

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Arnold and others v. Cowie and Sons, (the 'Glenduror'), from the High Court of Admiralty, delivered 8th February, 1871.*

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Present:—

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE JAMES.

THIS is an Appeal in a case of salvage from the Court of Admiralty, the salvors being dissatisfied with the quantum of remuneration which that Court has thought fit to award them. Their Lordships have had to consider the question with that difficulty which has pressed upon this Board in all these salvage cases, the great difficulty of laying down any principle by which they are to overrule what to a great extent must be considered as in the discretion of the Court below, as a matter of individual estimate and opinion as to the value of certain services rendered, or the money which ought to be paid by the person to whom the services have been rendered, under all the circumstances of the case. In some cases which have been referred to in the course of the argument, the difficulty has been put in very strong language; that is to say, that this Committee would not enter into the question of quantum where there has been nothing to shock the conscience, nothing gross, nothing extravagant. In the case of the 'Cheetah,' in which this expression is quoted, there follows a more accurate expression of the rule according to their Lordships' view:—That is to say, "It is, however, 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 the Court of Appeal to interfere upon a question of mere discretion."

Now, the facts of the case are really not in dispute. The Judgment on the facts of the learned Judge of the Court of Admiralty has not been questioned before us by either side, and it is not necessary for their Lordships to refer to the facts in any other terms than those which the learned Judge himself has used in stating the nature of the case, and the circumstances under which the matter came before him for decision. The Judgment ends thus:—"Seeing then that these  
 "services saved life while they were attended  
 "by, certainly, very great danger, which deterred  
 "the crew who went in the first from going in  
 "the other expeditions, the question is whether  
 "£500 is a sufficient remuneration for having mate-  
 "rially contributed to save property of the large  
 "value of £48,000," (it should be £46,000), "and  
 "having saved the lives of twenty or twenty-two  
 "men" (it ought to be twenty-seven, including the  
 "women and child), "who were on board; and  
 "having also to some extent perilled their own  
 "lives in the services which they rendered; and I  
 "am of opinion that it is not," in which conclusion  
 "their Lordships entirely agree. But taking that as  
 "the true state of the case, their Lordships have to  
 "apply the rule which is probably best laid down  
 "in the case of the 'Clifton,' where Lord Stowell  
 "expresses himself as follows:—" Now, salvage is  
 "not always a mere compensation for work and  
 "labour. Various circumstances upon public con-  
 "siderations, the interest of commerce, the benefit  
 "and security of navigation, the lives of the  
 "seamen, render it proper to estimate a salvage  
 "reward upon a more enlarged and liberal scale.  
 "The ingredients of a salvage service are, first,  
 "enterprise in the salvors in going out in tem-  
 "pestuous weather to assist a vessel in distress,  
 "risking their own lives to save their fellow-crea-  
 "tures, and to rescue the property of their fellow-  
 "subjects; secondly, the degree of danger and dis-  
 "tress from which the property is rescued, whether  
 "it were in imminent peril or almost certainly lost,  
 "nothing out of it rescued and preserved; thirdly,  
 "the degree of labour and skill which the salvor  
 "incurred and displayed, and the time occupied;  
 "lastly, the value. Where all those circumstances  
 "concur, a large and liberal reward ought to be

“given.” But he goes on, “where none or hardly any, then the thing ought to be *pro opere et labore.*” Applying that to the facts as stated by the Judge of the Court of Admiralty in his Judgment, their Lordships are of opinion, under all the circumstances of the case,—not forgetting that to a great extent there possibly was not that very great peril of life which was stated in the case of the salvors, and that that peril was diminished after the first few hours; but still, having regard to all the circumstances which have been admitted and proved,—that the “large and liberal” reward in this case ought certainly to be something more than £1000, which the learned Judge has awarded; and they have on the whole, having regard to the very large value of the property saved, and to the long list of cases in none of which do they find such a small proportionate remuneration as this given, come to the conclusion that £2000 would be a fair sum to award to the salvors. They have not omitted to weigh what was much pressed on them, that the real meritorious service was, on the first night, in saving the lives, and that what was done afterwards to the ship—the anchoring, the unloading, the pumping, and the going round to the Thames—were ordinary services which any person might have rendered. But their Lordships do not think it right to split up the services of salvors in this way, or to treat it as other than one continuous salvage service rendered to life and property. They have, moreover, showed in this case, that according to the evidence of the salvors (wholly uncontradicted), the ship was left entirely to their care for several days; that what was devised and done was devised and done by them, and that they acted with great promptitude at a time when every hour might have been of vital importance. With respect to the amount of difference of estimate which would justify their Lordships to review the decision of the learned Judge, they were referred to a case in which this Court differed to the extent of one-third. Unless the difference amounted at least to that they would not have interfered, but they think in this case the difference is so considerable as to induce their Lordships to differ and to express that difference in the Judgment which they have pronounced.

The Appellants to have the costs of the Appeal.

