

1892 E. CHURCHILL & SONS (DEFEND- } APPELLANTS;
 *Feb. 23, 24. ANTS)..... }
 *May 2. AND
 DANIEL MCKAY AND OTHERS } RESPONDENTS.
 (PLAINTIFFS)

IN RE THE SHIP QUEBEC.

ON APPEAL FROM THE LOCAL JUDGE IN ADMIRALTY OF
 THE EXCHEQUER COURT FOR NOVA SCOTIA.

*Power of attorney—Construction of—Authority to settle and adjust claim—
 Right to receive payment under.*

A crew of sailors claiming salvage from the owners of a vessel picked up at sea gave a power of attorney to P. authorizing him to bring suit or otherwise settle and adjust any claim which they might have for salvage services, &c.

Held, affirming the decision of the local judge in admiralty, that P. was not authorized to receive payment of the sum awarded for salvage or to apportion the respective shares of the sailors therein.

Taschereau J. took no part in judgment entertaining doubts as to the jurisdiction of the court to hear the appeal.

APPEAL from a decision of the local judge in admiralty for the district of Nova Scotia in favour of the plaintiffs.

The facts of the case are thus stated by the Admiralty Judge in giving 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.

*PRESENT:—Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.

On boarding the vessel they found the vessel making water rapidly through two augur 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 ship 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, "I had several con

1892
 CHURCHILL
 & SONS
 v.
 MCKAY.
 —
In re
 THE SHIP
 "QUEBEC."
 —

1892
 CHURCHILL & SONS
 v.
 McKAY.
 In re
 THE SHIP
 "QUEBEC."

versations 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 (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 Proctor, 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, an appearance was entered 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 contend 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 2nd. 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.

1892
CHURCHILL
& SONS
v.
McKAY.
—
In re
THE SHIP
"QUEBEC."

The decision of the judge was that the power of attorney did not authorize the owners of the *Quebec* to pay to Proctor, or Proctor to receive from them, the amount of salvage awarded and that Proctor's release of the plaintiff's claim did not prevent plaintiffs from maintaining this action. The defendants appealed.

W. B. Ritchie for the appellants cited the following cases on the authority of Proctor under the power of attorney to receive payment: *Hatch v. Hale* (1); *Hawkins v. Avery* (2); *New York Railway Co. v. Bates* (3); *Rex v. Martin* (4).

MacCoy Q.C. and *Morrison* for the respondents referred to *The Sylph* (5); *The Sarah Jane* (6); *Coondoo v. Watson* (7).

Sir W. J. RITCHIE C.J.—I think the evidence very clearly shows that this man Proctor was dealing with those unfortunate seamen in a most improper and objectionable manner. They were in Halifax waiting for the salvage, without means and unable to get any reasonable information from either Proctor or the

(1) 15 Q. B. 10.

(2) 32 Barb. 551.

(3) 2 Am. Dig. 1104.

(4) 7 C. & P. 549.

(5) L. R. 2 Ad. & Ecc. 24.

(6) 2 W. Rob. 110.

(7) 9 App. Cas. 561.

1892 agents of the ship-owner, and Proctor having got
 CHURCHILL the money, rightly or wrongly, went off with it;
 & SONS and I do not think the conduct of the agents of
 v. the ship is to be commended and it seems very
 McKAY. much as if they were acting in concert with
 In re Proctor, rather than with a desire to aid the
 THE SHIP men in preventing the money reaching the hands
 "QUEBEC." of Proctor as they desired, though, it is true, it may be
 Ritchie C.J. that they were influenced by the belief that Proctor
 was authorized to receive the money and therefore were
 unwilling to assist the men in any attempt to enforce
 the payment from the ship-owners notwithstanding
 the payment to Proctor.

Be this as it may, I am not disposed to question the accuracy of the finding of the learned Chief Justice "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 as expressed by the words of the instrument," but I do not think they authorized or intended to authorize Proctor to settle and adjust their proportion of the salvage as between the owners of the schooner and themselves, or receive their shares and release their lien until they actually received their respective shares. Whether such was their intention or not must depend on the reasonable and fair construction of the written instrument itself. The words of this power of attorney are :

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 in our names 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 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.

1892
CHURCHILL
& SONS
v.
MCKAY.

In re
THE SHIP
"QUEBEC."
Ritchie C.J.

It is for the judge to decide as a question of law on the construction of this power of attorney given by the crew to Proctor, inasmuch as the construction of written instruments is in all cases matter of law for the court. *Berwick v. Horsfall* (1); *Neilson v. Harford* (2). In my opinion this power of attorney must be strictly construed.

In *Attwood v. Munnings* (3) Bayley J. says:—

The plaintiff in this case relies on the authority given by two powers of attorney which are instruments to be construed strictly.

And again:—

The words must be confined to that which is their obvious meaning. And the same case shows that the general words are not to be construed at large, but as giving general powers for the carrying into effect the special purposes for which the power of attorney was given.

If the power conferred must be pursued strictly and so construed in ordinary cases, how much more so in a case such as this where seamen, whose interests it is the policy of the courts of admiralty to protect, are concerned.

Now what does the power of attorney authorize Proctor to do?

For us and in our name to bring suit or otherwise settle and adjust any claim which we may have for salvage services rendered to the barque *Quebec*, granting to 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.

But not a word about the distribution of the money or receiving it or releasing or discharging the ship.

(1) 4 C. B. N. S. 460.

(2) 8 M. & W. 806.

(3) 7 B. & C. 283.

1892

CHURCHILL
& SONS

v.

McKAY.

*In re*THE SHIP
"QUEBEC."

Ritchie C.J.

It authorizes a suit to be brought which was not done, and in the event of a suit not being brought to settle and adjust any claim, &c.; that, as I read the instrument, authorized him to fix and determine the amount to be paid by the owners of ship and cargo on account of the salvage services, but having settled and adjusted the amount I can find no language in the power of attorney to authorize Proctor to receive the amount of such adjustment, and to release and discharge the lien which the law gave the seamen on the vessel and cargo until their salvage claims were paid to them. Under this power Proctor would take all necessary means of executing it with effect, that is to say, all necessary means to settle and adjust the amount as between the owners of ship and cargo and the sailors. But receiving the money and fixing the amount to be received respectively by ship-owner, captain and seamen, as between themselves, were matters entirely independent of settling and adjusting the amount between owners of cargo and sailors. If such was the intention of this instrument, prepared at the instance of Proctor, surely they should not have been asked to sign until this was clearly pointed out to them, and as their interests were in conflict with that of the ship-owner I think they should have had legal assistance. But I think the notary who drew the power of attorney clearly shows that it was intended only to apply to a settlement of the amount of the salvage claim. He says on his examination at the trial:—

I am a notary public and shipping broker at Halifax. The first thing I had to do with the *Quebec* was at the request of Joseph O. Proctor to prepare a power of attorney. This was on 16th September last about 10 a.m. I prepared the power of attorney. The captain and some of the crew of the *Iolanthe* came to my office with Proctor. Proctor brought the paper with him. The seal on the face of the

paper now was then on the paper. Proctor and the captain of the schooner then brought the crew to sign this paper. Proctor explained to the crew what the nature of the instrument was. He told them it gave him the exclusive power to make all arrangements with regard to the salvage of the ship and cargo, and he would do all in his power to make the best settlement possible. I read the power of attorney over to the crew myself, and explained it to them several times. They did not all sign at the same time, but in batches. I read the paper and explained it to each batch. Every man who signed the paper in my presence had the paper read and explained to him. The men were sober as far as I could see. They were intelligent and asked questions about the paper. I read it to Seibe. He asked for an explanation. He wanted to know what the document was and what powers it gave. I explained to him that it gave full powers. He seemed to me to be sober. I told him and all of them that Proctor had full powers. There was no force or undue persuasion used in my presence.

Don't know where the power of attorney was prepared. The paper was signed by all the men during the morning. The master of the schooner and Proctor brought them to my office. John J. Collins was the master. There was no hesitation to sign on the part of the men. I told them they were giving Proctor absolute power to settle the salvage on ship and cargo. Joseph O. Proctor was not the owner of the *Iolanthe*. He told the men that he had a power of attorney from the owner of the schooner. He told the men he was the agent for the owner of the schooner. He did not say he was the owner.

What are the full powers the notary referred to but to settle the amount of salvage on ship and cargo and to make the best settlement possible? No doubt payment to the attorney of plaintiff is payment to himself; this may well be, for in such a case he is employed to collect the debt and the right to receive it is necessarily incident to the duty to collect, and then again he is an officer of the court and under its control. But an agent under a power of attorney stands in a very different position; he can only do what he is expressly authorized to do. His authority is confined to the very terms of the power. Thus payment of a debt to an agent employed to sue the defendant is not payment to the plaintiff.

1892
 CHURCHILL
 & SONS
 v.
 MCKAY.
 In re
 THE SHIP
 "QUEBEC."
 Ritchie C.J.

1892

CHURCHILL
& SONS

v.

McKAY.

*In re*THE SHIP
"QUEBEC."

Strong J.

In *Yates v. Freckleton* (1) "the court were clear that an agent employed to sue is not therefore authorized to receive payment. They said it had been formerly doubted whether payment to the attorney was payment to the party, though it was now settled to be so."

STRONG J.—This appeal cannot be sustained. The words of the power of attorney "to bring suit or otherwise settle and adjust any claim which I may have for salvage services rendered to the barque *Quebec*" were wholly insufficient to authorize payment to the attorney. Neither the word "settle" nor the word "adjust" implies any such authority, but they refer merely to the ascertainment of the amount due to the constituent. This is so plain that no reasoning or authority is required to demonstrate its correctness. "Adjust" plainly means to ascertain and in addition to the word "settle" being by itself insufficient to warrant payment, the principle of *noscitur a sociis* applies to restrict its meaning.

The appeal must be dismissed with costs.

TASCHEREAU J.—I am not satisfied that we have jurisdiction to entertain this appeal, and I take no part in the judgment. I refer to the Imperial Colonial Courts of Admiralty Act of 1890, 53-54 V. c. 27.

GWYNNE and PATTERSON JJ.—concurred in dismissing the appeal.

Appeal dismissed with costs.

Solicitor for appellants: *W. B. Almon Ritchie.*

Solicitor for respondents: *C. Hudson Smith.*