

In Re: the Ship Champion

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Court : Kolkata

Decided On : May-20-1889

Reported in : (1890)ILR17Cal84

Judge : Pigot and ;Trevelyan, JJ.

Appellant : In Re: the Ship Champion

Judgement :

Pigot, J.

1. This is an appeal from the decision of a Judge of this Court sitting on the Original Side in the Admiralty Jurisdiction of the Court respecting a claim for salvage brought by the owners, master, and crew of the Steam Tug Rescue against the British Ship Champion and the cargo on board of her.

2. It was not disputed that salvage services were rendered by the Rescue to the Champion. The learned Judge in the Original Court held that such services were rendered, and he awarded the sum of 1,500 in respect of them; and he directed Rs. 5,000 to be deposited by the impugnants with the Registrar to meet the promovents' costs.

3. The appeal is from that decision. The appellants contended that the amount awarded is wholly inadequate, and that the amount ordered to be deposited for costs is wholly inadequate for the purpose.

4. The Champion, on the afternoon of the 24th, when running for Saugor, was in this condition. She was strained, both in deck and poop, from the tremendous bumping which she had experienced; as appeared upon the survey held subsequently, her bottom had also suffered some damage. She was making three-and-a-half inches of water an hour. Her boats were all smashed. She had but one anchor, and not chain enough to use it; for she had only 25 fathoms of chain, and 45 would, according to the Captain's evidence, be necessary; and to supplement this chain, she had only a hawser which had been already seriously damaged on her journey down from Calcutta, and which was afterwards condemned on her return there. Her windlass was broken: and the crew were, according to the evidence, greatly exhausted and unable to get the anchor over the side of the ship. She was in fair trim as to spars, rigging, and sails, although no doubt the masts had suffered from the bumping, some of the sails had been blown away during the night, one fore-top-mizzen-stay-sail was blown away as she was running up to Saugor.

5. Being in this condition, what was her position? She was running for the Saugor Roads, with the wind south-west or west-south-west. Saugor Island north or north-east of her, the weather being still severe and the sea high. At 3 she passed the Lower Gasper Light, and at 4 the Upper Gasper; she had then 2 hours 24 minutes before sunset. Making as much sail as she could carry, she could not in all probability, according to the evidence, have got so far as Black Point, the spot where, as appears from the evidence to be presently mentioned, it had been determined to beach her, should assistance not be procured. She was in fact in a trap, sailing into the Saugor Roads, no doubt in perfect safety as long as she had water to sail in; but with no means of coming to an anchor, with nowhere, as the Captain says, to go to. She could not, as the evidence shows, have gone up the river after sunset; the alternative suggested in cross-examination, namely, that of beating about in the Saugor Roads, being stated in the uncontradicted evidence in the case, to be an absolutely impossible one.

6. It was under these circumstances that Mr. Paulson says that, if the Rescue had not come up (as she did soon after sunset), he would, in another quarter of an hour, have beached the ship. Of the fact that the resolution to beach her unless

assistance should come, was arrived at, there is no doubt. It is recorded in the log, in the protest, and is deposed to by the Captain as well as by Mr. Paulson.

7. On the afternoon of the 24th there were, in or just outside Saugor Roads (which begin above the Long Sand Light Ship) either four or five tugs; viz., the Clive, the Rescue, Hunsdon, Retriever, and, Mr. Paulson believes, the Electric.

8. As the ship was running up to Saugor, the Clive was in sight: the Chief Officer says, 'We saw the Clive almost the whole day of the 24th: we lost sight of her at 5 30 P.M., when it got dark.' The Captain says 'We first saw her at 3, she was alongside steaming into Saugor the same way we were.' Mr. Paulson says: 'During the time I was going from the place where I slipped my anchor, nearly where I started, I hoisted signals.' The first signal was 'I want a steam tug.' The next was 'I want immediate assistance.' These signals were flying at different masts, and I had a red ensign at the peak with a wheft in it. That means, 'that when you put up that signal any ship that sees it, is bound to come to your assistance.'

During this time I saw the Clive coming up astern of us. I saw her about half an hour after we started. When I first saw her she was four or five miles, three to four miles from us, and she came up astern of us. She overtook me and passed me, she was about a mile or a mile-and-quarter when she was nearest me... The signals we had were flying. We exchanged signals with her. She replied 'I cannot assist'. She did that with her flags.

9. He says, 'The Clive is a new vessel of 600 or 650 tons. She is a very powerful tug.....A comparatively new ship, and very powerful. I know the Rescue, of the two I think the Clive is more powerful but the Rescue pulls better; 'she has more nominal horse power; she is a more modern steamer.' The Captain says 'The Clive when she left us on the bank and when we passed her subsequently entering Saugor, was quite seaworthy.' They passed her on entering at about 4 P.M.

10. The Captain says, that when they first saw the Rescue about between 5 and 6, they, had then passed the Clive which was at anchor by the Long Hand Light Ship.

11. It is plain that so far as the Clive was concerned, her presence in the Saugor Roads did not in any way diminish the risk to which the Champion was then exposed. Whether it was the actual state of the weather, or an apprehension of worse weather, caused by the signals from Saugor, or any other reason, more or less sufficient which prevented her from giving assistance, does not appear. There certainly was no assistance to be had from her.

12. Captain Stone of the Rescue says: 'I remember the cyclone, I was anchored at Saugor at the time. I remained anchored there from 22nd night to night of '24th. I steamed up on the 24th to upper part of Saugor for shelter. There was a signal flying at Saugor that a cyclone was raging. That was the first time I saw it, at 5 o'clock. The signal was a drum over a ball No. 9. I saw this signal at 5 o'clock and proceeded up Saugor Roads.' Later on, in cross-examination, 'I got under way at 5 P.M. I was then lying a little below the Long Sand Light and steered up for shelter to Saugor Road. Three other tugs had gone before me.'

About half an hour after the Rescue had left the Long Sand Light, that is, at 5-30, according to the log the Champion passed that Light Ship and entered the Roads. She had, as we have said, been flying signals since about 4 P.M., and at quarter to 6 began to fire rockets. There was a little daylight, it was twilight.' Mr. Paulson says: 'When some of the rockets were fired, at about 6-20, it was sufficiently dark to see rocks well. They would be fairly visible at 6-30. About twenty rockets were fired.'

13. The Champion, when passing the Upper Gasper, took in some sail, to spin out the time, so as to attract the attention of the tugs whilst there was light, but, as Mr. Paulson says 'they did not come to us.' He says, he noticed some tugs turn round and pass up; one was the Rescue. 'She was about two miles from me when she steamed away.' At 6-30 Captain Stone's attention was directed to the rockets fired by the Champion.

14. At that time the Rescue was abreast of the Central Saugor Flat Buoy several miles up. He at once turned round with the intention of saving life; that, he says, was uppermost in his thoughts.

15. He rounded under the Champion's stern and hailed her at, he says, about 7-30 P.M., it being then perfectly dark. The Captain of the Champion puts it at 7, 6-30, or 7: Mr. Paulson says, about 7. The log says 'at 7-30 the Rescue came to our assistance.' Having regard to the fact that the Rescue was so far to the north as the Central Saugor Flat when she turned back at 6-30, and that she went so far south as the Upper Middleton Buoy where she met the Champion, we think 7-30 is most probably correct.

16. In cross-examination Mr. Paulson says: 'The tugs were all able to render assistance, but did not come.'

17. This is the state of the evidence as to the amount of assistance to be hoped for by the Champion from the tugs. After the tugs spoken of by Captain Stone are shown moving away, before the Rescue's departure, for a place of shelter, they disappear from the case.. There is nothing to show where they went to, or whether, when darkness came on so as to allow the Champion's rockets to become visible, they or any of them were in a position to see them,; or whether, if so, they were near enough to be in time to render any assistance; or, it, so, able and willing to do so.

18. We have stated in detail what appears to us to be the effect of the evidence on this subject; because it was strenuously argued before us that the presence of these tugs at or near Saugor must be an element of much importance in determining the degree of danger to which the Champion was exposed at the time salvage services were rendered. We have arrived, upon a consideration of this evidence, at a contrary conclusion. We think that, looking at what actually happened, the Champion, when the Rescue saw her rockets and turned back to assist her, had no help to look for from any of the tugs but that one: and that in forming an opinion as to the danger in which she was, the other tugs may be left out of consideration as completely as the Clive must be.

19. We do not forget that near the close of the hearing in the Original Court, the learned Counsel for the impugnants was instructed to ask for an adjournment to the following Monday to enable the impugnants to call the Captains of two of those tugs, one of whom was stated to be at that time some where down the river, and

the other actually in Calcutta; and that the learned Judge, as might have been expected, refused the application coming at such a stage of the case. Beyond showing that one at least of those Captains was available for the purpose of giving evidence, if the impugnants had thought it desirable to ensure his attendance, and that they did not do so, we do not see that this application bears materially upon the case.

20. We have said that there is no doubt that it had been resolved to beach the ship, if assistance did not come. The learned Judge in the Original Court finds that this was so: but he adds 'I do not think necessity has been shown to beach the ship; and before us it was contended that no such necessity was shown. We have not had, nor had the Original Court, the advantage of hearing this case with the assistance of nautical assessors. There were, however, expert witnesses examined in the Original Court. Their evidence was given chiefly upon the facts as stated in the voluminous evidence of Mr. Paulson. No evidence was given on behalf of the impugnants. The promovetits examined on Commission Captain Noel, the Chief Officer, Boatswain and Carpenter of the Champion in October 1888. The case was heard in Court in the following February.

21. The Captain said that if the Rescue had not taken him in tow, he would have had to beach the ship. The Chief Officer said the same.

22. Mr. Paulson in his evidence says: We had arrived at a conclusion as to what we should do. Captain Noel and I were agreed as to what we should do. The conclusion was that if, we did not get a tug, we should beach the ship.' As to the anchor they had left he says: 'The anchor was not ready. The crew were so exhausted we could not get it ready. We had a chain below which we could not bring up. Between pumping and taking in sail it was all that the crew could do.' Later on,' I made up my mind to beach her because there was nothing to be done but beach her. My object in beaching her was to save the ship, if possible, which was very doubtful, and to save life as well. I say doubtful, because of the state of the sea at the time: there were breakers on the beach.' In cross-examination he says: 'If beached, she would have been wrecked. If the tug had not come, we would have gone higher up. It would have been a matter of only a quarter of an

hour longer, and I would have beached her.' To the Court he said: 'It was night time and that prevented my sailing up to Diamond Harbour. It was night, I could not see narrow and dangerous channels. If I could have gone up to Diamond Harbour that night I would, but it was impossible.'

23. Mr. Elson, Branch Pilot as we understand the highest rank in the Pilots of this port, says that he would have beached the ship, and supposing the ship to have been at the Lower Gasper, at 3, as she was, 'I would not have been able to get to Diamond Harbour that day: the distance would have been too great. I could not have got beyond Saugor by dusk. It would not have been prudent to go through the narrow channel. The ship would have been utterly lost if I had tried to do so.' The evidence of Mr. Cox, Pilot, and of Mr. Alison, a seaman of experience, lately Marine Surveyor, and now Superintendent in the Licensed Measurers Department, is to the same effect as to the necessity which existed to beach the ship, if assistance had not come. They all say, however, that they would have tried the anchor still on board, if it was possible to do so, before beaching the ship.

24. Now, as to the possibility of using this anchor, and so avoiding the beaching of the ship, much argument was addressed to us. The suggestion is, that the state of exhaustion of the crew is exaggerated by Mr. Paulson, and that they could have got the third anchor over the ship's side, and that by supplementing the 25 feet of chain with the hawser, they could have saved her.

25. The learned Judge says: 'I accept Mr. Paulson's statement that they had the anchor on board, that they lifted it to the forecastle and endeavoured to get it over the side, but the crew were unable to do it. Even if the anchor had been got over the side, having regard to where the chain was looking to the fact as to the hawser, looking to the fact that the windlass lever was broken and that it was only left to them to take a double turn round the mast, I doubt whether it would have been of very much use. I accept Mr. Paulson's evidence that they did attempt to get the anchor over but failed. Probably he has exaggerated the state in which the crew was; still I think the evidence proves they did what they could to get out this anchor, but failed to do it.'

26. With this conclusion, upon the evidence, we fully agree. It seems to us quite established that it was wholly impossible for the crew in their then state, exhausted from hard-work, exposure, and want of food (a description of their condition at 1 P.M., that day, in para. 7 of the impugnants' written statement), to get the anchor over the ship's side: we see no reason to doubt, either, that Mr. Paulson is right in saying that they could not have got up the chain, or, we think, fitted the tackle to the anchor, so as to use it effectually even if they could have got the anchor over the side.

27. This being so, it appears to us to be established on the evidence, that the necessity for beaching the ship would have arisen but for the Rescue; for we do not think it necessary to consider the possibility of the ship's beating about all night in Saugor Roads, in a heavy sea, with an exhausted crew, with a great wind from the west-south-west or south-south-west blowing with occasional squalls, and with Saugor Island on her lee, and some shipping in the Roads.

28. Nor do we think that, upon the evidence, we need enter on any conjecture as to the possibility of the ship's being saved by one of the two ocean steamers which appear to have come into the Roads at or about the time the Champion was saved by the Rescue.

29. The next question is what conclusion can be reasonably drawn from the evidence as to the result of beaching the ship in her then condition upon the Saugor Flat. We think it clear, that, having regard to the lives of the crew, this, on evidence was the best place to beach her: the higher up the better; for the flat hard stretch of sand which forms the Saugor Flat, narrows as it extends north from three-fourths of a mile to one quarter of a mile at Black Point, which, or as near it as she could go, was the spot where Mr. Paulson meant to take the ship. But the Rescue came up to the ship at 7-30, when she was about the Upper Middleton Buoy, and taking it, that until she hove to, the Champion was making five miles an hour, she had shortened sail to increase her chance of being assisted in answer to her signals, we cannot see that there was any prospect of her getting so far north as Black Point: unless indeed Mr. Paulson's expression of a quarter of an hour means that, after the expiration of that time, he would have given up all hope of

rescue and have directed the ship solely with a view to beaching her, Even taking that view of his meaning we think the doubt expressed by him as to the possibility of getting as high as Black Point well founded; the ship must, we think, have most probably been beached lower down, This however relates only or chiefly to the greater or less probability of loss of life. There would have been the longer space of shoal water for the crew to struggle through the farther south the ship was beached.

30. At the best, having regard to the state of the sea-breakers on the Flat, as Mr. Paulson says, serious danger to the lives of the crew there must have been, and from that danger, they were saved by the Rescue.

31. As to the danger to the ship and cargo, the Captain said that had the ship been beached she would not, in his opinion, have come off' again. The Chief Officer said that in all probability she would have gone to pieces. Mr. Paulson said that to save the ship was very doubtful, because of the state of the sea at the time; there were breakers on the beach. There was little, if any, cross-examination on this matter. No evidence was tendered to contradict the promovents' witnesses upon it, or to show facts which might lead to a contrary conclusion; nor were the promovents' expert witnesses asked anything on the subject.

32. The evidence as to the consequences of the bumping sustained by the ship at the Saugor Sands the night before, which was not challenged, is to the effect that she would have gone to pieces had she had another low tide of humping; and we see no reason to doubt that the uncontradicted opinions of the witnesses we have referred to were well founded. No means are suggested in any part of the evidence by which either ship or cargo could have been saved from, what would have been practically, destruction. Even from the amount of water which reached the cargo during the cyclone, although, according to the evidence of the Carpenter, which we see no reason to doubt, the water was kept by the pumping low enough (14 inches) to prevent its reaching the cargo, more than 300 bales were damaged by mildew from contact with the water which got in through the straining of the decks, though the ship was battened down. We think the Rescue saved the lives of the crew of the Champion from great peril, and the ship and

cargo from imminent destruction.

33. The next question is, as to the character of the services rendered by the Rescue, having reference to risk incurred, skill and enterprise shown, and value of any property endangered in the act of salvage.

34. The learned Judge finds that the salvage services were rendered in the dark, with a heavy sea and wind blowing. He finds that there was some appreciable risk to the tug; and so far some risk to the lives of those on board; but does not think the risk was of a grave character. He does not think the risk much greater than when performing ordinary towage services. Upon this point also the learned Judge's decision is appealed from.

35. The case for the promovents is that the Rescue, after rounding the Champion, and learning her condition, passed a rope on board of her for the purpose of hauling a hawser belonging to the Rescue on board; and that in doing this it was necessary for the Rescue to approach near to the Champion; that having regard to the darkness, to the heavy sea and wind, and to the fact that the Champion was, as she lay hove to, sheering about from time to time, such necessary proximity to her was very dangerous to the Rescue and to the crew on board of her. Further, that the line to which the hawser was attached had ultimately, at any rate, to be passed on board the Champion by a boat manned by some of the Rescue's crew; and that this was a service of great danger in the then state of the weather. This is the first branch of the case of the Rescue, so far as danger to herself and crew, labour and skill deserving reward, are concerned.

36. The second is this: after the hawser was passed on board, and before it was tightened, the two ships got to the Long Stand Flat Buoy. Then the Rescue took the Champion in tow and turned her round so as to stem the flood which was then running. In this position both vessels remained until the ebb began to make. It then became necessary, the wind still blowing strongly from the south-west, that the Rescue should move the Champion; as Captain Stone puts it, 'the ebbtide began to make, and of course the ship would come on top of me. I turned round and round. I turned round eight times in the space of two miles.' In fact, until daylight they passed another, and afterwards another; and that day towed the ship up the

river, bringing her to Garden Reach that evening.

37. As to what occurred in passing the hawser Mr. Paulson gives a perfectly clear and detailed account of an attempt to pass a line between the jibboom of the Champion and the Rescue; an attempt which he describes as having been made twice unsuccessfully, and as being attended with danger to the Rescue. No other witness describes this, although no one says it did not take place. Mr. Paulson had the best opportunity of knowing whether it was done or not. It is not inconsistent with any of the other evidence that such an attempt was made. But Mr. Paulson says that in the morning when a second hawser was passed it was done by a boat. In this his recollection is in conflict with that of Captain Stone, who says, 'we did not lower a boat, a line was thrown from the jibboom. We could see then.'

38. The learned Judge in the Original Court is of opinion that Mr. Paulson's memory is at fault in this matter, that he confounds one occasion with the other; and we think we ought not to dissent from that view entertained as it is by the Judge who heard the evidence. We think we should leave out of the case any supposition of danger to the Rescue from an attempt to throw a line on board her from the Champion's jibboom.

39. As to the passing of the hawser by boat: taking it, then, that the Captain of the Champion refers to any risk run by the Rescue as run in passing the hawser by boat, we must consider his evidence.

Q.-Had the Rescue any difficulty in passing hawsers?

A.-Well, yes she had.

Q.-Did she incur any danger? (objected to)

A.-The danger she would run would be of coming across our bows and standing a chance of being run into by us.

Q.-Did she as a matter of fact incur the danger?

A.-Well, yes she did certainly.

40. In cross-examination he says: 'The tug was 30 yards off. He was on both sides of me, he had to watch his chance; the ship was sheering about '

41. We own that we were somewhat struck with this phrase watch his chance 'as being appropriate to an attempt to approach the ship to take a line thrown from her. It is, however, in any case sufficient to indicate that the ships were in dangerous proximity in the course of the discharge of the duty which the Rescue had undertaken.

42. The Chief Officer:

Q.-Had the Rescue any difficulty in getting alongside of you? (objected to)

A.- Yea. It certainly required some skill to come alongside of us with that sea that was running and the breeze that was blowing.

43. We shall not refer to Mr. Paulson's evidence as to the danger of dropping the line. He says, and, we have no doubt upon the evidence as to the state of the weather, correctly, that there was danger in the boat helping to pass the line.

44. As to the towing up and down Mr. Elson says: 'I heard what the state of the weather was. It was very hard weather. There was great risk of the tug being collided with in towing on an ebb and the wind aft and towing at night. Tugs do not generally tow at night. As to passing the hawser, there was danger to the lives of the crew of the boat.' Mr. Cox says (passing over for the moment his opinion as to the danger in passing the hawser as Mr. Paulson described it): 'I heard how the Rescue towed the Champion up and down: In doing that, the Rescue was exposed to very considerable risk; the weather being hazy at the time would cause the risk.'

45. To Court: 'Yes: it amounts to this, that there is more risk in a hazy night than a bright night. The danger to the men in the boat was, I think, extraordinary danger,'

46. As to the passing of the hawser, we understand Mr. Cox to regard the necessary proximity of the tug to the Champion, even while the line was being passed by boat, as involving danger to the tug.

47. Mr. Alison's evidence is also to the effect that the danger of towing up and down a ship with no anchor, in dirty weather, was a real one.

48. Upon the whole evidence of these witnesses, parts of which we have above referred to, we have to form our opinion. We consider it, with reference to what is we think established, that though the severity of the weather had moderated it was still blowing hard with squalls: that the squalls continued during the night, with bursts of rain occasionally obscuring the Saugor Light, and as we have already said the sea was high.

49. Upon this part of the case it is established, we think, that the salvage services of the Rescue were attended with: first, danger to the lives of the crew of the boat; second, danger to the safety of the tug (a) when engaged in passing the hawser line, (b) when towing the Champion up and down during the night in the* confined space of the Saugor Roads and with shipping lying there; and, third, so far as the tug ran that danger, there was risk to the crew other than the boat's crew. We do not think the latter danger to life was of a very grave kind: but we are satisfied that the danger of injury to this valuable ship was serious, though such as might be, as it was, avoided by the exercise of skill in the management of her.

50. Therefore, in the view of the evidence which we take, we differ from the learned Judge in the Original Court as to the danger from which the Rescue saved the Champion, and as to the risk incurred by the Rescue and the nature of the work performed by her which we conclude to have been very greatly more than ordinary towage services.

51. We have said that the impugnants tendered no evidence upon the different points arising in the case, the evidence given on behalf of the promovents is explicit, and is, save in respect of, first, the dropping of the hawser line, second, a manifest error as to the depth of water in the pumps, i.e., 26 inches in place of 14, and, third, a mistake of one hour made by Mr. Paulson as to the time -when the Gasper Light Ships were passed, none of which mistaken statements in any way influence our judgment in favour of the appellants, unshaken in cross-examination.

52. No doubt there are cases in which evidence, even uncontradicted, may, as to matters of fact, be so incredible, and, as to matters of professional or expert opinion, so absurd, as to disappear in the face of hostile criticism. But we are of opinion that the evidence in this case is very far from being of such a character. As to the sources from which much of the evidence in the case comes, they are, in the first place, the officers and two men of the Champion herself: persons whose evidence might naturally have been expected to come from the impugnants: and who if their minds were biased at all, might be expected to show a bias in favour of the Champion: while as to Mr. Paulson and the expert witnesses, there is nothing, either in their position or in the character of the evidence given by them, to entitle us to suspect a prejudice on their part in favour of the promovents and they give their evidence, it must be remembered, with the guarantee of that professional reputation which they are no doubt highly interested in preserving.

53. It has been justly observed to us, that in this large port abounding in persons skilled in nautical matters, and well acquainted with the navigation of the river, there must have been ample means of adducing skilled evidence to challenge the evidence given on behalf of the promovents, had that; evidence and the conclusion to be derived from it been really open to substantial criticism. Nor can it be disregarded, that the written statement of the promovents gave, from the outset, ample notice of what their case was.

54. It has been often stated as a rule followed by the Judicial Committee of the Privy Council, in cases of salvage, that the Court will not disturb the conclusion of the Original Court as to the amount of reward, save in the case of some great difference between what the Appellate Court and the Original Court consider proper for the services rendered.

55. In the present case any difficulty arising from that rule hardly arises. The learned Judge in the Original Court has awarded 1,500 to the promovents, upon the footing that the Rescue did not save the Champion from a position in which it would have been necessary to beach her; that if beached, it does not appear that her destruction would have been imminent or even highly probable; and that the Rescue in performing her salvage services did not run substantial risk. We do not

dissent from the estimate which he has made, upon that footing, of the reward to which the Rescue was entitled; and we may, we think, assume that if, upon the evidence, he had found what, after the advantage of hearing a very careful argument in appeal, we have felt bound to find, in addition to the conclusion arrived at by him, he would, as we now feel bound to do, have awarded a higher sum than the 1,500.

56. We hold that the due and proper salvage award for the services of the salvors in this case is 2,400 to be calculated at the exchange of the day mentioned in the decree of the lower Court; and to be apportioned in the like proportions to the same persons as provided by the Original Court with respect to the 1,500.

57. We think the bail was excessive: and that we should adopt the course followed by Brett, J., in *The George Gordon* L.R. 9 P.D. 46 to this extent: that the impugnants should have as costs of the excessive bail required from them, the difference between the interest on Government Paper in which the bail has stood and the market rate from the time the bail was given until the excessive bail be released, and that that amount be set off against the judgment debt. It should be referred to the Registrar to fix the amount but if the parties agree as to the amount before the decree is signed, the reference need not be included in the decree, and the amount agreed on may be inserted in the decree as the amount to be deducted from the judgment debt. The amount of bail was excessive so far as it exceeded 4,000 for salvage reward, and 500 for costs.

58. We think the appellants must have their costs of the appeal. The appeal, as we have already held, is under the High Court Act and the Letters Patent, and the procedure in it is mainly governed by the Civil Procedure Code, and we think the usual practice of this Court in appeals from the Original Side should therefore be followed.

59. Costs of filing cross-objections will be allowed to the respondents. The appeal is allowed with costs on scale No. 2.