

Friday, July 11.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

JÖRGENSEN v. NEPTUNE STEAM
 FISHING COMPANY, LIMITED.
 THE "HANS EMIL."

*Shipping Law—Salvage—Life Claims—
 Foreign Vessel—Wholly or in Part within
 British Waters—Rescue on High Seas—
 Merchant Shipping Act 1894 (57 and 58
 Vict. c. 60), sec. 544, sub-sec. 1.*

The Merchant Shipping Act 1894, section 544, sub-section 1, enacts—"Where services are rendered wholly or in part within British waters in saving life from any . . . foreign vessel . . . there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage."

The master and crew of a Danish vessel when about 200 miles S.E. by S. from Iceland, which was the nearest land, were at their own request taken from their own vessel by a British steam trawler, and were safely conveyed in her to Hull. In an action for settlement of a dispute as to salvage the owner and crew of the steam trawler claimed for life salvage. *Held* that their claim must be repelled, in respect that the salvage services had not been rendered either "wholly or in part within British waters."

*Shipping Law—Salvage—Remuneration
 for Services—Measure of Award—Derelict.*

A schooner was found derelict by a steam trawler about 80 miles from Iceland, and was towed thence about 500 miles into Aberdeen. The value of the salvaged vessel was £800, and the value of her cargo £300. The value of the steam trawler was £5000. The salvage services were rendered without any special risk to the salvor except from fog. The time which was occupied in towing the schooner to Aberdeen and returning to the fishing ground was eight days. The owners of the trawler were put to the expense of £150 in conducting the salvage operations. The Sheriff-Substitute gave the trawler £400 as salvage—£300 to the owner and £100 to the master and crew. In an appeal for reduction of the amount, the Court, while expressing the opinion that the award was very liberal, *refused* to interfere with the Sheriff-Substitute's decision.

This was an application presented to the Sheriff Court at Aberdeen under the Merchant Shipping Act 1894, secs. 547-548, for the determination of a salvage dispute. The petition was brought at the instance of Jens. Ph. Jörgensen, shipowner, Thuro, Denmark, owner of the Danish schooner "Hans Emil," the vessel in respect of which the salvage claims were made, and he called as defenders the Neptune Steam Fishing Company, Limited, Hull, owners of the

steam trawler "Tugela," and George Walton, trawl shipowner, Hull, owner of the steam trawler "Royalist," who had claimed payment respectively of £150 in name of life salvage, and of £630 for salvaging the vessel and cargo.

The pursuer, the owner of the "Hans Emil," craved the Court to determine the amount or amounts payable by him to the defenders. He maintained that the claim of the Neptune Steam Fishing Company was not well founded in respect, *inter alia*, that the services were not rendered to any extent within British waters. He admitted that the defender George Walton was entitled to salvage, but maintained that his claim was grossly excessive.

The defenders consented to the dispute being determined in the Sheriff Court.

Proof was allowed and led.

The facts were as follows—The "Hans Emil" was a schooner-rigged sailing vessel of about 93 tons register. In the month of July 1901, while on a voyage from Norway to Iceland with a cargo of timber, she encountered storms and suffered damage, and was partly disabled. The mate was washed overboard, and a seaman was so seriously injured as to be unable to work. This left only the master and two boys to navigate the ship. On Friday evening, 19th July, when the "Hans Emil" was about 200 miles S.E. by S. from Iceland, which was the nearest land, she was sighted by the "Tugela," which bore down upon the "Hans Emil," and at the request of the master took off the master and the crew, three in number, including the injured man. The "Hans Emil" was then abandoned and left derelict, and the master and crew were taken to Hull in the "Tugela," and safely landed there.

On Monday, 22nd July, the steam trawler "Royalist," when about 80 or 90 miles from Iceland, and about 490 or 500 miles from Aberdeen, sighted the "Hans Emil," and finding her to be a derelict put a crew on board her, consisting of the mate and two seamen, took her in tow, and brought her successfully into Aberdeen on Friday 26th July. The "Hans Emil" was quite water-tight. The "Royalist" had no difficulty in taking the "Hans Emil" in tow, and it did not appear that the "Royalist" while towing the derelict was in any special danger except from fog. The fog began on Wednesday 24th, and continued till they reached Aberdeen. On the 22nd and part of the 23rd the weather was fine. On the 23rd the wind rose and there was a heavy swell, which continued on Wednesday 24th. On Wednesday there was apparently some danger of the tow rope parting, and the engines of the trawler suffered some strain owing to the towage in the swell.

The "Royalist" took four days to get to Aberdeen with the "Hans Emil" in tow and four more days to get back to her fishing ground. She thus lost eight days' fishing. Allowing for the expense of running the boat during a week and other outlay, the owner of the "Royalist" in

conducting the salvage was put to expense, which, as estimated by the Sheriff-Substitute, amounted to fully £150.

The value of the "Royalist" as shown by the sum for which she had been sold subsequent to the date of the salvage, was £5000.

The seamen at first put on board the "Hans Emil" from the "Royalist" were the boatswain (Jebb) and a man named Forward, but Jebb having been taken ill was replaced by a man named Brewington.

It was admitted that the value of the cargo on the "Hans Emil" was £300, but the parties were at issue as to the value of the vessel herself. It was ultimately held by the Court to be established that her value was £800.

On 29th November 1901 the Sheriff-Substitute (HENDERSON BEGG) pronounced this interlocutor—"Determines the following amounts to be paid by the pursuer to the defenders for the salvage services rendered by them respectively, viz., £150 to The Neptune Steam Fishing Company, Limited, and £400 to George Walton, and decerns against the pursuer for payment thereof; Further directs the said Neptune Steam Shipping Company, Limited, to apportion and pay the said sum of £150 as follows, viz. (then followed the apportionment); and directs the said George Walton to apportion and pay the said sum of £400 as follows, viz., £300 to himself as owner of the 'Royalist'; £30 to the captain (Samuel Murlin); £25 to the mate (Robert Lawie); £6 to the chief engineer; £4 to the second engineer; £10 to the boatswain (Jebb); £9 to the third hand (Forward); £7 to the spare hand (Brewington); £3 to the other spare hand (Goodman), and £2 to each of the three remaining members of the crew: Finds the said two defenders entitled to the expenses of process," &c.

Note.—"It is admitted that the value of the cargo of the 'Hans Emil' was £300, and I think it sufficiently proved that the value of the vessel was £800. The salvage operations did not result in the earning of freight to any extent, for the vessel was brought by the salvors to Aberdeen, which is practically as far as Mandal from the port of destination. I therefore do not take into consideration the freight which the vessel earned after she had been repaired in Aberdeen.

"It thus appears that the sums I am awarding in name of salvage amount to one-half of the value of the property salvaged. This is an exceptionally large proportion, but the circumstances are exceptional. Not only were the salvage services extremely meritorious, while the value of the salvaged property was small, but there were three specialties which appear to me to necessitate a high award. In the first place, there were two sets of salvors, one of life and the other of property, each set being entitled to a fair award irrespective of the claim of the other. In the second place, the property salvaged was derelict. In the third place, the salvors of the property appear to have been put to the expense of fully £150 in conducting the salvage opera-

tion. It is certainly desirable that trawling steamers, which are generally eminently qualified to render salvage services, should be encouraged to do so, and I do not think that they would have sufficient encouragement if I awarded anything less than I am doing in the present case.

The pursuer appealed, and argued—(1) The amount of salvage awarded to the owner of the "Royalist" (£300) was excessive. £150 would have been ample. There was no case on record where the joint award had amounted to half the value of the property salvaged unless the services rendered had been most "meritorious" or unless personal risk of life on the part of the salvors had been involved. There was nothing of that kind here. The salvors might have taken the vessel to Iceland or Faroe, but instead of doing so they had taken her to Aberdeen in the hope of getting a bigger award. It had not been proved that the value of the "Hans Emil" was £800. The following authorities were cited on the question of the amount of salvage:—*The "True Blue"* (1866), L.R., 1 P.C. App. 250; *The "City of Chester"* (1884), 9 P.D. 182; *The "Hebe"* (1879), 4 P.D. 217; *The "Acacia,"* February 15, 1901, 3 F. 491, 38 S.L.R. 339; *The "Frances Mary"* (1827) 2 Hagg. Ad. Rep. 89. (2) *As to the claim for life salvage.* No claim arose unless the salvage had taken place in British waters—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 544. The owners of the vessel were not bound to pay life salvage unless some of the property had also been saved, so that if the derelict vessel had not afterwards been salvaged by the "Royalist" no claim for life salvage would have been exigible. The decision in the case of *The "Pacific"* (cited *infra*), relied on by the defenders, was not binding on this Court. The following cases were cited in regard to life salvage:—*The "Willem III."* (1871), L.R., 3 A. & E. 487; *The "Woosung,"* (1875), 44 L.J. Ad. 45.

Argued for the defenders the Neptune Steam Fishing Company, Limited—Prior to the Merchant Shipping Act of 1854 (17 and 18 Vict. cap. 104), no claim was exigible in respect of the salvage of life alone, apart from property. The Act of 1854, however, sanctioned it, and the Act of 1894 gave it a preference. The present case was on all fours with the case of *The "Pacific,"* [1898], P. 170. They also referred to *The "Johannes"* (1860), Lush. 182. The case of *The "Woosung,"* cited by the pursuers, was inapplicable, as the salvaging there was not done on the high seas, the crew being rescued from a dangerous position on an island in the Red Sea. The Court will not interfere with an award of salvage made by the Judge of first instance unless that award is unreasonable—*The "Gantock Rock,"* June 19, 1900, 2 F. 1060, 37 S.L.R. 804.

Argued for the defender George Walton—The value of the cargo and ship have been found to amount to £1100, and the award made in name of salvage to this defender (£400) was reasonable. In the

cases of *The "Pacific"* and *The "Hebe"* (cited above) proportionate amounts were given. The ship and the cargo were making common cause here, and so both could be taken into account in fixing the salvage award. The expense of the salvage operations to this defender (£150) must also be considered in fixing the amount to which he was entitled.

At advising—

LORD TRAYNER—We have here two salvage claims, one for the salvage of a derelict ship and her cargo, the other for life salvage.

The value of the derelict ship is stated by the Sheriff-Substitute to be £800, and her cargo £300. The value of the cargo is admitted, but the petitioner says that the value put upon the derelict ship is excessive, and should not exceed £450. I think there is evidence of value sufficient to warrant the finding of the Sheriff-Substitute, and I take it therefore that the salvaged property was of the value of £1100. The Sheriff-Substitute has awarded £400 to the salvors, which I cannot regard in the circumstances of this case as otherwise than an exceedingly liberal award. I should not have been disposed to allow so much, but the Sheriff-Substitute's award is not so extravagant as to induce me to interfere with it.

The claim for life salvage must, I think, be disallowed. By the 544th section of the Merchant Shipping Act 1894 claims for services rendered in saving life from foreign vessels (which was the case here) are only allowed where the salvage services have been "rendered wholly or in part within British waters." The services here claimed for were rendered on the high seas at a point where the nearest land was distant about 200 miles. It is said that the services were rendered partly in British waters because the salvors brought the rescued men to Hull. But I think the men were salvaged whenever they were taken off the disabled vessel they were abandoning and placed on the deck of another vessel which was seaworthy. They were thus rescued from the peril which rendered salvage service necessary. It was not necessary that in order to be salvaged they should be landed in an English port, or indeed in any other port.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"Sustain the appeal and recal the interlocutor appealed against in so far as it finds—(1) that the pursuer (appellant) is bound to pay to the Neptune Steam Fishing Company, Limited, the sum of £150; and (2) finds the pursuer (appellant) liable to said company in the expenses of process: Find in fact that the services for which the said company claim now to be recompensed were not rendered wholly or partly within British waters, and in law that

the said company have no claim to be recompensed for said services to the pursuer (appellant): Assoilzie the pursuer (appellant) from the claim made by said company: *Quoad ultra* dismiss the appeal and decern: Find the pursuer (appellant) liable in expenses to the respondent George Walton since the date of the interlocutor appealed from, and remit," &c.

Counsel for the Pursuer and Appellant—Salvesen, K.C.—Younger. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders and Respondents The Neptune Steam Fishing Company, Limited—Aitken. Agents—Alexander Morison & Co., W.S.

Counsel for the Defender and Respondent George Walton, the owner of the "Royalist"—M'Clure—D. Anderson. Agents—Macpherson & Mackay, S.S.C.

Tuesday, July 15.

FIRST DIVISION.

[Sheriff of the Lothians.

MIDLOTHIAN COUNTY COUNCIL *v.*
PUMPHERSTON OIL COMPANY,
LIMITED.

Process—Rivers Pollution Prevention Act 1876 (39 and 40 Vict. c. 75), sec. 11—Removal of Sheriff Court Process to Court of Session—Property—River—Nuisance.

Circumstances in which petitions, presented in different Sheriff Courts at the instance of the respective County Councils, and against various defenders, but all relating to the pollution of the same river, were removed into the Court of Session, under the provisions of section 11 of the Rivers Pollution Prevention Act 1876.

Procedure for removal into Court of such petitions.

The Rivers Pollution Prevention Act 1876 enacts (section 11)—"Any plaint entered in a County Court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a County Court, and on such terms as to security for and payment of costs and such other terms (if any) as such judge may think fit."

By section 21 (5) it is provided that in Scotland the expression "the County Court" shall mean the Sheriff of the County, and shall include the Sheriff-Substitute, and that the expression 'plaint entered in a County Court,' shall mean petition or complaint presented in a Sheriff Court; and sub-section (6) that the expression, 'the High Court of Justice,' shall mean the Court of Session, in either Division of the Inner House thereof."

The County Council of Midlothian presented a petition in the Sheriff Court of the