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In re
BHAYANIBAI.

"(4) Whether the document executed by the widow is a conveyance or a settlement?

"Opinion of the Commissioner, S. D.—

"Point 1.—The whole should not be considered as a single instrument, inasmuch as the deed executed by the widow was complete by itself, and because it was never intended to be endorsed by the adopted son, who had no *locus standi* at that time.

"Point 2.—If the whole be treated as one instrument, and the endorsement be not liable to stamp duty, it will be subject to the provisions of the old Act, 1869.

"Point 3.—Each of the instruments should be stamped as a settlement.

"Point 4.—The document is clearly a settlement; *vide* clauses 9 and 19 of section 4 of Act I of 1879."

There was no appearance on behalf of any party before the High Court.

SARGENT, C. J.—When the lady adopted a son, her gift *in futuro* became inoperative. The donee now claims under a gift from the adopted son, and if that instrument of gift be duly stamped, it will constitute a sufficient title-deed. The instrument should be stamped with a single stamp as an instrument of gift under article 36, schedule I, Act I of 1879.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

FRANCIS JOHN RAFFIN AND OTHERS, PLAINTIFFS, *v.* THE STEAM SHIP *CHILKA*, DEFENDANT.*

Salvage—Towage—Extraordinary towage—Claim of master and crew—Award—Apportionment.

The s. s. *C.*, while employed as a Government transport to convey troops and stores from Bombay to Egypt, broke her screw shaft and became disabled. While in that condition the s. s. *H. B.* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the s. s. *C.* settled the claim of the owners of the s. s. *H. B.* for Rs. 37,500, but refused to recognize any separate claim to remuneration in the plaintiffs, the master and crew of the s. s. *H. B.*

* Admiralty Jurisdiction, Suit No. 1 of 1882.

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and 17.

Held that the services rendered were, under all the circumstances of the case, salvage and not merely towage services, and that Rs. 10,000 was a fair remuneration for the master and crew of the salving vessel, to be apportioned, Rs. 4,000 to the master, the rest to the crew according to their ratings.

The plaintiffs held entitled also to one thirty-second part of the freight, if any, which might be recovered by the s. s. *C.* under her charter party with the Indian Government.

If towage leads to the rescue of a vessel in actual danger, or in reasonable apprehension of danger, the services should be remunerated as salvage.

When the steam power of the salving vessel is the efficient cause of the salvage the owners are entitled to the larger share of the reward. This is especially the case where the master and crew of the salving vessel incur no risk to life. But the reward of the latter ought nevertheless, in the interests of commerce and humanity alike, to be on a liberal scale.

The rule no longer obtains which made the salvage reward proportionate to the value of the salved ship. The Courts are only bound to give such amount as is fit and proper with reference to all the circumstances of the case, including value.

THIS was a cause of salvage instituted by the master of the steam ship *Henry Bolckow* (suing, under an order of Court, on behalf of himself and the officers and crew of the said steam ship) against the steam ship *Chilka*, claiming a sum of Rs. 37,000 for salvage services alleged to have been rendered by the plaintiff to the latter vessel.

The steam ship *Chilka* belonging to the British India Steam Navigation Company, while engaged as a Government transport in conveying troops mules and stores from Bombay to Egypt, had broken down on the 3rd September, 1882, some 460 miles short of Aden. She was sighted on the next day by the *Henry Bolckow*, being on her voyage from Aden to Bombay in ballast, and by her taken in tow and brought to Bombay, the towing voyage occupying eleven days.

The eighth clause of the charter party entered into between the Government of India and the agents of the owners of the steam ship *Chilka* ran as follows:—"Freight for the said vessel shall be paid by Government to the owners of the said vessel in Bombay as the rate of Rs. 40,824 for every calendar month, and a proportionate sum for any fractional part of a month, from and including the 4th day of August, 1882, for so long as she is employed, but the minimum term of employment to be not less than one calendar month; such payment to be made from time to

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time on production of a certificate from the officer appointed as Agent for Transports of, for, or on board the said vessel, or other duly authorized officer, that she is afloat, and has up to that time well and truly performed this contract.”

The Government, up to the time of the hearing of this suit, had refused to admit that they were liable to pay any freight under this charter party.

No terms of remuneration had at any time been agreed to between the captains of the two vessels. The captain of the *Henry Bolckow* had at first demanded Rs. 20,000 to tow the *Chilka* to port; but ultimately, at the suggestion of the captain of the *Chilka*, had agreed to leave the matter of remuneration for settlement between the owners of the respective vessels.

Rs. 37,500 had been paid by the owners of the *Chilka* to the owners of the *Henry Bolckow* in full settlement of all claims of such owners, both for damage done to their ship (estimated at Rs. 3,000), and for services rendered by her,—such settlement, however, being without prejudice to any claim the plaintiffs might have for the services rendered by them to the *Chilka*.

The owners of the *Chilka*, when appealed to, having refused to recognize any such claim in the plaintiffs, this suit was brought.

The other material facts of the case fully appear from the judgment.

The defendants denied that the services rendered were in the nature of salvage services, or that they gave the plaintiffs any right to remuneration as against them.

Inverarity (*Farran* with him) for the plaintiffs.—The facts show that the *Chilka*, at the time the services were rendered to her, was disabled and in danger. That makes the service a salvage service and not one of mere towage: it is not necessary that the danger should be imminent: *The Charles Adolphe* (1); *The Ellora* (2); *The Albion* (3); *The Reward* (4); *The Pericles* (5); *The Raikes* (6); *The Kingalock* (7); *The Charlotte* (8). A towage service is where one vessel is employed merely to expedite the

(1) Swab. 153.

(2) Lush. 550.

(3) Lush. 282.

(4) 1 W. Rob. 174.

(5) Br. & Lush. 80.

(6) 1 Hagg. 246.

(7) 1 Spinks 263.

(8) 3 W. Rob. 71.

progress of another: *The Princess Alice* (1); *The Strathnaven* (2); *The Isabella* (3).

The claim of the owners has been already settled, but that in no way affects the right of the plaintiffs. The only question is as to the amount to be awarded. That depends on a view of all the circumstances of the case: the state of the weather; the degree of risk and peril incurred by the salvors; the degree of labour and skill exerted; the value of the salving ship; the time occupied in the service, in this case eleven days; the degree of danger incurred by the salvaged ship, which in this case was considerable; the value of the property saved; and whether human life was saved: Kay's *Shipmasters and Seamen*, p. 1057. Where all those conditions exist, as they do here, a large and liberal reward is given (*Ibid.*) Had the plaintiffs not come up with the *Chilka* when they did, the *Chilka* with the 234 lives on board of her would in all probability have been totally lost on the coast of Arabia, towards which, distant only sixty-two miles, they were fast drifting. Rs. 37,000 would be a fair remuneration. The sum the owners got for the services rendered by their ship was Rs. 34,500. That furnishes some sort of guide here, as the owner seldom gets a larger amount than the master and crew. Before the introduction of steam ships the owner got little or nothing; now, on account of the greater part played by the ship herself, when she is a steam ship, in saving the property, the owner gets much more than formerly he did [Kay's *Shipmasters and Seamen*, p. 1071]. The owner's share, however, even now, is limited to one-half, except in the most special cases: *The Enchantress* (4); *The Spirit of the Age* (5); *The Princess Helena* (6); Williams and Bruce *Adm. Practice*, p. 138. That rule of apportionment has been followed in many cases: *The Howard* (7); *The Defiance* (8); *The Earl Grey* (9); *The Hope* (10); *The Saint Nicholas* (11); *The Perla* (12); *The George Dean* (13).

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(1) 3 W. Rob. 138.

(2) L. R. I. Ap. Ca. 58.

(3) 3 Hagg. 428.

(4) Lush. 93.

(5) Swab. 286.

(6) Lush. 190.

(7) 3 Hagg. 256, note.

(8) *Ibid.*

(9) 3 Hagg. 363.

(10) 3 Hagg. 423.

(11) Lush. 29.

(12) Swab. 230.

(13) Swab. 290.

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As to the distribution of the sum to be allotted to the plaintiffs, the practice is to give by far the largest share to the master, and to divide the rest amongst the remaining officers and crew according to their ratings.

Then the plaintiffs have a claim on the freight saved. The Government have not as yet paid, and it may be a question whether under this charter party they are bound to pay any freight to the owners of the *Chilka*; but, if the latter can maintain a claim for freight, it is only by reason of their ship having been saved; for, had she been lost, it is clear that the necessary certificate could not in that case have been obtained. The Court might properly, under the circumstances, give the plaintiffs some stated fraction of whatever freight, if any, is recovered.

Lang (*Latham* with him) for the defendants.—The services rendered by the *Henry Bolckow* were not salvage but towage services. They come under the category of extraordinary towage services: *The Kingalock*(1). A steam ship is not necessarily disabled because she has lost the use of her steam power: *The Batavier* (2). That was a very similar case to this. Here the evidence shows that there was no probability of the *Chilka* going ashore. She could easily have made the Indian coast with the favourable south-west winds that blow at that time of the year. She was fully found in all respects for six months. The master of the *Henry Bolckow* himself treated it as a mere case of a towage. He asked Rs. 30,000 and finally agreed to tow for such a sum as the respective owners or their agents might subsequently agree upon. Under that agreement the owners have been paid more than the Rs. 30,000 the master demanded, and the plaintiffs have no cause of action against us. Even if the service was in its inception a salvage service, it almost immediately degenerated into a mere towage service.

As to the question of apportionment, should the Court be against me on the above points. Since the introduction of steam power the vessel herself has always been regarded as the principal agent in effecting the service. Certainly in the present case, whatever meritorious services were rendered, were rendered by the vessel herself, and the part the plaintiffs played was small.

(1) 1 Spinks 263.

(2) 1 Spinks 169.

Except in cases of exceptional merit or exertion in the master and crew they do not get nearly as much as is given to the owners of the salving vessel: *The Miranda* (1); *The Dido* (2); *The True Clue* (3); *The Golandrina* (4); *The Scout* (5); *Rathbone v. The Secretary of State for India* (6); *The Cleopatra* (7). The plaintiffs, we submit, are entitled to nothing; or at the most to some very small sum.

The plaintiffs can, in no case, have any claim on the freight in respect of the period from the 4th of August, the date of the commencement of the charter party, down to the 4th September, the day when the *Henry Bolckow* took the *Chilka* in tow. That freight at least was not salvaged, and, if recoverable at all, would equally have been recoverable had the ship been lost.

Cur. adv. vult.

March 29. SCOTT, J.—This is a salvage suit instituted by the captain, officers and crew of the steam ship *Henry Bolckow* against the steam ship *Chilka* and her freight.

The *Henry Bolckow* is a screw steamer of 639 tons net register and 99 horse power. The *Chilka* is a vessel of 1,497 tons register and 200 horse power belonging to the British India Steam Navigation Company, of whom the defendants in this suit are the agents in Bombay. The *Chilka* was chartered last autumn by the Secretary of State for India to convey troops and stores to Egypt, and left Bombay on the 28th August, 1882, for Suez with 133 camp followers, 234 mules, and a crew of 101 all told.

On the 3rd September, at 8-15 P. M., her machinery broke down. The fact is thus recorded in her log-book:—"Shaft broken in stern-tube and unable to turn ahead or astern." She was then ninety-six miles from Ras Fartak, the nearest point on the Arabian coast, in lat. 14-9 N., long. 52-49 E.

She fired guns, sent up rockets, displayed signals of distress, and in short showed by her conduct that she thought herself in need of assistance. She set her fore and aft sails; but, in spite of

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(1) L. R. 3 A. & E., 561.

(2) Pritch. Adm. Dig., 846, 907.

(3) L. R., 1 P. C., 250.

(4) L. R., 1 A. & E., 334.

(5) L. R., 3 A. & E., 512.

(6) Adm. Suit No. 2 of 1869 (not reported); the facts of the case are set out in the judgment, *post*, p. 207.

(7) L. R., 3 P. D., 145.

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her sails, her log records that evening "the ship is drifting bodily to leeward.

The next day, the 4th, there was a moderate breeze and fine weather, with a heavy south-west swell. The sails still failed to be of effectual service. There was a current setting to the north, and the log records "Ship drifting bodily to leeward from direction of drift, the vessel making for a most dangerous part of the coast, *but every chance of a set to the eastward.*"

The *Henry Bolckow* came in sight the midday of the 4th, heard the distress guns of the *Chilka*, and saw her distress signals. She bore down upon the disabled vessel, whose captain came on board and asked for assistance. There was some negotiation as to the terms on which service should be rendered, the captain of the *Henry Bolckow* asking Rs. 30,000; but it was finally agreed that the *Henry Bolckow* should tow the *Chilka* to Aden, and the amount of reward should be left open. The *Chilka* was then made fast to the *Henry Bolckow*, and the two ships started for Aden. But wind and sea were against them, the *Henry Bolckow* was of too slender horse power for such a task, and both ships were drifting towards shore. The two captains had another conversation, decided Aden was impracticable, and agreed to try for Karachi or Bombay. They turned round on the evening of the 4th, and made for Bombay.

This voyage to Bombay, though successfully performed, was not without casualties. They started with a moderate breeze and fine weather, but with what one log, the *Chilka's*, calls a "beam swell" and the other log calls "heavy seas". They encountered no storm or bad weather, but they had the "beam swell" or "heavy seas" nearly all the way. The rolling of the vessels caused difficulties of steering; on two days at least, according to her log, the *Henry Bolckow's* engine 'raced'; on three occasions the towing tackle parted; and on one of these occasions there was a slight collision, the *Chilka* running into the *Henry Bolckow* and causing damage.

On the last day but one, the 14th, the *Malda*, one of the "British India" line, offered assistance, but the offer was not accepted. On the afternoon of the 15th the *Henry Bolckow* cast off the *Chilka* within the limits of Bombay harbour.

On the 11th October Rs. 37,500 were paid by the owners of the *Chilka* "in full discharge" of all claims of the owners of the *Henry Bolckow*. On the 20th November it was acknowledged by the agents of the *Chilka* that this payment "was not intended to be a settlement of the claims, if any, which the captain and crew might have against the owners of the *Chilka*." The captain, officers and crew of the *Henry Bolckow* brought the present suit, and claimed Rs. 37,000 for their salvage services.

The above facts undoubtedly constitute a case of salvage. "If towage leads to the rescue of a vessel in danger it should be remunerated assalvage": *The Isabella* (1). "Service performed by a steamer to a disabled vessel can never be considered as mere towage": *The Charles Adolfe* (2).

The amount to which the salvors claiming in this suit are entitled is the real question.

In no cases of salvage are the circumstances so similar that one case can serve as a complete precedent for another, but the principles on which salvage compensation should be based have been laid down by Lord Stowell in *The Clifton* (3), and his rules have been the guide in all subsequent cases; see *The Glenduror* (4).

Those rules are as follows:—

"Now salvage is not always a mere compensation for work and labour. The interests of commerce, the benefit and security of navigation, the lives of the seamen render it proper to estimate a salvage reward upon a more enlarged and liberal scale. The ingredients of a salvage service are, first, enterprise in the salvors risking their own lives to save their fellow creatures and to rescue the property of their fellow creatures: secondly, the degree of danger and distress from which the property is rescued, whether it were in imminent peril or almost certainly lost: thirdly, the labour and skill which the salvors incurred and displayed, and the time occupied. Lastly the value."

Now first as regards the risk and peril of the salvors in the present suit. The breakdown of the *Chilka* occurred towards the close of the south-west monsoon. On the 4th September, when the salv-

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(1) 3 Hagg., 428.

(3) 3 Hagg., 120.

(2) Swab., 153.

(4) L. R., 3 P. C., at p. 592.

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age service began, the sea was high, but the wind was moderate and the weather fine. The weather did not get worse during the eleven days of the towage. It was suggested that a risk was run by the captain of the *Henry Bolckow* going in a boat to the *Chilka*. I think it was a danger inappreciable to skilful sailors. The *Chilka* had already launched a boat ready to go to Aden, and she sent off another when the other ship came in sight. "The second smallest boat of the *Chilka* went to and fro without difficulty" says one of the witnesses.

There was, however, danger in the towage of a large ship by a small ship with weak steam power in a heavy sea. An independent witness, a marine engineer of reputation, told us what this danger consisted in. If the machinery had broken down, collision might have ensued. The engines were more likely to race, which might lead to a breakdown. Collision was also possible from the parting of the hawsers.

I do not think, however, the peril incurred by the salvors was so great as to put their lives in serious danger; although it was such as to call for constant attention and considerable skill in navigation.

The danger of the salved vessel is the next question. When the *Henry Bolckow* came up, the *Chilka* was certainly in a serious position. The main shaft of her screw was broken, and she could not steam. Although her sails were set, she was drifting on to a lee shore. The *Chilka's* captain himself said to the Bombay pilot. "The *Chilka* probably might have gone ashore if the *Henry Bolckow* had not come." No other steamer was in sight or could apparently be procured. Only one other steamer was sighted that day, and she paid no attention to the signals. In the instructions which the captain of the *Chilka* had prepared for the officer who was to go to Aden for assistance he states that he had drifted thirty-nine miles in sixteen hours. On the other hand the captain states in the same document that "if the wind freshens up he shall get the ship round and run her to the eastward." He also states that he hopes to find the current setting to the east a little further on.

The log-books show that, as a matter of fact, the wind got more into the west on the evening of the 4th and on the 5th, and such

a change was likely in the south-west monsoon*season. There was on the 5th a moderate breeze from the south-west (*Chilka* log) or from the south-south-west (*Henry Bolckow* log), and it may be presumed that with such a wind a schooner-rigged vessel with all her fore and aft sails set and her rudder in working order could have turned round in sixty miles of sea-room. Once she got her head to the east, the *Chilka* would be out of imminent danger. Both logs agree that when the Bombay course was taken the ships found both wind and current favourable.

The local character of the current which placed the *Chilka* in such danger is also confirmed by the charts produced. The Bombay chart shows the currents off the Arabian coast to be all easterly. The Admiralty chart agrees with the Bombay chart. The Imray chart shows the Red Sea currents to be northerly and those of the Indian Ocean easterly. It may very well happen that where the two seas meet, no hard and fast rule can be made; but the captain of the *Chilka* said he hoped to find the normal currents further on, and events proved him right.

On the whole, therefore, I do not think the peril to the *Chilka* so imminent as at first sight appears. "Once out in the monsoon", says the captain of the *Chilka*, "we could have made our way to the Indian coast, but I could not undertake to get to any port in particular." She had wind and sea in her favour, with food and water in abundance. But such a voyage would by no means have been free from danger, although not of an extraordinary or imminent character.

Of the third ingredient, the labour and skill of the salvors, I have already spoken. It was argued that the salvage service only lasted a short time, and that the rest was mere towage. The Privy Council has met this argument in *The Glenduror*(1): "Their Lordships do not think it right to split up the services of salvors or to treat it as other than one continuous service rendered to life and property." Moreover, in the present case, the disparity of size and power between the two ships, the difficult steering and the rough seas must have given the salvors constant work as regards the towing tackle, and much anxiety concerning the success of their undertaking.

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(1) L. R., 3 P. C. at p. 593.

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The value of the salving and salvaged ships is the last ingredient. I have not perfect evidence on this point. The defendants, however, gave proof of value by Captain Clark, a marine surveyor in their employment, who is also surveyor to Lloyds Agency, and who surveyed the *Chilka* on her arrival for general average purposes.

He valued her actual value at Rs. 2,15,000. But he admitted that he had estimated her probable repairs at Rs. 50,000. The account produced shows they did not exceed Rs. 10,000. In the next place he not only allowed for a fall in value by deterioration at the rate of 6 per cent. *per annum*, but he also deducted Rs. 30,000 for general fall in prices. Now, although the price of iron fell from 117s. per ton in 1873 to 47s. in 1879, I find they are much the same to-day as they were in 1879 (see Economist Annual Commercial Summaries). I cannot, therefore, allow this Rs. 30,000 deduction. He calculated the gross value at £18 a ton on builder's measurement. I think it should be calculated on the gross tonnage, and not on any measurement which is diminished by allowances.

The value of the *Chilka* on Mr. Clark's estimate, checked as above, may be fixed at about three lakhs and a quarter. The value of the *Henry Bolckow* was valued in the books of her owners at Rs. 1,80,000 in 1879. She may be taken to be about one and half lakhs now.

The precise value of the two ships, however, is no longer all important, as the rule of proportionate rewards has been practically abandoned (3 Hagg., 93 and 62). Even in the case of derelicts the Courts are only bound to give such amount as is fit and proper with reference to all the circumstances (including value): *The Seindia* (1); *The True Blue* (2). An approximative estimate of value is sufficient. The fact is important that Rs. 37,500 has been paid by the defendants to the *Henry Bolckow*, of which upwards of Rs. 30,000 were for services rendered to the *Chilka*. What is paid to the owners of a salving ship must serve to some extent as a guide to what ought to be paid to the master and crew, even though the money was paid under the idea that no other legal

(1) L. R., 1 P. C., 241.

(2) *Ibid.* 250.

claim existed. But since the introduction of steam ships the rules of apportionment have greatly changed. The services rendered are (save in exceptional cases) held to be more due to the steam power than to any personal efforts, and, consequently, the owners, as compared to the captain and crew, are rewarded on a much higher scale than they were in the days of sailing ships. Obviously a long towage comes more especially within this rule. At the same time the reward must not go too exclusively to the owners, or that encouragement to save life and property at sea would be withdrawn which is so beneficial in the interests of commerce and humanity alike.

I will finally mention three of the many cases furnished by the diligence of counsel with a view to my decision.

The first is a case cited by Mr. Lang—a salvage suit tried in this Court before the late Chief Justice: *Rathbone v. The Secretary of State for India* (1). The facts were as follows:—The *Madras*, a screw steamer of 1,185 tons register and 274 horse power chartered for Abyssinia war service in 1868, broke her screw shaft between Bombay and Aden. The steamer *Gunga*, 891 tons and 150 horse power, bound for Liverpool, took her in tow to Aden, a service of five and half days. The value of the *Madras* was £60,000 and her cargo £100,000. The value of the *Gunga* was £30,000. She carried passengers, and her cargo was worth £60,000. There was no bad weather, the sea was favourable, and there was no danger, save the fact that the ship was disabled. Rs. 26,000 was awarded, which sum was distributed—Rs. 20,000 to the owners, Rs. 3,000 to the master, Rs. 3,000 to the crew. “The service was really performed,” said Sir Michael Westropp, C. J., “by the steamer and without danger, but the master took a great responsibility as regards his passengers and a valuable cargo.”

The next case is the *Kenmure Castle* (2), a very recent decision of the British Admiralty Court. The *John David* steam-ship (1,807 tons burthen with full cargo from Bombay) fell in with the *Kenmure Castle* in the Red Sea (value £75,000, 1,268 tons) with her shaft broken. The weather was fine, sea calm. The towage

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(1) Adm. Suit No. 2 of 1869 (not reported).

(2) L. R., 7 P. D. 47.

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lasted ten days. £4,000 was awarded, it being apportioned—
 £3,000 to the owners, £400 to the master, £600 to the crew.

The third case is that of the *Cleopatra* (1), where the vessel containing the Egyptian obelisk was found in the Bay of Biscay as a derelict, rescued with much daring by the captain and crew of the *Fitzmaurice*, and towed through a heavy sea ninety miles to Ferrol. The value of the *Cleopatra* was fixed at £25,000. £2,000 salvage money was awarded, of which £1,200 was given to the owners, £250 to the captain, and the rest to the crew.

Now it will be observed in the first two cases the master and crew received about one-fourth of the amount awarded. Yet in both cases the master took upon himself a grave responsibility in delaying a valuable cargo, and in one of the cases he detained passengers also. The master of the *Henry Bolckow* assumed no such responsibility. He carried no passengers: his ship was in ballast, and he had no cargo on board. The value of his own vessel was comparatively small, and the value of the *Chilka* was hardly half that of the other vessels. But the *Henry Bolckow* saved her from actual danger, and Captain Raffin exposed his ship to a certain degree of risk. The service was not an easy one, and it was performed with skill, zeal, and perfect success.

The third case is useful as showing that even when the greatest perils are encountered by the crew of the salving vessel, and the salvaged vessel is rescued from total loss by their skill and courage, still the owners are rewarded on a higher scale, because the steam power is the efficient cause of the salvage.

In conclusion, I think the present salvors will be fairly remunerated under all the circumstances of the case if I award the sum of Rs. 10,000 for their services. I think the distribution of this sum should be, Rs. 4,000 to the captain, and Rs. 6,000 to be divided amongst the officers and crew according to their respective ratings. I am also asked to fix the salvage on freight in case any freight is paid. I cannot decide in this suit whether or not any freight is recoverable under the charter party: but supposing some to be recoverable, I do not think any exception is to be made in favour of the freight for the period between 4th August and

(1) L. R., 3 P. D. 145.

the 4th September, in respect of liability to contribute for the services rendered. I think the total salvage on whatever freight, if any, is recovered should be calculated at one-eighth of such freight; and that one-fourth of such salvage, or, in other words, one thirty-second part of the freight, if any, recovered, should be paid to the present claimants as their share, to be divided amongst themselves in accordance with the above apportionment. The owners' claim I have nothing to do with in this suit, and, moreover, it has been already settled. Costs to be paid by defendants. Solicitors for the plaintiffs.—Messrs. *Prescot and Winter*. Solicitors for the defendants.—Messrs. *Craigie, Lynch and Owen*.

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APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

THE FIRST ASSISTANT COLLECTOR OF NASIK AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. SHAMJI DASRATH PATIL AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1878
July 24.

Water of a river—Diversion—User—Relative rights of riparian proprietors and occupiers—Rights of the Government—Khalsa or rayatvadi land.

A dam had been in existence across a river for upwards of 280 years, and during all that time the villages of D. and P. had received an equal supply of water from separate sluices in the dam. The Government authorities, being of opinion that D. required less water than P., reduced the size of the D. sluice, and consequently the amount of water flowing to the D. village. The village of D. was *khalsa* or *rayatvadi*, i.e., was held immediately of Government. The inhabitants of D. appealed against the action of Government.

Held that the Government had no such right of interference, neither (1) as riparian proprietors (supposing them to be such) since the right to the enjoyment of the water of a river belongs to the occupant of the river-bank, whatever the nature of his tenancy; nor (2) by any other imaginable rights existing in the Government as such, since if any such rights ever existed, the long user for upwards of 280 years of the water from the dam by the village of D. would be amply sufficient to justify a presumption of an original *animus dedicandi* in the Government.

THIS was an appeal from the decision of Rav Bahadur G. R. Deshmukh, Joint Judge of Nasik, in Original Suit No. 3 of 1875.

This suit was instituted by the villagers of Dabhade for the removal of an obstruction to their water-course. The plaint

* Second Appeal, No. 47 of 1877.