

1919
August 21.

BRITISH COLUMBIA ADMIRALTY DISTRICT
CLAYOQUOT SOUND CANNING COMPANY,
LIMITED, et al,

PLAINTIFFS;

v.

S.S. "PRINCESS ADELAIDE,"

DEFENDANT.

Towage—Apprehended risk of danger—Nature of services.

On October 13, 1918, in the afternoon, the "*Princess Adelaide*" ran aground on a reef on her trip from Vancouver to Victoria in a dense fog. There were on board 310 passengers besides mail and baggage. She was listing considerably to starboard with danger of sliding off and had wired for help, including the salvage steamer "*Tees*". There is always danger at this place of an unfavourable wind springing up. The "*Iskum*" with little danger to herself agreed to and did transfer all passengers, mail and baggage to a sister ship which had been called to the place of the accident.

Held.—1. That where there is apprehension of risk, or danger, to the ship, though no immediate risk or danger, the services voluntarily rendered such ship are in the nature of salvage services.

2. That though danger to the salving vessel is an ingredient of such services, it is not always necessarily present, and is not essential. "*The Andrew Kelly*" v. "*The Commodore*", (1919), p. 70, ante referred to, (48 D. L. R. 213).

3. That the degree of danger to life and property of the salvors and the greater or lesser number of ingredients of salvage services found to be present are elements to be considered in arriving at the measure of compensation.

THIS is an action for salvage services rendered by plaintiffs' schooner "*Iskum*" to the defendant. The case was tried before the Honourable Mr. Justice Martin at Victoria, B.C., on June 25, 1919.

The facts of the case are stated in the reasons for judgment delivered by trial Judge.

H. Beckwith, K.C., for plaintiffs.

James E. McMullen, K.C., for defendant.

MARTIN, L. J. A., (August 21, 1919) delivered judgment.

This is an action for alleged salvage services rendered by the plaintiffs' auxiliary gasoline schooner "Iskum" (registered tons 42.44; length 68 ft., 6 inches) to the defendant ship "Princess Adelaide" (registered tons 1,910; length 290 ft.) on October 13, 1918, at the northern entrance to Active Pass, where the "Princess Adelaide" had run aground on a reef near the lighthouse at Georgina point in a dense fog. For the purpose of this case the fair value of the "Iskum" may be taken to be \$17,000 and her cargo of salmon cans \$1,130; and of the "Princess Adelaide," \$360,000. The services rendered consisting in transferring 310 passengers and their baggage and 61 bags of mail from the "Princess Adelaide," when aground, to the steamer, "Princess Alice" during the fog. The "Iskum," like the "Adelaide," on her way from Vancouver to Victoria, sighted the "Adelaide" about 3.20 p.m. slightly on her port bow in the fog and went on into the Pass to determine her position and then returned to her in about half an hour, at which time it was arranged between the masters of the two vessels that the "Iskum" was to transfer the passengers, baggage and mail to the "Princess Alice," which had been summoned by the following wireless from the "Adelaide's" master to her owners at Victoria:

"Ashore at Georgina Point at top of high water, 12 feet of water on main reef amidships. Fuel oil tank leaking. Send boat for passengers."

and was expected to arrive in about a couple of

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hours, depending upon the fog, and she did arrive about five o'clock, and anchored out in the channel about three cables from the "Adelaide." In the interval the "Iskum" had come alongside the "Adelaide" and was taking the baggage on board when the "Alice" arrived, and in the course of four trips between the two vessels she transferred all the passengers, baggage and mail as aforesaid, to the "Alice," and left for Victoria at 7.30 p.m. The "Iskum's" master, S. B. Wells, says that during the operation of transferring the baggage, which came first, he could see two vessels, but when it came to the passengers the fog was so thick that he could only see the vessels occasionally and never clearly, and in this he is confirmed by his mate, Larsen, while the master of the "Adelaide," R. B. Hunter, says that he saw the "Alice" during the whole of that time. I have no reason to believe there is here any intentional misstatement, but I think the difference in view may be explained from the very much greater height of the bridge of the "Adelaide," from which objects might be more clearly seen than from the lower elevation of the "Iskum."

The position and condition of the "Adelaide," and state of weather and tide, as they appeared to her master on the day of the "Iskum's" services may best be gathered from the following wireless messages he sent that day to her owners:—

1. "310 passengers. No small steamers. Will have "to transfer with boats large amounts of baggage. "When will Tees be up? Fuel all spoiled, only one

“tank, which won’t last long. Weather calm, thick fog. When will ‘Alice’ arrive?”

“HUNTER.”

(The Tees was a special salving steamer).

2. “Schooner ‘Iskum’ arrived alongside. Will take passengers and baggage to ‘Alice.’ Will have to make three trips. Will take too long to go to Mayne Island wharf. ‘Alice’ will be here in about half an hour.”

3. “Star-side bow 30-feet sloping to 27-feet at gangway door. Still shoaling to 14 feet at after gangway doors. Forward end of dining-room 12 feet deepening to 15 feet under steam. Port side 30 feet at stem shoaling to 20 feet at forward gangway doors, gradually shoaling to 9 feet at after gangway carrying 12 feet right aft, ship’s head S.S.W., lighthouse right abreast the stern.”

4. “No. 2 oil tank full of water. (Salt).

“No. 3 “ “ (port) full of water.

“No. 3 “ “ (starb) leaking slightly, able to use oil.

“No. 4 “ “ (port) full of water.

“No. 4 “ “ (starb) leaking slightly.

“No. 5 “ “ full of water, bilges dry, also tunnel.”

At the time of the arrival of the “Iskum” arrangements were in progress to transfer the passengers to the Adelaide’s boats by means of a special gangway and thence to the island shore within a distance of 100 ft., but these were discontinued. It would also have been possible, if nothing inter-

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vened, caused by accident, weather, or atmosphere, to transfer by rowboats the passengers, baggage and mails to the "Alice," but it would have taken several hours (being at best a cumbrous process) not less than four, I am inclined to think, beginning at five p.m. and soon extending into darkness, whereas the "Iskum," which lay alongside from 3.30 to 5 p.m. when she made her first trip to the "Alice," had finished the transfer in time to leave for Victoria at 7.30 as aforesaid. I am clearly of the opinion that it would have been inexcusable in the circumstance if the master of the "Adelaide" had failed to avail himself of the first opportunity to transfer so large a number of passengers, because, as Dr. Lushington said in *The Thomas Fielden*¹, the paramount consideration is risk to human life, thus expressing it:—

Page 62. "Is it possible to contend for a moment "that the property was not in very great danger, "and that, to a certain extent, at a certain period, "there was risk to human life, and that to the extent of nineteen men at least? The time is of no "consequence. I have ever held the opinion that, "when once I can come to the conviction that human "life has been at stake, even for a short time, it is "the duty of the Court amply to reward the persons "concerned; and for obvious and plain reasons— "first, because from the necessity of the case, a very "great reward should be given wherever there has "been a sacrifice of human life; and, secondly, that "human life is above all other considerations, and "ought never to be exposed to unnecessary hazard "and risk. These are the principles."

¹ (1862), 32 L. J. 61.

And the same learned Judge said in the same case, p. 62.

“Now, of course, according to ordinary principles, “all these matters are governed by general rules; “and it is utterly impossible to go minutely into “each individual case and each particular point; “and it never is a satisfactory investigation, take “what pains you will, for it always will be that which “Lord Stowell used to call it, a *rusticum iudicium*.”

And so for these reasons I shall refrain from examining further in unnecessary detail all the facts which it is necessary to consider which make up what Dr. Lushington called in the *Charlotte*.¹

“The many and diverse ingredients of a salvage service,” which will be found classified in Lord Justice Kennedy on Salvage, 2nd edition, p. 133, at the end of which classification that learned author says:—

“Where all or many of these elements are found “to exist, or some of them are found to exist in a “high degree, a large reward is given: where few “of them are found, or they are present only in a “low degree, the salvage remuneration awarded is “comparatively small.”

In the article on Salvage,² written by Lord Justice Kennedy and others, it is said:—

“Salvage service in the present sense is that service which saves or contributes to the ultimate “safety of a vessel, her apparel, cargo, or wreck, or “to the lives of persons belonging to a vessel when “in danger at sea, or in tidal waters, or on the shore “of the sea or tidal waters, provided that such ser-

¹ (1848), 3, Wm. Rob. 68.

² 26 Hals. (1914), p. 557.

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"vice is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation."

And in the said book of the same learned author, *Kennedy, on Salvage*, p. 18, it is said:—

"Two things at least are essential to the constitution of a salvage service. There must, in the first place, be danger to the subject of the service. In the second place, the undertaking of the service must be a voluntary act on the part of the salvor."

The principal facts in favour of a salvage award that stand out in the case at bar are:—The stranding of the steamer; her appreciable list to starboard, and in such a position that the apprehension, as it then appeared, of her sliding off to her own peril and that help of the "Iskum" could, though slight, not be wholly ignored; the existence of a fog; the large number of passengers; and the uncertainty of an unfavourable wind springing up at any time at that season of the year. It is admitted that the "Iskum" stood alongside and placed herself at the disposal of the "Adelaide" for the purpose of transferring her passengers, baggage, and mails from 3.30 till 7.30 p.m., when that service was completed. Many cases were cited to me but none of them as is to be expected in these varying occurrences of the sea, is what might be termed close to the one at bar. On the general principle of salvage it was said in *The Phantom*¹ by Dr. Lushington, at p. 60:—

"I am of opinion that it is not necessary there should be absolute danger in order to constitute a salvage service; it is sufficient if there is a state

¹ (1866), 1, L. R. A. and E. 58.

“of difficulty, and reasonable apprehension. There
 “might be danger of further difficulty occurring,
 “and I think it is proved in this case, from the facts
 “to which I have adverted, that it was a matter of
 “importance for the vessel to be moved—that she
 “was, while she lay where she did, in reasonable ap-
 “prehension of danger, and that reasonable appre-
 “hension was fulfilled by the accident that oc-
 “curred.”

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And in *The Ella Constance*¹ Dr. Lushington also said, at p. 193:—

“It is a case in which there was no immediate
 “risk, no immediate danger, but there was a possible
 “contingency that serious consequences might have
 “ensued.”

The subject has lately been considered by Mr. Justice Bucknill in the *Suevic*² wherein he says at p. 157:—

“Cases of life salvage alone are of rare occur-
 “rence in this Court, and therefore it is necessary
 “carefully to consider the principles upon which a
 “salvage award may be made in such a case as this.
 “I apprehend that it will be accurate to say that the
 “principle which lies at the bottom of life salvage is
 “that there must, in the first instance, be actual
 “danger to the persons whose lives have been salv-
 “ed, or the apprehension of danger, and that seems
 “to me to cover the whole ground. If there is no
 “danger, or anything like danger, there is nothing
 “to be saved from.”

¹ (1864), 33, L. J. 191.

² [1908], P. 154.

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And at p. 158:—

"Now, the weather being, as I find it to have
"been, foggy or misty, so that the light could not be
"seen, but only the loom of it in the water, and the
"wind of force about six, as I find, with a ground
"swell, these people very properly, as the master of
"the *Suevic* thought, had to be landed with the
"greatest expedition.

"If anything had happened and any life had been
"lost through these people not being sent ashore as
"quickly as possible, very severe and harsh things
"would have been spoken of the master and of the
"great company he serves, and one may be satisfied
"that the master duly appreciated the position."

And at p. 159:—

"People are fond, sometimes, of using the word
"danger" only, but there is a great difference be-
"tween danger and risk of danger; and just as the
"principle of salvage here applies to people on this
"ship who were either in danger or risk of danger,
"so a tug which is being navigated even by the most
"skilful navigator would be, I find, either in danger
"or risk of danger in going to the neighborhood in
"which this ship was."

I find myself quite unable to say that there was not here that apprehension or risk of danger which constitutes salvage. The subject has been considered by me many times in this Court and a case which bears some relation to this one is the *Grand Trunk Pacific Coast S.S. Co. v. The "B.B."*,¹ wherein I held there was "an element of appreciable risk"; and see also my recent decision in *The "Andrew*

¹ (1914), 15 Can. Ex. C. R. 389, 17 D. L. R. 757, Mayers Adm. Law (1916), p. 544.

Kelly'' v. *The "Commodore."*¹ Some stress was laid in argument upon the fact that the "Iskum" was not in danger, but while that is one of the "many and diverse ingredients" of salvage, yet it is not an essential thereof — of the "*Ellora*'';² the "*Altair*''³ and the "*Toscana*.''⁴

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Viewing then the service here as salvage, I have to award the same and after full consideration of the circumstances I am of the opinion that the sum of \$1,000 is the proper award to make, and in so doing I bear in mind what was said by the Admiralty Court in the *London Merchant*.⁵

"A great steam navigation company is peculiarly "bound to encourage salvage assistance; they owe "it to the public; they are particularly engaged in "carrying the passengers; they are large contract- "ors for carrying the mail."

Here it must be remembered, not only the passengers but their baggage, and the mail were transferred expeditiously to a place of safety, the baggage being so much that the mate of the "Iskum" says it was stacked up forward so high that he could not see over the bow from the wheelhouse. The apportionment of this award will be on the principle cited in the case of the "*Andrew Kelly*," *supra* and I shall give further directions in regard thereto when the Registrar is furnished with particulars of the complement of the "Iskum's" crew.

There will be judgment accordingly for the plaintiff for \$1,000 and the costs follow the event.

Judgment accordingly.

¹ (1919), 19 Can. Ex. C. R. 70, 48 D. L. R. 213.

² (1862), Lush, 550.

³ [1897], P. 105.

⁴ [1905], P. 148.

⁵ (1837), 3 Hagg. 394 at 400.