

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bligh, Harbottle & Co., v. Simpson and others (the "Fusilier" and Cargo), from the High Court of Admiralty; delivered the 8th March, 1865.*

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Present:

LORD CHELMSFORD.

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

THE principal question raised upon this Appeal is, whether by the 458th and 459th sections of "The Merchant Shipping Act, 1854," the owners of the cargo of a vessel to which salvage services have been rendered, are liable to contribute to that portion of the claim of the salvors which arises from the saving the lives of the passengers on board the vessel. There was another subordinate question as to the amount of salvage awarded to some of the salvors, which will require a short notice.

It is unnecessary to state the facts of the case, which were all agreed to on both sides. The Appellants, the owners of the cargo on board the "Fusilier," the vessel salvaged, admitted that the owners, masters, and crews, of the different vessels to whom salvage was awarded, were entitled to remuneration for their services. The value of the ship was 2,500*l.*, of the freight 2,581*l.* 17*s.* 8*d.*, and of the cargo 52,000*l.* The learned Judge of the Court of Admiralty pronounced "the sum of 2,200*l.* to be due to the salvors for the salvage services rendered by them to the vessel 'Fusilier' and her cargo, and for their services in saving the lives of the passengers on board the said vessel, namely, to the master, owners, and crew of the

steam-tug 'Aid,' the sum of 700*l.*; to the master, owners, and crew of the life-boat 'Northumberland,' the sum of 700*l.*; and to the masters, owners, and crews of the luggers 'Champion' and 'Lotus,' the sum of 800*l.*, together with costs." The services rendered by the luggers were these: On the 3rd of December, 1863, the "Fusilier" was aground on the Girdler Sand. The steam-tug the "Aid" and the life-boat the "Northumberland" had been rendering assistance, and had succeeded in taking all the passengers out of the "Fusilier" and placing them in safety on board the "Aid," to be conveyed to Ramsgate. The "Aid" received an order from the "Fusilier" to bring an anchor and chain from Ramsgate, to be used in getting her off the sand. The weight of the anchor and chain procured for this purpose was found to be too great for the "Aid," and it was necessary to employ the two luggers, the "Champion" and the "Lotus," to carry them off to the "Fusilier." These vessels anchored near the "Fusilier" at midnight of the 4th of December, and remained by her the whole night. On the following day, unsuccessful attempts were made to tow the "Fusilier" off the sand. In the course of the afternoon of the 5th of December, the gale, which had been blowing from the westward, changed to the southward, thereby lessening the chance of the "Fusilier" being got off the sand, and the luggers were ordered to proceed to the Nore, and remain there till the weather moderated. They remained at the Nore from the 6th to the 10th of December; then, according to instructions, they returned to the "Fusilier," which, not being sufficiently light to float, although part of her cargo had been removed, they were ordered back to the Nore, still with the anchor and chain on board; and the "Fusilier" having been got off the sand on the 11th of December, they followed her to the Blackwall Docks, and finally arrived at Ramsgate on the 14th of December. The Appellants objected that the amount of 800*l.*, awarded to the "Champion" and the "Lotus" for their services, was excessive, and urged as proof of the excess, that it exceeded the value of the two vessels.

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. The accident of the amount of salvage exceeding the value of the vessels is wholly immaterial. Undoubtedly the placing valuable property in peril may enhance the merit of salvage services, but it does not follow, on the contrary, that the trifling character of the property endangered will necessarily detract from the value of such services. It was not quite correctly said in argument at the bar that what is risked is the first thing to be regarded, and the next the services which are rendered. It would have been more accurate to have reversed the order of these considerations, and to have said that the first thing to be regarded is the value of the services with reference to the amount of property rescued from peril, and the next, how far the merit of these services is enhanced by the risk to life or property which has been involved in them. Taking the grounds of claim to salvage in this order, it is obvious that it never can be an argument against the amount awarded to the salvors, that it exceeds the value of their property put in peril by the service. And even if such an argument could ever be urged, it hardly belongs to the Appellants in this case. No complaint was made by them of the total amount of salvage awarded to the salvors in one entire sum of 2,200*l.* It is only in the distribution of this sum amongst the different classes of salvors that there is any opening for their objection. Now, the award of salvage is not of such a sum to one set of salvors, and such a sum to another, making a total of 2,200*l.*, but of that sum as the whole value of the salvage services which is afterwards apportioned amongst them, according to their respective merits. The amount allotted to the "Champion" and the "Lotus" might be made the subject of dispute by the owners and crew of the other vessels, but it can hardly be objected to by the Appellants, who have never once suggested that, taking into account the value of the property rescued from peril, and the number of lives saved, the sum of 2,200*l.* was too great a reward for the whole of the services rendered. There is, therefore, no valid objection to the Decree upon this ground.

The principal question in the case is one of great

importance, and of some difficulty. Prior to the passing of "The Merchant Shipping Act, 1854," the Court of Admiralty, in a cause of salvage where no property had been rescued from peril, but where life had been saved, had no power to award anything to the salvors. But where both property and life had been saved, it was the well-established practice of the Court to increase the amount of salvage, and thus indirectly remunerate the salvors for the merit due to their having saved life as well as property. Of course, as the salvage was awarded in one entire sum, the owners of the cargo, as well as of the ship and freight, contributed their proportion to the payment of this increased salvage, and so in a certain sense were rendered liable to the payment of what is called life salvage.

Before the passing of "The Merchant Shipping Act, 1854," the Legislature had provided for the payment of a reward or compensation by way of salvage for the saving of the life of any person on board a ship or vessel in distress, by the 19th & 21st sections of 9 & 10 Vict., cap. 99, "An Act for Consolidating and Amending the Laws relating to Wreck and Salvage." The provisions of these sections are substantially re-enacted in "The Merchant Shipping Act, 1854," and therefore need not be further noticed.

In construing the 458th and 459th sections of the Act on which the principal question arises, the recognized practice of the Court of Admiralty of indirectly rewarding salvors for the saving of human life by giving an increased rate of salvage on that account must always be borne in mind. The Legislature in dealing with the subject of life salvage must be taken to have been aware of this practice, and to have intended to confer upon the Court of Admiralty a power of doing that directly which they had been so long in the habit of doing indirectly. And it must also be remembered that by the established practice of the Court the owners of cargo were always rendered virtually contributory to the reward and compensation given to salvors for the preservation of life. Under these circumstances the provisions in the sections in question were introduced. The 458th section is in these terms:

"Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the

limits of the United Kingdom, and services are rendered by any person,—

- “ 1. In assisting such ship or boat ;
- “ 2. In saving the lives of the persons belonging to such ship or boat ;
- “ 3. In saving the cargo or apparel of such ship or boat, or any portion thereof ;
- “ And whenever any wreck is saved by any person other than a receiver within the United Kingdom :

“ There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services, or any of them, are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.”

It is perhaps hardly necessary to advert to a point which was raised in the Court of Admiralty, but barely mentioned here, and certainly not insisted upon, that the persons saved being passengers on board the “Fusilier,” were not in the terms of the Act, “persons belonging to such ship.” It would be strange indeed if an Act intended to encourage and reward the saving of life which is in peril in consequence of the distress and danger of the vessel in which it is embarked, should be construed so as to make a distinction between those who were on board in different capacities and different relations to the vessel. It is a sufficient answer to such an objection to say that nothing is more common in popular language than to speak of “the passengers belonging to such a vessel.” The salvors therefore are entitled to a reasonable amount of salvage for the services rendered in saving the lives of the passengers on board the “Fusilier,” and the only question to be considered is whether the owners of cargo are liable to contribute towards its payment.

The general rule as to the parties liable to pay salvage is, that the property actually benefited is alone chargeable with the salvage recovered. But this rule is inapplicable in the case of life salvage, because it is difficult to imagine a case where the saving of the lives, either of the crew or of the passengers of a vessel in distress would be of any benefit, either to the vessel or to the cargo. The Legislature therefore could not have intended that the benefit to property should be the criterion of the

liability to the payment of life salvage. All that seems to have been contemplated is, that there should be included in the entire sum payable for salvage of ship and cargo, a distinct reward for the preservation of human life. It was argued on behalf of the Appellants that when the 458th section, after describing the services to be rendered in assisting the ship or boat, in saving the lives of the persons belonging to the ship or boat, and in saving the cargo or apparel of the ship or boat, goes on to say, there shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, a reasonable amount of salvage, the words must be read *reddendo singula singulis*. But, although this might very well be if the section had confined the claim to salvage to the saving of the ship and cargo and apparel, for then each species of property benefited would alone have been chargeable, yet, where amongst the other subjects of claim, the saving of human life is included, there is no reason why that should be referred to the ship any more than to the cargo, since the one derives no more benefit than the other from the services rendered. The Legislature seems merely to have had in view the rewarding at a higher rate persons whose services were more meritorious from having rescued human life as well as property from peril, and almost to have assumed that the liability to the salvage would attach, without any distinction, upon all the owners of property exposed to the common danger. And as the salvage is always awarded in a gross sum, and under this section is to be increased by the reward for the saving of life, the owners of cargo since the Act are liable exactly to the same extent as before, with this immaterial difference that there now is a distinct and express item of claim to increase the amount of salvage to which they are contributory, instead of the whole being estimated upon a higher scale. But it is said that the 459th section of the Act shows that it must have been intended by the Legislature that the owners of the ship should alone be liable to the payment of life salvage, for it enacts that "salvage in respect to the preservation of the life or lives of any person belonging to any such ship or boat shall be payable by the owners of the ship or boat in priority to all other claims for salvage, and in cases where such ship or boat is destroyed, or

where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives." There is no doubt that this section creates some difficulty as to whether the Legislature intended that life salvage should be payable by any other persons than the owners of the ship, but if such was the intention it would have been easy to have expressed it, and the language of the section is capable of the construction that it merely fixes the limit of the shipowners' liability, and does not mean to render him solely liable to the payment of this description of salvage. And whatever doubt may be thrown upon the subject by this section, there are two subsequent sections of the Act, the 468th and the 469th, which appear to be susceptible of no other interpretation than that the owners of cargo were intended to bear a proportion of the payment for life salvage. The 468th section enacts, "that whenever any salvage is due to any person under this Act, the receiver shall act as follows (that is to say): If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof, he shall detain such ship or boat, and the cargo and apparel belonging thereto, until payment is made, or process has been issued by some competent Court for the detention of such ship, boat, cargo, or apparel." It is thus expressly provided, that in the case of salvage being due for services rendered in saving the lives of persons belonging to the ship, the cargo shall be detained. And it is not intended that it shall be merely held as additional security with the ship for payment of the salvage, for the 469th section enacts, that "whenever any ship, boat, cargo, apparel, or wreck so detained by any receiver for non-payment of any sums so due as aforesaid (that is, amongst others, for services rendered 'in saving the lives of persons belonging to the ship'); the receiver in certain cases may sell such ship, boat, cargo, apparel, or wreck, and out of the proceeds of the sale defray all sums of money due in respect of salvage." What-

ever difficulty, therefore, may be supposed to be created by the 459th section, it seems impossible to read the two last-mentioned sections without being satisfied that they proceed upon the ground of the owners of cargo being liable to the payment of life salvage. The object of the Legislature in the different sections referred to seems to have been to give a legislative sanction to the practice of the Court of Admiralty of indirectly rewarding salvors for the preservation of human life, by allowing the value of their services to be made the subject of a distinct estimate, but without intending to fix the responsibility of payment upon one class of owners of property involved in the common peril, more than on another. Their Lordships after much consideration have arrived at the same conclusion with the learned Judge of the Court of Admiralty, and they will, therefore, humbly recommend to Her Majesty that the Decree appealed from be affirmed, and that the Appeal be dismissed with costs.

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