

the present action. They could, if they thought right, prohibit any meetings being held there, or they might issue a notice prohibiting the holding of certain meetings as likely to lead to a breach of the peace. It would be the duty of the police to enforce their orders, and if anyone obstructed the police in the execution of their duty he would be prosecuted for that. I am, however, unable to take the view that, if meetings are allowed at all, any meeting can be prohibited except upon the ground that it is calculated to cause obstruction or breach of the peace.

The Court adhered.

Counsel for the Pursuer (Respondent)—Crabb Watt, K.C.—J. B. Young. Agents—Robertson & Wallace, S.S.C.

Counsel for the Defenders (Reclaimers)—Cooper, K.C.—Macmillan, K.C.—Hon. W. Watson. Agent—Sir Thomas Hunter, W.S.

Thursday, July 10.

SECOND DIVISION.

[Lord Hunter, Ordinary.

STEEL & BENNIE, LIMITED
 v. EVANGELISTA.

Ship—Salvage—Amount.

A new twin-screw steamer went aground and was rescued from a position of imminent danger by two tugs, who towed her to safety. The value of the steamship as salvaged was £27,837. In an action for salvage brought by the owners of one of the tugs to whom the Lord Ordinary had awarded £700, the Court, on a consideration of the evidence as to the services rendered, increased the award to £1200.

Steel & Bennie, Limited, shipowners, Glasgow, *pursuers*, brought an action against Tito Jose Evangelista, master of, and, as such, representing the owners of the steamship "Taquary," of Rio de Janeiro, then lying in the harbour of Glasgow, *defender*, for £2500 for salvage services.

The facts of the case are given in the opinion (*infra*) of the Lord Ordinary (HUNTER) who, on 20th February 1913, after a proof led, decreed against the defender for payment to the pursuers of the sum of £700.

Opinion.—"The pursuers are the registered owners of the tug 'Cruiser' of Glasgow. They sue for themselves, and also as representing the master and crew of the said tug, to recover from the defender, who is the master and as such represents the owners of the Brazilian steamship 'Taquary,' a sum in name of salvage services, rendered by the said tug to the said steamship. It is not disputed that the services rendered were in the nature of salvage services. The only question that I have to determine is the amount of the award.

"On 25th February 1912, being a Sunday, about 1 a.m., the 'Taquary,' which is a new twin-screw steamer of 1942 tons gross and 1175 nett register, went aground on the west side of Ailsa Craig. There is considerable conflict in the testimony of the different witnesses as to the exact position where she lay. The point does not appear to me to be of great materiality. I think that she was less to the north than was represented by the witnesses for the pursuers, and not so much to the south as represented by the witnesses for the defenders. Her position may be taken as somewhat to the north of the point called the Boating Stone on the chart of the Craig. I do not think that at any time she was broadside on to the beach, but undoubtedly the position in which she lay exposed her to great risk of destruction in the event of a strong wind or sea from the south-west. At the time when she grounded there was practically no sea, and the wind, which was only a slight breeze, was blowing from the north. She was not therefore in imminent danger of breaking up. In the course of the early morning, two steamers, the 'St Catherine' and the 'Woodcock,' communicated with her. The defender did not request either vessel to give him assistance in the way of attempting to get the 'Taquary' off. He was content to entrust them with the sending of telegrams to the managing owners and to the Insurance Company. This course may to some extent have been dictated by a dread lest the vessel on being pulled off the rocks might sink. At the same time, I do not think he would have refused assistance had the state of the wind or sea given him cause for immediate anxiety.

"The 'Cruiser,' which is a tug engaged in towing vessels up the Clyde to Glasgow, was on the morning of the 25th engaged in 'seeking' or looking for work, when she sighted the 'Taquary.' She is said at the time to be in attendance upon the 'Hyltonia' and expected to be engaged in towing that vessel. On sighting the 'Taquary' she went and offered her assistance, which was accepted. This was about 7.30 a.m., and from that time she remained in attendance until 3 or 3.30 p.m., when, with the assistance of the 'Setter,' a vessel which came up about 1.20, she succeeded in floating the 'Taquary.' The 'Cruiser' and the 'Setter' towed the 'Taquary' from Ailsa Craig to the Tail of the Bank, a distance of about 47 miles. The towing operations lasted about 12 hours. From the Tail of the Bank the 'Cruiser,' with the assistance of another of the pursuers' tugs, towed the 'Taquary' to Glasgow, but payment for this latter service has been made and therefore does not enter into the present calculation.

"In rendering her services to the 'Taquary' the 'Cruiser' was exposed to no risk, and the lives of none of her crew were ever in danger. The work done was not difficult, and did not call for the exercise of any special skill in seamanship. The services were, however, certainly useful. In the first place, the 'Cruiser' had

slew the 'Taquary' round to some extent, so as to put her in a more favourable position to the shore. This seems to have been done in the early morning, before low water. Thereafter she maintained her in position, acting for some time in conjunction with the 'Setter.' At high water the 'Cruiser' and 'Setter' succeeded, by towing, in pulling the 'Taquary' off the shore. When they started towing from the Craig to the Tail of the Bank, the 'Setter' was in front of and the 'Cruiser' behind the 'Taquary.' The towing vessels, however, soon changed position, and the 'Cruiser' went ahead. For some miles the 'Taquary' was towed with her bow first; but she was so much down by the head, that she had to be towed stern first. The two vessels experienced no difficulty in so towing her, but as Captain Abram explained in his evidence it would have been dangerous for passing vessels for the 'Cruiser' alone to have towed the 'Taquary' stern first. I think the services rendered by the 'Cruiser' were more valuable than those rendered by the 'Setter.' The latter vessel was not constructed for tug work, and was not so handy or able to keep her position so well as the former vessel.

"If the 'Cruiser' had not rendered the services which she did, I think that the 'Taquary' might have got other assistance. I have already referred to the 'Woodcock' and the 'St Catherine.' About 11 o'clock, the 'Tweed' also offered assistance; but the master of the 'Cruiser' refused the offer, as he thought he would manage to get the 'Taquary' off himself. Another vessel, called the 'Copeland,' had gone ashore on the north or north-east side of the Craig about the same time that the 'Taquary' did. Two tugs, the 'Flying Serpent' and the 'Flying Scotsman,' were sent to her assistance. The 'Taquary' passed these tugs as she was being towed to the Tail of the Bank. Looking to the state of wind and weather at the time, I think that these vessels would have been in a position to save the 'Taquary,' had she not been floated with the assistance of the 'Cruiser' and 'Setter.'

"It is admitted that the value of the 'Cruiser' was £5500, and that the value of the 'Taquary,' as salvaged, was £27,837.

"For the services rendered in the salvage operations the 'Setter' received the sum of £450. As I have already indicated, I think that the 'Cruiser's' services were more valuable than the 'Setter's' services. On the other hand, the 'Setter' sacrificed more in going to the assistance of the 'Taquary.' I did not, however, allow evidence as to the value of the 'Setter,' as it does not appear to me that the record raises a case for my estimating the amount to be awarded for the joint salvage services and allocating to the pursuers their proper proportion.

"A number of cases illustrative of the different awards given in different cases were cited to me. Each case must depend on its own circumstances, and I do not think it would serve any good purpose to refer in detail to these decisions. Keeping

in view the different elements that appear to have weighed with the Court in arriving at the awards given, so far as they are present in this case—and I have endeavoured briefly to indicate them—I reach the conclusion that the sum of £700 is a fair award to make the pursuers for the services rendered by them. As that amount was tendered before the action was raised, and was refused, I think that the defenders are entitled to expenses."

The defenders reclaimed, and argued—The Court was entitled to review the Lord Ordinary's award when, as here, it was unreasonably small—*The "Port Hunter,"* [1910] P. 343, per Vaughan Williams (L.J.) at 351; *The "Star of Persia,"* 1887, 6 Asp. 220. Steam tugs were entitled to especially liberal awards—Kennedy, *Salvage* (2nd ed.), p. 131; *The "Glengyle,"* [1898] P. 97, per Gorell Barnes (J.) at 102; *The "Envoy,"* Shipp. Gaz. Weekly Summary, February 28, 1888 (referred to in Kennedy, *Civil Salvage*, 2nd ed., p. 131). Although the weather was fine, the chance of its becoming boisterous was an element in assessing the award—*The "Kennure Castle,"* (1882) 7 P.D. 47, per Phillimore (J.) at 48. The services of the "Cruiser" as the first salving vessel were entitled to especially favourable consideration by the Court—*The "Anna,"* Shipp. Gaz., May 30, 1905 (referred to in Kennedy, *Civil Salvage* 2nd ed., p. 188); *The "Maasdam,"* 1893, 7 Asp. 400, per Jeune (P.) at 401; *The "Santipore,"* 1854, 1 Spink 231, per Lushington (J.) at 233. Three elements were to be taken into consideration in assessing the award, viz.—(1) the value of the salvaged property, (2) the risk to it, and (3) the risk to the salving vessel. In view of the large value of the salvaged property, and the risk both to it (which the Lord Ordinary failed fully to appreciate) and to the salving vessel, the Lord Ordinary's award was far too small—*The "Adriatico,"* Shipp. Gaz., July 20, 1912; *The "Dungeness,"* Shipp. Gaz., November 27, 1912; *The "Campbell,"* Shipp. Gaz., November 16, 1912; *The "Kilmorack,"* Shipp. Gaz., March 6, 1912; *The "Fairport,"* [1912] P. 168; *The "Buteshire,"* [1909] P. 170; *Walker Steam Trawl Fishing Company, Limited, v. Mitre Shipping Company, Limited*, 1913, 1 S.L.T. 67; *Pust v. White Star Steam Fishing Company of Aberdeen*, 1909, 1 S.L.T. 275; *The "Ben Alder" v. The "Acacia,"* February 15, 1901, 3 F. 491, 38 S.L.R. 339; *Liverpool Steam Tug Company v. Cornfoot*, June 19, 1900, 2 F. 1060, 37 S.L.R. 804; *Duncan v. Dundee, Perth, and London Shipping Company*, March 8, 1878, 5 R. 742, 15 S.L.R. 429.

Argued for the respondent—The Court was not entitled to interfere with the award of the Lord Ordinary unless it was unreasonably excessive—*"Baku Standard" v. "Engèle,"* [1901] A.C. 549, per Sir Ford North at 553; *Liverpool Steam Tug Company v. Cornfoot (cit.)*, per Lord Trayner at 2 F. 1065; *The "Accomac,"* [1891] P. 349. In assessing the award it was competent to take into consideration the ordinary earn-

ings of the salving vessel—*The "City of Chester,"* (1884) 9 P.D. 182, per Baggallay (L.J.) at 196 and 199, and Lindley (L.J.) at 206; *The "Sunniside,"* (1883) 8 P.D. 137, per Hannen (P.) at 142—and the ordinary earnings of the "Cruiser" were small. Other elements to be taken into consideration were the fact that the value of the "Cruiser" was small and the fact that the salvage award was a windfall to her owners—*"Vulcan"* v. *"Berlin,"* July 6, 1882, 9 R. 1057, per Lord President (Ingils) at 1061, 19 S.L.R. 790, at 791. The "Taquary" was not in imminent danger. To award a percentage on the value of the salvaged property was not a proper principle of calculation—*Greenock Towing Company v. Anchor Line (Henderson Brothers),* November 2, 1901, 9 S.L.T. 221. The following cases were also referred to—*The "Camphill"* (cit.); *The "Adriatico"* (cit.); *The "Kilmorack"* (cit.); *The "Buteshire"* (cit.); *The "Port Hunter"* (cit.); *Liverpool Steam Tug Company v. Cornfoot* (cit.); *The "Werra,"* (1886) 12 P.D. 52.

At advising—

LORD JUSTICE-CLERK—This is an action in which salvage is claimed by the owners of the tug "Cruiser" for services rendered to the "Taquary" which went aground on Ailsa Craig on 25th February 1912. We have had the assistance of a nautical assessor and his views have been expressed to us with great care and, so far as I am able to judge—I think your Lordships will agree with me—with great acumen.

I do not think that the exact place where the vessel struck is of great importance, though in that matter I am inclined to prefer the evidence of the pursuers' witnesses. We are advised by the assessor that she was equally exposed to danger from the south-west wind in whichever position she was lying. As to the angle at which she struck the shore, if she was not broadside on, she was at least in such a position that her stern had a very short distance to drift before the vessel would be on the rocks throughout her whole length. If the wind rose—and we know that shortly after she was taken off the wind did rise to nearly a gale—she would have been carried on to the rocks. Apart from the risk from wind, she was in a very dangerous position. When she went ashore her bottom was scored and dented by the rocks for a considerable distance aft. This was at high tide, and if she had remained there till the tide was low the whole weight of the vessel would have rested on the boulders which made these dents, with the result that her side would have burst in. In that event, as we are advised by the assessor, she might have become a total loss, or at any rate her salvage would have been a very difficult task, requiring special apparatus and involving great expense.

This was the danger, the imminent danger, from which she was rescued by the "Cruiser," and practically speaking by the "Cruiser" alone, for in the work of getting and keeping her stern away from the shore the "Setter" gave little if any

assistance, though at a later stage, when the "Taquary" was being towed to the Tail of the Bank the "Setter" was of great use.

The Lord Ordinary states, and I think erroneously, that the services rendered by the "Cruiser" could have been obtained elsewhere. It must be remembered that these services would have been of no avail if they had not been rendered at the time they were given. If her stern had not been pulled out before low tide and before the wind rose the probability is that she would never have been salvaged at all. The Lord Ordinary refers to the tugs which had gone to the assistance of the "Cope-land." I am sure they could have done nothing. They could not leave the "Cope-land" to come to the "Taquary," and by the time they were free to come it would have been too late.

In these circumstances the question is, what is a fair salvage allowance to the "Cruiser" for what she did? That her services were immeasurably superior to any services rendered by the "Setter," I do not think there can be the slightest doubt. Estimating these services as well as I can with the aid I have received in consultation with your Lordships, and without going into details, I think that the "Cruiser" is reasonably entitled to the sum of £1200, and I move your Lordships to alter the interlocutor of the Lord Ordinary and to grant decree for that sum.

LORD DUNDAS—I am of the same opinion. I think the Lord Ordinary has greatly undervalued the salvage services rendered by the "Cruiser," and that an award of £1200 would be reasonable and moderate.

LORD SALVESEN—I agree. We have had the advantage of the advice of a nautical assessor—an advantage which the Lord Ordinary did not possess—and this has enabled us to look at the evidence from a more enlightened point of view than an ordinary layman is likely to have in dealing with nautical matters.

The first question is, what was the degree of danger to which the "Taquary" was exposed? The Lord Ordinary seems to think that the "Taquary" might have remained in the position in which she was stranded without incurring further damage unless in the event of a strong wind or sea from the south-west. I think that is a misapprehension of the facts. On the course on which the vessel was, as described in her log, assuming her bow went ashore near the Boating Stone, she would be almost parallel with the beach, and her stern at no great distance from it. Even if the point laid down by Captain Griffiths, who was on board the "Taquary," be taken as the point on which she struck, her angle with the beach would only be, according to the nautical assessor, some 25 degrees and her quarter would not be more than 90 feet from the beach at low water-mark.

I agree with your Lordship in thinking that the position assigned to her by the "Cruiser" more nearly corresponds with

the actual position in which she went ashore than that assigned to her by Captain Griffiths, and that she may be taken as having lain almost broadside on to an extremely rocky beach. In such a position the action of the tide alone would tend to set her stern shorewards quite irrespective of wind.

But there is a piece of real evidence, to which the Lord Ordinary makes no allusion, which seems to me to demonstrate that the "Taquary" was in imminent danger of becoming a total wreck unless she had been salved by the "Cruiser" at the time she first offered her services. I refer to the marks on the vessel's bottom, to which our attention has been specially directed by the nautical assessor. These marks must either have been made at the time the vessel went on to the beach, or they must have been made at some subsequent time before the "Cruiser" arrived. I agree with your Lordship in the chair that in all probability they were made at the time that the vessel stranded, because the scoring on the bottom of the vessel as far aft as sixty feet on the port side indicated that the vessel had been moving at the time the indentations were made. Now these indentations show that there was some irregularity in the ground on which the vessel had stranded. The tide was then rising and no further damage would be done until the water fell materially below the level at which the indentations were produced. If, however, the water fell away further, these indentations were extremely likely to be converted into holes, with the result that the vessel would have been absolutely lost. If, on the other hand, the indentations were made after she first struck, they are conclusive evidence of her having swung round closer to the beach, and in that case it was equally inevitable that, as she settled down on the stones as the water receded her bottom would have been pierced aft of the forward bulkhead.

Now the "Cruiser" arrived before eight o'clock, some hours before low water, and her first care was to take the stern of the vessel further out by swinging her stern round towards the west; and I think it is in accordance with the bulk of the evidence that she succeeded in doing so. Even Captain Griffiths admits that she was swung between two and three points, although he seems to suggest that was merely for the purpose of lessening the hold that she had on the rocks and that her position remained unchanged—a qualification which I do not accept. If so, the "Cruiser," entirely unaided, rendered a most valuable service, without which the subsequent operations would in all probability have proved futile.

The Lord Ordinary has also, in my judgment, overestimated the prospective assistance which might have been obtained from the other tugs that were sent down to the "Copeland." These tugs did not arrive at the "Copeland" until 5:30, after the "Taquary" had fortunately been salved, but in any case they could not have got the "Taquary" off until the next

high water, which was about 4 o'clock in the morning, and their operations during the whole time would have been rendered difficult by darkness. As I have already said, however, I believe they would have been too late to render effective assistance.

We do not require to assess the salvage remuneration due to the "Setter," but I agree with your Lordship that her services were very much less valuable to the "Taquary" than the services of the "Cruiser." Indeed, I doubt whether they were of any value except in so far as the "Setter" acted as a rudder during the tow between Ailsa Craig and the Tail of the Bank.

Under such circumstances, where we think that the Lord Ordinary has misapprehended the evidence, or has seriously underestimated the value of the services which were rendered, we are at liberty to review the salvage award at which he has arrived with greater freedom than if we thought he had correctly stated the facts of the case, in which event it would only be where we thought there would be substantial injustice if we adhered to the award that we would review it at all. Even under the circumstances as they stand there must be some considerable and substantial difference in our estimate of the services from that which the Lord Ordinary has reduced to money. I think that such a difference is to be found in this case, and that the award which your Lordship in the chair has proposed is more in harmony with previous decisions than that of the Lord Ordinary.

The only two decisions of the Scottish Courts that have a direct bearing on this case are the decisions in the cases of *Duncan*, 5 R. 742, and the "*Gantock Rock*," 2 F. 1060. In the case of *Duncan* the vessel had been deprived of her rudder and sternpost by a collision with a rock. The salver obtained an award of £1500 on a valuation of the salved property of £31,000. In the case of the "*Gantock Rock*" an award of £1550 was given on a valuation of £40,000. In neither of these cases was the peril so imminent as in the present case. In the "*Gantock Rock*" case the vessel was uninjured. She was riding at anchor on a lee-shore and had safely ridden out a very violent gale. If the gale increased, as in point of fact it did, there was great risk of her driving upon the rocks, but her position was not so serious as the position of a vessel which is already on the rocks, and which, if my view is sound, could not have safely lain there for another tide. In the case of *Duncan* the vessel was afloat and was able to use her own engines, and therefore was not in the hopeless condition of the vessel with which we are here dealing.

Having in view the great danger of the salved vessel in this case, I think we are amply justified in giving the award your Lordship proposes; and indeed if the assessment of the salvage services had taken place in England I am disposed to think that a somewhat higher sum might have been considered appropriate, looking

to the awards in the recent cases in the Admiralty Court to which our attention was called.

We were also referred to the case of the "Vulcan," 9 R. 1057, where an award of £500 was made on a salvaged value of £21,000. Although the circumstances were entirely different and the danger to the salvaged vessel not at all imminent, I think it has always been recognised in the profession that the award represents the judicial low water-mark of salvage remuneration.

Reliance was also placed on an Outer House decision of Lord Stormonth Darling (*The Greenock Towing Company*, 9 S.L.T. 221), where the extremely small sum of £350 was awarded in respect of salvage services rendered to a stranded vessel valued at £43,000. I can only account for that on the footing that his Lordship thought that the services, although of the value of salvage services, were not much different from towage, and that the steamer would have floated off without assistance at the next tide, and as she had the use of her own engines and rudder could have been navigated safely into port—in short, that the services rendered by the tug consisted in merely plucking the ship round into a position in which she was less likely to take further damage. On any other view of the facts the award in that case is quite irreconcilable with the whole trend of decisions both here and in England.

LORD GUTHRIE—I am of the same opinion. The Court is always unwilling to disturb an amount found due by the Judge who heard the witnesses. We do not do so unless the amount found due is substantially either inadequate or excessive—so excessive or inadequate as in our opinion necessarily to involve misapprehension of essential facts. Your Lordships have incidentally dealt with the points on which we all think the Lord Ordinary has erred. I content myself with tabulating them. First, as to the position of the vessel. Captain Griffiths says that the "Taquary" was nearly at right angles to the shore. The defenders do not go so far as this, nor, on the other hand, do the pursuers maintain that it was exactly broadside on. The question is whether it was not substantially broadside on. Apparently the Lord Ordinary thinks it was not—a view which the evidence seems to me to negative. Then the Lord Ordinary says that the "Taquary" was not "in imminent danger." It seems to me, whether we take the pursuers' or the defender's views of the place where she went ashore and the position in which she was, that she was in imminent danger. In the third place, the Lord Ordinary says that the "Cruiser's" services were certainly useful. It seems to me that that is a quite inadequate way of describing what she did. It would be more proper to say that her services were absolutely essential. Then the Lord Ordinary, in the fourth place, says that the "Flying Serpent" and the "Flying Scotsman," looking to the state of the weather

at the time, would have been in a position to save the "Taquary" had she not been floated by the "Cruiser." As your Lordships have pointed out, these vessels were sent for a purpose which excluded the notion that they would be available for the "Taquary." In any case, even if they might have been available ultimately, the evidence shows, and we are advised by the nautical assessor, that by that time the "Taquary" would have been beyond salvage.

Lastly, the Lord Ordinary says—"It does not appear to me that the record raises a case for my estimating the amount to be awarded for the joint-salvage services and allocating to the pursuers their proper proportion." No doubt, although we must confine our consideration to the particular services of the salvor now before us, it seems necessary to form an opinion of the total amount that should be paid. Considering the "Cruiser" only, and taking into view, first, the risk to the "Taquary" from which she was saved by the "Cruiser"; second, the value of the salvaged vessel; third, the nature of the "Cruiser's" services; and fourth, the time taken, I concur in thinking that £1200 is a reasonable sum—certainly not out of line with the cases quoted to us, particularly those dealing with stranded vessels.

The Court recalled the interlocutor of the Lord Ordinary, and decreed against the defender for payment to the pursuers of the sum of £1200.

Counsel for the Reclaimers (Pursuers)—Horne, K.C.—D. Jamieson. Agents—Whigham & Macleod, S.S.C.

Counsel for the Respondent (Defender)—Dean of Faculty (Scott Dickson, K.C.)—Stevenson. Agent—Campbell Fail, S.S.C.

Thursday, July 10.

SECOND DIVISION.

[Lord Cullen, Ordinary.]

DAMPSKIBSSELSKABET DANMARK
v. CHRISTIAN POULSEN & COMPANY.

Ship—Charter-Party—Demurrage—Exemption—“Time Lost through Strikes either Preventing or Delaying the Working, Leading, or Shipping of the said Cargo.”

A charter-party provided that "the parties hereto mutually exempt each other from all liability . . . arising from, or for time lost through, . . . strikes, . . . or by reason of . . . any unavoidable accidents and hindrances beyond their control, either preventing or delaying the working, leading, or shipping of the said cargo."

The charterers contracted with a colliery company to supply a cargo of coals, but the company were not taken bound under the contract to deliver the coals in due time for loading within