

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of The Owners of the vessel 'Chetah' and cargo v. The Owners of the vessel 'Annie Grant,' and of The Owners, Masters, and Crews of the steam ship 'Dublin' and other vessels v. The Owners of the ship 'Chetah' and cargo, ship 'CHETAH' and cargo, from the High Court of Admiralty; delivered 30th November, 1868.*

Present :

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

LORD JUSTICE PAGE WOOD.

LORD JUSTICE SELWYN.

These Appeals are from the sentence or decree of the High Court of Admiralty in causes of salvage for services rendered by a schooner called the 'Annie Grant' and by five steam vessels, called respectively the 'Dublin,' the 'Camilla,' the 'Gipsy,' the 'Tintern,' and the 'William Wallace,' to a vessel called the 'Chetah,' of the value, with her cargo and freight, of £50,000.

The learned Judge of the Court of Admiralty awarded to the 'Annie Grant' a sum of £3150 for her services, and, in addition, a sum of £200 for damages sustained, and £335 for detention of the vessel while rendering the services, making in the whole the sum of £3685; and for the services of the five steam vessels he awarded a sum of £355, which he distributed amongst them in certain proportions.

The owners of the 'Chetah' have appealed from the Decree in favour of the 'Annie Grant,' on the ground of the amount awarded being excessive. And the owners, masters, and crew of the five steam vessels have appealed on the ground that the sum

of £355 is wholly an inadequate reward for their services.

In dealing with these cases their Lordships have felt some degree of embarrassment, in consequence of the unwillingness which has been invariably shown by this Committee to interfere with the judicial discretion which has been exercised in questions of salvage where the quantum awarded was alone the subject of appeal.

Thus, in the case of the 'Carrier Dove,' 2 Moore, N. S. 284, Lord J. Knight Bruce, in delivering the opinion of their Lordships, said, "It has never been the rule or practice of the Committee to enter into the question of quantum where there has been nothing (to use a familiar expression) to shock the conscience, nothing gross, nothing extravagant." In the case of the 'Clarisse,' in 12 Moore's Reports, 344, the same learned Judge, expressing the opinion of the Judicial Committee in less forcible terms, said, "It is a settled rule, and one of great utility, particularly with reference to cases of this description, that the difference ought to be very considerable to induce the Court of Appeal to interfere upon a question of mere discretion."

In the case of the 'Cuba,' Lushington's Admiralty Reports, 14 (which was an Appeal from an award of salvage by Justices of the Peace), Dr. Lushington said, "The question for me to decide is, whether the sum awarded by the Justices is so exorbitant, so manifestly excessive, that it would not be just in me to confirm it."

And, lastly, in the case of the 'Fusileer,' 3 Moore, N. S. 69, it was said, "Their Lordships would always be slow to disturb an award of salvage by the learned Judge of the Court of Admiralty, on the ground of his having given too large a sum to the salvors, unless they were satisfied beyond all doubt that he had made an exorbitant estimate of their services."

These cases show that a party who seeks by Appeal to increase or to diminish the remuneration which, in the discretion of a Judge before whom a case of salvage is brought, is a proper estimate of the value of the services rendered, undertakes a very difficult task.

It was agreed by the Counsel on both sides that no case was to be found where, upon an appeal from

a decree for salvage services, the amount awarded had ever been reduced. The deduction which the Counsel for the 'Annie Grant' rather left to be drawn than drew himself, from the absence of such precedents, seems to have been that this Committee would never disturb the award of the Judge in this direction. But there are cases in which their Lordships have increased the amount awarded for salvage services, on the ground that the Judge had formed too low an estimate of the value of such services; and, in principle, there can be no difference between increasing and diminishing an amount awarded in these cases, both being equally an interference with judicial discretion. The fact of no instance being found of the reduction of a decree for salvage upon appeal may possibly be accounted for by the very natural desire which must always be felt to accept the most liberal estimate of services, which are usually of a highly meritorious character, and generally attended with peril of life and property. But however this may be, to assume from there being no case in which a decree for salvage services has been reduced in amount upon appeal that it ought never to be done, would be to draw an inference in opposition to the authorities previously mentioned; which, stating negatively that the Committee will not interfere with the discretion of a Judge as to the quantum of salvage, where there has been nothing exorbitant, or manifestly excessive, in his estimate of the value of the services rendered, necessarily imply that where such excess or exorbitance exists, they will exercise their own judgment as to the proper remuneration to the salvors, and reduce it to a just and reasonable amount.

After the most careful consideration of the circumstances upon which the claim of the 'Annie Grant' is founded, and with an anxious desire that the salvors should receive not merely a fair, but a liberal remuneration for their services, their Lordships have come to a conclusion as to the value of the services rendered, widely differing from that of the learned Judge of the Court of Admiralty. The first, and most important question in cases of this description, is the degree of danger to which the vessel was exposed, and from which she was rescued by the salvors. The learned Judge formed

his opinion of the peril in which the 'Chetah' was originally placed upon evidence to which the Appellants could have no possible objection, viz. the protest of her Master. But not being assisted with the advice of nautical assessors, he seems to have considered that that document described a state of things in which the 'Chetah' was in imminent danger of being lost, unless prompt assistance had been afforded. Possibly, their Lordships reading the protest by the light of their own understandings, might have arrived at the same conclusion with the learned Judge. But they are advised by the nautical gentlemen, to whose knowledge and experience they have referred, that the description of the condition of the 'Chetah' at the time when the 'Annie Grant' tendered her services by no means indicates that degree of peril which the learned Judge seems to have supposed. She had, indeed, lost her rudder; but this loss might have been supplied by some temporary expedient, for which there were materials on board.

The most important element in a claim for high salvage reward, viz. the imminent peril of destruction of the vessel to which assistance is rendered, is therefore wanting in this case.

Again, the mode in which the services of the 'Annie Grant' were first applied, appears to their Lordships to detract considerably from their merit. They are advised that it was a very injudicious course to attempt to tow the 'Chetah,' being without a rudder, with a small schooner like the 'Annie Grant.' That this opinion is well founded is proved by the fact, that in the course of the towing, the 'Chetah' overreached the 'Annie Grant,' and occasioned part of the damage which she sustained, and for which a compensation has been awarded. The learned Judge of the Admiralty, adverting to this attempt at first to tow the 'Chetah,' says, "It may be, for all I know, that this was an imprudent attempt, and that greater nautical skill and knowledge would have told the 'Annie Grant' that it would turn out, as it did, a failure." He adds, indeed, that "no remonstrance was made on behalf of the 'Chetah,' but, on the contrary, the 'Annie Grant' seems to have acted under the direction of the 'Chetah.'" Whether this was so or not, it is clear, that as salvage is a reward for benefits actually



conferred, not for a service attempted to be rendered, all the period during which the 'Annie Grant' was unsuccessfully endeavouring to tow the 'Chetah,' should have been left out of the account in estimating her merit and the value of her services.

With respect to the risk incurred by the 'Annie Grant' (which is always a circumstance to be considered in determining the amount of a salvage reward), it is observable that the greatest peril to which she was exposed was the consequence of her own injudicious and imprudent act of taking the 'Chetah' in tow.

The really meritorious services of the 'Annie Grant' commenced when, abandoning the repeated unsuccessful attempts to tow the 'Chetah,' she was made fast to the 'Chetah's' stern, in order that she might act as a steering-power upon her. Unless this course had been adopted, the 'Chetah' would have been unmanageable at a time when, being near the Irish coast, she would have been exposed to the greatest danger. But with the assistance thus afforded by the 'Annie Grant,' the 'Chetah' was enabled to wear and stand off shore, and afterwards, on the following day, to run in towards the land so as to be able to avail herself of the services of the steam vessels whose claim is the subject of the other Appeal.

That the 'Chetah' was rescued from a situation of considerable peril by the exertions of the master and crew of the 'Annie Grant,' and by the application of proper means for securing her safety at a time when, being crippled by the loss of her rudder, she would most probably, if not inevitably, have been driven on shore, there can be little (if any) doubt, and the services of the 'Annie Grant' have, therefore, been the means of saving very valuable property from impending destruction. That they are entitled to a high salvage reward it is impossible to deny. But their Lordships are of opinion, that the learned Judge of the Court of Admiralty, acting upon his own unassisted judgment, has greatly overrated the value of the services rendered by the 'Annie Grant,' and that it is a case in which they are bound to reduce the amount awarded.

They think that if the owners, master, and crew of the 'Annie Grant' receive a sum of £1500 for

the salvage services of the vessel, they will be most liberally and abundantly rewarded.

They will, therefore, recommend to Her Majesty to alter the Decree of the Court of Admiralty, in the case of the 'Annie Grant,' by reducing the sum of £3150 for salvage to the sum of £1500, and to affirm the Decree as to the sum of £535 for the damage and detention of the vessel, and that there should be no costs of the Appeal on either side.

As to the case of the steam vessels, their Lordships will humbly recommend Her Majesty to affirm the Judgment of the High Court of Admiralty, and to dismiss their Appeal, with costs.