the ship till they got their money as they kept possession of the vessel till she was arrested under the process of this court. The witness McKay says:—

On Saturday night the 12th September the barque got to anchor about 9 o'clock. I went on board of her, I think, on Tuesday after and we took turns keeping a watch on board of her to the time she was arrested.

The authority conferred by the instrument was "to bring suit or otherwise settle and adjust any claim which we may have for salvage services, &c." After the most careful consideration I can give the question, I have come to the conclusion that this power of attorney did not authorize the owner of the ship to pay, or Proctor to receive, the salvage payable to these men, and for which the law gives them a lien on the ship and tackle till paid, and that the payment to Proctor and his release or receipt cannot prevent these plaintiffs asserting their rights in this action. As to the amount of salvage to be allowed on the ship I think the plaintiffs must be bound by the agreement of their agent—the amount agreed upon \$1,680 is certainly not excessive. Under the circumstances in proof I think the distribution ought to be one-third to the schooner and two-thirds to the crew. The latter lost their fishing voyage entirely through the misconduct of the agent of the owner of the *Iolanthe*, and were obliged to remain in Halifax without means to prosecute their claim; while the schooner with the loss of a few days' time was able to refit and resume her trip with another crew. The salvage, therefore, to be allowed to the plaintiffs will be as follows:

The amount agreed upon as payable by ship	\$1,680,	1891
$\frac{1}{3}$ to the schooner <i>Iolanthe</i> and $\frac{2}{3}$ to the crew.		THE SHIP
60 per cent on cargo as valued.....	2,100	QUEBEC.
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$\frac{2}{3}$ per cent to the crew.....	\$2,520	

To be divided among 14, or \$180 each man.

The defendants will pay the costs.

*Judgment accordingly.**

Solicitor for salvors: *C. Hudson Smith.*

Solicitor for owners: *W. B. A. Ritchie.*

*REPORTER'S NOTE.—On appeal to the Supreme Court of Canada by the owners of the ship *Quebec*, this judgment was confirmed.