

17th, June, 1952.

Judge :

The Hon. Mr. Justice T. Gouder, LL.D.

Vice Admiral Geoffrey Alan Brooke Hawkins,

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

versus

John Scott ne. et.

**Salvage — Assessment of Reward for Salvage Services —
Pilotage — Expenses.**

In order to be entitled to salvage reward, a pilot must not only show that the ship was in some sense in distress, but that she was in such distress as to call upon him to run such unusual responsibility, or exercise such unusual skill, or perform such unusual kind of service, as to make it unfair and unjust that he should be paid otherwise than upon the terms of salvage.

The amount of salvage award, in the absence of a special contract, is limited to the value of the property or the interest in the property saved; and the sum of the reward is in the discretion of the Court. Such a reward is not regarded as compensation for the actual amount of work done in rendering the assistance, but other considerations are taken into account in arriving at a fair reward — the general interest of navigation and commerce, the encouragement of exertion, the stimulation to risk and peril in the relief of the property in danger.

It is the duty of the Court, in assessing the award, to seek 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; and in doing this, to bear well

in mind the risk which salvors run of getting nothing at all, however strenuous and heroic their efforts to save the property in peril.

Although the value of the ship and cargo is an important element in fixing the amount of the salvage reward, it must not be allowed to raise the "quantum" of the amount altogether out of proportion to the services actually rendered.

The expenses for which the salvor may be compensated are those properly incurred by the salvors in the furtherance of the salvage service and before the vessel assisted had been placed in a position of safety, and those directly occasioned by the performance of the salvage service.

This is a claim for salvage ;

In the writ-of-summons plaintiff nomine stated that on the 3rd. April, 1952, at Malta, the cargo of the S.S. Ranjita, consisting of a shipment of coal, caught fire, and at the request of defendant nomine he lent the Dockyard Fire Brigade and the necessary fire-fighting equipment. On the 12th. April, 1952, the fire was extinguished, and the cargo and steamer were saved from the danger of fire. Wherefor, plaintiff nomine asked for a declaration to the effect that he is entitled to the payment of salvage in respect of the services rendered; that that salvage award in respect of such services be assessed, due regard being had to the disbursements made on behalf of the defendant nomine; and that the same defendant be condemned to pay to him the sum that will be assessed, including disbursements, with interest thereon according to law, from the date of the service of the writ-of-summons, and with costs, including those of the warrant of impediment of departure of the vessel issued on the 18th. April, 1952;

The defendant nomine pleaded that plaintiff nomine cannot be considered as a "salvor", but merely as one who carried out service in virtue of a contract, and as such he is not entitled to a salvage award, but merely to a payment for the services rendered. Defendant nomine also stated that he has never denied payment for those services, and he has not yet paid them because plaintiff nomine has failed to submit the bill as he has been requested to do;

This plea was disposed of by a judgment on the 23rd. April, 1952. It was held that plaintiff nomine is entitled to payment on the basis of salvage;

The Court appointed Captain Arthur Messenger to report on the following points:— 1. What was the nature and extent of the damage to the ship and/or her crew and/or the cargo; 2. what was the extent of the assistance given, the nature and degree of the risk run by the salvors and/or their property in the salvage service, the length of time occupied in and about the service, and the degree of labour and skill incurred and displayed by the salvors; 3. what would be a fair and reasonable amount to be awarded in respect of the salvage services; 4. what expenses were properly incurred, and what damages, if any, were sustained by the salvors in the course of the salvage services;

Doctor of Laws Victor R. Sammut was appointed to assist Captain Messenger, in so far as legal formalities are concerned;

Captain Messenger and Doctor Victor R. Sammut filed their report on the 10th. May, 1952, and confirmed it on oath on the 14th. day of that month;

The following are the facts established by witnesses and documentary evidence, which gave rise to this case;

The "Siva Ranjita", an Indian Line vessel of 5881 gross tonnage, was proceeding to the United Kingdom with a cargo of 6822 tons of coal. On the 29th. March, 1952, when she was approximately 24 hours West of Port Said, the defendant, her Master, noticed traces of smoke in no. 2 hatch. He proceeded with the voyage, and on the 2nd. April he observed that the smoke from the same hatch was increasing, and gasses were rising that suddenly blew off the hatch tarpaulin and the ventilator plugs. Having sealed all ventilation, the Master decided to put into port with a view to ascertaining the cause and the extent of the fire. The ship was approximately 22 miles from Malta. The Naval Authorities directed the Master to enter Marsaxlokk harbour, which he entered on the 2nd. April, and anchored at 14.52 hours. A conference, attended by Lloyd's surveyor and the ship's agents, was held on board, and it was decided that the ves-

sel could enter the Grand Harbour, as it was considered that there was no danger either to the vessel or to others. The Naval Authorities were accordingly informed, and the vessel entered the Grand Harbour on the 3rd. April, making fast at no. 2 buoy next to the Floating Dock, at 10.20 hours;

Another conference was held on board, at which the Queen's Assistant Harbour Master as Police Inspector, Lloyd's agent and the same persons as before were present. It was considered that there was no immediate danger, and it was decided that in the event of the ship being later endangered, she should be taken to Kalkara in shallow water, flooded and grounded. It was also decided to obtain a pump for concentrating jets of water into the holes where it was necessary to do so, the vessel's own pump being utilised to pump out the water from the bilges and control the stability of the ship. With the authority of the Civil Police, a naval pump, manned by firemen under Inspector Underwood, was brought alongside by the Naval Authorities at noon, the same day, 3rd. April, and was put into action at about 7 o'clock. Meanwhile port labourers had been engaged by the shipping agents to discharge the cargo of coal from no. 2 hold on to lighters. The discharging of coal and the pumping of water into the hold went on more or less simultaneously, and the hold was finally discharged on the 8th. April;

Meanwhile, on the 5th. April, the other hatches were examined by Lloyd's Surveyor, and while he was inspecting no. 4 hatch, the gasses blew off the ventilator plugs and covers, and this hold was therefore also discharged. The fire brigade was in attendance, pumping in water where necessary, while discharging went on. On the 8th. instant smoke was observed in no. 1 hold, and discharging from this hold commenced on the 9th. April, the fire brigade remaining in attendance pumping water intermittently into no. 1 hold and no. 4 hold, as required, until 7 p.m. of the 12th. April. The fire engine remained alongside on the night of the 12th. April, but was inactive. The discharge of cargo from no. 4 hold was completed at noon on the 12th. April, and from no. 1 hold on the 14th. The coal was then reloaded. There was no appreciable loss of coal, and no structural damage to

any part of the ship. No. 5 hold, which also contained coal, was not interfered with in any way ;

According to the defendant, there were no flames at any time, but only smouldering or rather glowing coal. Fireman Hector Connell, produced as a witness by the plaintiff nominee, stated, however, that on the morning of the 6th. April he was down in no. 2 hold, and at about a quarter past eight he saw flames from six to eight feet high rising from the coal under the bridge on the port side, and as he had the hose in hand he trained it on the flames, and completely extinguished them in ten minutes. This is the only witness who stated that he saw actual flames ;

The referee submitted that when the Naval Authorities' assistance was requested, on the 3rd. April, the ship was not in any immediate danger of damage by fire ; the coal at that time was in a state of smouldering combustion, but the danger to the ship was very remote ; as a matter of fact, even without the intervention of the Dockyard Fire Brigade, any possible danger to the ship, that might have actually arisen, could have been overcome by flooding the holds with the removal of the bilge suction valves and the opening up of the shipside connections. A decision had been taken that, should it become necessary to do so, the vessel would be flooded and grounded in shallow water, and consequently any fire would not have communicated itself to the vessel in such manner as to cause any appreciable damage. The referee concluded by saying that in the circumstances the danger that could have existed, had the vessel been far out at sea, was not present ;

Nor was there any actual damage to the crew of the ship when the salvage services commenced, or at any time thereafter until their completion ; because, as the referee submitted, at no time did the fire reach a state as would have caused danger to them ;

With regard to the cargo, consisting exclusively of coal, some danger to it did exist, consisting in the possible loss of part thereof by fire. However, the referee did not consider that the danger was by any means imminent, or that it necessarily regarded an appreciable part of the cargo, in

view of the fact that the vessel could have been flooded before much damage was done ;

The assistance rendered by the plaintiff nomine consisted in tug services inside the Grand Harbour, mooring boat services for securing the vessel to buoys, and the Fire Brigade attending day and night and pumping water into the holds as necessary, the pumping apparatus being on a barge alongside the ship, attended by two men, the hoses being led on to the deck by the other members of the Fire Brigade under Sub-Inspector Underwood, and the Master of the ship generally supervising. As regards the firemen, shifts of approximately six men, including the two men at the pumps, were engaged. The pump originally engaged having broken down, another was brought to the ship, but was kept as a stand-by, as at no time was more than one pump in action. The firemen attending to the hose led on to the vessel were on the deck, but occasionally one man went down into the hold for a few minutes in order to place the hoses as required ;

An Admiralty pilot also boarded the vessel close to the Breakwater. The referee did not consider this service, because in his opinion it is not in the nature of a salvage service, considering that the ship was not in such distress as to call upon the pilot to run unusual responsibility or exercise unusual skill or perform an unusual kind of service as to make it unfair and unjust that the pilot should be paid otherwise than upon the terms of salvage reward. The Court upholds the referee's opinion, as it is based on the principle laid down in the case "*Akerblom vs. Price*" (1881) 7 Q.B.D. 129, quoted by Kennedy, "*A Treatise on the Law of Civil Salvage*", 3rd. edition, pp. 102-107, quoted in the referee's report. "In order to entitle a pilot to salvage reward, he must not only show that the ship was in some sense in distress, but that she was in such distress as to call upon him to run such unusual responsibility, or exercise such unusual skill, or perform such an unusual kind of service, as to make it unfair and unjust that he should be paid otherwise than upon the terms of salvage reward" ;

The referee submitted that the salvage services should

be deemed to have commenced on the 3rd. April, 1952, when at about 8 a.m. the Admiralty tugs proceeded to attend on the ship just inside the Breakwater of the Grand Harbour, for the purposes of securing her to no. 3 buoy; for the reason that, although fire-fighting services were not required until late on the same morning, salvage services should be deemed to extend, to a minor degree, to the tug assistance rendered to the vessel, which had already encountered a misadventure, and the time occupied by the tug may be considered as time spent "in and about the salvage service", notwithstanding that such services would have been normally required to moor the ship to an Admiralty buoy. In support of his opinion, the referee quoted Dr. Lushington's expression in the case of the "Reward (1814), 1 W. Rob. 174-177" — "mere towage service is confined to vessels that have received no injury or damage, and..... mere towage reward is payable in those cases only when the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident" — Kennedy, p. 25;

The salvage services proper were terminated in the evening of the 12th. April, 1952, shortly after 7 p.m., when the Fire Brigade withdrew, the float and dump remaining alongside for removal at a later date, only because, it being a Saturday, and the hour being late, it was considered more convenient to leave their removal to the following Monday;

The services rendered were not of the same nature throughout, nor were they continuous; the two tugs attending on the vessel commenced operations at 8 a.m. on the 3rd. April, one of them, the "Respond", finishing at 10.30 a.m. on the same day, the "Diligent" finishing at 9.45 a.m. Admiralty pilot services were rendered while the tugs were in attendance. The time taken by the boat crew in mooring services for making the vessel fast to no. 2 buoy could not have been, according to the referee, of any great length. The Fire Brigade was in attendance day and night from noon on the 3rd. April to 7 p.m. on the 12th. April, but the actual work of playing water into the holds was intermittent, as required. At no time was more than one fire pump in oper-

ation, and no work at all was done from 9 a.m. to 2 p.m. on the 4th. April, as the pump broke down;

The referee submitted that the operation was straightforward and simple, and did not involve any high degree of skill or strenuous labour. Though operations went on both during the day and the night, no undue strain was imposed on the firemen, as they worked in watches. Moreover, the work was intermittent, as the water was pumped into the holds as required. No serious fire-fighting was involved. One Sub-Inspector, three Sergeants and thirtytwo other men, were employed in shifts, each watch comprising an average of approximately six men, two of whom were on the pumps;

There was no risk of burns or other risk to any of the firemen, who were all either on deck or on the barge, saving that occasionally one man went down into the hold for a few minutes in order to place the hoses as required; but the men who went down in the holds, in the opinion of the referee, did not run any actual risk from gasses which would be formed in the holds, because it was not necessary for them to stay below for more than a few minutes, and they had available the necessary breathing apparatus which would have obviated the risk. The fact, established by the evidence of the witness Underwood, that it was not deemed necessary to make use of the apparatus, shows that the opinion of the referee is correct. The referee also considered injury from burns to the men going down into the holds too remote to constitute any actual risk under the circumstances prevailing;

The amount of salvage award, in the absence of a special contract, is limited to the value of the property, or the interest in property salvaged, and the amount of the reward is in the discretion of the Court. The Merchant Shipping Act, 1894, does not provide a fixed scale, but merely provides that a reasonable amount of salvage shall be payable to the salvor. Salvage is not regarded as compensation for the actual amount of work done in rendering the assistance. As the referee submitted, it is not based on the "quantum meruit" principle, but other considerations are taken into account in arriving at a fair reward—the general interest of navigation and commerce,

the encouragement of exertion, the stimulation to risk and peril in the relief of property in danger. The Court must, however, endeavour "to combine liberality to the salvor with justice to the owner of the salvaged property" (Halsbury, *Laws of England*, 2nd edition, Vol. 30, s. 1210). Kennedy (*A Treatise on the Law of Civil Salvage*, third edition, p. 147) states:— "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, and in doing this it bears well in mind the risk which salvors run of getting nothing at all, however strenuous and heroic their efforts to save the property in peril. The Court regards the rewards of salvage services not merely as a compensation meted out 'pro opere et labore', or according to the exact amount of benefit conferred in the particular case, but also as the proper subject of important consideration of a public and general character. These general principles are applied in conjunction with certain circumstances that, in varying degrees, affect the amount of the award. It is also usual to regard with favour salvage services rendered by vessels built and maintained for salvage purposes, as such vessels have to be kept constantly in readiness for any eventuality that might arise;

The referee submitted the following circumstances, according to the classification of Kennedy (*ibid.* p. 151); namely:—

- 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; and
- 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. Responsibility incurred in the performance of the salvage service;

7. Loss or expense incurred in the performance of the salvage service;

The Court agrees with the referee, as these principles have been accepted and applied by our Courts;

In the present case, the majority of the said elements is either not present, or not present to any appreciable degree; and although the value of the ship and the cargo is an important element in fixing the amount of the salvage reward, so important that where it is of a great value it entitles the salvor to an enhanced reward, for the general encouragement of salvage services, and not merely because the benefit of the owner of the property has been great, yet it must not be allowed to raise the "quantum" to an amount altogether out of proportion to the services actually rendered. This principle was enunciated by the Privy Council in the case of the "Ame-rique", quoted by Kennedy (p. 159);

The referee suggested that a reward of £1800 would be fair and reasonable, taking into consideration the circumstances of the case, including the fact that special fire-fighting equipment kept in readiness for eventualities was used;

Plaintiff nomine considers the reward suggested as inadequate, taking into account the value of the cargo exposed to danger and the damage which might have been caused to the ship. It has been established, however, that the ship was not in any immediate danger of damage by fire, and that any possible danger to the ship, that might have eventually arisen, could have been overcome without the intervention of the Dockyard Fire Brigade, by flooding the holds by removing the bilge suction-valves and opening the ship's side connections; and with regard to the cargo, it has also been established that the danger was by no means imminent, and that it did not necessarily regard an appreciable part thereof, in view of the fact that the vessel could have been flooded before much damage was done. Moreover, it is an established principle that where only a few of the above elements are found, or are present only in a low degree, the salvage remuneration is comparatively low;

Plaintiff nomine also submits, in his note of submissions, that the expense which would have been incurred, had it become necessary to take the ship to Kalkara and flood and

ground same, should have been taken into consideration. There is no reason to think that the referee did not take this circumstance into consideration; on the contrary, there are reasons to hold that he did take it into consideration, but he certainly never lost sight of the fact that the other circumstances were either not present, or not present to any appreciable degree, and of the general principles above enunciated, which must be applied in accordance with those circumstances;

For the fore going reasons, the referee's suggestion with regard to the amount of the reward is accepted by the Court;

The expenses properly incurred and the damage sustained by the plaintiff nomine will now be considered;

The expenses claimed are those appearing in exhibit "E" (page 48), which shall be an integral part of this judgment. The referee submitted that the disbursements therein listed are to be considered admissible as salvage expenses, with the exceptions of item 3, pilotage in £3, this not being a service performed in the course of salvage services, as above explained, and items 6, 7, 8 and 9, which refer to services rendered at a date subsequent to the salvage services, and therefore cannot be considered as expenses incurred before the vessel had been placed in a position of safety. Among the items listed in exhibit "E" are included wages by the Admiralty to the crew of the tugs and the firemen, whose services were availed of by the plaintiff in order to earn the salvage award. These wages are allowable as expenses. It was so judged by this Court in the "Benledi" case ("Rear Admiral Clarke ne. vs. Cdr. Gibbons ne.") determined on the 16th. August, 1950. Among the said items are also included the damage caused to the suction hose and damage caused by wear and tear to a length of hose during the salvage services, amounting to £11. 17. 11 aggregately;

The Court agrees with the referee's submissions, as the expenses for which the salvor may be compensated are, according to Kennedy (p. 182):— "1. Expenses properly incurred by the salvor in the furtherance of the salvage service and before the vessel assisted has been placed in a position of safety; and 2. expenses directly occasioned by the performance of the salvage service, as e.g. the cost of repairing damage which, without any fault on the part of her officers or crew, has been

caused to the salving vessel..... or of replacing damaged clothing”;

The expenses allowed amount to £207. 18. 0;

Plaintiff nomine, in his note of submissions mentioned, contended that all the expenses listed in exhibit “E” should be allowed, as they are ancillary to the salvage operations, and were in fact incurred. However, in accordance with the principles above enunciated, they cannot be allowed; for, as the defendant nomine has pointed out in his note of submissions, they refer either to a service which is not in the nature of a salvage service, or they refer to services rendered at a time subsequent to the salvage service, and consequently they cannot be considered as falling under salvage, the termination of which is marked by the termination of the danger to the life or to the property. The right is, however, reserved to plaintiff to receive payment of these disallowed expenses independently of salvage;

For the fore going reasons, the Court allows the claims of the plaintiff nomine, awarding the sum of £1800 as salvage reward, in addition to the sum of £207. 18. 0 for loss and expenses incurred for salvage services rendered to the ship “Siva Ranjita” and her cargo; and consequently condemns the defendant nomine to pay to the plaintiff nomine the sum of £2007. 18. 9, with interest thereon at the rate of six per cent per annum from this date;

Costs are to be paid by defendant nomine.
