

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Prendiville and others v. The National Steam Navigation Company, Limited, ship 'England,' from the High Court of Admiralty; delivered the 1st December, 1868.*

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Present :

LORD CHELMSFORD.

SIR JAMES WILLIAM COLVILLE.

LORD JUSTICE PAGE WOOD.

LORD JUSTICE SELWYN.

THEIR Lordships had occasion so very recently to consider the principles upon which this Board acts in reviewing the decisions of the Judge of the Court below, in respect of sums allotted for salvage services, that it would be quite unnecessary to go again through the authorities. But their Lordships think it material to observe that, in the Judgment which was pronounced yesterday, it was not the intention of this Board to enunciate, nor in terms did they enunciate, any new principle; but that Judgment consisted mainly in a citation of the previously existing authorities, and to those authorities, then and now, their Lordships are determined to adhere. It is unnecessary to refer to them at any length, but there are two principal ones in the same volume of 'Moore's Reports,' "The Clarisse," and "The Neptune." In the latter case, Lord Kingsdown, in expressing the opinion of this Board, says, "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 a Court of Appeal to interfere upon a question of mere discretion." That which we therefore have to determine is, whether it is right in the present case for us to interfere with the judicial discretion which has been exercised by the Judge of the Court below?

Now it has been justly observed, that we have first to consider the position of danger and difficulty in which the property that was rescued was at the time; and in the argument it has been contended, that this ship, the 'England,' was in a position of very great difficulty and danger, and the case of the 'Saratoga' has been cited as an analogous case. Their Lordships think that case is very useful by way of contrast to the present case; because here, although there was no doubt a gale of some violence blowing (the witnesses differed as to the extent), it must always be remembered that this ship was a ship with its own steam-power perfectly ready to be exercised,—a ship in a condition to go to sea which had met with no casualty whatever, and which was not only within the harbour and within the river, but actually within the Sandon Basin, no doubt in a position of considerable difficulty. Therefore, it may fairly be said she was in a position which might expose her to some considerable risk of detention, and possibly to some risk of loss, by straining or otherwise; but she was not, by any means, in the position in which the 'Saratoga' was, that having been a ship which was in a dismantled and crippled condition. It is admitted here, that if she had once got her head in the proper direction to the entrance into the river, she would, by means of her own unaided steam-power, have been able to proceed upon her voyage.

Then we have to consider the amount of risk. We are told in the argument that these steam-tugs were rendering services of danger and peril to themselves. Their Lordships have consulted the Nautical Assessors upon this subject, and their opinion entirely concurs with that which their Lordships had formed for themselves on the evidence, viz. that the tugs on this occasion incurred no danger and no peril. It appears that one tug had already entered into an engagement to liberate this vessel, and by reason of an accident which occurred to that vessel in the peculiar circumstances in which she was placed, she had lost her funnel and her mast; but the other tugs had merely come through the open entrance into the basin, and then endeavoured to liberate the 'England' from the position in which she was. It

appears that a bargain was actually made with one of these vessels,—a number of them having been collected together by the signals which had been sent up,—a bargain was actually made with one of them, the ‘Rocklight,’ to perform that very service; and there was no evidence to show that the ‘Rocklight’ was unable or unwilling to perform that very service, which is called a service of peril and danger, but which in our opinion was neither perilous nor dangerous, for a sum of £20; but by the superior skill or good fortune of the ‘Knight Templar,’ the ‘Rocklight’ was anticipated by the ‘Knight Templar,’ and the ‘Knight Templar,’ with the assistance of the ‘Royal Arch,’ which performed a comparatively trifling service, succeeded in towing this vessel in.

We think, therefore, considering the position in which the ‘England’ was at the time, considering that the services rendered by the tugs were rendered in what may be called the ordinary course of their business, and rendered in a manner which exposed them to no danger or difficulty, there is nothing whatever to induce this Board to believe that the sum which was awarded by the learned Judge was other than a reasonable remuneration for the services rendered. And then, when we consider the principle referred to at the commencement of these observations, viz. that the difference ought to be very considerable to induce a Court of Appeal to interfere on a question of mere discretion, we think there is no foundation for this Appeal, and that it is our duty to advise Her Majesty to affirm the judgment of the Court below, and to dismiss the Appeal with costs.

