

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Dawson and others v. Bates and others
(The "Sydney Dacres"), from the High
Court of Admiralty of Ireland; delivered
July 23rd, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR HENRY S. KEATING.

IT is scarcely necessary for their Lordships to reiterate what has been frequently said at this board, that this Committee invariably show an indisposition to interfere with the judicial discretion of the learned judge of the Court of Admiralty where that discretion in cases of salvage is exercised upon a question of amount. Their Lordships must see very clearly that there has been a misconception amounting to miscarriage in the judge below before they would interfere with the discretion which is vested in him.

Now, in this case no complaint whatever is made of the findings of the learned judge in point of fact, or of any misapplication of the ordinary rules of law applicable to cases of salvage. The learned judge has found that the "Sydney Dacres" was at the time the "Lord Elgin" came up to her a derelict ship, and their Lordships are willing to treat the case on that footing, that she had the legal character of a derelict, but although a ship may have that character it is obvious that it may occur under

varying circumstances, and that a derelict may be in great and imminent danger of loss, or she may be in a position where there is very little danger of her ultimately becoming a wreck or being lost to her owners. In this case, although the ship was, if one may use the term, technically speaking, according to the legal definition of a derelict, in that state, yet her position was well known, and her crew had left her because she would not steer, and therefore they considered that there was danger of her going ashore when near the Skellig rock. Although they had, under those circumstances, left her, there was an intention to go to the nearest port where they could get the assistance of steam vessels, in order to endeavour to recover the vessel. It appears that the mate landed at Valentia. The owners at Liverpool were at once communicated with by telegram, and they sent on communication as to the state of the vessel to Queenstown, and there the agent of the vessel sent for Mr. Seaton, who was the manager of the Towing Company, communicated to him the knowledge that he had regarding the vessel, and desired that he would send out a tug. No agreement was made at that time, nor does it appear that at the first interview any negotiation took place about an agreement, but very shortly after Mr. Seaton was again seen by Mr. Scott. Mr. Scott then endeavoured to make an agreement with regard to the "Lord Elgin," but Mr. Seaton said she had gone out; he had come to no agreement about her, but he did enter into an agreement to send out two other tugs, the "Lord Clyde" and the "Lord Lyons," to assist in finding the vessel. It appears the "Lord Elgin" was successful in finding this vessel; the other two tugs came up and assisted her in bringing the vessel back into Cork, and about three days were occupied in that service. Whilst the judge

finds that the vessel was derelict, he has also found that the services were really towage services, although not legally bearing that character but bearing the character of salvage services, but that the towage was done without difficulty, that the weather was very fine, and that the services were not very difficult, and were rendered without any risk to life or limb or loss of voyage, and without any serious damage being done to the "Lord Elgin." Their Lordships cannot say that under these circumstances a sum of 800*l.* which he has awarded to the owners of that vessel is too small. It appears to be rather more than double what would have been paid if there had been an agreement made, and the other two vessels, both being smaller but in the aggregate making up the tonnage of the "Lord Elgin," received altogether a sum of 345*l.*

It is said that the learned judge has not sufficiently regarded the value of the "Sydney Dacres." Her value, with that of her cargo and with the freight, is no doubt considerable; but although value is an ingredient to be considered in estimating the proper amount to be paid in these cases, it must also be regarded only as an ingredient, and must be estimated with all the other circumstances of the case. The proper rule is laid down by their Lordships in the recent case of the "Amerique" in these terms:—The "rule seems to be that though the "value of the property salvaged is to be considered "in the estimate of the remuneration, it must "not be allowed to raise the quantum to an "amount altogether out of proportion to the "services actually rendered." With reference to the services actually rendered in this case, their Lordships are unable to see that the learned judge has come to a wrong conclusion in estimating the remuneration which the owners

of the "Lord Elgin" ought to receive at the sum of 800*l.*, and they will therefore humbly advise Her Majesty to affirm the decision of the Court below, and to dismiss this Appeal with costs.