

[VASSILIADES, J., SITTING WITH CAPTAIN K. MCM DRAKE, R.D., R.N.R. (RET (d)), ELDER BROTHER OF TRINITY HOUSE, LONDON, APPOINTED TO ACT AS ASSESSOR IN THIS CASE UNDER RULE 132 OF THE CYPRUS ADMIRALTY JURISDICTION ORDER, 1893).

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*Plaintiffs,*

v.

MOTOR TANKER "KEISSERSWAARD" AND  
ANOTHER,

*Defendants.*

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(Admiralty Action No. 10/64)

*Admiralty—Supreme Court of Cyprus—Jurisdiction—Law applicable in admiralty jurisdiction is the law prescribed in section 29 (2) (a) of the Cyprus Courts of Justice Law, 1960 (Law 14 of 1960), i.e. the law in force in England on 15.8.1960 as modified, if at all, by any law of the Republic ; here by the Wrecks Law, Cap. 298 and the Cyprus Admiralty Jurisdiction Order, 1893.*

*Admiralty—Salvage—Services rendered to stranded vessel—Nature of services—Tug's services—Whether amounting to salvage—Vessel in need of salvage help—Command of vessel—Determination and apportionment of amount of award.*

This admiralty action concerns a claim for salvage services rendered by plaintiffs for refloating the motor tanker "Keisserswaard" which grounded on a sandy bottom near Larnaca port, Cyprus, when driven by weather conditions and other accidental adversities and attempting to move away to safer anchorage in the Roads of the said port, in the winter-night of the 9th December, 1964.

The main issue in the case is whether the services rendered by the plaintiffs' tug for the refloating operation in question were salvage services ; and if so, what is the remuneration payable for such services.

The defence put forward, in this respect, was that the services rendered were mere towage services, not amounting to salvage.

On the legal aspect, Counsel for the defendants submitted that the combined effect of sections 24-34 of the Wrecks Law, Cap. 298, is to introduce in Cyprus the law of England, regard-

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ing salvage claims, generally speaking, subject to the Statutory provisions in Cap. 298, which makes here in Cyprus the law "more strict"; so, where in England a salvor could have a good claim, in Cyprus he may not have one, in view of the proviso in section 34 which requires proof of the existence of "actual peril threatening destruction" of the salvaged property, "save for the assistance rendered by the salvor", before salvage can be awarded by the Court. And in this case, Counsel submitted, no such actual peril threatening the destruction of the tanker has been shown.

*Held, (I) on the legal aspect :*

As regards the Admiralty Jurisdiction of the Court :

In any case, there can be no doubt that the law applicable in this jurisdiction is the law prescribed in section 29 (2) (a) of the Cyprus Courts of Justice Law, 1960; *i.e.* the law in force in England on 15.8.60 as modified, if at all, by any law of the Republic; here by Cap. 298 and the provisions in the Cyprus Admiralty Jurisdiction Order, 1893.

(II) (1) Both these enactments refer to and speak of salvage; none attempts to describe it in their respective definition-sections. In determining, therefore, the nature of plaintiffs' services, and whether they amount to salvage, I have to apply the English law. In doing so I am moreover, supported by section 24 of the local statute (Cap. 298) which provides that :—

"Whenever any ship is stranded on the shore of any sea within the limits of Cyprus, and services are rendered by any person in assisting her there shall be payable by the owners of the ship to the person by whom the services or any of them are rendered a reasonable amount of salvage, together with all expenses properly incurred the amount of such salvage and expenses to be determined in case of dispute in manner hereinafter mentioned."

(2) Section 34, to which I have been particularly referred on behalf of the defendants, provides for the method of determining the amount of salvage, as the marginal note of the section clearly indicates. It was submitted in this connection, that the effect of the proviso in this section, is to render the law of Cyprus "more strict" than English law. I cannot accept this submission. I take the view that the proviso in question, must be read together with the rest of the section, in the sta-

tute as a whole. And so read, I take the proviso as intended to be of guidance in the application of the principles of English law in this connection ; and not as a change thereto. Its object and effect, in my opinion, is to exclude claims and awards for services to ships, not actually amounting to salvage in their nature.

*(III) on the factual aspect :*

On whether or not plaintiffs' tug rendered salvage services to the defendants' ship.

(1) In my mind the position is quite clear ; and I may add, very simple. The whole operation of refloating this stranded ship in the circumstances of the present case, and taking her to safe anchorage, with her propeller out of action at the time, in the prevailing weather conditions, in the month of December, was clearly a salvage operation. The tug's services were offered, accepted, and rendered for the purposes of this salvage operation ; and have contributed considerably to its success. They are, therefore, in my opinion, salvage services. In arriving at this conclusion I have, naturally, availed myself of the Assessor's assistance on the maritime aspect of the operation.

*(2) on the amount of award :*

- (i) The tug travelled for about 4 1/2 hours in difficult weather, as quickly as she could do, to get from her moorings in Famagusta harbour to the tanker. She made fast on arrival, and worked for about an hour in this salvage operation, the first half in the refloating of the tanker under the directions of the Director of Ports (P.W. 4) from the ship ; and the other half in towing the tanker to safe anchorage. She rendered admittedly, prompt, efficient and useful service, which has definitely contributed to the success of the whole salvage operation.
- (ii) I accept the evidence that the Director of Ports (P.W. 4) was not a Receiver of Wrecks under Cap. 298 in the area in question, at the material time ; and that the service he rendered to the tanker as described earlier in this judgment, was a voluntary service, outside the scope of his official duty.
- (iii) I do not propose going into further detail regarding the number and nature of the factors which led me to the figure of the award. What I had to find was the amount which would be an adequate award for the services

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rendered by the tug in question, to the " Keisserswaard ", in the circumstances of this case as established by the evidence before me ; the circumstances which constitute the relevant facts as I have found them, on such of the evidence as I am prepared to accept. The danger into which the salvaged property was exposed ; the risks involved in the operation for the men on the tug ; the value of the salvaged ship ; the value of the plaintiffs' tug and the risk of damage thereto ; the time-factor as affecting both sides ; the difficulties and strain which the salvors promptly undertook ; the proportionate value of maintaining a service capable of rendering assistance to ships in difficulties, in addition to its normal towage work, are amongst the factors which I took into consideration in determining the award.

- (iv) Moreover, I had to remember that I must be realistic ; that although I could receive advice—most valuable in this case—from the Assessor on matters pertaining to his nautical experience, the responsibility for determining the amount of the award rests with the Court ; and that local conditions bearing on the matter, must be taken into account. Furthermore, that the submission made on behalf of the defendants that the claim in this action is against the ship only, and the award should therefore not include the part of the remuneration payable by the cargo and freight, is, I think, well founded, and deduction was made in that respect.
- (v) With these considerations in mind, I award to the tug and those who manned and controlled her £2,750, which I apportion as follows :—

	£
(i) To the owners of the tug ..	1,600
(ii) The Director of Ports .. ..	150
(iii) The Tug-Master .. ..	200
(iv) The Mate .. ..	100
(v) The Engineer .. ..	100
(vi) The 8 other men, £75 each ..	600
	<hr/>
	£2,750
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- (vi) There will be judgment for the plaintiffs for £2,750 with costs, (including the cost paid out of the deposit as costs to the Assessor).

*Judgment accordingly.*

Cases referred to :

*Stylianou v. The Fishing Trawler " Narkissos "* reported in this vol. at p. 291 *ante* ;

*Reg v. Haralambos Erodotou*, 19, C.L.R. p. 144 ;

*Branco Salvage Ltd., v. Photos Photiades & Co.* 1962 C.L.R., 325 ;

" New Australia ", Lloyd's List Law Reports (1958), Volume 2, Admiralty October 17, 1958, p. 35 at p. 39.

*The Troilus* (1950) 1 All E.R. 103.

#### Admiralty Action.

Admiralty action for remuneration in respect of salvage services rendered for refloating the motor tanker " Keisserswaard ".

*A. Frangos*, Counsel of the Republic, for the plaintiffs.

*G. Cacoyiannis*, for the defendants.

*Cur. adv. vult.*

The facts of the case sufficiently appear in the following Judgment delivered by :—

VASSILIADES, J.: The motor tanker " Keisserswaard " approaching the Roads of Larnaca port in the forenoon of December 8th, 1964, was met by her local pilot, and in due course, was berthed a few hundred yards from the shore, at the seaward end of the discharging pipeline of the Shell Petroleum installation.

When through with her deliveries at this point (3,290 tons of white oil) in the evening of the same day, the tanker had to wait for the next daylight in order to shift to the moorings of the Purfina pipeline, a short distance further north on the same shore, where she was to discharge another some 600 tons of her cargo. For this shifting from the one mooring berth to the other, the tanker's Master, who was new to the place, kept the pilot on board for the night.

Weather conditions, however, taking a disturbing turn for the worse, caused the tanker to leave her moorings during the night, for safer anchorage in the Roads ; (*vide exhibit 5*), away from the shallows of the coast. There, she had to wait for an improvement in the weather permitting re-mooring of the ship, and discharging operations, at the Purfina pipeline.

During the afternoon of the following day, December 9, it was decided to bring the ship to her Purfina berth: and, at 15.46 hrs. the pilot had her moored (*exhibit 5*, page 2)

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at the seaward end of the pipeline, fast to 3 buoys there, and also with her starboard anchor and nine shackles of chain in the water. The weather apparently was still unsettled. The ship's position at this berth, is better described in the plan produced at the trial and admitted as exhibit 1 in the proceedings; this plan also shows distances from the shore in metres and depth of water in feet. After mooring, the pilot left the tanker for the shore, as his services would no longer be required; she was to sail in safe waters, directly after discharging her comparatively small cargo at the Purfina Installation, which the Master expected to do on that same day.

The people ashore, however, taking a different view of the risks involved in discharging operations under the prevailing weather conditions, decided to wait until next morning. Their mind is reflected in the radiogram (*exhibit 2*) transmitted to the Master by the ship's agent, in the evening, which reads:

1. "Master Steamer Keisserswaard Cyprus Radio Purfina cannot board owing bad weather. They will board tomorrow 07.00. W XOAM Vapor."

This message is dated December 9th; and is timed as handed in at 19.45 hrs.

. In fact weather conditions worsened in the early part of the night to the extent of forcing the tanker's Master to the decision to remove his ship to safer anchorage in the Roads. "I decided to leave the berth as being now dangerous and unsafe", he says in page 2 of his statement in exhibit 5. It is not for me to consider here, or to discuss, the correctness of the Master's decision. This is not part of the case; and I do not find it necessary for the purposes of this judgment, that I should do so. But, on the evidence before me, I have no doubt in my mind, that the Master's decision was fully justified, in the circumstances, and this is one of the numerous points in this case, where the Assessor's wide experience and advice in nautical matters were of great help to me.

Be that as it may however, the fact remains that in her attempt to move away to safety, the tanker was driven by weather conditions and other accidental adversities, (such as the fouling of her propeller by loose ropes and the dragging of her anchor) further towards the shore in the shallow waters; and so eventually grounded on a sandy bottom at 22.32 hrs. It was a dark winter-night

with a thunder-storm going on ; and the best that her Master could do, in the circumstances, was to inform immediately the ship's local agent, and to wait for daylight. A copy of the radiogram to the Agents, put to the Master while in the witness box, was admitted as exhibit 12 in the case, and reads :

“ Urgent. Vapor Larnaca. Urgent. On trying to leave berth due storm grounded between buoys, Need urgent assistance.”

The pilot was advised forthwith and remained up all night, he said. But apparently he could do nothing more in the way of help to the ship, before morning. The principal Agents at Famagusta, were also advised. Next morning the Director of Ports, a qualified and experienced seaman, was informed. He was the officer who controlled the Government tug in his Department, stationed in the harbour of Famagusta, about 30 miles from the stranded tanker ; a mere towing tug, but the only one available in Cyprus, at that time. The Director (who gave evidence for the plaintiff as P.W. 4), instructed the tug-master to stand by with his crew, ready to proceed to Larnaca to assist, if required. Messrs. Branco Salvage Ltd., of Famagusta, a firm engaging, *inter alia*, in salvage operations apparently also came to know of the tanker's difficulties.

On the morning of December 10th, weather conditions somewhat improved ; but there was still a swell and a SE wind going on. The Master prepared his ship for the refloating operations, and waited for the expected assistance. The Director of Ports (P. W. 4) discussed matters with the ship's principal Agents at Famagusta ; also with Lloyd's Agent. The frame of mind in which this officer approached the matter throughout, appears from his evidence in this connection, which I have admitted as evidence indicating the intention behind his actions ; and not as evidence committing in any way the other side. He believed that the stranded ship was in need of salvage services ; and he made his opinion quite clear to the Agent, as well as to other persons concerned, whenever he thought it necessary to do so. Together with the ship's Agent, and others, he proceeded to Larnaca by car.

Mr. Edmondo Branco, of Branco Salvage Ltd., was the first to board the tanker on December 10th ; he was able to do so on the lee side of the vessel, not without difficulty, and was with the Master before 10 o'clock. He went to offer salvage services with the means at his disposal,

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which he described to the Master, who, however, did not consider them sufficient in the circumstances. Branco said that he had the means to lay out ground tackle ; but when asked if he could provide a tug he replied in the negative. The Master, apparently realising that the laying out of proper ground tackle sufficient in the circumstances, would be a lengthy business, and hoping for advice and assistance from his Agents shortly, turned Branco off without actually refusing him. To avoid returning to the evidence of Branco, who was called by the plaintiffs as P.W. 2, I may add here, that I found him an independent witness, who gave his evidence to the best of his ability with full regard to truth. His evidence was particularly useful in connection with the under-water examination of the tanker after refloating (carried out for the purposes of the required certificate of seaworthiness to enable the ship to continue her voyage) and in connection with the fouling of the tanker's propeller when he examined and cleared it at a later stage. His evidence was also useful regarding the dragging of buoy ' C ' in exhibit 1 ; and the weather conditions prevailing on the 10th, 11th and 12th December, when the witness was at sea in his Z-craft in the area where the tanker had stranded.

While the witness Branco was still aboard the tanker at about 10.30 or so, on the morning of December 10, the Director of Ports (to whom I shall refer hereafter as P.W. 4) arrived together with the ship's pilot, Captain Rossides (to whom I shall refer as the pilot) and others, including a senior employee of the ship's agents. They all came in a launch from the Customs pier, over a mile away to the south of Purfina's installations, where they had assembled to discuss the ship's position, the assistance which could be provided, and the way in which the tanker could be boarded in the weather prevailing that morning. The stranded ship was well in view from the head of the pier. One of the outcomes of that discussion was a telephonic order to the tug-master at Famagusta to proceed to Larnaca forthwith, and there be ready to render all possible assistance.

When the group in the launch boarded the ' Keisserswaard ' they, naturally, found the Master anxious and worried about it all ; and each did his best to give him courage and re-assurance. While on this point, I should add that having watched the tanker's Master in the witness box where he was called by the defendants (D.W. 2) and having carefully followed his evidence, I have no doubt in my mind that anxious and worried as he may well have been,



he was in proper control of the situation, ready to take action as it might be necessary, upon the local information and assistance which he expected to have, and the means available. Having said this, I do not propose going into much detail regarding what may have been said at that meeting; or what was done thereafter, excepting what I think is necessary for determining the dispute in this case.

Branco, (P.W. 2) soon realised that his offer for help, without a tugboat, no longer attracted interest at that stage ; and he withdrew. Nevertheless, it is significant that in view of all circumstances, as he could best assess them, he had his Z-craft with equipment and crew, brought over from Famagusta all the way to Larnaca to stand by.

After Branco's departure from the tanker, her Master discussed the position with the Director of Ports (P.W. 4) and the pilot. The object of the consultation was to ensure the refloating of the tanker as soon as possible ; and if that part of the operation proved successful, to move her away to suitable anchorage for her safety and that of her cargo. It was never suggested at that stage—as it was suggested at the trial—that the tanker was perfectly safe, resting on her sandbed as she was ; nor that she could be allowed to stay there for days, weeks or even months without any danger. And, nobody seems to have thought at that stage, that the interest of the ship and her cargo would be best served by rejecting the offer for help from the arriving tugboat. On the contrary, I am inclined to think that the tug's assistance was considered as a material part of the plan. It did not take the three seamen long to decide on the course of action to be followed, to get the ship out of her difficulties. It seemed to be pretty obvious what could be done in the circumstances.

Pending the arrival of the tug, a mooring boat was instructed to collect the mooring ropes cluttering up the sea and constituting a potential danger to propellers. Clearing the ship's propeller had already proved unsuccessful with the means available. As the weather was improving somewhat, the trim of the ship was prepared for the refloating operation, and the tanker was lightened of ballast. To help to get the stern off ground whilst heaving on anchors to get the bow off, once she had been lightened, it was necessary to provide something on which to pull. To lay out proper ground tackle had already been discarded as being too long a job in the circumstances. Mooring

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buoy 'C' on the plan (*exhibit 1*) could be put into use. This buoy was not ship's ground tackle. It had its own ground tackle designed to provide the maximum resistance to pull in a given direction ; *i.e.* to provide a point to fix the starboard quarter lines of a ship at the Purfina berth. Although dragged out of position by the tanker in the attempt to move her away the previous night, buoy 'C' could still be made use of in pulling the ship's stern in the intended refloating operation. A line was run to this buoy notwithstanding the distance of about 1,100 ft. between the buoy and the ship's stern. The attempt to put the ship's fouled propeller into some use, proved entirely unsuccessful.

In these circumstances, and under the weather conditions prevailing at the time, I find myself entirely unable to accept the evidence that the stranded ship was not in danger ; or, that she was not in need of salvage help. In this connection I accept the evidence that there were potential dangers in sight, and that, apart from the danger of delay, it was a matter of necessity for the safety of the ship and her cargo, to have her refloated and moved to safety, as soon as possible.

In fact, as soon as the tug arrived at about 15.30 hrs., after a rather strenuous trip of 4 1/2 hours in adverse weather conditions, the tanker's Master promptly agreed, as he has frankly admitted in the witness box, that the tug should make fast ; and lost no time in making the best use of her services. There can be no doubt that the tug offered salvage services, which were accepted, in the circumstances. And there is not the slightest doubt in my mind, on the evidence before me and on the advice which I received from the Assessor, on the point, that the tanker's Master was perfectly right in taking that course. What followed definitely established the correctness of his decision.

The plan of action agreed upon between the ship's Master and P.W. 4, in the presence of the pilot, for refloating the tanker and then moving her to safe anchorage, in view of the prevailing weather conditions, was put in action forthwith. As I have already said, I do not find it necessary to go further into detail on the agreed plan of action, or on the way it was executed. All I am concerned with in this case, is whether plaintiffs' tug rendered salvage services to the defendants' ship ; and if so, what is the remuneration payable for such services.

In my mind the position is quite clear ; and I may add, at this stage, very simple. The whole operation of refloating this stranded ship in the circumstances of the present case, and taking her to safe anchorage, with her propeller out of action at the time, in the prevailing weather conditions, in the month of December, was clearly a salvage operation. The tug's services were offered, accepted, and rendered for the purposes of this salvage operation ; and have contributed considerably to its success. They are, therefore, in my opinion, salvage services. In arriving at this conclusion I have, naturally, availed myself of the Assessor's assistance on the maritime aspect of the operation.

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Who of the seamen who participated in the planning of this operation, suggested this part, or that part of the plan ; and who supervised or performed this or that part of the operation, is in my opinion, immaterial in determining the nature of the tug's services in this case. It is only material in determining the value of the services rendered by each party entitled to salvage remuneration ; and in assessing the amount payable to such party. A lot has been said—and it may be found on the record—as to the percentage of the tug's contribution to the refloating of the tanker, as compared to that of the heaving by the ship's capstans on the manilla line to buoy ' C ' (*on exhibit 1*). I do not think that this matters, excepting as regards amount. In any case, my finding in this connection, is that both efforts contributed to the refloating, together with other factors operating at the same time, such as the wind, the swell, the tide, the release of ballast, etc. ; and that, on the evidence before me, none of these contributing factors alone, could have done it. Indeed, if necessary, I can go further. On such of the evidence as I am prepared to accept, I find that all the other factors operating together, could not have refloated the tanker on that day, without the tug. The rejecting of Branco's services without a tug, is significant in this connection.

Another point where a lot has been said, is the efficiency of buoy ' C ' (*in exhibit 1*) as ground tackle ; and whether it can be properly described as such. Again I do not find it necessary to go into this controversy ; especially after my finding in the preceding paragraph. In any case, dragging of this buoy from its original position, is undisputed ; and this is very significant in this connection.

I do not think that I need go further with the refloating plan or its execution, excepting that the Master of the tanker retained command of his ship throughout, and

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co-ordinated efficiently all efforts and assistance. And, to add that P.W.4's contribution, particularly in directing the work of the tug, was most useful for the success of the operation.

I must now deal with the submission of Mr. Cacoyiannis, on behalf of the defendants, that salvage in Cyprus is governed by the relevant provisions of the Wrecks Law, Cap. 298, in the Statute Book. Learned Counsel apparently went into this case very thoroughly; and I wish to acknowledge his assistance, both on the factual and on the legal aspects of the matter before me, without any reservation. In fact counsel on both sides have been very helpful in enabling me to deal with this rather large claim.

The submission on behalf of the defendants, is that the combined effect of sections 24-34 of the Wrecks Law (to which I shall refer hereafter as Cap. 298) is to introduce in Cyprus the law of England, regarding salvage claims, generally speaking, subject to the Statutory provisions in Cap. 298, which makes here the law "more strict" as Counsel has put it; so, where in England a salvor could have a good claim, in Cyprus he may not have one, in view of the proviso in section 34 which requires proof of the existence of "actual peril threatening destruction" of the salvaged property, "save for the assistance rendered by the salvor", before salvage can be awarded by the Court. And in this case, Counsel submitted, no such actual peril threatening the destruction of the tanker has been shown.

As regards the Admiralty jurisdiction of this Court, I think I can repeat what was said, in this connection in *Stylianou v. The Fishing Trawler "Narkissos"* (reported in this vol. at p. 291 ante):—

"It is common ground, I believe, that this Court derives its jurisdiction and powers from the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33/1964); and in particular from section 9 (a) which, as regards Admiralty jurisdiction, brings into play the provisions of section 19 (a) and section 29 (2) (a) of the Courts of Justice Law, 1960 (No. 14/1960)."

As regards the law applicable in this jurisdiction, the position is admittedly governed by section 29 (2) (a) above, which provides that it is "the law which was applied by the High Court of Justice in England in the exercise of its Admiralty jurisdiction on the day preceding Independence Day, as may be modified by any law of the Republic".

The submission on behalf of the defendants is that the reference to modification by any law of the Republic, does not only mean : law to be made by the Republic ; but it includes any law in force in the Republic. And Cap. 298 as well as the Cyprus Admiralty Jurisdiction Order, 1893, is such a law by virtue of Article 188 of the Constitution, which preserved existing legislation, subject to the Constitution.

I am inclined to accept this submission, notwithstanding my reservations regarding the intention of the draftsman of section 29 (2) (a) in this connection. The Wrecks Law (Cap. 298) is part of the law of Cyprus ever since 1886 when it was enacted ; and its provisions regarding salvage in Part III (sections 24-38 inclusive) pertain to matters in the jurisdiction of this Court. It forms part of the legislation preserved for the Republic of Cyprus by Article 188 of its Constitution ; and, subject to the provisions thereof, is law which, in my opinion, this Court must apply.

The object of the Statute (Cap. 298) appears clearly from its heading : " To Regulate Inquiries into Wrecks and to Provide for the Custody and Disposal of Wrecked Property ". At the time of its enactment (1886) the common law of England was not part of the law applicable by the local Courts in litigation between Cypriots, who at that time were Ottoman subjects.

The Courts established under the Cyprus Courts of Justice Order, 1882, from Her Britannic Majesty's Court at Windsor, dated the 30th November, 1882, applied the law prescribed in Chapter VI of the Order (Clauses 23 to 27 inclusive) which was the Ottoman Law in actions concerning Ottoman subjects ; and the English law in foreign actions ; as from time to time altered or modified by Cyprus Statute Law.

To present more completely the setting in which Cap. 298 must, in my opinion, be read and interpreted, the two first clauses, 23 and 24, may be given here :—

" 23. Every Court and Judge exercising civil jurisdiction in an Ottoman action, or exercising criminal jurisdiction where an Ottoman subject is accused, shall apply Ottoman Law as from time to time altered or modified by Cyprus Statute Law.

24. Every Court and Judge exercising civil jurisdiction in a foreign action or exercising criminal jurisdiction, where a person, not being an Ottoman subject, is

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accused, shall apply English Law as from time to time altered or modified by Cyprus Statute Law".

A "foreign action" according to the definition in clause 3 of the Order, "means an action in which the defendant or any defendant, is not an Ottoman subject".

In this setting, in the conditions prevailing in Cyprus eight years after the British occupation of the island, the local legislature enacted the Wrecks Law of 1886 (now Cap. 298). It seems to me that the apparent object of this legislation was to make local provision of general application (on Ottoman and non-Ottoman subjects) based on the English Law and practices, for the protection of wrecked property, and for the settlement of salvage claims, as known to the English law. I take the view that Cap. 298 was not intended "to contain as far as possible the full and complete statement of the law" (*Reg. v. Haralambos Erodotou*, 19, C.L.R. p. 144) to the exclusion of the English law; but, to introduce the English law in such matters, for general application, in a manner and procedure adapted to local conditions.

In any case, there can be no doubt that the law applicable in this jurisdiction is the law prescribed in section 29 (2) (a) of the Cyprus Courts of Justice Law 1960; i.e. the law in force in England on 15.8.60 as modified, if at all, by any law of the Republic; here, by Cap. 298 and the provisions in the Cyprus Admiralty Jurisdiction Order, 1893; the two enactments referred to by learned Counsel for the defendants.

Both these enactments refer to and speak of salvage; none attempts to describe it in their respective definition-sections. In determining, therefore, the nature of plaintiffs' services, and whether they amount to salvage, I have to apply the English law. In doing so I am, moreover, supported by section 24 of the local statute (Cap. 298) which provides that—

"Whenever any ship . . . . is stranded . . . . on the shore of any sea . . . . within the limits of Cyprus, and services are rendered by any person in assisting her . . . there shall be payable by the owners of the ship . . . to the person by whom the services or any of them are rendered . . . . a reasonable amount of salvage, together with all expenses properly incurred . . . . the amount of such salvage and expenses . . . to be determined in case of dispute in manner hereinafter mentioned."

Section 34, to which I have been particularly referred on behalf of the defendants, provides for the method of determining the amount of salvage, as the marginal note of the section clearly indicates. It was submitted in this connection, that the effect of the proviso in this section, is to render the law of Cyprus "more strict" than English law. I cannot accept this submission. I take the view that the proviso in question, must be read together with the rest of the section, in the Statute as a whole. And so read, I take the proviso as intended to be of guidance in the application of the principles of English law in this connection; and not as a change thereto. Its object and effect, in my opinion, is to exclude claims and awards for services to ships, not actually amounting to salvage in their nature.

I do not propose discussing in this judgment the nature of salvage and salvage services; or, the legal meaning of these terms. It would be entirely superfluous, and very presumptuous on my part to attempt to do so, in the light of the wealth of authoritative legal pronouncements on the point. I consider it sufficient to refer to section 2 of Part 9 of the Chapter on Shipping and Navigation in Lord Simond's edition of Halsbury's Laws of England, Volume 35, under the heading of Salvage at page 731 paragraph 1109 *et seq.*, and to the guidance found therein.

I would only repeat here the view expressed in *Branco Salvage Ltd., v. Photos Photiades & Co.* 1962 C.L.R. 325 that "the nature of a Salvage Service, the reasons which render its existence and maintenance desirable, where there is navigation, and why it stands on a separate footing as regards remuneration, are obvious matters and need no comment". Everybody concerned must feel no hesitation in hastening to offer salvage services, wherever these are likely to be needed for the safety of ships or other property, exposed to the perils of the sea. And all such persons must be fully assured that after their services are duly accepted, or are rendered in due course, the law settles for them the question of their remuneration, which they have no time or opportunity to negotiate; and entitles them to appropriate remuneration against the owner of such ship or property, on accepted principles, formulated from experience in the course of years, as fair and reasonable for all concerned. It is obviously in the interest of navigation that such services should be encouraged

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and duly protected ; and there is no fairer encouragement than appropriate remuneration, and no better protection than that of the law.

I could do no better in this connection than cite with great respect, a passage from the judgment of Willmer J. (as he then was) in the "New Australia" proceedings, to which I have been referred (Lloyd's List Law Reports (1958), Volume 2, Admiralty October 17, 1958, page 35 at page 39), where he sat with Captain K. McM. Drake, one of the Elder Brothers of Trinity House, whom I had the advantage of having with me as an Assessor in this case, and where, dealing with the amount to be awarded to tugs which rendered salvage services, he put the matter in these words :—

"As I have said in other cases before, and I will say it again in this case, my object must be to make an award which will encourage this and other tugs in the future to be ready to go to the assistance of vessels similarly in difficulties with equal promptitude."

The usefulness, the promptitude, and the efficiency of the tug's services in the present case, have never been disputed. The defence put forward is that they were mere towage services, not amounting to salvage. I have already given the reasons for which I am clearly of opinion that they were salvage services. On the legal aspect of the question, there is ample authority to which I need not specifically refer. I wish only to mention the Troilus Case (1950) 1 All E.R. page 103 which, I think, fully covers the point. The passage from Dr. Lushington's judgment in the Charlotte, referred to by Bucknill, L.J., at page 109 of the report, I found particularly helpful in the present dispute.

I can now proceed to the other main issue in this case : the amount to be awarded ; and who are the persons entitled thereto. Here again, with all respect, I shall draw wisdom from another passage in the judgment in The New Australia (*supra*) at page 39, which reads :

"I must not, I think, be dazzled by the value of the salvaged property. I think it is sufficient for me to say that the value is so high that there is an ample fund from which to reward these eminently deserving tugs. However, I must be, as Mr. Bucknill (Counsel representing the defendants) invited me to be, realistic."



The "Keisserswaard" is a single crew motor tanker of 18,500 d.w., 12,576 gr. tonnage (net 7,082) built in 1955 ; registered at the Hague. Her measurements as given in evidence are 556 ft. length ; 73 ft. beam ; she was equipped with a 5,500 h.p. 8 cylinder diesel engine ; and had a crew of 42 men. Her value at the material time, as agreed upon between Counsel at the trial, was £300,000. The plaintiffs' tug "Desdemona" is a single crew rather small size towing tug, gross tonnage 137.54 ; 94 ft. length ; 21 ft. 3 in. beam ; equipped with a 500 h.p. engine and towing gear, but no salvage equipment. She had a crew of 11 men, including tug-master, mate, engineer and 3 firemen. Her value was given as between £15,000 to £20,000. I take it at £17,500.

The tug travelled for about 4 1/2 hours in difficult weather, as quickly as she could do, to get from her moorings in Famagusta harbour to the tanker. She made fast on arrival, and worked for about an hour in this salvage operation, the first half in the refloating of the tanker under the directions of P.W. 4 from the ship ; and the other half in towing the tanker to safe anchorage. She rendered admittedly prompt, efficient and useful service, which has definitely contributed, as I have already said, to the success of the whole salvage operation.

I accept the evidence that the Director of Ports (P.W. 4) was not a Receiver of Wrecks under Cap. 298 in the area in question, at the material time ; and that the service he rendered to the tanker as described earlier in this judgment, was a voluntary service, outside the scope of his official duty.

I do not propose going into further detail regarding the number and nature of the factors which led me to the figure of the award. What I had to find was the amount which would be an adequate reward for the services rendered by the tug in question, to the "Keisserswaard", in the circumstances of this case as established by the evidence before me ; the circumstances which constitute the relevant facts as I have found them, on such of the evidence as I am prepared to accept. The danger into which the salvaged property was exposed ; the risks involved in the operation for the men on the tug ; the value of the salvaged ship ; the value of the plaintiffs' tug and the risk of damage thereto ; the time-factor as affecting both sides ; the difficulties and strain which the salvors promptly undertook ; the proportionate value of maintaining a Service capable of rendering

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assistance to ships in difficulties, in addition to its normal towage work, are amongst the factors which I took into consideration in determining the award.

Moreover, I had to remember that I must be realistic ; that although I could receive advice—most valuable in this case—from the Assessor on matters pertaining to his nautical experience, the responsibility for determining the amount of the award rests with the Court ; and that local conditions bearing on the matter, must be taken into account. Furthermore, that the submission made on behalf of the defendants that the claim in this action is against the ship only, and the award should therefore not include the part of the remuneration payable by the cargo and freight, is, I think, well founded, and deduction was made in that respect.

With these considerations in mind, I award to the tug and those who manned and controlled her £2,750, which I apportion as follows :—

	£
(i) To the owners of the tug .. ..	1,600
(ii) The Director of Ports .. ..	150
(iii) The Tug-Master .. ..	200
(iv) The Mate .. ..	100
(v) The Engineer .. ..	100
(vi) The 8 other men, £75 each ..	600
	<hr/>
Total .. ..	£2,750
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There will be judgment for the plaintiffs for £2,750 with costs (including the cost paid out of the deposit as costs to the Assessor).

*Judgment accordingly.*