

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Merchant Trading Company v. Jolliffe and others, ship 'Woburn Abbey,' from the High Court of Admiralty, delivered 29th November, 1869.*

Present :

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

THERE are two questions which arise on this Appeal; first, whether the Respondents are entitled to any salvage at all; and secondly, if they are, whether the amount awarded to them is excessive.

The only question upon which their Lordships have felt any hesitation, and upon which they desired to hear the Respondents, was, whether the 'Superb' and the 'Conqueror' were entitled to any salvage services upon the principle upon which the claim against the 'H. M. Hayes,' in the case of the 'Annapolis' was rejected; that is, whether the services which were rendered to the 'Woburn Abbey' were direct or only indirect services.

Now, with regard to the case of the 'H. M. Hayes,' it was perfectly clear there that the services were indirect, because the 'Storm King,' which had been hired to tow the 'Annapolis,' in the course of the performance of her services, brought the 'Annapolis,' or the 'Annapolis' drove upon the bows of the 'Golden Light;' the vessels were entangled together, and they approached the 'H. M. Hayes,' riding at single anchor. When at a short distance from her, the 'Storm King' and another steamer called the 'Lioness,' which had come to the assistance of the 'Annapolis,' towed the 'Annapolis' clear of the 'Golden Light.' The 'Storm King' continued towing the 'Annapolis' for a few minutes, and then, leaving her in charge of the 'Lioness,' went to the assistance of the 'Golden Light,' which vessel meanwhile had fouled the

'H. M. Hayes,' and with her had drifted to within a short distance of H.M.S. Majestic.

No doubt the two vessels, the 'Golden Light' and the 'H. M. Hayes,' were foul of each other. "Two small steamers had hold of the 'Golden Light,' but were unable to hold her." The service which the 'Storm King' rendered was, by coming to the assistance of the two steamers, and taking the 'Golden Light' away from the 'H. M. Hayes,' without any intention whatever of rendering services to the 'H. M. Hayes,' which vessel, however, received benefit by being relieved from the 'Golden Light,' which had fouled her. It is clear, therefore, that no other view could be taken of that case, than that the services which were rendered by the 'Storm King,' were services which were rendered to the 'Golden Light,' though indirectly beneficial to the 'H. M. Hayes.'

Now, what were the services in this case? It appears to their Lordships that the 'Woburn Abbey' received a direct, and not an indirect benefit from the services of these steam-tugs. The two vessels, the 'Woburn Abbey' and the 'British Trident,' were in close contact with each other, and in such a position that it was impossible for the 'Woburn Abbey' to slip her chain, because the 'British Trident' was upon her. In order, therefore, to extricate the 'Woburn Abbey' from her position, it was necessary that the 'British Trident' should be taken off from her, and that was the particular service which it was suggested on the part of the 'Woburn Abbey' should be performed by the 'Superb,' the first steam-tug that came up. In page 65, the Captain of the 'Superb' states that he went to the 'Woburn Abbey,' "and "I asked the Pilot whether he would want any "assistance; to which he answered, not at present, "we are not ready to slip, we can't, owing to the "chains; but go to the next ship, the 'British " 'Trident,' and get hold of her, and try to get her "from us; tow her clear."

The same account pretty nearly is given by the Pilot of the 'Woburn Abbey,' who said, "I "told him (the Captain of the 'Superb') that we "were not prepared for towing away, and that he "could do no good at towing of us, but that he "had better go to the other ship, and tow her up."

The difference is striking between the case of the 'H. M. Hayes' and the present. It is quite clear that the 'Woburn Abbey' could not possibly have been extricated from her position except by relieving her from the 'British Trident,' and this the pilot asked the Captain of the 'Superb' to do. In the case of the 'H. M. Hayes,' the 'Storm King,' without being asked to do anything to or for her, went and assisted the two other vessels which were not sufficient to take the 'Golden Light' away; but the very thing which was absolutely necessary for the steam-tug, the 'Superb,' to do for the safety of the 'Woburn Abbey,' or at least, in order to extricate her from danger, was that the 'British Trident' should be removed from her, and this service the 'Superb' was expressly requested to perform.

That being so, it is quite clear that the benefit she received from the services of the 'Superb' was a direct, and not an indirect benefit.

With regard to any alleged distinction between the 'Superb' and the 'Conqueror;' the 'Conqueror,' it appears, did not come up until after the 'Woburn Abbey' had been made fast to the Halifax Buoy; but, at the same time, at that very moment, the 'British Trident' was upon her, just in the same way, and the 'Superb' could not have taken the 'Trident' away without the assistance of the 'Conqueror.'

There is, therefore, no substantial difference between the merits of the two parties, the 'Superb' and the 'Conqueror.' If they are entitled to any salvage at all, they are entitled, their Lordships think, to an equal amount of salvage.

It being then established that the liability to salvage exists, the only remaining question will be as to the amount which has been awarded by the learned Judge. In the course of the argument, attention was called to the principle upon which their Lordships deal with appeals from the Judgment of the Judge in salvage cases; and their Lordships cannot see that there is anything so excessive or exorbitant in the amount of salvage which has been awarded by the learned Judge as to induce them to interfere with and moderate that amount.

Under the circumstances, therefore, their Lord-

ships will recommend to Her Majesty to affirm the sentence of the learned Judge, and to dismiss the Appeal with costs.

Their Lordships do not mean to say that they affirm the principle upon which the damages were assessed; nor, perhaps, if they had been called upon to determine originally, that they would have awarded as large a sum as the Judge has given, but they act entirely upon the principle which has governed the Committee in cases of this kind, and say that they cannot interfere with the award which has been made.