

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the "Thomas Allen" v. Gow and others, from the Vice Admiralty Court, Nova Scotia; delivered 11th December 1886.

Present:

LORD HERSHELL.

SIR BARNES PEACOCK.

SIR JAMES HANNEN.

This is an appeal from a decision of the Judge of the Vice Admiralty Court, at Halifax, Nova Scotia, in an action for salvage, on the ground that the sum awarded by the learned Judge is excessive.

The material facts are as follows:—

On Saturday, the 3rd October 1885, the screw steamship "Thomas Allen," on a voyage from New York, when about 300 miles from Halifax, broke her shaft.

She was then in the Gulf Stream, with a north-easterly current of $1\frac{1}{2}$ to 2 miles, the wind being south-east.

At 6 p.m. she was seen by the "Austerlitz," a steamer of 1,600 tons, on a voyage from Philadelphia to Bordeaux, and at 6.30 the "Austerlitz" reached her, when an agreement was come to that the "Austerlitz" should tow the "Thomas Allen" to Halifax. At about 8.30 the operation of making fast was completed, and the two vessels proceeded on their course. The place where the "Thomas Allen" was picked up was 40° N. and 66° W., at a distance

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of over 100 miles in a south-easterly direction from George's Shoal, and within the current of the Gulf Stream setting her north-east.

The boat work required in connecting the two vessels was performed by the "Thomas Allen," and the operation of making fast was accomplished without difficulty or danger. The two vessels anchored in Halifax harbour at 3.30 p.m. on Monday the 5th October. Thus the actual towing occupied 43 hours, and the whole time that the "Austerlitz" was engaged in assisting the "Thomas Allen" was 45 hours, to which must be added the time required to regain the position she had lost while giving this assistance. The wind was favourable for a portion of the time, and both vessels were able to carry sail.

The towing was performed without any stoppage at an average rate of seven miles an hour, and without any unusual consumption of coal.

No accident of any kind happened beyond the loss of a running line, and chafing on the poop deck of the "Austerlitz," which would cost two or three dollars to repair.

It was argued for the "Austerlitz" that it was to be assumed that she had not, by her charter, liberty to tow. But in the absence of any evidence on the point no such assumption can be made.

The agreed values were, of the "Austerlitz," her cargo and freight, \$132,500; and of the "Thomas Allen," with her cargo and freight, \$126,775.

The learned Judge awarded \$12,000 for the salvage service rendered.

Their Lordships are of opinion that this amount is larger than the circumstances of the case justify. The services, though valuable to the "Thomas Allen," were of a very simple character, unaccompanied by any danger to the "Austerlitz" beyond the ordinary risks of

towage, and the fact that the towage was performed at a high rate of speed, and without interruption by breaking of the tow ropes or otherwise, and without damage, except of the most trifling kind, to the "Austerlitz," shows that it was without difficulty.

The danger from which the "Thomas Allen" was rescued was simply that of any steamship which has lost her propelling power. Their Lordships are advised by their nautical assessor that there was no risk of her drifting on to George's Shoal, and she was in the track of steamers, so that there is no reason to suppose that she would not have obtained the assistance of some other vessel if the "Austerlitz" had not fallen in with her. In these circumstances the award of 12,000 dollars is certainly at a higher rate than that which has been adopted by Courts of Admiralty in similar circumstances. Their Lordships have felt the hesitation which has so often been expressed at this Board in interfering with the judicial discretion upon a mere question of amount, but their Lordships are of opinion that in this case the difference between the sum which they think would be a liberal remuneration for the services rendered and that which has been awarded is so large as to require correction.

This subject has been very fully considered by this Tribunal on several occasions, and the principle on which the Committee proceeds in these cases is very clearly stated in the judgement delivered by Lord Justice James in the "Glenduror" (3 P. C. Ap., 589). He there says:—"In some of these cases which have been referred to in argument, the difficulty has been stated in very strong language, namely, that this Committee would not enter into the question of *quantum* when there has been nothing to shock the conscience, nothing

“gross or extravagant” (the “Carrier Dove,” 2 M. P. C., 254 N.S.). In the case of the “Clarisse” (Swabey, 134) there follows a more accurate expression of the rule according to their Lordships’ view. Their Lordships there 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 considerable to induce a Court of Appeal to interfere upon a question of mere discretion;” and at the conclusion of the judgement is this passage,—“With respect to the amount of difference of estimate which would justify their Lordships to review the decisions of the learned Judge, they were referred to the case of the ‘Scindia,’ in which this Court differed to the extent of one third. Unless the difference amounted at least to that, they would not have interfered.”

Acting on the principle thus laid down, and being of opinion that \$7,500 will be a liberal reward for the services rendered by the “Austerlitz,” their Lordships will humbly recommend to Her Majesty that the sum awarded be reduced to that amount, of which the master and crew will receive 1,880 dollars, and that each party bear his own costs of this appeal.
