

The result is that their Lordships think that the appeal must be dismissed, and they will humbly advise Her Majesty to that effect; the appellants must pay the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellants:—Mr. *Arthur Cheese*.

Solicitors for the respondents:—Messrs. *Ranken, Ford, Ford, and Chester*.

1899.

CHOTALAL  
v.  
MANOHAR  
GANESH  
TAMBEKAR.

## ADMIRALTY JURISDICTION.

*Before Mr. Justice Russell.*

THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY AND ANOTHER, PLAINTIFFS, v. THE S. S. "CASHMERE," HER CARGO AND FREIGHT, DEFENDANTS;\*

1899.  
*April 20.*

AND

RAFFIN AND OTHERS, PLAINTIFFS, v. THE S. S. "CASHMERE," HER CARGO AND FREIGHT, DEFENDANTS.†

*Shipping—Salvage—Amount of salvage awarded—Mode of estimating salvage services—Allocation of salvage amongst officers and crew—Bail—Costs.*

On the 13th August, 1898, the S. S. "Cashmere," being (as found by the Court) in a position of risk and hazard, which by a change in the weather might have at once become one of danger, was in need of assistance which the "Naseri" afforded her. The services, however, rendered by the "Naseri" were not of an extraordinary or protracted character. The owners of the "Naseri" sued claiming Rs. 1,00,000 for salvage services and the master and crew of the "Naseri" filed a second suit claiming Rs. 50,000. The defendant ship paid into Court Rs. 5,000 for the owners of the "Naseri" in the first suit, and Rs. 2,257 for the crew in the second suit. The value of the S. S. "Cashmere" was Rs. 78,000 and that of the cargo on board was Rs. 53,510.

*Held*, that the amount paid into Court by the defendant ship was sufficient for the salvage services rendered.

*Held*, also, that the cargo was liable in the same proportion.

Principles regarding (a) salvage generally, (b) allocation of salvage amongst officers and crew, (c) costs, and (d) bail discussed.

SUITS for salvage. The first suit was by the owners of the "Naseri" claiming Rs. 1,00,000 for services rendered by the

\* Admiralty Suit, No. 1 of 1898. † Admiralty Suit, No. 2 of 1898.

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION CO.

v.

S. S.  
"CASHMERE."

"Naseri" to the "Cashmere." The second suit was brought by the master and crew of the "Naseri." They claimed Rs. 50,000.

On the 1st August, 1898, the "Cashmere," a screw steamer of 1,695 tons nett register of the value of Rs. 78,000 with a cargo on board of the value of Rs. 55,510, was on her voyage from Massowah to Bombay, when her rudder was carried away to the extent of about fifteen feet from the bottom of the rudder. The captain then tried to steer with a hawser, but found it was impossible. He then stopped the engine and set sails and kept in a northward course. On the 3rd August he fell in with the "Clan Shaw," which rendered assistance until the 6th August, and then left. While in the "Clan Shaw's" company the captain had gone between 230 and 240 miles towards Bombay, and was then about 258 miles from that port. It was then (as stated by the captain) blowing a strong monsoon but nothing unusual.

At noon on the 12th August, the "Cashmere" was 82 miles from Bombay. The wind had then moderated very much, and there was only a swell with a light breeze. Here she sighted the "Haddon Hall," but did not get assistance from her. At 2 o'clock A.M. on the 13th, when between 45 and 50 miles from Bombay, the "Naseri" was sighted. There was then a fresh breeze and a heavy sea from west-south-west. The "Naseri" was a steamship of 911 tons nett register of the value of Rs. 1,75,000 and had a cargo of the value of about six lakhs, and 45 passengers on board. She had left Bombay on the 12th August for the Persian Gulf, and had got permission to deviate a little from her course and keep a look out for the "Cashmere." On getting within sight of each other the two vessels exchanged signals and attempts were made by the "Naseri" to tow the "Cashmere," first by a steel-wire hawser and then by a chain, but both broke. The captains then agreed that the "Cashmere," whose engines were in good order, should tow the "Naseri," and the "Naseri" was, therefore, made fast to the stern of the "Cashmere" in order to act as a steerage power upon her.

The remaining facts of the case are stated in the following passage taken from the judgment :—

“Accordingly the towage gear was shifted from aft to forward of the ‘Naseri,’ and here again a line was thrown to get the ‘Cashmere’s’ hawser. After the ‘Cashmere’s’ wire hawser had been hauled on board the ‘Naseri’ she came upon the starboard quarter to the ‘Cashmere’ to get the stream chain, and in the course of this operation the ‘Naseri’ collided with the stern of the ‘Cashmere’ and smashed a boat and about 15 to 20 feet of her bulwarks. The captain of the ‘Naseri’ says that his starboard bow caught the port quarter of the ‘Cashmere,’ but although the captain of the ‘Cashmere’ says this damage was done by the negligence of the ‘Naseri,’ I really do not think, upon the evidence in the case, I would be justified in holding that this was so. It is perfectly true, no doubt, that the ‘Naseri’s’ captain was on the forecastle while this operation was going on, and a subordinate on the bridge, but I cannot find from that fact alone that there was negligence on the part of the captain of the ‘Naseri.’ But I will deal with this matter more particularly hereafter. According to Captain Raffin, shortly after the ‘Cashmere’ began to tow him, his stream chain parted, but Captain Souter says that one of the chains slipped, but did not actually break. Whatever happened, however, the ‘Cashmere’ at 3-30 or 3-45 P.M. when 44 miles off Bombay began to tow the ‘Naseri’ towards Bombay and arrived off the outer-light ship at about 11 P.M. on the 13th. After waiting for about an hour for the pilot they proceeded up the harbour, in the course of doing which the stream chain parted, but the wire hawser held, and eventually the two ships anchored off middle ground at 3-45 or 4 A.M. of the 14th August. The above are, shortly, the facts of the case.”

• *Scott and Lowndes* for the plaintiffs.

*Lang* (Advocate General) with *Branson* and *Raikes* for the defendants.

The following authorities were cited:—*Kay on Shipping* (2nd Ed.), Secs. 720, 721; *The Golondrina*<sup>1</sup>; *The Chetah*<sup>(2)</sup>; *The Glendurov*<sup>(3)</sup>; *The Amerique*<sup>(4)</sup>; *The Thomas Allen*<sup>(5)</sup>; *The Cleopatra*<sup>(6)</sup>;

(1) (1867) L. R. 1 Adm. and E., 334.

(4) (1874) L. R. 6 P. C., 468.

(2) (1868) L. R. 2 P. C., 205.

(5) (1886) 12 Ap. Ca. 118.

(3) (1871) L. R. 3 P. C., 589.

(6) (1878) 3 P. D., 145.

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION CO.

v.

S. S.

“CASHMERE.”

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION CO.  
v.  
S. S.  
"CASHMERE."

*The Kenmure Castle*<sup>(1)</sup>; *The Accomac*<sup>(2)</sup>; *The Spree*<sup>(3)</sup>; *The Lady Jocelyn*<sup>(4)</sup>; *The Rathbone v. The Secretary of State for India*<sup>(5)</sup>; *The Chilka*<sup>(6)</sup>; *The Champion*<sup>(7)</sup>. As to costs occasioned by excessive bail having been compelled, the counsel cited *The George Gordon*<sup>(8)</sup>.

RUSSELL, J. (after stating at length the facts of the case continued):— The plaintiffs have, in my opinion, exaggerated largely the value of the services done by them, and the state of the weather and other circumstances under which that aid was rendered. The defendants, on the other hand, have unduly tried to minimise the value of the services done. I shall endeavour myself to steer a middle course between these two lines of conduct. The first and the most important question in salvage cases is the amount of risk to which the salvaged ship was exposed. (See *Janet Court*<sup>(9)</sup>, although in *The Werra*<sup>(10)</sup> it was held that the Court first considers the value of the property saved, and then the actual perils.) I, therefore, deal with this point first. On the one hand, it is clear to my mind that the "Cashmere" was really in want of assistance. She had signalled for it continuously. She had got it for two days from the "Clan Shaw." She had asked for it, but failed to get it from the "Haddon Hall." She asked for and got it from the "Naseri." Captain Souter's evidence on this point, to my mind, is not satisfactory. Furthermore, the "Cashmere" was not only rudderless but had on two occasions failed to extemporise steering apparatus. Next, the time of the year was the monsoon, and, although possibly weather charts and nautical handbooks may say that after the middle of August the sting of the monsoon is gone, it is a matter of common knowledge that high seas and heavy winds are liable to occur. Another matter to be considered is that the "Cashmere" was as light as she could be with safety. She was only drawing about 14' 7" forward and 17' 7" aft, her mean draught being

(1) (1882) 7 P. D., 47.

(2) (1891) P., 349.

(3) (1893) P., 147.

(4) (1865) 2 Mad. H. C. R., 355.

Unreported.

(6) (1883) 7 Bom., 196.

(7) (1889) 17 Cal., 84.

(8) (1884) 9 P. D., 46.

(9) (1897) P., 59.

(10) (1886) 12 P. D., 52.

22' 6" when deeply loaded. Her height out of the water would obviously render her more unmanageable. It is, to my mind, impossible to say that the position of the "Cashmere" was not one of risk and hazard, and might by a change in the weather at once become one of great danger. As against this, however, the views of those on board the "Naseri" are, to my mind, somewhat extravagant. As regards the weather, it appears to me that it was not more than the ordinary monsoon weather which may be expected between Aden and Bombay in the month of August. The wind was W.S.W., and, to use the words of Mr. Barron, the chief officer of the "Naseri," was a fresh breeze. The sea according to him was a stiff sea or good fresh sea. Therefore, as regards wind and sea there was nothing to render the salvage services very hazardous. Moreover, it must be remembered that the "Cashmere" had from the time she left the "Clan Shaw" down to the time that she fell in with the "Naseri" been steadily making her way towards the direction she wanted to go. It seems to me that, although she may not have been actually able to get up into Bombay harbour, she would have been able, unassisted, to get within the arc of light either of the Prongs or of Kennery Island. It has been suggested that she must have gone on a lee shore and not have been able to anchor. I confess I see no foundation for these suggestions. Her engines were in perfectly good working order. She had got four anchors, two of them bent on to their cables, one on her fore-castle deck ready, and another spare one. There does not appear to me to be any reason to suppose that her anchors and cables would not have held. It must especially be borne in mind that the "Cashmere" was not in what has been described as "a condition of impotence" such as she might have been in had her propeller been broken or her engines unable to work. As regards the set of the currents and where they would have taken her, it is practically impossible to come to any satisfactory conclusion. On the one hand, we have witnesses coming forward, and authorities produced, to show that she must inevitably have been taken by the current somewhere north of Bombay. On the other hand, witnesses are called, and authorities and charts produced, to show that she must have been taken to the southward of Bombay. In this

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION Co.

v.  
S. S.  
"CASHMERE."

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION CO.  
S. S.  
"CASHMERE."

conflict of authorities I cannot say that I have formed an opinion one way or the other.

I would sum up the position thus—The "Cashmere" without a rudder and approaching Bombay was in need of assistance which the "Naseri" afforded her, and in so doing conferred meritorious services upon her. At such time the position of the "Cashmere" was one unquestionably of risk and might possibly have become one of danger, but the services rendered by the "Naseri" were not of an extraordinary or protracted character. I am, therefore, of opinion that the "Naseri" is entitled to salvage reward and in the usual course to salvage from all the properties salvaged. I would here refer to a point made by Mr. Scott, *viz.*, the absence of the scrap log. No doubt its absence is to be regretted, but I cannot find that it has been wilfully suppressed. The ship's log unquestionably is kept in an utterly incomplete way; moreover, the Exhibit No. 4, Captain Souter's log, has a peculiarly clean appearance, but having seen Captain Souter in the witness-box I cannot find that he has had anything to do with the suppression of the scrap log, or that he has manufactured Exhibit No. 4. It is quite possible, as suggested by the Advocate General, that the scrap log did contain entries as to the stranding of the "Cashmere" in the Red Sea which the chief officer was not anxious should be disclosed.

I now deal shortly with the pleadings and proceedings in the case.

The plaint by the owners of the "Naseri" was filed on the 16th August, 1898, and that by her master and crew on the 18th. In the former a sum of one lakh was claimed; in the latter, Rs. 50,000.

I agree with the Advocate-General's observations about these claims. They are, to my mind, excessive. I think also it was unnecessary to file two suits. The written statements of the defendants were filed on the 7th of October, on which date they paid in the sums of Rs. 5,000 and Rs. 2,257, respectively. The cargo owners did not put in any written statement, and have taken no part in the proceedings, but the exhibits from M to W inclusive satisfy me that they were duly served and have

had ample notice of the proceedings. At the hearing I alluded to an amendment of the written statements by an alternative assertion that, in the event of the services being held to be salvage, a sufficient sum was paid in. Although it appears from the evidence of Captains Potts and Macaulay that they calculated the amounts paid in on the basis of towage, I do not think that the defendants should be held bound by those gentlemen taking what I find to be an erroneous view of the services rendered. At all events, the Advocate General, the defendants' counsel, admitted unreservedly that the services were salvage services.

I next deal with the law applicable to the whole state of facts.

The defendant ship has paid into Court the sum of Rs. 5,000 for the owners of the "Naseri" and Rs. 2,257 for the crew. The question is: Is that sufficient so far as regards the defendant ship?

It must be remembered that salvage services have been described as giving rise to an equitable claim. It has also been held that, in dealing with the amount, all the circumstances must be taken into consideration. In section 720 of Kay on Shipping (2nd Ed.) the various elements to be considered in salvage cases are set out. I deal with them, so far as applicable, *seriatim*. The value of the property saved, I take to be: ship Rs. 78,000, cargo Rs. 56,510. As to the actual perils from which the "Cashmere" and cargo were saved, I say she was in a position of risk which by change of weather might have become one of danger. As to the possibility of assistance from elsewhere, seeing that she met the "Naseri" within twenty-four hours of her leaving the "Haddon Hall," I think it may fairly be said that the probability of her falling in with another steamer was considerable. As to the state of the weather when the services were rendered, it was ordinary monsoon weather such as is usually met with in the middle of August near Bombay. With regard to the degree of risk and peril incurred by the salvors, I do not consider that with proper seamanship any such was incurred. With regard to the degree of labour and skill exerted by them I cannot think it was of the highest character. As regards the value of the "Naseri" and her cargo, the latter was, I have said, six lakhs. The value of the former is Rs. 1,75,000.

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION Co.  
v.  
S. S.  
"CASHMERE."

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION CO.  
v.  
S. S.  
"CASHMERE."

As regards the time occupied by the services I find that the "Cashmere" commenced to tow the "Naseri" at 3-30 on the 13th, and stopped about the same hour next morning, but of course she had been trying to assist her before that as above set forth. As regards injury and loss occasioned to the salvors, I do not find any.

I now give a tabular abstract of the cases referred to by counsel on both sides for convenience of reference:—

Ships.	Citation.	Value of Ship, &c.	Amount awarded.	Remarks.
IN ENGLAND.				
"The Golondrina" ... ..	(1867) L. R. 1 Adm. and E., 334.	£ 20,000	£ 1,800	
"The Chetah" ... ..	(1868) L. R. 2 P. C., 205.	£ 50,000	£ 3,150 reduced to £ 1,500	
"The Glenduror" ... ..	(1871) L. R. 3 P. C., 589.	£ 46,000	£ 1,000 increased to £ 2,000	Very meritorious services life saved.
"The Amerique" ... ..	(1874) L. R. 6 P. C., 458.	£ 190,000	£ 30,000 reduced to £ 19,000	Derelict.
"The Thos. Allen" ... ..	(1886) 12 App. Ca., 118.	£ 126,775	£ 12,000 reduced to £ 7,500	
"The Cleopatra" ... ..	(1878) 3 P. D., 115.	£ 25,000	£ 2,000	
"The Kenmore Castle" ... ..	(1882) 7 P. D., 47.	£ 75,000	£ 4,000	10 days' work.
"The Accomac" ... ..	(1891) P., 349 ...	£ 22,133	£ 1,000 increased to £ 1,800	
"The Spruce" ... ..	(1893) P. 117 ...	Value not given.	£ 12,000 paid	
IN INDIA.				
"The Lady Jocelyn" ... ..	(1865) 2 Mad. H. C. R., 355.	£ 120,000	Rs. 12,000	9 hours' work.
"The Rathbone" ... ..	Unreported (vide L. L. R. 7 Bom., 207).	£ 160,000	Rs. 26,000	5 days' work.
Secretary of State for India } "The Chilka" ... ..	(1833) 7 Bom., 196.	Rs. 3,00,000	Rs. 34,000 paid to ship; Rs. 10,000 awarded to crew.	11 days' work.
"The Champion" ... ..	(1889) 17 Cal., 84.	£ 43,000	£ 1,500 raised to £ 2,400	

While agreeing with the proposition of law contended for by Mr. Scott, and stated in section 721 of Kay on Shipping (2nd Ed., p. 589), viz., that in fixing a proportion of the value the Court usually gives a smaller proportion where the property is large, and a larger proportion where the value is small; still looking at the amount awarded in those cases I am of opinion that the sum paid in by the defendant ship is amply sufficient. It is considerably more *pro rata* than was paid in the cases I have referred to above. As regards, therefore, the defendants, the "Cashmere" and her freight, I am of opinion that a decree should be passed for the plaintiffs in these two suits, respectively, as against the defendant ship and freight for Rs. 5,000 and Rs. 2,257, respect-



ively, the plaintiffs to have their costs down to 7th October, 1898, inclusive. The plaintiffs respectively to pay the costs of the defendant ship and freight after that date.

I am of opinion that the amount paid in is sufficient to cover all the charges which the plaintiffs may have been put to as regards the arrest of the "Cashmere," &c. One set of costs, if necessary, to be set off against the other.

As regards the cargo on board the "Cashmere," which, as I have said before, was of the value of Rs. 56,510, the matter is, of course, on a different footing. By maritime law all property saved from danger is liable individually for its proportion of the salvage awarded against the whole of the adventure to which it belongs. Therefore the cargo on board the "Cashmere" is individually liable. The owners of that cargo although they had notice of these proceedings as I have pointed out above, in the usual way, have not paid anything into Court, and have not appeared. I have, therefore, to decide what, in my opinion, the cargo ought to pay; and I think that a proper amount would be the sum of Rs. 5,257. I have arrived at this figure by the ordinary rule of three as applied to the sum paid in by the defendant ship. If I have erred on the side of liberality with regard to the cargo, the cargo owners ought to have appeared to prevent such error. I am aware that in valuing the cargo all necessary expenses attendant on transhipping and storing the goods and their valuation ought to be deducted as well as the freight and customary charges, *e. g.*, brokerage, weighing and commission. The cargo owners have not chosen to show me what should be deducted, and I must treat the cargo as of the value as aforesaid proved before me. But, of course, if either party wish or insist, the matter must be referred to the Commissioner.

With regard to the claim of the "Cashmere" for damages alleged to have been caused by the "Naseri" running into her, I do not think the evidence would justify me in coming to any finding. The occurrence, it seems to me, was either an inevitable accident which happened in the performance of the services and was one of the necessary risks of the undertaking, and created no liability on the part of either party, or, as I am inclined to think, it was

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION Co.

v.

S. S.

"CASHMERE."

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION Co.

v.  
S. S.  
"CASHMERE."

a bit of bungling on the part of each of the two captains, and I think I may safely say that, if the plaintiff company had taken out the sum of money paid in by the defendant ship, we should have heard nothing more of this claim for damages. Moreover, when Captain Macaulay says the damage would come to Rs. 2,000, and Mr. Ditchbourne says it would come to Rs. 9,500, I do not see how I could assess the proper amount.

I must now proceed to allocate the sums paid into Court and awarded as above. I do not propose to interfere with the allocation as already carried out by the defendant ship, which, therefore, will stand as follows, *viz.*, Rs. 5,000 to the owners of the "Naseri" and Rs. 2,257 to her crew. I allocate the Rs. 5,257 in respect of cargo as follows:—Rs. 3,622 to the owners of the "Naseri," and Rs. 1,635 to the crew. The owners of the "Naseri" will, therefore, get altogether Rs. 8,622, and her crew will get Rs. 3,892. Of this sum I would allot to Captain Raffin Rs. 700, to First Officer, C. H. Barron, Rs. 400, to the Second Officer Rs. 250, and to the Third Officer Rs. 200, to Govind Jacko, Serang, for his conduct which deserves special recognition, Rs. 200, to the three engineers Rs. 250, Rs. 180 and Rs. 150, respectively, the balance to be divided amongst the rest of the crew according to their rating. But in accordance with the usual practice (see *The Spree*<sup>(1)</sup>) the non-navigating members of the crew get only one-half.

With regard to the costs of this suit, I have dealt with them so far as the defendant ship is concerned, but the defendants cargo-owners must pay the plaintiffs the cost of and incidental to the first day's hearing, as the plaintiffs' case as against the cargo must have been proved, but I do not think the cargo should bear any more costs. The cargo lately on board the "Cashmere" or such portion of it as may be sufficient to satisfy the amount above awarded and costs must be sold to pay the amounts. After taxation of costs against the cargo, notice under Rule 15 of Admiralty Rules to be given to consignees of cargo.

The bail given by the defendant ship will be vacated and the title deeds handed back to their owner.

With regard to the question of costs, his Lordship recorded the following judgment on the 21st April, 1899 :—

I have considered the question of the point raised by Mr. Branson yesterday with regard to the costs the owners of the "Cashmere" have been put to by reason of excessive bail having been compelled. In a matter of this sort the Court must, of course, allow for the plaintiffs taking a generous view of the value of their services, but I think in this case the bail that was compelled, although it was in the three suits, was excessive. Mr. Justice Butt says in "*The George Gordon*"<sup>(1)</sup>: "Parties should not arrest a ship for an exorbitant sum, and if they do, it is no excuse to say that the defendants did not, as it were, struggle to get free by applying to have the bail reduced." This case was directly followed in "*The Champion*,"<sup>(2)</sup> where the costs occasioned by the bail required being excessive were directed to be paid by the promovents. I think in the present case the plaintiffs ought to pay the costs of and incidental to bail being compelled beyond the sum of Rs. 50,000.

*Decree accordingly.*

Attorneys for the plaintiffs :—Messrs. *Crawford, Brown and Co.*

Attorneys for the defendants :—Messrs. *Smetham, Bland and Noble.*

• (1) (1884) 9 P. D., 46.

(2) (1889) 17 Cal., 184.

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## ORIGINAL CIVIL.

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*Before Mr. Justice Russell.*

HUNSRAJ PURMANAND, PLAINTIFF, v. RUTTONJI WALJI  
AND OTHERS, DEPENDANTS.\*

*Forgery—No title through forgery—Shares, debentures, Government promissory notes having a forged indorsement—Holder has no title—Government promissory notes surrendered for renewal—Title to renewed notes—English Bills of Exchange Act (Stat. 45 and 46 Vict., c. 61)—Negotiable Instruments Act (XXVI of 1881)—Holder in due course.*

The plaintiff as administrator of Purmanand Cooverji, a deceased Hindu, sued to recover from the defendants (thirty-one in all) certain shares, debentures and

\* Suit No. 594 of 1898.

1899.

BOMBAY AND  
PERSIA  
STEAM NAVI-  
GATION Co.

S. S.  
"CASHMERE."

• 1899.

September  
4, 7, 8.

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