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Jan. 19.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

J. O. DUNSMUIR.....PLAINTIFF;

AGAINST

THE SHIP *HAROLD*.

Maritime law—Agreement to tow—Suppressio veri by person making agreement on behalf of ship in distress, effect of—Quantum meruit.

A ship, having been stranded, was set afloat again by her crew. She was leaking badly when boarded by the master of a tug who made an offer to the mate of the ship to tow her into port for a specified sum. In making this offer to the mate the master of the tug was under the impression that the former was the captain of the ship, and in accepting the offer, without authority therefor, the mate allowed himself to be addressed and treated as such by the master of the tug. Apart from this *suppressio veri* on the part of the mate he did not, although he was aware of it, disclose the dangerous condition of the ship at the time of entering into the towage agreement.

Held, that the agreement was void, and that the tug was entitled to be remunerated upon a *quantum meruit* for extraordinary towage services.

THIS was an action for salvage.

The facts of the case are fully set out in the reasons for judgment.

December 28th, 1893.

The case came on for trial at Victoria, B.C., before the Honourable Mr. Justice Crease, Deputy Local Judge for the Admiralty District of British Columbia; Captain Hughes-Hallett, R.N. and Lieutenant Blair, R. N. sitting with him as Nautical Assessors.

E. V. Bodwell, for the plaintiff;

P. Æ. Irving, for the ship.

CREASE, D. L. J., now (January 19th, 1894), delivered judgment.

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There was a great deal of irrelevant evidence taken which has to be disregarded in coming to a decision on the facts.

For instance, it is immaterial to the issue how the accident happened, except so far as it forms part of the *res gestæ* and helps to explain or measure the extent of the damage thereby occasioned, and the nature and value of the services rendered, for which compensation is sought.

The claim for salvage arose out of the following circumstances:

At a quarter past four in the afternoon of the 15th November, 1893, the *Lorne*, a powerful and efficient steam-tug belonging to the plaintiff,—Locke, master,—hailed the *Harold*, a ship of 1299 tons—King, master,—well found in every respect, built of steel, with steel masts, and thoroughly sound, as she was entering the Strait of San Juan de Fuca, by Cape Flattery, carrying with her a strong breeze and flood tide, on her way to Esquimalt.

The *Lorne* offered her a tow to the Royal Roads, an anchorage outside of Esquimalt Harbour.

This offer, under the circumstances, Captain King was quite justified in declining.

As the breeze slackened the *Lorne* followed her in; and, proceeding between the Race Rocks and the land, anchored for the night inshore, between the Race Rocks and Albert Head.

On looking out before dawn in the morning of the 16th, the *Harold* was descried from the *Lorne*, in by no means a safe position near the Race Rocks Lighthouse.

The tug steamed up to the Race, and around it, as it was dark, to get a better view of the ship and her condition, and observed all her sails clewed up and the ship apparently in an eddy, near the lighthouse,

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with rocks on three sides of her, with no headway, but in deep water, and no wind to speak of. She made no signal to the *Lorne* requiring any assistance, so, as it was still dark, the captain of the *Lorne* prudently resolved not to risk his ship, which was deep in the water, among strong tides on each side of the lighthouse and dangerous rocks; and so, 'lay to' till morning.

About 6 a.m. on the 16th when there was more light, he went up and hailed the ship; and seeing her in such a position, asked "if she had been ashore"? "A. Yes." "Q. Any damages"? "A. Don't know."

He then went on board and saluting two officers on the poop, "good morning gentlemen"—asked for the captain. One of these, the second mate, in reply pointed to the first mate, who, Captain Locke says, answered, "I am the captain," but the mate states that he added the words "for the time being" but even if he did the addition is immaterial, inasmuch as then, and all the time afterwards, Captain Locke regarded, dealt with, and treated, him, and was treated by the mate, in all respects as if he were the Captain of the ship, until their arrival in Esquimalt, when on Locke addressing him as 'captain,' he found it necessary to disabuse him by informing him, "I am not the captain."

In the further conversation which occurred between them, at the time of making the tow, and which I give somewhat *in extenso*, as it is around the circumstances of this contract that the chief interest of the case centres and radiates:—

Captain Locke said: "Do you want a tow"? A. Yes; what, will you tow me for"? "Are you leaking"? To which the mate replied "O, well there may be a little trickling in." "I have'nt noticed anything yet." To which Locke responded "all right" and

agreed to tow to Esquimalt for $50 and a promise of inside towage. To this specific statement, under a long, trying and severe cross-examination, Captain Locke from first to last substantially adhered.

The first mate, with the rest of defendant's witnesses from the ship, who, be it remembered, must, however unconsciously, have been influenced by the fact that they were going home in the *Harold* again, under the command of the same officers in whose favour they were now called upon to testify (and, a captain while at sea, is an absolute, almost irresponsible autocrat) were present in the court during the examination and cross-examination of the plaintiff's witnesses and heard some of the arguments of counsel, before they themselves were called to the stand.

When put in the box, the first mate wished to convey the impression that he told Capt. Locke that the ship was "making water slowly," an expression which, while it appears to mean the same thing as "trickling in," conveys to a sailor's mind a very different idea of the quantity of water flowing in, and the consequent extent of injury incurred by the ship.

As an instance of this, when Captain Locke, on boarding the *Harold* in Esquimalt, and looking down the forehatch saw a great quantity of water there, he went in alarm direct to the first mate, whom he believed to be the captain, and exclaimed, "Captain! your ship is making water."

The first mate in his evidence, besides erring in the statement that the ship was only half an hour on the rocks, whereas she was distinctly proved to have hung there more than three hours, was an adept at picking words, e. g. He "called the captain," which for a moment was taken in its common sense, like calling a man to take his turn on deck—but by an accidental further question, turned out to mean, called

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him, but could not make him hear; the fact being he could not wake him.

The second mate who was standing by the first mate and Capt. Locke during the conversation on the poop when arranging for the tow, confirms the words of the contract—but does not, although asked, confirm the expression—"making water slowly" which, if used at such a crisis, must have struck him.

Looking at, and as a jury weighing all the evidence, the whole of which I have gone over with great care, and, after considering all attendant circumstances on both sides, and the manner of the several witnesses, including that of the first mate, I am convinced that Captain Locke's version of this part of the evidence is the correct one.

He looked around the decks and saw no water from the pumps, the hatches were all on, as far as he could see, and consequently thought the ship *was* all right.

He could not possibly know that there were, at that very moment, in the ship 14 inches of water amidships, and 6 inches over the ceiling in the forehatch—of which the first mate (Gill) to whom the soundings of the pumps were regularly reported by Anderson, the carpenter, was perfectly well aware.

That was the suppression of an important fact which, I think, according to *Akerblom* v. *Price*, (1) materially affected the contract entered into with the tug, the purport of which I have already given.

Now Dr. Lushington, in the *Kingalock* judgment (2) lays down a rule which may be well applied here, whereby to ascertain the chief ingredients of a valid agreement.

He says:

An agreement to bind two parties must be made with a free knowledge of all the facts necessary to be known by both parties; and if

(1) 7 Q. B. D. 129. (2) 1 Spks. p. 265.

any fact, which, if known, could have any operation on the agreement is kept back, or not disclosed to either of the contracting parties, that would vitiate the agreement itself. It is not necessary in order to vitiate an agreement that there should be moral fraud; it is not necessary, in order to make it not binding, that one of the parties should keep back any fact or circumstance of importance, if there should be misapprehension, accidently or by carelessness. We all know that there may be what in the eye of the law, is termed "Equitable fraud."

The real captain of the ship, Capt. King, within a quarter of an hour after the ship struck and appeared resting quietly on the rock, after giving orders to clew up everything, and sound the pumps—which gave first nothing, then 2 inches, then 4—overcome with the fatigue of a stay on deck on his feet, from 5 a.m. on the previous morning to that time, acting on a frame enfeebled by a severe illness from which he had been for some time in hospital—and other causes, which need not here be further referred to—went below for a short nap; but soon fell into a dead sleep from which he could not easily be awakened. So that he was unable to take an active part in the working or management of the ship; or appear on deck until she got into port—though, the mate says, he awoke sufficiently to suggest and sanction the contract, to the extent of $100. But he could not possibly have been cognizant, in the state of illness in which he then was, of the surrounding details.

At 7.20 a.m., on the 16th, the tug put her hawser on board the ship and commenced the towage—and anchored in Esquimalt at 8.30 a.m.

The ship also anchored there at the same time, Capt. Locke, going on board, looked down the forehatch and seeing the water and being much alarmed sought out the mate at breakfast with the officers, and addressing him still as "captain," said "Captain, your ship is making water."

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The first mate then for the first time told him—"I am not the captain." Thereupon Captain Locke answered, "Oh, this is all false representation made then." That statement is borne out by the evidence of the second mate, one Rowland Brooks, whose manner of delivering his evidence inspired confidence. He stated that Capt. Locke said on coming into the mess-room, "This appears to be a case of misrepresentation all round,"—then asked to see the captain, and after Locke waiting some length of time, he did see him on the poop.

There is considerable conflict of evidence on both sides, as to what was stated then and there, on the ship; but Capt. Locke swears positively that he overheard the first mate, for whom, it is in evidence, Capt. King had sent, ask what the bargain was?—as if he had never heard of it before—and was answered, $50, which Capt. Locke swears he then and there repudiated. Be that as it may, there is no doubt he repudiated it to the captain himself, on the ground of misrepresentation, in the cabin of the *Lorne* when they went up directly after, on the same morning, to the ship's agents, at Victoria. to make arrangements for towing the *Harold* into dock.

During the conversation in the cabin of the *Lorne* on the way up, upon the repudiation of the $50 contract (on the ground of misrepresentation by the mate that he was captain) and the concealment of the real state of the water in the ship, and the consequent injury they had sustained, Capt. King says that Capt. Locke offered to compromise matters for $1,000, of which he offered him $500 for himself if he would agree to it, and that he indignantly repelled it—concluding with the words—"a bargain is a bargain"—alluding to the $50, and that he repeated this to another gentleman shortly afterwards.

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But of this conversation Capt. Locke, in his evidence, taken before Capt. King's, and which Capt. King heard before he gave his own evidence—gives a very different version :—

I invited the captain into my room, says Capt. Locke. I was washing myself, and I said, captain you understand that I repudiate this bargain ; but I think that you could settle it at our office—meaning Dunsmuir & Sons—for about a thousand dollars. He hesitated a little, and I said : "Do you want anything yourself"? The reason I asked him that, I might state (this reason he was not allowed to give, as not part of the conversation itself and not evidence). Capt. King said : "No ; he could not do it ; that a bargain was a bargain," to which Locke answered "all right," and no further conversation on the the subject ensued.

Capt. Locke in cross examination distinctly denied King's version ; and as there was no other witness on the point the rule of law in such cases is *detur pro neganti*.

But there are several considerations which make it probable that Capt. King was mistaken in a very material portion of his allegation. Capt. King denies, and the captain of the tug as strongly avers, that he spoke of referring the settlement of the difficulty to his owners, where it is needless to say, how, with honourable men like his employers, such a proposition as that laid to his charge, would have been received. The preposterous amount of the alleged bribe, $500 out of $1,000, is itself an argument against it. There would have been no way of passing so shameful an account ; and it could not have been concealed. The state of Capt. King's health and nervous system at that period, and his confessedly defective memory, to say the least of it, add to the probability of a misapprehension of any specific proposition having been made in the manner alleged ; and the fact that confessedly he did not immediately report such an extraordinary proposal to his ship's agent, Mr. Robert Ward, who receiv-

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him with the highest consideration and sympathy, and with whom he was on terms of the greatest confidence, runs strongly in the same direction. There was every reason why he should have instantly told it to so earnest and powerful a friend, and none, that I can think of, against it—and not have waited until he had told this tale to a comparative stranger—and so felt compelled to mention it to so sympathetic a friend as the ship's agent.

All things considered, I think there was such an antecedent improbability about such a proposal, as, in the face of Capt. Locke's emphatic denial and explanation under oath, would require a great deal of specific evidence to surmount, and none such was even attempted.

Such a practice as that suggested cannot be too strongly reprobated, and that this comment is called for, though it has no bearing on the decision of the present case, is clear; for it was stated by a most trustworthy and respectable witness who had been in Victoria for thirty years, and engaged in seafaring matters nearly the whole of that time,—that he had been told of a captain of a steamer handing back part of the towage charge to the master of the tow; and had seen several cases of that kind. Capt. King himself also stated that he had had frequent offers of that kind made to him. If such a mode of defrauding owners should grow into a custom, it would be one more honoured in the breach than in the observance.

But to return to the condition of the ship—

When she reached Esquimalt she had three feet six inches in the forehatch and twenty-two inches of water in the main pump.

Up to that time there had been no pumping, and the towing had increased the pressure and presumably

the water, and so possibly would sailing in have done by increasing the speed and consequent pressure.

Before leaving the ship to go to Victoria, the *Harold* was seven inches by the head, and though she had been ballasted level, she had then a slight list to port. When the captain returned from Victoria to the ship "there was a good lot of water in the forehold."

While he was away, at half-past nine a.m., the crew had manned the pumps and continued pumping till 1 p.m., but the water still gained on them. The pumps were double and in good condition and working order, and capable, both together, of throwing twenty tons of water an hour. Yet the list to port steadily increased.

Admiral Stephenson kindly lent from the *Royal Arthur* a relief party of his men to assist the *Harold* generally, heaving the anchor and getting the ship into the dock. Lending also a steam pumping machine to help in getting the water out.

With the aid of the dockyard appliances and men, and particularly with his own crew, the captain succeeded, on the morning of the 17th, in placing the *Harold* on an even keel on the blocks, and to facilitate the exit of the water, had some of the rivets knocked out of the bottom of the ship, but not before she had got a list; and heeled over to an angle of thirty-two and this in spite of the fact that a double gang of men from the shore had been pumping all night; this angle of list having also prevented one of the pumps from sucking water for a considerable time.

As to the injury to the ship, the evidence of Captain Clarke, Lloyd's surveyor, who twice surveyed her in dock, shewed that she had suffered a great deal of damage on the outside, "quite a number of plates" having been injured. When the ballast was removed and the ceiling lifted, so that the damage could be plainly observed from the inside—it was seen that one

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plate in particular (she was a steel built ship) on the starboard side, about abreast of the forepart of the main hatch, "had quite a slit in it—one could see the Dry-dock through it." It was split about seven or eight inches long; and there was "a punctured hole" in it, made when the ship settled down on the rock, through which the water had flowed.

There were quite a number of steel plates to come off on the port side, and quite a number of garboards —and part of the stem was turned around.

Mr. Thompson, Inspector of Machinery, who also inspected the ship, but only after the four rivets had been knocked out of the bottom of the ship, found two on the port, and two on the starboard side; out of which he saw the water was coming in a solid stream.

He could not say for how long before he saw them the rivets had been knocked out, and this stream of water flowing out of them.

They were knocked out in the next tier below the "punctured hole" in the bottom, but, as the ship was practically level, he considered it was probably at the same level; and as there was at that moment no water coming out of the hole itself—the hole being by some means blocked—it could only have been that the water had been coming in at some other point. There is no doubt, from the evidence, that the whole time she was afloat, the water was coming into the ship in large quantities; and, in spite of the vigorous pumping, I have described, had so increased as ultimately, in about some thirty odd hours, to give her a list to the dangerous point of thirty-two degrees.

He considered that in six hours, from what he called that "punctured hole" alone, and irrespective of any other weak places in the ship, with *both pumps going all the time and drawing*, she would have made one hundred and fifty-seven tons of water. There was no estimate

of the quantity of water which had got into the fore compartment where the forepart had been damaged— nor as to what quantity of water had got into the ship by the plates damaged (and afterwards replaced) on the port side. And no reason whatever could be assigned for her list to port, which shewed itself directly she got into harbour, nor for her being seven inches down by the head at that time, *unless the water got in forward.*

And as to the list—it is in evidence, that once started, it would go on increasing, in a gradually accelerated ratio, the deeper she got in the water, and as the consequent pressure from the outside increased.

Mr. Robert Ward, the agent of the ship, in his evidence, pointed out that when he inspected her bottom, there was kelp in the hole, and this was confirmed by another witness; and counsel suggested that kelp must have blocked the hole as she slipped off the rock into a mass of it, and must have so blocked it not only while in dock but also while she was afloat, and so lessened the risk.

But if that be so—and it is very probable—then, as it is beyond a doubt that the water was coming in all the time, it must of necessity have come in at other points of the hull, which makes the damage to the ship all the greater.

Having thus reviewed, as far as the space of a judgment will allow, the leading evidence in the case, the whole of which I have gone over with the greatest care, and used in forming my opinion, there only remains to draw from it the deductions which the law, as fairly, though not completely, laid down by the learned counsel for the ship directs, and to ascertain the conclusions of the court on the following points.

1. Was the $50 contract a complete and binding one on the tug as an ordinary towage contract?

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2. Was the service rendered by the tug a purely salvage service, or not ?

3. Was the ship in danger of loss, if left to her own resources ?

4. If not, what was the service rendered and was it beyond an ordinary towage service. If so, what was its value ?

On the first point, I don't think there can be any reasonable doubt; for I find, that the contract was made by the first mate, who represented himself as the captain at the time and allowed himself to be called and treated in all respects as the captain of the ship and in all respects conducted himself as the captain until, when so addressed in Esquimalt harbour, he was obliged to undeceive the master of the tug. Capt. Locke was not till then aware who the captain of the ship really was. The mate did not declare the authority, which he says he had from the real captain, or the fact of his existence ; and purposely concealed a most material fact from the master of the tug, viz., that he had in the main hold at that very time, which he must have known, eighteen inches of water in the well and six inches over the ceiling forward. As a jury, I have no doubt that the statement of the master of the *Lorne* on that point, was substantially correct.

And apart from that, I have little doubt that, had Capt. Locke known that fact, he would never have towed her in for $50.

The contingent inside towage fell with it. King also, if in his condition, he, with any clearness knew, even approximately, the full position, (and this as a jury, I am by no means satisfied he did know) went as high as $100 for the job, with other contingent inside towage —an amount (if $50 was, as stated in evidence, the fair and ordinary price for that distance) which showed that Capt. King, even from his cabin, and ill as he

was, considered the service was worth more than double the ordinary rate.

I am, therefore, clearly of opinion, and find, that the contract was not a binding one, and must be treated as null and void.

The second point—Was the service rendered to the *Harold* a purely salvage one? I find must be answered in the negative; and for the following reasons:

(And here it must be remembered that I base all my reasoning and conclusions throughout this judgment, on the position of, and circumstances which surrounded, the *Harold* at the time the tug took her in tow, and not on anything that happened before that).

In the first place the *Lorne* ran no risk or danger in order to assist the ship. That course was prudent and in his (Capt. Locke's) judgment, which I do not impugn, necessary with a ship too deep in the water, to go in, in the night among a cluster of rocks. But he can base no claim for salvage or extra reward on the score of having incurred any risk or danger on her behalf.

Now, I will suppose, for it is necessary to do so, that she had not taken the tug; but had trusted only to her sails and seamanship.

If, in such a case it had been found that there was any probability of the *Harold* being again placed in a position of danger by the ebb tide, she could have anchored anywhere, although the chart shows forty fathoms thereabouts, and the tide runs strong. And it is proved beyond a peradventure that all her tackle, cables, anchor and every other part of her equipment, were in perfect order, and the crew well in hand and presumably willing.

She was, when taken in tow, in a position of safety, with a prospect of fine weather and a hope of a breeze.

She was then making water it is true, but not, com-

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paratively speaking, fast; with no immediate prospect that the leak would materially increase, unless she went fast through the water under sail. But then she would be getting nearer, perhaps into, port.

What light air there was, was in a favourable direction.

She was in the flood stream, which, even in the event of no wind, would have set her in the direction of Esquimalt—at least somewhere near to Albert Head within a few miles of Esquimalt, from where it sets off, partly towards Esquimalt but mainly towards the Bell buoy, to the eastward—when she could have anchored during the short ebb and taken her chance of getting into Esquimalt.

The crew, when once the alarm and confusion on getting on the rock was over, was well under command of the first and second mates.

Under these circumstances, no one in charge of the *Harold* would have been justified in employing a tug at a purely salvage rate of payment.

On the third point. Was the ship then in danger of loss (that is, of being lost) if left to her own resources by the tug?

Of course, at sea, as most unexpectedly befell the *Harold* in this very case—it is frequently that the unexpected does happen. But in answering this question, I am obliged to answer it, according to the reasonable probabilities, as they appeared—from the evidence—at the time.

I do not think that the services of the *Lorne* saved the *Harold* from loss. There is evidence which attributes a sudden, large and somewhat dangerous, influx of water which took place after being taken in tow, but not with certainty, to the increased pressure caused by her being towed by a vessel lower than herself, in the water; and though this increase of danger

according to the cases, is not to be attributed to the tug towing—as she did here—in the ordinary course of her duty, as a fault, or a reason for diminishing her remuneration, still, towing at eight knots an hour had its natural effect in creating a certain danger of its own. It forced the kelp, then partially blocking up the principal leak, right through the hole and up against the ceiling, where it remained acting as a non-return valve, allowing the water to flow in freely until the ship was docked, when, the pressure being removed, it was forced back into the hold, preventing the water from coming out, even though there were four rivet holes in the same, or next, tier of the bottom, out of which the water had an unrestricted flow.

From the nature and position of the leak, this danger could have been minimized where there was no tug; because it could have been to some extent choked, after ascertaining the position, with a sail or thrum mat in case she was making water too quickly for their pumps. That would have prevented the danger of loss.

And this brings me to the last point: what was the service rendered, and what should be its remuneration?

I need not say how deeply I am indebted to the valuable assistance of the Assessors, who have throughout furnished me with the results of their nautical experience, and the suggestions they have so cheerfully afforded, in a somewhat difficult case, on nautical points whenever the occasion required.

In estimating the service actually rendered by the tug, and in weighing the varying evidence taken on the point, it is impossible to forget the position of the ship and the injury and damage which actual experience proved she had received. These remained the same whether she was towed in by the tug or came in under sail. All the observations I have made

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in considering previous special points, have assumed, as it was a calm day, every reasonable condition which could be thought of in favour of the ship, and I have the advantage of being fairly well able to do so, after the event.

But at the time of taking her in tow, which I have adopted exclusively, in a salvage case, as the proper legal point of departure for my consideration, it is impossible in dealing with so mutable an element as the sea, and particularly at this stormy season of the year, not to be conscious that great and pressing danger to the ship might at any moment have arisen, when the men would either have been obliged to neglect the sails in order to work the pumps, or neglect the pumps, as they did when they slipped off the rock, to work the yards.

As I have stated, the ship at the time of taking the tug was not in actual danger; although she did subsequently appear in danger, it was not immediate, nor was it such that the crew, provided they had their hands free to do so, could not have somewhat reduced it, even if they could not keep it under. The ship, however, was not in a seaworthy state after having been on the rocks, from the damage to her bottom, although this was not apparent at the time.

It is true that under the circumstances of wind, weather, tide and the like, under which the services of the *Lorne* were rendered, she could not be said to have saved the *Harold* from being lost, yet the fact remains, that the services of the *Lorne*, rendered when they were, removed any possibility or probability of loss; and, from a calm setting in, were of considerable value to the *Harold* in bringing her at once into a place absolutely safe, whatever might occur; and which she could not have gained, in a reasonable time without risk by her own resources.

This, in my opinion as a jury, constituted a service of more than ordinary towage.

The decision of the Court of Appeal in *Akerblom* v. *Price* (1) is a good guide in arriving at a correct conclusion here; for that applies to a case where those who represented the ship in making the towage contract did not disclose to the other party material facts affecting the danger of the ship, or the danger or difficulty of the required service, in view of which, it would be, in the language of the same judgment "manifestly unfair and unjust" to expect the performance of the service to be undertaken for remuneration at a mere towage rate.

And that is certainly the case here. I have found that the towage contract in this case was void for misrepresentation and the concealment of a material fact affecting the safety of the ship—the concealment of the large quantity of water then in the ship—and, consequently of the extent of the injury and damage, so far as then known which the ship must necessarily have sustained; and there being no contract for such towage, I am of opinion that a fair and moderate amount of remuneration for an extraordinary towage, adapted to the facts of the case as proved in evidence, should be paid to the tug for the service rendered. The circumstances of no two of the various cases reported, which I have examined, exactly agree. It is therefore the duty of the court, acting upon the principles laid down most nearly suited to the circumstances, and the benefit rendered in this particular case, to apportion the sum allowed to the benefit rendered to the particular ship, as in justice and good conscience is right and equitable.

After much and careful consideration and having regard to the rates in common use and the unusual cir-

(1) 7 Q.B.D. at p. 133.

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cumstances of the case before me for decision, I have fixed upon the sum of $250 as the amount of the remuneration to be paid to the *Lorne* for the whole of her services to the *Harold* (inclusive of all towage) on the present occasion; and as the difficulty and consequent expense incurred arose entirely by the default of one of the officers of the *Harold*, the ship should also pay the costs of the action.

I pronounce therefore and adjudge that the *Harold* do pay to the plaintiffs $250, and costs to be taxed.

It is satisfactory to be able to add that the Nautical Assessors who sat with me and who gave so much attention to the case, concur in the judgment now rendered.

Judgment accordingly.

Solicitor for plaintiff: *C. E. Pooley.*

Solicitor for the ship: *P. Æ. Irving.*