

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Holland and others v. Hayley and others, ship 'Percy Douglas,' from the High Court of Admiralty of England; delivered 8th February, 1868.*

Present:

LORD WESTBURY.

SIR JAMES WILLIAM COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

Their Lordships have attended to this case with a feeling of anxiety, to ascertain all the facts in any way favourable to the claim of the 'Rambler,' because their Lordships are very sensible of the great propriety of the principle expressed in the words of Dr. Lushington, in his Judgment in the case of the 'Albion':—

“ It is of the utmost importance to the safety of shipping, that the owners of steam-tugs and other salvors should know that this Court is inclined to reward liberally unusual efforts to assist vessels in distress, whenever those efforts are successful. As Mr. Justice Story has said, ‘Salvage is a mixed question of private right and public policy;’ and that has always been the doctrine maintained in this Court.”

No doubt, therefore, the Court would be exceedingly unwilling to look at any case of a claim of salvage with any other disposition than to regard it with favour. On the other hand, it must be recollected that this practice of earning salvage by assisting vessels has grown on particular parts of our coast to such an extent, that, in reality, persons live by watching for ships in distress, or apparently in distress; and perhaps on some occasions there is a disposition to construe ordinary circumstances into cases of danger, in order to make

out a claim of salvage, where that claim could not be justly supported.

Keeping, therefore, an even hand between the two claims before us, we have to examine the evidence, and to state the result of our examination with as much perspicuity as we can.

It is quite clear that, at the particular time, the 'Percy Douglas' was on shore, on the stone beach below the Shakespeare Cliff. She appears to have been held fast by the stern, but there was enough water still to keep the forward part of the ship afloat. It was, however, a falling tide, and if she had not been rescued from her position before the tide had been allowed to fall for some short time longer, her situation undoubtedly would have been extremely perilous. The moment she took the ground, she appears to have sent to Dover for assistance, and the steam-tug 'Palmerston' went out accordingly to render her that assistance. It does not appear that the master of the 'Percy Douglas' considered it requisite to send for more than one steam-tug. The 'Rambler,' however, had gone out on a sort of roving expedition, and was lying with her steam up, under shelter of Dover pier, ready to engage in any service that might present itself. Seeing the 'Palmerston' steam-tug going out, according to the engagement which had been sent to her, the 'Rambler' seems to have thought there was a chance of joining in any service which the 'Palmerston' was about to render; but being at anchor, it took her some time to get under way, and that gave the 'Palmerston' a considerable advantage; so that the 'Palmerston' got to the 'Percy Douglas' much sooner than the 'Rambler' was able to do.

We are now to ascertain from the evidence what was the condition of things at the time when the 'Rambler' came up to the 'Percy Douglas.'

There is great abundance of testimony, and of apparently impartial testimony, on the part of the 'Percy Douglas.' The evidence on the part of the 'Rambler' is almost entirely confined to the deposition of her own master. On a minute examination of the evidence brought forward by the 'Percy Douglas,' this appears to their Lordships to have been the state of things when the 'Rambler' came up on the port-bow of the 'Percy Douglas.' The 'Percy Douglas' was at that time afloat, being towed

by the 'Palmerston,' which had a stern hawser fastened on board the 'Percy Douglas,' and, after several efforts, had succeeded in drawing the 'Percy Douglas' off the berth, which her stern had formed for itself by bumping on the shore; she was afloat, and was proceeding into deep water, and the success of the 'Palmerston,' in having drawn her off the shore, was sufficient to show that the 'Palmerston' had enough power to carry her out into deep water, and to bring her into a condition of safety.

The first question, therefore, which their Lordships have to consider is, was the 'Percy Douglas' in a condition of danger at the time when the 'Rambler' drew alongside of her? She was afloat, she was proceeding into deep water, her sails were set; there was no difficulty in her having the aid of those sails in the position in which she was, or at all events into which she was immediately proceeding. She had made no water, she had started no planks; a part of her stern-sheathing had indeed been knocked away; but there was nothing in the internal condition of the ship to suggest to the master or crew of the 'Percy Douglas' any condition or circumstances of danger. She was at that time in deep water, in charge of the 'Palmerston.' Their Lordships, therefore, are unable to say that the state of the 'Percy Douglas,' at the time when the 'Rambler' first approached her, was a condition of danger. Their Lordships are unable to come to any other conclusion, than that the ship was reasonably safe, in charge of a reasonably competent power; and although it may have been a very prudent thing, having regard to the state of the weather, and to the fact that it was desirable the ship should get up to Gravesend as quickly as possible, for the master of the 'Percy Douglas' to hail another steam-tug, yet there appears to their Lordships to have been no circumstance whatever to warrant the conclusion that he accepted the services of the 'Rambler' under a sense of peril, from his ship being in a dangerous state, or under any other expectation than that the services of the 'Rambler' in towing the ship would bring her quicker and more advantageously into port, than if he depended on the 'Palmerston' alone. That was a service of towage, not a service of salvage, either from the actual condition of the ship, or

from the apprehensions of those who were on board the ship.

What then does it appear that the 'Rambler' did? She put the end of a hawser on board the 'Percy Douglas;' she then steamed out to get the hawser taut, and did that either so unskillfully or so hastily as not to give time for the end of the hawser to be made fast on board the 'Percy Douglas.' Accordingly the end of the hawser slipped, and the service attempted on the part of the 'Rambler' failed altogether. Afterwards the 'Rambler' succeeded in getting her hawser put on board the 'Percy Douglas' and made taut, and then she, in company with the 'Palmerston,' performed the service of towing the vessel up to Gravesend.

But the 'Rambler' endeavours to improve her case by the allegation of an agreement. She says, "Although "it may be true that the ship *de facto* "was not in danger, although it may be true that "the master did not apprehend her to be in danger, "—yet I refused to give her my services unless my "services were accepted on the same terms as the "services of the 'Palmerston' had been rendered, "that is to say, unless I should be entitled to "equality of remuneration with the 'Palmerston.'"

Now, without saying anything as to the right of a vessel so to bargain when another ship is in danger, it is clear that if the vessel was not *de facto* in danger, (as we have already ascertained that she was not,) the obligation of the 'Rambler,' which sets up a salvage contract where no salvage contract was necessary, undoubtedly is to make out and prove that improbable fact by the most incontestable evidence. But, instead of that being so, the evidence on the part of the master of the 'Rambler' is utterly irreconcilable with the evidence on the other side. There are two versions given with regard to the language which was used. Both the witnesses profess to give the very words. By one it is said, "The master of the 'Rambler' said this, "My words were, I would go in for the same "terms." By the other the evidence is somewhat varied. But whatever may have been the difference of the expression, the question is whether such words, followed by the acceptance of the services of the 'Rambler,' could amount to a clear proof that the 'Percy Douglas' engaged positively to give

the 'Rambler' salvage remuneration on the same terms as the 'Palmerston' was entitled to. It is impossible to hold that expressions such as these, even if they really were uttered, amount to anything like a contract in law, binding the owners of the 'Percy Douglas,' through the medium of the master, to pay salvage twice over,—that is, once to the 'Palmerston,' who had really earned it, and another salvage of the same amount to the 'Rambler,' who had not earned anything of the kind.

Upon these grounds we have no difficulty in affirming the judgment of the Court below, and in advising Her Majesty to direct that the Appeal be dismissed with Costs.

