

NOVA SCOTIA ADMIRALTY DISTRICT.

1911
Dec. 9.

DIE DEUTSCHE AMERIKANIS-
SCHE PETROLEUM GESSEL-
SCHAFT, OWNERS OF THE
STEAMSHIP *ENERGIE*, ET AL... } PLAINTIFFS;

AND

THE STEAMSHIP *BERWIND-*
MOOR HER CARGO AND
FREIGHT. }

THE COMMERCIAL CABLE }
COMPANY, ET AL..... } PLAINTIFFS.

AND

THE STEAMSHIP *BERWIND-*
MOOR HER CARGO AND
FREIGHT..... }

*Salvage—Meritorious Services—Remuneration—Towage—Salvage—Character of
ship rendering service.*

The SS. *Berwindmoor* was picked up some 70 miles S. S. E. of Sable Island in a disabled condition, in consequence of having lost her rudder, by the SS. *Energie* on the morning of the 27th November and brought into the port of Halifax. The position in which the ship was found was a dangerous one at that time of year. During the operations heavy weather prevailed for the greater part of the time, in consequence of which the salving ship lost a number of lines, one of her anchor chains and anchor, had her windlass broken, and sustained other damage which necessitated detention and repairs at Halifax. The time consumed in the salving work and in the consequent repairs amounted to eleven and a half days.

Held, that the services rendered by the *Energie* were of a meritorious character and that the sum of \$12,500 would be a reasonable allowance therefor, to be apportioned \$10,500 to the owners of the ship and \$2,000 to the officers and crew.

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2. When the *Energie* with the *Berwindmoor* was within thirteen miles of the mouth of Halifax Harbour, the weather at the time being fine and there being nothing to prevent the *Energie* completing her work without assistance, the SS. *Mackay-Bennett* was taken down by the agent of the owners of the *Berwindmoor*, and, by the directions of the agent, a line was put on board the disabled ship from the *Mackay-Bennett* and that ship assisted in the further work of getting the *Berwindmoor* into port.

Held, that, under the circumstances, the services rendered by the *Mackay-Bennett* could only be regarded as in the nature of towage—salvage, but that, having regard to the size, power and equipment of the ship, the ordinary rule in relation to remuneration for towage services should not apply.

THESE two actions claiming compensation for salvage services rendered in bringing the Steamship *Berwindmoor* into the port of Halifax were, by order of the Deputy Local Judge, consolidated and tried together at Halifax on the 6th day of December, 1911.

The facts are fully stated in the opinion of the learned Judge.

Ritchie, K.C., and *Robertson*, K.C., for the owners of the *Energie*.

Mellish, K.C., for the Commercial Cable Co., owners of the *Mackay-Bennett*.

Harris, K.C., and *Henry*, K.C., for the owners of the *Berwindmoor*.

DRYSDALE, D.L.J. now (December 9th, 1911) delivered judgment.

The *Energie* is a German steamer of 2,762 tons gross and 1,726 net, and whilst on a voyage from New York to Königsberg, Germany, laden with a cargo of oil she fell in with SS. *Berwindmoor* about 70 miles SSE. of Sable Island on the morning of Monday the 27th November last. The latter steamer was on a voyage to Philadelphia laden with iron ore, and when sighted by the *Energie* was in a disabled condition, calling for

assistance owing to a broken rudder. After exchanging signals the *Energie* offered her assistance and agreed to tow the *Berwindmoor* to Halifax, N.S.

For the purposes of this trial the values of the respective steamers, their cargo and freight was by agreement of parties fixed as follows:

The SS. <i>Energie</i>	\$ 102,000
Her cargo.....	50,000
Freight when earned by delivery of cargo at Königsberg.....	21,000
Total	\$ 173,000
The <i>Berwindmoor</i>	262,500
Her cargo.....	35,296
Freight when earned by delivery of cargo at Philadelphia.....	12,583
Total	\$ 310,379

On the morning of Monday, the 27th November, the *Energie* at the request of the *Berwindmoor*, first made lines fast to the bow of the latter ship and attempted to tow her, but owing to the absence of a rudder this method of procedure had to be abandoned, and thereupon the lines from the *Energie* were made fast to the stern of the *Berwindmoor*, the latter using her own steam and being towed by the *Energie*. Two lines were made fast for this operation and the ships started for Halifax about 11 a.m. on the 27th. Progress was made until Tuesday, about 7.20 p.m., when one of the lines parted and thereafter until Wednesday, the 29th, one line only was used. Before this, however, to wit, early in the operation of making fast and starting, the *Energie* had her windlass broken and her bulkhead injured by the strain pulling out an anchor chain to which one line was fast. On Wednesday

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night the remaining line parted, and the boats drifted until Thursday morning when the *Energie* again made fast. Once more they parted the line and again shackled up about 11 a.m. on Thursday the 30th. At this time they were near the entrance to Halifax Harbour (about 13 miles from Chebucto Head) and ready to proceed when the agent of the *Berwindmoor's* owners with the SS. *Mackay-Bennett*, a cable ship, arrived and put a line over the bow of the *Berwindmoor* from the *Mackay-Bennett* and proceeded into Halifax Harbour, the *Mackay-Bennett* towing and the *Energie* steering as before.

The services of the *Energie* were salvage services and meritorious. The obvious danger of being adrift 70 miles off Sable Island at the time of the year needs no comment. The weather, though not particularly rough when the towing commenced, became worse. On the night of the 28th a line was parted, and it was deemed prudent to simply hold the vessel that night by one line without making progress. Rough weather again on the 29th parted the remaining line and lost the *Energie's* anchor chain. By drifting all that night they were about as far from the mouth of Halifax Harbour on Thursday the 30th as they were on Wednesday afternoon, but in a different direction. And with the then prevailing weather conditions I have no doubt, on Thursday, without the aid of a tug or the *Mackay-Bennett*, the *Energie* could have brought the *Berwindmoor* to safe anchorage in Halifax. The only question here is one of amount. The *Energie* was four days either steering or towing the *Berwindmoor*. That is to say, she made fast on Monday morning and started at 11 a.m. They anchored in Halifax Harbour on Thursday about 6.30 p.m. During all this time the *Energie* was rendering effective service—most of

the time steering, sometimes breaking away and again picking her up; or lying by and shackling up as soon as conditions permitted lines to be run. The *Energie* also suffered considerable damage during the operations. She lost one anchor chain, a wire hawser, and several manilla hawsers. The Port Warden has put a value on the chain and hawsers proven to be lost and fixes such loss at about \$1,650. I accept this as approximately correct. Besides, the injury to her windlass and bulkhead necessitated repairs in this port to the extent of \$1,251.74. The machinists' bills in this connection I am satisfied with as disbursements rendered necessary solely by injuries received in the act of assisting, and not by any fault or default of the *Energie's* officers.

Then the *Energie* was compelled to lay in this port for repairs six and a half days. I do not think she could have been despatched sooner, as I noticed, to expedite matters, the machinists worked on Sunday; and I find she had reasonable despatch. It would take her one day at least to regain her position to resume her voyage to Germany. Thus it will be seen the *Energie* was detained at and by reason of her services eleven and a half days. She had by reason of this deviation to take in extra coal at Halifax that cost \$541, besides paying port charges, pilots, tugs, &c., in this port and the services of an agent here amounting to about \$800. It will be seen that the owners of the *Energie* have on account of the aid rendered been obliged to disburse \$4,242, or thereabouts, besides eleven and a half days delay of their ship and consequent loss with the daily outgo necessary to man and victual such a vessel.

Considering all the circumstances, the nature of the services, the value of the salved property, the danger

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that undoubtedly existed at the time that the *Energie* fell in with the *Berwindmoor*, the hazardous undertaking and all the attendant circumstances I am of opinion that the sum of \$12,500 is a reasonable allowance to the salvors—\$10,500 to the ship and \$2,000 to the officers and crew. I will apportion the \$2,000 before decree on production of the list of officers and crew.

RE COMMERCIAL CABLE COMPANY'S CLAIM.

The action referred to in the above reasons for judgment and this one were by order consolidated and tried together.

I am of opinion no claim can be made for salvage services on account of the Wednesday trip to the *Berwindmoor* off the mouth of Halifax Harbour.

On Wednesday, the day previous to the day upon which the services claimed for were performed, the *Mackay-Bennett* upon receipt of a wireless message to the effect that the *Berwindmoor* was off the harbour in a disabled condition, went out to her assistance, but finding her in charge of the *Energie* and her services having been declined, returned to port.

When she went out on Thursday it was an assured arrangement that her line would be taken on board the *Berwindmoor* and that she should tow, or assist in towing, the vessel into the harbour. I do not think that at the time the *Mackay-Bennett* was taken out on Thursday by the agent of the owner of the *Berwindmoor* that the latter vessel could be reasonably said to be in danger. She was some thirteen miles off the mouth of the harbour, or that distance from Chebucto Head, in charge of the *Energie*. The weather was fine, and, no doubt owing to the delays on the way caused by the difficulties encountered by the *Energie* and

Berwindmoor, the owner was anxious to expedite the arrival. The *Mackay-Bennett* was taken under the circumstances just as a prudent or anxious owner would reasonably take a powerful tug to hasten the arrival. He assured the captain of the *Mackay-Bennett* that his line would be taken and he could tow to Halifax, and went out with that understanding. No agreement was made for the services. It is true the *Mackay-Bennett* assisted a disabled vessel. If it were not for this the services would be mere towage. As it is I think it may be said to be services in the way of towage, salvage. But the remuneration for what was to my mind little more than a certain towing engagement in fine weather is not the subject for any large allowance. Of course I must bear in mind that the *Mackay-Bennett* was a very powerful vessel, equipped as a cable ship with a crew of 83 men, and is not in any sense a tug-boat, and if an owner engages her services, even for towing, owing to her great strength and equipment, no ordinary tug fee scale would or should apply.

I regard the sum of \$600 as reasonable compensation for the services rendered, \$500 to the owners and \$100 to the captain.

Judgment in both cases accordingly.

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