Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the 'Sappho' v. Dent and others (the 'Sappho') from the High Court of Admiralty, delivered 15th June, 1871.

Present:—

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice James.
Lord Justice Mellish.

THIS is a suit for salvage, and it raises a question of considerable importance, namely, whether, when salvage services are performed by one ship to another, and both ships belong to the same owner, the crew of the ship which has performed the salvage services is entitled to salvage remuneration?

The facts necessary to the decision of the case appear to be simple and plain enough. Whilst the 'Sappho,' a screw steamer, was performing a voyage in the Mediterranean, its screw became disabled, and the ship itself appeared to be in a very disabled state, and in very bad weather. It was 157 miles from Malta, and it appeared to be certainly in a state that made it extremely doubtful whether, if it was left to itself and got no assistance from any other steamer, it would ever arrive at Malta at all. Under those circumstances, another screw steamer belonging to the same owners, the 'Nero,' met with it, and, it apparently not being known at that time that they did belong to the same owners, it was agreed that the 'Nero' should tow the 'Sappho' to Malta, which she accordingly did, and that ar-

rangement was entered into on the assumption that the services were to be salvage services. Then it turns out that the ships belong to the same owner, and of course, therefore, there could be no salvage as respects the ships, since such a claim would be absurd; but the question arises, whether the crew, and the master also, of the 'Nero,' if he had claimed it, would be entitled to salvage remuneration?

It certainly seems curious that this question has never been decided on principle at all. It was very much considered in the case of the 'Mary Jane,' which is said to be an authority, that in no case where the ships belong to the same owners can any salvage remuneration be recovered. But when the facts of that case are looked at, their Lordships do not think that Dr. Lushington intended to lay down any such general rule. There the ships belonging to the same owner were engaged in the African trade. It is stated in the Judgment that it was part of the general arrangement that the ships of the same owner and the crews of the same owner should render mutual assistance to each other, and the real question seems to have been whether the services there rendered did go beyond that mutual assistance which under the circumstances of the African trade and according to the well-known usages of that trade, one ship was bound to render another? Dr. Lushington, after all, puts the case upon what appears to their Lordships to be the true principle, namely—whether the services rendered were services which under their contract the seamen were bound to perform, and for which they are remunerated by their wages? It is quite clear that as a general rule of law seamen cannot recover salvage remuneration for services which by their contract they are bound to perform, and therefore they never recover salvage remuneration for services connected with the saving of their own ship as long as the relation of master and servants between them and their owner, with reference to that ship, continues. But it has never been laid down, and their Lordships are not disposed to lay down, that if a seaman perform services for the benefit of his owner which are not within his contract, he cannot be entitled to salvage remuneration. Their Lordships do not say services which he is not bound to perform, because it may be that as an ordinary incident of

a voyage if a ship meets another ship in distress, and the master orders the seamen of his ship to give assistance, they are to a certain extent bound to give assistance, but then for that assistance, if salvage services are rendered, they are entitled to receive salvage remuneration. Their Lordships do not see why the case should be different if it turn out that the ship to which the service is rendered belongs to the same owner. The ordinary contract which a seaman enters into certainly says nothing about rendering services to another ship. He does something, therefore, which is not within his contract. It may be that he ought to do it because it is an ordinary incident that he should do it, but then if it is an ordinary incident that he should do it, and if he does it, not because it is within his contract, but for the reason Lord Stowell assigns in the case of the 'Waterloo,' where he says that nobody but a freebooter would refuse to render assistance under such circumstances, and that there is a moral duty to render assistance,—if he performs that duty towards a ship, though it may be belonging to the same owner, because of that moral duty, and not because it is within his original contract of service with his owner, there does not appear to be any good reason why the ordinary consequence should not follow, namely, that for this extraordinary service he should receive the remuneration which the law gives him. That appears to be in accordance with the ordinary rules laid down by Lord Stowell, and all the great authorities respecting salvage, that it is a right very much favoured in the law, and therefore that it ought not to be narrowed in a case which clearly comes within the principle. Indeed, the learned counsel for the Appellant appeared to admit that if a man risked his life, that being a thing he was not bound by his contract to do, he would be entitled to receive salvage remuneration; but their Lordships do not see on what principle a distinction can be drawn between a case where a seaman risks his life and a case where he performs other extraordinary services which would in their nature be salvage services. That would be raising a new distinction, for which there appears no sufficient ground or authority. The true rule appears to their Lordships to be, to consider whether the

services are in themselves of the nature of salvage services; and next, whether they are services which are within the contract which the seaman originally enters into, so that he receives remuneration for them by his ordinary wages? If they are not within his contract, so that he does not receive remuneration for them by his ordinary wages, and they are in their nature salvage services, their Lordships are of opinion that there is no good reason why the seaman should not receive the ordinary salvage remuneration which the law gives him.

Then, as to the question of amount, their Lordships certainly think that the amount awarded by the Court below is somewhat large, and they will not say that if they had to determine the question, they would give the same amount; but it is a fixed rule that their Lordships do not interfere with the amount given for salvage, unless it is a case where the amount is very greatly in excess or deficient, in their Lordships' estimation; and they do not think that, on the whole, there is sufficient reason to induce them to interfere with the amount in this case.

The result is, that their Lordships will recommend to Her Majesty that this Appeal be dismissed with costs.