

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Carmichael and others, Appellants, v. Brodie and others, Respondents—the 'Sir Ralph Abercrombie,' from the Vice-Admiralty Court of St. Helena; delivered on the 27th February, 1867.

Present :

JUDGE OF THE ADMIRALTY COURT.
SIR JAMES W. COLVILLE.
SIR EDWARD VAUGHAN WILLIAMS.
SIR RICHARD T. KINDERSLEY.

THE question in this case is how their Lordships will recommend her Majesty to dispose of the sum of £3000 which has been reserved out of a sum of £12,000, the amount originally allotted by the Court below as a compensation for the services which had been rendered to a disabled vessel, the 'Sir Ralph Abercrombie.' The simple question is how this £3000 should be disposed of, having of course regard to the mode in which the remaining £9000 has been distributed by the Judge of the Court below. It is not for us, even if we were desirous of undertaking the task, to say how the whole sum of £12,000 should have been allotted and distributed if it had been within our reach; but we must bear in mind what has been done, and, with reference thereto, consider the claims which are now made upon this £3000.

There has been some discussion at the Bar as to the relative claims of the owners of ships, and of the masters and crew, who are the actual salvors. But it cannot be necessary at this day to discuss those principles in any detail, because they have been so constantly acted upon and are of such every-day occurrence that no one entertains any doubt as to the principles themselves; and the only difficulty that ever arises, is to ascertain the facts so as to apply the principles to the individual case.

In the present instance the vessel to which the services were rendered, was a ship of large dimensions, laden with a very valuable cargo, and she was in a certain degree of distress, viz. she had when she applied for assistance lost her rudder, and I think she had three feet of water in her. It is not requisite or necessary that we should deliver any precise opinion as to the degree of distress in which she was. At the same time, it is but right to say that such a state of distress is not very uncommon, and in the Admiralty Court we should not consider that she was in very imminent peril, because, even without very skilled persons, a temporary rudder can be rigged up, so that she might, if there was tolerably fine weather, be got into a place of refuge, if within any reasonable distance. However that may be, the master of this vessel must have been actuated by the conviction that there was imminent danger, for it is clear that of his own accord he, in the first instance, abandoned the vessel. I state this because the evidence is uncontradicted that he went in his boat on board the vessel which ultimately rendered the salvage service—he went with his wife, and with his chronometers,—all proving, or at least being *prima facie* evidence, that he did not intend to attempt to navigate his own vessel any further. The master of the ‘Martaban’ seems, in the first instance, to have been desirous of rendering such assistance as was in his power; but it happened that a very short time afterwards the rest of the crew of this vessel, the ‘Sir Ralph Abercrombie,’ quitted that vessel and came on board the ‘Martaban,’ so that in fact she became, in one sense of the word, a derelict vessel; and then it appears the idea occurred that the master of the ‘Sir Ralph Abercrombie’ and his crew should all remain on board the ‘Martaban,’ and that a less number of persons, with the assistance of the carpenter belonging to the ‘Martaban,’ should take charge of this vessel, and, I believe, in the first instance, with the view of taking her to the Mauritius. We need not, perhaps, endeavour to investigate with any very great nicety what was the original intention and how it came to be changed; but, upon my mind, individually, there is an impression that the original intention was to have taken her to the Mauritius in

the first instance, which was at no very great distance off, and that afterwards the second mate and the persons with him on board, finding that the vessel was capable of being navigated successfully, thought it more expedient to take her to her original place of destination,—in all probability, in the expectation that they would get a much larger reward. It is not necessary, minutely to consider whether or not the master of the ‘Martaban’ intended to recall these persons or not. Considerable doubt and difficulty might arise in coming to a very decided opinion whether the master of the ‘Martaban,’ in recalling the second mate, which according to the evidence he intended to do, intended finally to abandon this vessel or not. We think there would be some difficulty in coming to a positive determination thereon so far as to say that he comes within that category, which Mr. Clarkson has pointed out, of a person who has utterly abandoned the salvage of a vessel, after having commenced to render service. However, be that as it may, the vessel is brought, under the guidance of this man, Daley, to its destination. This conduct, no doubt, is very praiseworthy, and he was very much assisted by the carpenter who was on board, who was the man who constructed the temporary rudder, and who also undoubtedly afforded very great assistance.

Of the sum of £12,000 awarded by the Vice-Admiralty Court of St. Helena, the allotment which has been made is to the following effect:—£1600 is awarded to Daley, £1400 to Young, and £6000 amongst the eight seamen belonging to the ‘Martaban’ who assisted in bringing the vessel the ‘Sir Ralph Abercrombie’ safe to St. Helena.

Now the first consideration is, whether or not this allotment of £9000 out of the £12,000 salvage to the second mate and others who took the vessel to St. Helena is an adequate reward to them for their services, or whether Her Majesty ought, in justice, and according to the usual rule of allotment for salvage service, to increase it out of the remaining £3000.

Their Lordships are of opinion that the sum of £1600 is an ample reward for the services Daley rendered, even estimating them as high as you may. He does not appear to have incurred any

great risk or any great danger. At one time, no doubt, there was tempestuous weather, and then there might be a certain degree of difficulty; but £1600 is a very large reward to give a person in his situation for the services which he performed.

We next come to consider what, out of this £3000, ought to be given to the owners of the 'Martaban.' We think it is quite right that the claims of the owners should be considered not only on account of the doubt whether the insurance might not be vitiated, and whether the owners of the ship might not become responsible to the owners of the cargo for the acts of their servants in deviating from their course to render the assistance, and weakening the crew, but also for the risk to which their property has been exposed in rendering the service, and which in justice ought to be made good to them. Now, to say nothing of the deviation, it is quite clear that nine or ten of the most useful servants on board the 'Martaban' were taken away and placed on board the 'Sir Ralph Abercrombie.' It is said that an equal number, indeed a larger number of men, went on board afterwards; but it is a very different thing to take away a large part of the crew accustomed to perform their duty under the guidance of the master of the 'Martaban,' and to put in their place a set of persons of whom he knows nothing, and who, according to the appearance they make in this case, undoubtedly were not the people to render very valuable assistance.

We therefore think that the owners are entitled to due consideration at the hands of this Committee, and therefore their Lordships intend to recommend Her Majesty to allot to them a sum of £2000 out of the £3000.

With regard to the remaining £1000, we award to the master of the 'Martaban' £300; and I think it right to observe that in all probability we should have given a larger sum than £300, if it had not been, so far as we can make out from the evidence, that there was a certain degree of vacillation on his part, which deprives him of the highest merit; but we give the £300 upon this principle,—that it is a very great responsibility for the master of any merchant vessel, especially one which contains a very valuable cargo, to weaken his crew

to the extent to which this master weakened his crew in order to assist another vessel; in fact, it is exposing the interests of the owner committed to his charge to a considerable risk, and that is a great responsibility. We think, in this case, looking at all the facts, that £300 will be sufficient.

Then we award to the chief mate, whose duties, beyond all doubt, must have been increased, and whose labours must have been the greater, the sum of £150; and £550 to the rest of the crew of the 'Martaban,' according to their respective ratings, which exhausts the sum of £3000.

Their Lordships will humbly recommend Her Majesty to order that the Decree or Order of the Judge of the Vice-Admiralty Court of St. Helena of 23rd November, 1865, be reversed, the cause retained, and the said sum of £3000 apportioned in the manner stated in this Judgment, each party paying his own costs of this appeal.

A monition will issue against the sureties, and in case the whole £3000 is not recovered, all parties must take *pro rata*.

