

8th, May, 1951

Judge :

The Hon. Mr. Justice Harding, B.Litt., LL.D.

Vice Admiral Geoffrey Alan Brooke Hawkins,

C.B., M.V.O., D.S.O.

versus

Cecil Pace ne. et.

Salvage — Towage — Assessment of Reward.

A very ample discretion is exercised by the tribunal which has to assess a salvage award. In the exercise of this discretion there are, of course, certain broad principles which the Court recognises as proper guides to its judgment; and the Court always seeks to combine the consideration which is due to the owners in the protection of their property with the liberality due to the salvors in remunerating meritorious services.

But, in addition to these broad guiding principles, there are certain material circumstances which fall to be considered in fixing the amount of the reward; which the Court outlined in this judgment.

By its judgment of the 13th. February, 1951, this Court disposed of the first demand contained in the writ-of-summons aforementioned, declaring that plaintiffs proprio et nomine are entitled to salvage:

The Court will now deal with the remaining demands;

Proceeding to deal with the amount of the salvage award, there is no doubt that a very ample discretion is exercised by the tribunal which has to assess the salvage award; so much so that the practice of the Privy Council of the English Court of Appeal, in dealing with appeals from the "quantum" of the salvage award, has been in the sense that, unless there has been a misapprehension of facts, or an error in principle, then, if the amount is not unreasonable, the Appellate Court does not interfere (vide *Star of Persia* case, 6 Asp. M.L.C. 220, at page 221; vide also the *Carrier Dove* case, P.C.N.S. 243.

at page 254, in which it was said by the Privy Council that "their Lordships would not enter into the question of the "quantum" where there has been nothing to shock the conscience, nothing gross or extravagant"). In the exercise of its discretion, there are, of course, certain broad principles which the Court of Admiralty has learnt to recognise as proper guides to its judgment. The Court always seeks to combine the consideration of that which is due to the owners in the protection of their property with the liberality due to the salvors in remunerating meritorious services;

The Court, as was stressed by Lord Stowell in the *William Bedford* case, 3 C. Rob. 355, at p. 356, regards the reward of salvage services not merely as a compensation to be meted out "pro opere et labore", or according to the exact amount of benefit conferred in the particular case, but also as to the proper subject of important considerations of a public and general character. That is why Judge Dr. Lushington, in the *Albion* case, 1861, 1, Lush. 282, quoted Mr. Justice Story as saying that "salvage is a mixed question of private right and public policy";

Of course, in addition to these broad guiding principles, there are certain material circumstances (which Dr. Lushington, in his judgment in the *Charlotte* case, 3 W. Rob. 68, p. 71, termed "the many and diverse ingredients of a salvage service") which fall to be considered in fixing the amount of the award. Kennedy (*The Law of Civil Salvage*, p. 119) classifies these ingredients as follows:—

A. As regards the thing salvaged:— 1. The degree of danger to human life; 2. the degree of danger to property; 3. the value of the property as salvaged;

B. As regards the salvors:— 1. The degree of danger to human life; 2. their skill and conduct; 3. the value of the property employed in the salvage service; 4. the danger to which the property is exposed; 5. the time and labour expended in the performance of the salvage service; 6. the responsibilities incurred in the performance of the salvage service, such, e.g. as risk to the insurance, and liability to passengers or freighters through deviation or delay; 7. the loss or expense incurred in the performance of the salvage service, such as de-

tention, loss of profitable trade, or repair of damage caused to ships, boats, or gear;

Kennedy proceeds to comment:— "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 in a low degree, the salvage remuneration is comparatively small";

The facts of this case are fully set out in the preliminary judgment of this Court of the 13th. February, 1951. The services rendered by plaintiffs consisted in proceeding to sea, taking the "Mediterranean" in tow, and bringing her to anchorage in the Grand Harbour in favourable weather conditions. There was no immediate danger to the S.S. Mediterranean, to her passengers or crew, but only an apprehended or prospective danger, had the weather deteriorated, the vessel being immobilised and not being able to use her own power. This danger was lessened, although not eliminated, through the "Cape Race" standing by. The value of the "Mediterranean" is approximately £6000. With regard to the salvors, there was no danger at all to human life, nor any danger of injury to the crew of H.M. Tug "Robust" in carrying out the operation of straight forward towing under favourable weather conditions. The fire on board the "Mediterranean" was out long before the arrival of the Tug. No particularly high degree of skill was required in taking the "Mediterranean" in tow. The time employed by the salvors for the whole operation, i.e. from preparing for sea at 2.15 a.m. to her securing the "Mediterranean" in the Grand Harbour at approximately 7 a.m., was four hours 45 minutes. Of these, about two and a quarter (2¼) were spent on actual towage. The labour employed consisted, apart from the preliminary signals and communications, in passing a tow line to the vessel and attendance on same during towage. With regard to expenses, the normal commercial towage charge per hour of service, all included, is from £12 to £15 per hour. It is the practice to charge for the total number of hours of service employed for the operation from the moment the tug leaves her berth till re-mooring, fractions of an hour being considered as an hour. The total time in this case was, therefore, or at least should be consid-

ered as five hours. And therefore, at a mean towage charge of £13 per hour, the expenses would come to £65. The distance from the casualty to the Grand Harbour was approximately eleven miles;

Another circumstance which falls to be considered is that the "Robust" is a harbour tug, fully equipped for towage. In this connexion it is well to quote the view expressed by Mr. Justice Butt in the "Envoy" case, 28th. February, 188 (33 Shipp. Gaz. Weekly Summary, p. 134):— "To my mind," he said, "one of the most important functions of this Court is to encourage the maintenance of powerful and efficient steam tugs around our coasts, to be in constant readiness to assist vessels in distress";

All these ingredients of the salvage service have to be weighed together;

This Court has come to the conclusion that the nautical expert Captain Arthur Messenger, in the report submitted to this Court at page 86 of the record, duly took into consideration all the relevant circumstances of the case, and is, therefore, of opinion, that the amount of the award suggested by him is fair and adequate:

The Court, therefore, adjudges as follows:

For the purpose of the second demand, assesses the salvage award in the sum of £200, inclusive of expenses;

Condemns defendant Cecil Pace nomine to pay to plaintiffs proprio et nomine the aforesaid sum of £200, with interest at six per cent per annum as from this day;

All the costs, including those reserved in the judgment of the 13th. February, 1951, are to be paid by defendant Pace nomine, in regard to all the contending parties.
