

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Ward and others v. Rogers and others, (the "ANNAPOLIS"); Ward and others v. Lockhart and others (the "GOLDEN LIGHT"); and Ward and others v. the Owners of the "H. M. HAYES;" from the High Court of Admiralty: delivered the 2nd August, 1861.*

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Present :

LORD KINGSDOWN.

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

AN action was brought against these three ships by a steam-tug, the "Storm King," for salvage, which action in the Admiralty Court has been dismissed.

The Court below appears to have held that in each case salvage would have been due, but for the circumstance that it considered the accident which created the danger to be attributable to the "Storm King" herself.

The principles applicable to cases of this description have been so fully explained in the case of the "Minnehaha," that we think it unnecessary here to discuss the question of law.

The facts are, to a certain extent, free from doubt.

The "Annapolis" is an American ship, which in the month of January last was bound with a cargo for the port of Liverpool.

On the 19th of January, when off the Orme's Head, she engaged the "Storm King" to tow her into the Mersey, and there to dock her.

The "Storm King" accordingly towed her into the

Mersey, where she was anchored, and remained there several days. On the 25th of January, in performance of her engagement to dock the "Annapolis," the steam-tug again took her in tow, being lashed on her port side, and was towing her down the river towards the Waterloo Dock. The tide at this time was flowing rapidly, when a barque called the "Johanna Stoll" came into collision with the "Annapolis" on her port side. To avoid being crushed by the collision, the "Storm King" let go the "Annapolis," slipped out from between the two vessels, and dropped astern. It is admitted on all sides that this manœuvre was perfectly justifiable.

The "Annapolis" and the "J. Stoll" then drifted with the tide up the river, till they came into collision with the brig "Anne." After getting clear of her, the "Johanna Stoll" was brought up by her anchor, and the "Annapolis" continued to drift alone until she came into collision with the "Golden Light," which was lying at anchor, near Tranmere Ferry.

The anchor-chain of the "Golden Light" parted, and she and the "Annapolis" drifted together in the direction of a ship called the "H. M. Hayes."

Before the "Annapolis" had come into collision with the "H. M. Hayes," and while she was in collision with the "Golden Light," the "Storm King" came up, and got her hawser on board the "Annapolis," and together with another steam-tug called the "Lioness," which had previously given her assistance, towed away the "Annapolis" till she was brought up by her anchor, and placed in safety. The "Storm King" then sent another steamer to assist in docking the "Annapolis," and herself steamed away to assist the "Golden Light," and towed her away from the "H. M. Hayes," with which she had come in contact.

Thus far there is no controversy about the facts; and in these circumstances the "Storm King" claims salvage for all these ships:—against the "Annapolis," on the ground that, by reason of the accident, she was in peril, from which she was saved by the "Storm King," whose claim for towage service was thereby converted into salvage service;—against the "Golden Light," because she was rescued from the danger to which she was exposed by the collision with the "Annapolis" and

the "H. M. Hayes," and against the "H. M. Hayes" by reason that she was relieved from the "Golden Light," and saved from the danger of a collision with Her Majesty's ship "Majestic," against which, if she had not been so relieved, it is said that she would have drifted.

We will consider the defences separately.

First, as to the "Annapolis."

She insists at the Bar that the "Storm King" did not perform her duty with due skill and promptitude; and secondly, that in point of fact she rendered no service which was not included in her towage contract, and which was not covered by her towage hire.

The Court below has decided in favour of the "Annapolis" upon the first ground.

The "Storm King," having backed, and left the "Annapolis" adrift, was bound to return with all possible speed, and attach herself again to that ship. It is sworn by witnesses on her behalf that she did so; that she immediately came up again on the starboard side of the "Annapolis," and succeeded in throwing a rope on board, which one of the crew took hold of, but instead of fastening to a hawser afterwards let go. This is said to be accounted for by the circumstance of all the men on board the ship being engaged on the port side, in consequence of the collision with the "Johanna Stoll," and the subsequent collision with the brig "Anne."

There is contradictory evidence upon this important point, but the Court below has held, and we concur in that opinion, that the preponderance of evidence is in favour of the tug, and that this fact must be taken as proved.

If, therefore, there was any want of skill or promptitude on the part of the tug, it must have been in some subsequent proceeding, in adopting a wrong course in following the ship, or in not pursuing that course with sufficient activity.

The grounds upon which the Trinity Masters came to their conclusion are not stated, and their opinion is, as too often happens in these cases, directly opposed to that of the Nautical Gentlemen who assist us, who, after being strictly questioned upon every point which has been suggested in the argument, as showing want of skill or of dili-

gence on the part of the tug, are quite satisfied that the course which she took was that which good seamanship prescribed, and that there is no reason to believe, from the time which was occupied, or otherwise, that there was any default upon her part. We confess that this is the conclusion at which we have arrived.

But as regards the "Annapolis," the question, in our view of the case, is not very material, because whether she did or did not come up to the "Annapolis" as soon as she might have done, she rendered, in our opinion, no services beyond those which she had stipulated to render.

She was bound to tow the "Annapolis" into dock. In performing that duty, she, for her own safety, let the "Annapolis" go adrift. She was justified in looking to her own safety in the first instance, but that consideration did not exonerate her from the obligation of following the "Annapolis" to complete her engagement, and from doing what she could to prevent the mischief which might arise from the temporary interruption of her service.

Assuming that she could not have come up sooner, what did she do beyond what she was bound to do? She attached her hawser to the ship, and towed her out of danger, leaving the remainder of the service to be performed by another tug. She incurred no risk herself; she performed, with more or less diligence, the duty which she had undertaken; and the fact that when this service was renewed the "Annapolis" was entangled with another ship, can no more entitle her to salvage than if a collision had taken place without interrupting the towage service.

Upon these grounds, we think that the sentence as far as it dismisses the claim against the "Annapolis" must be confirmed.

With respect to the two other ships, the case is different. To these the "Storm King" was under no obligation.

First. As to the "Golden Light."

It appears that she hailed the "Storm King," and required her assistance, that such assistance was afforded, and that the injury which the "Golden Light" might have suffered by collision with the "H. M. Hayes" was prevented or diminished. She was afterwards towed, at her request, by the "Storm

King" to another part of the river, and the tug remained near her, at the request of the pilot of the "Golden Light," till the latter ship went into dock.

This certainly entitles the "Storm King" to require payment for salvage service, unless by some means she has disentitled herself to it. Now it has been held below that she has so disentitled herself, because she has not performed her duty to the "Annapolis," and it is said that if she had performed such duty, the "Annapolis" would not have run into the "Golden Light," and the "Golden Light" would have been in no danger of running into the "H. M. Hayes." That the accident must be considered to have been primarily caused by the "Storm King," and that she therefore cannot claim salvage from any of these vessels.

A most important principle of law is involved in this decision, which, as far as our knowledge extends, is new: that third persons can avail themselves of the breach of a contract to which they are strangers, on the ground that if it had been duly performed they would have escaped injury to which they have been subjected. But it is not necessary to pronounce a decision upon this point, for we think it is not made out in fact that the collision with the "Annapolis" was caused directly or indirectly by the fault of the "Storm King." As to the "Golden Light," therefore, we must advise a reversal of the sentence.

There remains the case of the "H. M. Hayes."

Her case in this respect differs from that of the "Golden Light," that she neither invited nor accepted any assistance from the "Storm King." She fairly admits that she received some slight benefit from the service performed by the "Storm King" on the occasion, but she insists that such service was rendered not to her but to the "Golden Light." It appears to their Lordships that it would be dangerous to hold that if salvage service be actually rendered to a ship she cannot be called upon to pay anything unless it can be shown that she either requested or expressly accepted assistance. In many cases the urgency of the case may be too great to admit of previous discussion, and if a salvor were required to prove such agreement before he could recover, it is to be feared that there would be much slackness in cases which most require energy

and activity. They agree with what they understand to be the opinion of the learned Judge below, that it is sufficient if the circumstances of the case are such that, if an offer of service had been made, any prudent man would have accepted it.

But in the present case the "H. M. Hayes" received only indirectly a benefit from the service rendered to the "Golden Light." There was not only no acceptance of the service by her, but there was nothing done by the "Storm King" with a view to her benefit. She received benefit indirectly, as Her Majesty's ship "Majestic," or any other ship lying higher up the river than the "H. M. Hayes," may have received benefit. As to the "H. M. Hayes," therefore, their Lordships think that the Judgment must be affirmed with costs.

Their Lordships must observe that the services rendered by this tug, and the danger of the ships, appear to have been grossly exaggerated by the Appellants, and they cannot express too strongly their disapprobation of the enormous amounts for which, in each case, bail has been demanded. They are advised that, having regard to the state of the tide and weather, and the situation in which these different vessels were, the only danger they incurred was that of some injury to their bulwarks and rigging; that the cargoes were not in any danger at all; and that nothing but the most ordinary service was rendered by the tug, without the least risk to herself. They will advise 100*l.* to be awarded in the case of the "Golden Light," and the Appellants must have their costs both here and in the Court below, the case being proper for the decision of a Superior Court.

As their Lordships differ from the Court below on the grounds of its decision in the case of the "Annapolis," and much expense was incurred in the evidence, which they think does not warrant the finding below, they will advise that the sentence as to costs should be reversed, and that there should be no costs in her case, either there or of this Appeal.

They will humbly advise Her Majesty to alter the Judgments below in conformity with the opinions which they have thus expressed.

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