

Judgment of the Lords of the Judicial Committee on the Appeal of The Master and Owners of the S.S. "Baku Standard" v. The Master and Owners of the S.S. "Angèle," from His Britannic Majesty's Supreme Consular Court at Constantinople; delivered 13th June 1901.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

SIR FORD NORTH.

[*Delivered by Sir Ford North.*]

This is an Appeal by the master and owners of the S.S. *Baku Standard* from a judgment of the Supreme Consular Court at Constantinople, affirming a judgment of the Honourable Mr. Justice O'Malley by which he awarded to the master and owners of the S.S. *Angèle* (the present Respondents) the sum of 1,000*l.* for salvage and towage services; and also damages, subsequently assessed at 1,316*l.* 11*s.* 7*d.*

The facts are as follows:—

The *Baku Standard*, of London, is a large oil-tank screw steamer, of 2,375 tons register. On the evening of the 10th of December 1898, while passing through the Sea of Marmora on a voyage to Batoum in ballast, she became disabled by the fracture of her propeller shaft. This was about 6 p.m. She was practically in no danger, as she was not making any water, there were numerous steamers about, and the weather was not unfavourable. Tugs could easily have been procured the next day from either

Constantinople or the Dardanelles, and if in the meantime the currents had carried her towards the shore she could have anchored in safety. But she was helpless, and made the usual signals for assistance.

First one and then another steamer came up and offered help, but the master declined their aid, thinking he might do better. About 10 p.m. the *Angèle*, having seen the signals, came up. She was a British steamer of 1,149 tons, belonging to Malta, and bound for Constantinople in ballast; and after some discussion it was agreed that she should tow the *Baku Standard* to Constantinople, then about 50 miles distant. The price to be paid for her services was left to be settled between the owners. Accordingly a $4\frac{1}{2}$ inch wire hawser belonging to the *Baku Standard* was carried to the *Angèle*, and made fast on her starboard quarter. The other end of that hawser was shackled to the starboard cable of the *Baku Standard*, the total distance between the vessels being about 60 fathoms. When ready the *Angèle*, with the other vessel in tow, started for Constantinople, between midnight and 1 a.m. on 11th December.

It appears that both vessels (probably from being in ballast) steered irregularly and yawed a good deal. About 3 a.m. a violent shock was felt on board the *Angèle* and her engines began to race; indicating some injury to the screw. But she completed her tow to Constantinople, reaching that port in the evening of the same day.

Upon her arrival there it was found that two of the four blades of her propeller had been broken off from the boss, while a third blade had also been broken across about 8 inches from the boss. There can be no doubt that this occurred at the time of the shock above mentioned; but there is no direct evidence what was

the cause of the accident. Various suggestions are made. One is that the tow rope became slack from the yawing of the vessels; and when slack had fouled the screw of the *Angèle*, and so caused the damage. The nautical assessors consulted by their Lordships were of opinion that this was possible; but that, if it occurred, the hawser also must have sustained injury. There is evidence that when it was examined after the towage was ended the hawser showed no indication of its having been in contact with the screw, as it was not bruised, nor were any of the wire strands broken or frayed; but this inspection was not made in the presence of anyone representing the Respondents. Another suggestion was that the screw might have come in contact with some floating wreckage. This also seems possible. It was said on the other hand that no wreckage was seen; but as the accident occurred at 3 a.m. on a very dark night in December this is not surprising. There was nothing in the state of the weather to account for what happened. Both sides agree that the force of the wind was about No. 3 of the Beaufort scale—a very moderate breeze; and there was no sea on to speak of. Another suggestion was that the screw might have come into contact with some stone or rock at the bottom; but this may be put aside. In the result it is impossible to ascribe the injury with certainty to any definite cause. It occurred during the towage; and there is no proof that the master and crew of the *Angèle* were guilty of any negligence or unskilful management.

This action was instituted on behalf of the master and owners of the *Angèle*, who claimed salvage, and also the amount of damage actually sustained by the *Angèle* in carrying out the salvage work with consequent demurrage and other expenses. The Judge of the Supreme Con-

sular Court condemned the Defendants in 1,000*l.* for salvage service, and also for the other damages claimed, the amount to be ascertained by the Registrar. This decision was affirmed on appeal. The amount claimed for damages was 1,504*l.* 5*s.* 1*d.* and the Registrar awarded 1,316*l.* 11*s.* 7*d.*, made up of repairs, 532*l.* 19*s.* 10*d.*; demurrage, 546*l.* 6*s.* 0*d.*; dock dues, 192*l.* 1*s.* 3*d.*; and a few small items.

To deal first with the question of damages. It is clearly settled that when the vessel of a salvor has, without default on his part, been injured in the performance of salvage services, compensation may be awarded to him in respect of the injury so sustained, and damages consequent thereon. It was laid down by this Committee in the case of *Bird and Others v. Gibb and Others*, the *De Bay*, L.R., 8 App. Cas. 559, that it is always justifiable—and sometimes important, if it can be done—to ascertain what damages and losses the salving vessel has sustained in rendering salvage services. It is often difficult and expensive, and sometimes impossible, to ascertain exactly the amount of such loss, and in such cases the amount of salvage must be assessed in a general manner, upon so liberal a scale as to cover the loss, and to afford also an adequate reward for the services rendered. It was also laid down in the case of the *Thomas Blyth*, Lushington's Reports, p. 16, that when the vessel of a salvor is injured or lost while engaged in a salvage service, the presumption is that the injury or loss is caused by the necessities of the service, and not by the default of the salvors; and that the burthen of proof lies upon the parties who allege that the loss was caused by the salvors' own acts.

Adopting the principles thus laid down, and in the absence of any evidence that the damage to the *Angèle* was caused by negligence or default

on the part of the master or crew of that vessel, their Lordships are of opinion that the damages assessed by the Registrar were rightly awarded against the Appellants.

This being so, the compensation to be given for salvage services, as distinguished from compensation for damage, ought to be calculated on a less liberal scale than if the sum given for salvage was intended to cover compensation for damage also. Their Lordships are of opinion that, considering the evidence, and that the compensation for damage is dealt with separately, full justice would have been done by an award of less than 1,000*l.* for salvage. But this is a question of amount only, and it is not the custom of this Committee to vary the decision of a Court below on a question of amount, merely because they are of opinion that, if the case had come before them in the first instance, they might have awarded a smaller sum. It has been laid down in the *De Bay* (mentioned above), and other cases, that they will only do so if the amount awarded appears to them to be grossly in excess of what is right; which is not the case here.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed. The Appellants must pay the Respondents' costs.
