

1981 January 12

[HADJIANASTASSIOU, J.]

EVISAR COMPANIA NAVIERA, S. A.,

*Plaintiffs,*

v.

THE SHIP "HERMIA",

*Defendant.*

(Admiralty Action No. 156/76).

*Admiralty—Salvage—Duty of salvor—Degree of care and skill—  
Negligence—Burning ship—Salvors offering salvage services  
on own initiative—Having no suitable equipment—And no previous  
experience—Aware that fully equipped tugboats prepared to  
5 furnish professional services but not given opportunity by  
them to do so—Sinking of ship—Salvors have failed to  
discharge the duty of showing that they have used such skill and  
care as was reasonable in the circumstances—Guilty of negligence  
—Award of damages at agreed scrap iron value of ship.*

10        On September 18, 1976, a fire broke out on board the ship  
"Alexandra K" whilst sailing from Elefsina port of Greece for  
Jeda—Saudi Arabia with a cargo of timber and other wood  
products. Following the call for assistance by the ship's radio  
15        officer the ship's captain was informed that three tugboats  
were on their way towards the ship. Some time later there  
arrived at the spot the defendant ship "Hermia", a liner ship,  
whose captain boarded the burning ship and volunteered to  
take the sailors in distress to Limassol port of Cyprus. The  
captain of the burning ship declined the offer and left his ship.  
20        Then the captain of the defendant ship at his own initiative  
and without consulting or informing the captain of the burning  
ship volunteered to offer salvage services to the latter ship;  
and having tied the burning ship with ropes started towing  
it towards Cyprus. In the course of their journey the steel  
25        wire connecting the two ships was broken; and inspite of attempts  
to have it reconnected the burning ship was abandoned  
because she was heavily rolling and because the defendant ship

had been damaged. The burning ship was finally sunk. In the course of the operation the crew of the defendant ship tried to fight the fire but they were unsuccessful because they were not properly trained and they did not have suitable equipment. The captain of the defendant ship was aware that tugboats stationed in the neighbouring islands in Greece would be coming to render professional services to the burning ship; and in fact a tugboat appeared at the scene fully equipped for the purpose of saving the burning ship but the defendant ship did not stop to enable the tugboat to offer professional services.

*In an action by the owners of "Alexandra K" for damages for negligence by the defendant ship in rendering salvage services to the said ship:*

*Held*, (1) that those who render salvage services are under a duty to provide suitable equipment to such an extent as may be reasonable in the circumstances of each case; that the degree of "diligence" owed by a salvor is to be measured by the degree of skill and care which is requisite in the circumstances to safeguard the interests of the plaintiff and there is nothing in maritime law of salvage which involves that a lesser measure of duty is required; that though the Court takes a lenient view of the conduct of salvors or would be salvors, and is slow to find that those who try their best, in good faith, to save life or property in peril at sea, and make mistakes or errors of judgment in doing so, have been guilty of negligence, nevertheless there is no doubt that the Court in a proper case may, after making all allowances, find negligence against salvors; that in deciding these matters the Court looks at all the circumstances of the case including the fact whether the salvors are amateur or professional and the question whether they have acted at request or on their own initiative.

(2) That as the defendant ship had no suitable equipment to such an extent as was reasonable and as a member or members of the crew had no previous experience, the salvors have failed to discharge the duty in showing that they have used such skill and care as was reasonable in those circumstances; and that, therefore, this is a classic case of negligence and not simply question of making mistakes in good faith or errors of judgment by the crew of the defendant ship in trying to save the property in peril at sea.

Held, further, that the salvors were guilty of negligence because they were aware that tugboats stationed in the neighbouring islands would be coming to render professional services to the burning ship and because they continued dragging the burning ship all the way to Cyprus even when they had fully realized that a tugboat was following them fully equipped for the purpose of saving the property in peril.

*Held, on the question of damages:*

That there is clearly on the record a statement by both counsel on behalf of their clients on 19th December, 1980, that in the particular circumstances of this case the proper amount of damages to be awarded by this Court in favour of the plaintiffs is the amount of the agreed value of the scrap iron which was accepted as being the sum of US \$150,000; accordingly there will be judgment for plaintiffs and against the defendants in the sum of US \$150,000 with costs.

*Judgment for US \$150,000 with costs.*

Cases referred to:

*Anglo-Saxon Petroleum Co. Ltd. and Others v. Damant* [1947]  
2 All E.R. 465 at pp. 467, 468;

*Tojo Maru v. N. V. Bureau Wijsmuller* [1971] 1 All E.R. 1110  
at pp. 1114, 1134, 1135, 1136;

*The "St. Blane"* [1974] 1 Lloyd's Law Reports 557 at p. 560.

#### **Admiralty Action.**

Admiralty action by plaintiffs against the ship "Hermia" for U.S. \$400,000 as damages for negligence in rendering salvage services to the ship "Alexandra K".

*C. Mylonas with M. Vassiliou, for the plaintiffs.*

*Fr. Saveriades, for the defendant.*

*Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment. In this Admiralty action, the plaintiffs, Evisar Compania Naviera S.A. of Panama, who were the registered owners of Alexandra K, brought an action against the ship Hermia for alleged negligence in rendering salvage services to the ship in question when fire broke out, and finally was sunk on or about the 20th September,

1976. The plaintiffs now claim the sum of US \$400,000 for the loss of their ship.

On 4th October, 1976, when the ship *Hermia* arrived at the port of Limassol, counsel on behalf of the owners of *Alexandra K*, applied for a warrant of arrest claiming damages for the unlawful and/or negligent acts of salvage. The Court in granting the warrant of arrest, authorised the Marshal of the port of Limassol on the filing of a security bond by or on behalf of the ship in the sum of C£160,000, to release the ship. On the 6th October, 1976, all counsel appearing made a statement that the amount of US \$350,000 in the form of a bank guarantee in favour of the plaintiffs was a satisfactory amount for the release of the ship *Hermia*, and that the guarantee would be irrevocable and would be valid till final determination of the three actions including appellate jurisdiction. With that in mind, the *Hermia* was released.

On 8th January, 1977, counsel for the defendant ship, Mr. Saveriades, filed an application seeking an order of the Court (a) to set aside the writ of summons on the ground that the Court had no jurisdiction in rem; and (b) an order to set aside the order of the warrant of arrest.

On 18th February, 1977, counsel for the plaintiffs opposed the application of the defendants alleging that the application was misconceived erroneous and groundless in law. On 5th March, 1977, the Court, having heard argument on behalf of both counsel, adjourned the case in order to enable them to reconsider the issue of jurisdiction which finally was abandoned by counsel for the defendant ship on 12th March, 1977.

Then, after a number of further adjournments on preliminary points, the petition was filed by the plaintiffs on 12th May, 1977, and in the particulars of negligence, they stated *inter alia* that, the defendants in rendering salvage services to the ship *Alexandra K*, wrongly did the following: (a) they towed the ship *Alexandra K* in a south-easterly direction and thus the fire on the ship was assisted to spread because of that direction; (b) the defendants failed to beach the ship or tow her to any Greek port or to a Greek island, or at a sea-shore in order to avoid sinking; (c) they continued to tow the burning ship on to the high seas and failed to take account of the stresses and wave action and the labouring of the ship *Alexandra K*

under the circumstances; (d) they failed to fight the fire with their fire fighting equipment; (e) they tacitly and/or impliedly misrepresented that they were capable of doing so and/or had the facilities and/or possessed the skill and ability to render  
5 salvage services to the burning ship; and (f) they deprived the salvage tugboats of the opportunity of salvaging the ship in question.

On 6th October, 1977, the defendants filed the statement of defence alleging in effect that they were not negligent in rendering  
10 salvage services to the burning ship, and that the master and crew were continuously fighting the spreading of the fire and have taken all necessary steps and made all necessary reconnections in towing the ship to Limassol. In addition, it was alleged that on the night of the 19th September, the weather had changed  
15 and at about 7.00 hrs Greek local time of 20th September, 1976, the wind was north-westerly force 5 to 6, and because the connection had broken, new special wires were attached to tow the ship. Then because the wind was westerly, its force being 6, and because of the increasing of the wind and rough  
20 seas, the connecting line or wire was cut again, and though members of the crew tried to reconnect it, their dingy capsized and two crew members were nearly drowned. Furthermore, the defendants stated that they had done their very best to go alongside the burning ship, but when the bow of the Hermia was about 2 meters from the Alexandra K, the two ships rolled  
25 in tops from Alexandra K pollers and or otherwise together, because of the heavy seas, causing damage to the Hermia.

Finally, the Master, in order to avoid greater danger for the loss of life and/or damage or loss due to the prevailing  
30 heavy seas and dangerous conditions, abandoned the salvage services to Alexandra K; and they counter claimed for damages for the wrongful arrest and detention of the ship Hermia against the plaintiffs.

The reply and defence to counter claim was filed on 31st  
35 October, 1977, but on 29th March, 1979, the parties reached a new agreement regarding the amount of guarantee for the present action only, which is in these terms (*exhibit 20*):-

“(1) The agreed value of the scrap iron on the M.V. ‘Alexandra K’ was at the material time, US \$150,000, without any admission by the defendant of any liability.

(2) We jointly agree that the bank guarantee dated 8th October, 1976, will be cancelled and the document will be returned to the defendants on production to the Registrar of the Court of a guarantee in the following wording:-

'Guarantee for US \$165,000 with regard to Admiralty Action 156/76 M.V. 'Alexandra K'.

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We, Grindlay's Bank Limited, Nicosia, guarantee the owners of motor vessel 'Hermia' to meet on their behalf and pay on their behalf in favour of the plaintiffs regarding the M.V. 'Alexandra K', any judgment of the Supreme Court of Cyprus in its Admiralty Jurisdiction not exceeding the sum of US \$165,000. Such guarantee will be irrevocable and will be valid till final determination of the action including appellate jurisdiction'

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(3) The above guarantee includes also US \$ 15,000 costs and other incidental matters"

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According to the Captain of the ship Alexandra K, Nicolas Kopsides, when the ship completed its classification Society Survey for C.S.M. and loadline inspection on 16th September, 1976, she sailed off Elefsina Port of Greece for Jeda—Saudi Arabia with a cargo of timber and other wood products.

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On the 18th of the same month, according to the plaintiffs, a fire broke out on board the ship and the ship's radio officer called for assistance through the international ships' station S.O.S. The Captain took the necessary measures and piloted the ship in such a way that the wind would be blowing from the right hand side to enable them to lower the lifeboat placed on the left side, and finally when the boat was lowered, the assistant Captain, who had been injured, the telegraphist and others went into that boat. On the ship itself remained the Captain, the second lieutenant, the first and second engineers, and one sailor. It appears further that just before the departure of the telegraphist, an S.O.S. signal was made to all ships and all harbour or port stations, as well as to the operations department of the Ministry of Mercantile Marine of Greece regarding the fire on the ship in question.

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There was further communication and the Captain visited the Turkish ship, Denus, which was in the vicinity, and the Captain was informed by the officials that three tugboats

were on their way towards his stigma, one from Pireaus, one from the harbour of St. Nicolaos, Crete, and the third from Rhodes. The Captain was also in touch with a cargo ship Minilace, which was also heading towards his stigma. At  
5 about 21.00 hrs–21.30 hrs., the ship Hermia arrived at the spot and the Captain boarded that ship in order to inquire whether the Captain could take them to the nearest port in Greece. Because the Hermia was a liner ship—as the Captain of that ship said—it was difficult to deviate, but he volunteered to  
10 take the sailors in distress to Limassol port of Cyprus.

Then the Captain of the burning ship left, and having conferred with his crew, they decided to wait for the Minilace which would have taken them directly to Pireaus, and declined the offer of the Captain of the Hermia. Whilst they remained  
15 waiting in the two lifeboats, not far from the burning ship, they realized that the Hermia had brought her stern near the bow of the Alexandra K, and had tied the latter ship with ropes to tow it away. In the meantime, the Captain added, the wind which was blowing in a North–westerly direction, was blowing  
20 in such a way as to increase the flames which were pushed towards the front of "mesostegon" space.

It appears further that after the Alexandra K had been towed away, the Minilace arrived, they boarded it, and at the same time they tried to communicate with the Hermia by telephone  
25 and by other means, but unfortunately, the Captain added, there was no response from the Captain of the Hermia. When the Captain and the crew arrived at Pireaus, they took further measures in order to trace the ship, viz., by using an airplane and by a tug boat belonging to the company of Vernicos Matsas  
30 and Tsavlidis, but the ship was not traced.

There was further evidence by a certain Michael Pagonis, in charge of the operation department of the salvage consortium of the partnership Vernicos Matsas and Tsavlidis, but because a lot of his evidence was based on hearsay evidence, the Court  
35 will only deal with that part of his evidence which counsel for the defendants sought to introduce by questioning him, and which is in these terms:–

"Q. When you beach a ship, is there no danger for the ship to deviate and to sink and to hit?

A. The ship was loaded with wood and the wood is a lighter cargo, and because the ship was not loaded with the aggregate of the weight she could carry. Therefore there was no danger if one would take the ship in a harbour, where there was no fear of the winds and to stop her there; and come closer without danger from the opposite side and wind blows, having first taken care to measure the depth of the sea by using a depth measurer, and at the same time, to throw water either directly on the burning ship or from the 'anemodochous' or from different places in the holds so that the holds would be flooded and therefore the fire in the holds would be extinguished without any fear because the ship in question could have carried more cargo and in this case all the water one would have thrown on the ship, and it would have made no difference to the weight.

Q. Is there a danger for the ship when you partly sink her to turn and to hit a reef or to break?

A. Once it will sit on a sandy depth, something we will know in advance before taking her there, there is no danger.

Q. I put it to you that there is danger to hit on the reef or on the sand and to run aground.

A. As the bottom of the ship is flat and the contact with the depth will be made smoothly, there is no danger for the ship once the depth is sandy".

Questioned by the Court whether the bottom of that particular sea is rocky, the reply was "We would have known that in advance". Questioned further by the Court whether in the area where the ship was found there were rocks or not on the depth, his answer was that the island of Astipalia has sandy beaches and its distance from the burning ship was 22 nautical miles. The witness further stated that in his opinion the Hermia did the opposite of what she ought to have done in order to put out the fire in a fast way.

According to Mr. Nietzil, a consulting engineer who was on the ship Hermia because there was engine trouble and the owner had asked him to stay on board during the voyage in order to repair and look after the engine. In giving evidence he



stated that on the 18th, after dinner time, he noticed a burning ship. After lunch time, the second officer Mr. Baeske heard the signals S.O.S. from a ship. He asked him why he did not call the Captain of the ship, and Baeske's reply was that he checked the position and it was far away behind their ship. There was nothing further to see during that time, but after dinner time the burning ship appeared and it was about 18.00 hrs. They went closer, they saw the lifeboats, and when the speed of the Hermia was lowered they took the lifeboats alongside. Most of the crew members, he added, were sitting in the first boat, and in the second boat there were three or four persons. They towed the lifeboats alongside and one man (the Captain), climbed up the pilot's ladder and went on board the Hermia. In the meantime, he said, he went down to the engine room and asked the chief engineer to prepare their fire-fighting equipment and find also the plan of the piping system in order to increase their pressure in the pumping system, because in his opinion, it was very dangerous to go too close to a burning ship; and therefore they intended to increase pressure so that they could reach the ship with the fire-fighting equipment from a long distance.

Having had a discussion with the Chief Engineer, he went up to the bridge and saw the Captain, Mr. Urban, conversing with the Captain of the burning ship. The Captain offered his help, and he invited the Captain of the burning ship to bring his crew on board. In the meantime, he added, the Captain of the burning ship was connected by V.H.F. with Hellas radio and he made a very short telephone call. Having finished that telephone call, both captains went to the chart room to find out the exact position of the ship Hermia and the Alexandra K. Finally the Captain of the burning ship told them that he received a message that he should leave the Hermia and wait in the lifeboats because he had been informed that a tugboat would arrive there. In fact, the witness added, when their Captain offered to take his crew on board the Hermia and take them to Cyprus the Captain of the Alexandra K never mentioned the burning ship or asked for assistance. Indeed, this witness added that he never understood why the Captain wanted to go back to the lifeboats when he was in a safe position on their ship, and particularly because he could have communicated with other ships for their help.

When Captain Kopsides left, their Captain having discussed the matter with the Chief Mate, Mr. Baeske and himself decided to go closer to the ship; and once there was no danger, they went to the forecandle deck, which had the same height as their forecandle deck, in order to climb over to Alexandra K. 5 Both himself and Baeske climbed onto the burning ship. Having had prepared their fire fighting equipment, and connected the one pump to the other, in order to increase the pressure; and having brought their fire hose over to the ship Alexandra K, the pump was switched on. 10 Regretfully, he added that after two or three minutes the hose pipe broke, and the reason was that in order to cover the distance, they had connected also the deck wash hoses with the hose pipe. Having received further instructions from Captain Urban, the two of them tried to repair and reconnect it to that of Alexandra K to the Herminia. 15 Having received further instructions from the Captain, they turned the ship round in order to prevent the fire from spreading, and tried as far as possible to keep the ship on the spot; and because the ship was not powered, there was fear that it would drift immediately across the sea. 20

In searching further in the dark forecandle they found one fire hose in hatch No. 1, not connected, and although they tried to connect those hoses with their ship's hoses it was found impossible because they were of a different system. Finally when they returned to their ship they waited about two hours 25 in order to see whether a tugboat would appear in the scene. Indeed he finally added the Alexandra K was towed to their ship and they proceeded with their journey to Cyprus carrying with them the ship in question. At midnight when they were still towing the ship Alexandra K a tugboat was seen but he 30 was not aware whether any communication was made with the Captain of his ship. In fact, he said, when the tugboat appeared and the ships crossed each other he wondered why the tugboat has done nothing to fight the fire when it was easy for them to do so. Indeed he added no interest was shown 35 by the tugboat in question and nothing was done and/or signal to their ship.

Finally the witness added that they continued their journey once there was no response by the tugboat but during their journey the wind increased and the steel wire connecting the ship Alexandra K to their own was broken. They tried several 40

times to get close to the ship to reconnect the steel wire, but as the Alexandra K was heavily rolling and because their ship had been damaged, they informed their charterers about their position and they abandoned the ship. Finally the Hermita  
 5 reached the port of Limassol after midnight. Questioned by the Court he said that they tried several times to get in touch with the other ship to catch the wire. The wire was straight down and when it came close to the other ship in that bad weather Alexandra K was heavily rolling and the Alexandra K struck  
 10 their ship and damaged it

In re-examination as to why they did not continue throwing water and fighting the fire within two or three minutes after starting this witness said that "you cannot tie up nose to nose with both ships, you have to go a little apart and to cover this  
 15 distance; the crew members connected all fire hoses together and one of them was a deck wash hose pipe, and this hose pipe could not take the increased pressure so that it was gone after the pressure came up from the hose pipe". Questioned further in order to show that they must have realized from the first  
 20 two minutes that they did not have the proper fire hoses to fight the fire, his answer was "This hose was broken. It was the mistake of one of the crew members, and you cannot expect that everybody is an expert in fighting fire". Then counsel went on in these terms -

25 "Q. So, apart from the lack of hoses the one crew member was not properly trained to fight that fire?"

A. Yes

Q. How many crew members of the Hermita were trying to fight the fire on the Alexandra K, one or two?

30 A. I have been on board the Alexandra K during this time, I do not know how many crew members were trying to fight the fire

Q. How many crew members were on board the Hermita?

A. I think 13 crew members

35 Q. You will agree that in order to fight the fire two ways exist: (1) fighting the fire by throwing water or foam on the fire, or (2) by beaching the burning ship

A. Not in this case. What can you do with foam in this case. The ship is burning nearly from the stern to the stern but I am sure that nobody would be able to extinguish the fire by foam in this case from the picture we have seen.

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Q. You exclude the foam, but you will agree with me that the two ways which are open for fighting the fire were throwing water on the ship by pumps and beaching the ship somewhere.

A. Yes, I agree".

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Finally counsel in challenging further the witness that the water which they were throwing could never reach the place where the fire was, he said:-

"I do not agree. I will explain why, and I am using this picture stamped B6 to support my stand and which shows that the draft and trim of the Alexandra K, that is some water could reach the forecastle deck the water will spread out and flow down from the forecastle deck to the main deck and keep the plates cool in this area. If there were no fire, because I do not know what is underneath, and we could keep this place cool may be there was a chance that this hatch No. 1 could not catch fire if everything tied up, because there is no oxygen inside to burn, but it seems that the fire flaps are not closed".

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There was further evidence by the Captain of the ship Hermia who told the Court that on 18th September, 1976, he noticed a burning ship and later on saw two lifeboats and two men came on board the ship Hermia. One stayed down on deck with his crew and the other one, the Captain of the burning ship, went to the bridge. He spoke only very little English and when he offered him help he did not respond at first and he almost pressed him to make a telephone call to the owners of the ship on Hellas Radio. He made the connection, he added, with Hellas Radio through V.H.F. Questioned by Court as to what he meant when he said that he offered him help he said: "First of all to take his crew on board because it is not very pleasant to sit in the lifeboat during the night". Then the Captain went on to add that after he made the connection with V.H.F. and handed the receiver to the Captain he spoke in Greek with Hellas Radio. He spoke only about twenty

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words. He did not understand as it was Greek, and after that the Captain left his ship. When the Captain was leaving his ship he added he saw that a lifeboat was coming to pick him up and he said something about some Ministry. When  
5 the Captain left he decided to have a closer look at the burning ship and his purpose was to tie with ropes the burning ship and to tow her. He also informed Hellas Radio and his owners. In fact, he added, in communicating with Hellas Radio he told the owners that he would stay on at that position until  
10 the moment the crew were picked up by some other ship. He then continued that he told his owners that he had a ship in tow and that he wanted to go with that ship to Limassol once he could not go to a nearby port. He stayed on the spot until another ship arrived and picked up the crew of the burning  
15 ship, the only thing he was told was "it is O.K. just go on". Questioned further he said that he could not take the burning ship to a nearby port because he did not have special charts about those islands. In explaining what he meant by these special charts he said that you need charts to go into a port  
20 or a nearby island. It is the same he added as if you want to look for a street in Nicosia and you take the map of Cyprus. His decision to take the burning ship to Limassol he added was due to the lack of the maps that you need to navigate the ship to those islands; and the next point was that he was not  
25 able to tow it there because if he towed it in to an island without a special map, he might ground his own ship and the other ship as well. He informed Hellas Radio that he started towing her and it was about 2-2 1/2 hours after the Captain left his ship. They towed her first on a very short rope. This connection  
30 broke after two hours, and after that they started towing it round midnight. Then a new connection was made and they towed the ship again. This took up to 40 minutes to an hour. Then on the 19th a tugboat turned up to from behind, but at that moment he could not see the nationality of the ship because  
35 it was dark. Later on he realized that it was a Greek boat. The tugboat came up from behind alongside at a distance of about 50-60 meters and she followed them for about three hours alongside without doing anything, waving or shouting, just she followed them. No radio was used nothing at all.  
40 Then, that tugboat turned off behind an island without making any indication at all or any signal. Indeed he said, he wondered why nothing was said and called them on V.H.F. but there was

no response. Later on, after half an hour the new connection broke again. It was nearly 7.30 in the morning of the 19th and they stopped again and effected a new connection. The weather was fine from the beginning to the end and on the 19th they passed Rhodes from the south on their way to Cyprus. He met another Greek ship, a Greek tanker and someone was calling him and was asked what had happened and he told him. After this the V.H.F. was silent and then there was a conversation in Greek. The Captain explained that he did not ask for any help, he just asked the ship in question if they had a weather chart on board and asked them for the weather in future and in reply he was told that the weather was fine and good.

On the 19th to the 20th, however, after midnight the winds were freshening up and the sea was becoming rough. He slowed down and at about 6.30 a.m. the two inch steel wire once again broke. Then they tried to get a new connection but from that time until 18.00 hrs they did not succeed and he ran the risk of losing two of his men in the boat. Indeed he lost the boat and damaged his ship. The wind was increasing all the time and the waves were getting rougher, and as the ships were rolling and labouring very hard, it became impossible to get a new connection. There was no possibility of slowing down because even if he had slowed down the weather had become very bad. He finally informed through Rhodes radio, the owners of the Hermia only, as he was not aware who were the owners of the other ship, and the charterers, that he had to abandon the ship. He informed Rhodes radio the position of the abandoned ship. This was on the 20th at about 18.00 Central European Time.

Questioned further he said the ship was afloat and burnt out totally. Reverting to the measures they had taken, he said on the second connection his men did not stay on the burning ship because it was too dangerous for them. They tried to fight the fire from their ship but they could not reach it, only the bow and the fore-castle head, but this was nothing, it was like throwing a bucket of water. It was the same on the second connection, he added, but it was still during the night and they continued perhaps for another two hours and then they broke it off because they thought it was useless. Finally he said that on board his own ship they had wires and ropes which were

stored in the forecastle head in the store room which is under the deck. They had no engine trouble during the voyage and the towing did not affect their power. It had nothing to do with the main engine.

5 Pausing here for a moment I think it is necessary to quote a passage from the deck log, which the Captain of Asteri tugboat recorded, when he was calling the Captain of the ship Hermia on the V.H.F., I quote:—

10 "Changing course by the island of Sofrada, we approached the burning ship which was towed from the German ship in South East direction. The German ship did not reply to our calls by V.H.F. We followed at a reduced speed. When we found ourselves near Karpathos—Rhodes straits and because we had no reply from the German ship which  
15 was continuing towing the burning ship, we changed course to meet the tugboat Starlet and M.V. Socratis in accordance with our original destination".

In re-examination by counsel for the defendant ship, he said he agreed to that statement but that he himself had tried to  
20 contact Asteri without response as he said before. Finally, the Captain said that because of the weather on the 20th and because had he tried more he would have damaged his ship so badly that might have wrecked it, he decided to stop the salvage of the ship in question.

25 Counsel for the plaintiffs argued that the Master of Hermia carried out the operations for the assistance of Alexandra K in a negligent way, fully aware that they were not able, and/or they did not have the means to carry out salvage operation and that her sinking was the result of such negligence. On the  
30 contrary counsel for the defendant ship argued that in the particular circumstances of that case and because their ship was damaged by trying to save the burning ship they had no alternative but to abandon the salvage operation once their own ship was damaged by the collision and there was a danger that there  
35 own ship would have had the same fate.

Before examining the submission of counsel, I think it is necessary to state which is the general approach of Courts to charges of negligence against persons who render or try to render assistance at sea. It seems to me that according to

the general principles of policy in relation to salvage which have been laid down over the years by the Courts, it is required that the Courts, in judging the conduct of salvors, should err, if anything, on the side of leniency toward salvors in so far as their behaviour is criticized. This matter is summed up in a passage in Lord Justice Kennedy's book on the Law of Civil Salvage (3rd Ed.) and at p. 162 the learned author says:-

"In considering whether a salvor has shown such a want of reasonable skill and knowledge as ought materially to affect the Court's award, or is guilty only of an error of judgment, the Court will incline to the lenient view, and will take into favourable consideration any special circumstances which tend to exonerate the salvor from blame, such as, e.g., a request for help, the suddenness of the emergency or the absence of more efficient means of succour".

This appears to me to be the correct approach to the matter and in the case of *Anglo-Saxon Petroleum Co. Ltd. and Others v. Damant* [1947] 2 All E.R. 465, Scott L.J. lays down the degree of care and skill required by a salvor. This case lays down that a salvage company professing to render salvage services is also under a duty to provide suitable equipment to such an extent as may be reasonable in the circumstances of each case. The degree of "diligence" owed by a salvor is to be measured by the degree of skill and care which is requisite in the circumstances to safeguard the interests of the plaintiff and there is nothing in maritime law of salvage which involves that a lesser measure of duty is required. Lord Justice Scott in delivering the unanimous judgment of the Court of Appeal had this to say at pp. 467, 468:-

"We, accordingly, hold in accord with the learned judge that a salvor does come under some measure of duty to the reasonable skill and care, the breach of which entails liability. In the case of a salvage company professing to render salvage services, we think there is also a duty to provide suitable equipment to such an extent as may be reasonable in the circumstances of each case. We see no reason why the same measure of duty should not be applied to the salvage department at Alexandria as to a salvage company, and, therefore, to Captain Damant



5 under the orders he received from the admiral, but was difficulties and the duty of the admiral to have regard to war needs in the use he made of otherwise available tugs, tankers and other salvage equipment, no doubt affected the degree in which the salvage department had power to provide such equipment. It could not justly be blamed for inability caused by the war, for the duty is to use such skill and care as is reasonable in the circumstances. For the latter reason we recognise that the owners were well advised not to put forward a claim on the footing that the admiral was to blame for failing to provide tanker barges to take the cargo out of the Delphinula by pumping it into tankers alongside, even though that could, but for war circumstances, have been done quite safely, as we were advised by our assessors, viz., by light canvas pipes—a way of lightening the Delphinula greatly preferable to jettisoning it by compressors

20 It follows, doubtless, that the principles of duty and liability recognized by our Court of Admiralty must apply just as much as those of our Courts of common law, but the converse proposition is equally true. And we can see no justification in law for the contention advanced by counsel that when a salvor causes damage to the owner of the property which he is endeavouring to save, by some act or omission which would in a Court of common law constitute negligence, the Court of Admiralty should let him off any part of the damages on the footing that the standard of care it exacts is lower than that of the King's Bench Division. The phrases about 'crassa negligentia', etc., in the older Admiralty reports cannot, we think, be treated as establishing a lower standard of duty than at common law. The standard, in our view, is still that of reasonable care and skill in the circumstances of the particular case, and, indeed, the Admiralty Court itself recognized this principle in the *Dwina* (2). In that case there was a counterclaim for damage to the salvaged ship caused by the salvors' negligent navigation".

40 In *The Tojo Maru Owners of motor tanker Tojo Maru (her cargo and freight) v. N. V. Bureau Wijsmuller* [1971] 1 All E.R. 1110 H.L., Lord Reid delivering the first judgment that the contractors for salvage were negligent had this to say at p. 1114:—

"It is said that public policy requires and always has  
 required that every proper encouragement should be  
 given to salvors. With that I agree. In older times it  
 was highly desirable to encourage the master and crew  
 of any vessel which encountered another in distress to do  
 their utmost to save that other vessel. And today it is  
 equally desirable to encourage professional salvors to  
 maintain salvage vessels in a wide variety of situations.  
 Just as Courts are very slow to hold that errors of judgment  
 in emergencies amount to negligence, so too Courts are  
 slow to impute negligence to salvors. But here the arbi-  
 trator has found against them on that matter and the  
 contractors do not seek to challenge his finding. It is  
 said that it will be most discouraging to salvors if they  
 have to contemplate the possibility of heavy awards of  
 damages against them by reason of their vicarious liability  
 for their employees, and that it is not easy for them to cover  
 their liability by insurance. But the rule for which the  
 contractors contend would not prevent such awards. The  
 rule is only said to apply where the salvage has been success-  
 ful. It is not disputed that if, by reason of the negligence  
 of the salvors' employees, a ship which they are trying to  
 save is lost, then the salvors can be sued for that negligence  
 and they must pay damages. To serve the public interest  
 the encouragement of salvors must operate on their minds  
 before they begin salvage operations. But at that stage  
 the salvor cannot know whether, if negligence of his employ-  
 ees occurs in the course of salvage operations, it will  
 merely cause damage, or will cause total loss of the vessel.  
 I could understand a rule that a salvor can never be liable  
 for the damage caused by negligence in trying to save  
 a vessel. And there may be a very good case for extending  
 the limitation provisions with which I shall deal later so  
 as to prevent large awards against salvors. But the rule  
 for which the contractors contend would not be a satis-  
 factory solution of the problem viewed as a whole. My  
 noble and learned friends have dealt with the authorities  
 in detail and I do not think it would be useful for me to  
 go over the same grounds again. On this matter I am in  
 full agreement with them".

Lord Diplock in delivering a separate speech had this to say at p. 1134:-

5 "This is a contract for work and labour entered into by a party who carries on the business of providing services of this kind for reward. Before 1875 professional salvage contractors did not exist and express contracts of this type were unknown....."

10 Today, in the latter half of the twentieth century, most salvage services, other than that of 'standing by' a vessel in distress, are performed by professional salvors under a salvage agreement in Lloyd's standard form. Under  
15 it the salvage contractor undertakes a continuing obligation, until the ship is lost or brought to a safe port, to use his best endeavours to save her and to provide the equipment and labour which in the circumstances it would be reasonable for him to use for this purpose. The first question of law in this appeal is: what is the liability of the contractor for damage caused to the ship by his failure to use reasonable skill or care in the performance of that undertaking?

20 The proper approach to this question in the year 1971, as it seems to me, is to consider first what would be the salvage contractor's liability under the general English law of contract, and then to examine what, if any, differences flow, either in principle or on the authority of previous decisions, from the special characteristics of salvage services.  
25 Under the general English law of contracts for work and labour by a person who carries on the business of undertaking services of the kind which he has contracted to provide, he warrants that he will use reasonable skill and care in the provision of the services; and the measure of  
30 his liability for breach of that warranty is such a sum by way of damages as will put the other party, so far as money can do so, in the same position as if the contract had been performed without such breach".

Then at pp. 1135, 1136 I read:-

35 "These special characteristics of the remuneration payable for salvage services whether rendered under Lloyd's standard form of salvage agreement with a professional salvage contractor, or volunteered by a passing vessel and accepted without any express contract, would not appear  
40 in themselves sufficient to oust the ordinary rule of English law that a person who undertakes for reward to do work

and labour on the property of another owes to the owner of the property a duty to exercise that care which the circumstances demand and, where he holds himself out as carrying on the business or profession of undertaking services of that kind, to use such skill in the performance of them as a person carrying on such a business may reasonably be expected to possess. The circumstances in which salvage services are rendered may vary greatly. So may the expertise of those who undertake them. They may be such as to involve imminent peril to the salvor and his own property as well as to the property he is trying to save. He may have had no previous experience of salvage operations and no specialised equipment for that purpose. It may be mere chance that his was the vessel nearest to the scene when the emergency occurred which endangered the other ship and those aboard her. On the other hand, the ship requiring salvage services may be in no immediate peril. To bring her to a place of safety may be a simple operation devoid of any appreciable risk to the salvor or his property. The salvors may be professional salvage contractors who have obtained the contract to save the ship in competition with other professional salvors. All these are circumstances to be taken into consideration in determining whether a particular act or omission of the salvor constitutes a breach of his duty of care or skill.

It has been strenuously submitted on behalf of the contractors that English maritime law, as administered originally by the Court of Admiralty and since 1875 by the High Court of Justice, gives effect to a public policy of encouraging salvors to offer their services to vessels in distress by according to them more favourable treatment than those who render services to other people's property on land. It is true that many passages are to be found in judgments in salvage cases from Lord Stowell onwards which refer to this policy as justifying generous awards to successful salvors and leniency in condemning as negligent acts or omissions of a salvor occurring in the course of salvage operations. The question in this appeal is whether English law goes further than this in favouring salvors, by according to them some exceptional relief from liability for damage caused by an act or omission which, when every

allowance has been made for the exigencies of the circumstances in which the operations are carried out, manifestly fall short of the standard of care which would be observed by a prudent and reasonable man.

5 My Lords, if previous authorities were to be ignored and the question of the salvor's liability for damage caused by his carelessness in the course of rendering salvage services were approached de novo it would, I suppose, be possible to conceive of a rational system of law which  
10 did not impose on a salvor any duty of care or skill owed to the owner of the property he was trying to save, but relied on the salvor's reward being conditional on success and assessed according to what he deserved (quantum meruit) as a sufficient inducement to him to exercise such  
15 care and skill as he possessed. Such a rule would exempt from liability for negligence salvors whose carelessness or lack of skill had resulted in the total loss of the property, as well as those who, despite their carelessness or lack of skill, had nevertheless achieved partial success. But this, as the contractors are driven to concede, is not the law. There are clear decisions to the contrary. For at least  
20 a hundred years unsuccessful salvors have been held liable for negligently destroying the ship that they were trying to save. It is sufficient to cite *The Thetis* (16), a decision of the Court of Admiralty, and *Anglo-Saxon Petroleum Co Ltd v. Damant, Anglo-Saxon Petroleum Co Ltd v. Regem* (17), a decision of the Court of Appeal".

30 In *The "St. Blane"* Lloyd's Law Reports [1974] Vol. 1, 557, Mr. Justice Brandon dealing with the lenient attitude of the Court regarding a negligent salvor said at p. 560:-

35 "It is well established that the Court takes a lenient view of the conduct of salvors or would be salvors, and is slow to find that those who try their best, in good faith, to save life or property in peril at sea, and make mistakes, or errors of judgment in doing so, have been guilty of negligence. Nevertheless it is not in doubt that the Court may, in a proper case, after making all allowances, find negligence

(16) [1869] L.R. 2 A & E 365

(17) [1947] 2 All E.R. 465, [1947] K.B. 794

against salvors and, having done so, award damages against them in respect of it\_\_\_\_\_

In deciding such matters the Court looks at all the circumstances of the case, including the status of the salvors—whether amateur or professional—and the question whether they have acted at request or on their own initiative. The principle of the lenient approach to mistakes is an important one. It derives from the basic policy of the law relating to salvage services, which is always to encourage rather than discourage, the rendering of such services".

Having quoted a number of authorities which clearly show what is the task and the duty of a salvor, I shall turn to see in the light of all the circumstances of the present case, whether the salvors have been guilty of negligence in trying to save the burning ship. Having considered very carefully the able contentions of both counsel, as well as the totality of the evidence in this case, I have no doubt at all, that the Captain of the Hermia—having conferred with his crew, they had decided on their own initiative, and without consulting or informing the Captain of the burning ship of their decision to render salvage services to the latter's ship. Indeed this finding of mine is fully supported and accepted by Mr. Nietzil, the consulting engineer. With that in mind and in the light of the whole evidence which was before me it became apparent that it was realized at an early stage that the ship Hermia had no suitable equipment to such an extent as was reasonable; and indeed without, as Mr. Nietzil clearly admitted, a member or members of the crew had no previous experience. In my view, therefore, the salvors have failed to discharge the duty in showing that they have used such skill and care as was reasonable in those circumstances. I would reiterate once again that the whole of the evidence clearly shows that their only aim was to try and save the remaining part of the cargo of timber and nothing else. But there is another reason why the conduct of the salvors was a negligent one once the Captain of Hermia was aware that tugboats stationed in the neighbouring islands in Greece would be coming to render professional services to the burning ship in question. There is no doubt that the Captain and his crew knew or they ought to have known about the tugboats when the Captain left their own ship without asking them for any help except than to take the sailors in the boat to a nearby Greek island.

For the reasons I have given, and as I think it is not necessary to go through the evidence again, in my opinion this is a classic case of negligence, and not simply a question of making mistakes in good faith or errors of judgment by the crew of the Hermia in trying to save the property in peril at sea. I would reiterate once again that the salvors were guilty of negligence because they continued dragging the burning ship all the way to Cyprus even when they had fully realized that a tugboat was following the Hermia fully equipped for the purpose of saving the property in peril. Regretfully the Hermia did not even stop to enable the tugboat to offer their professional services. Indeed Mr. Nietzil, as he put it, he was wondering why the tugboat did not do anything when it was easy for them to fight the fire but they did not do so. I think that the answer to that query appears in the recorded statement of the Captain of Asteri tugboat, who said, that the German ship did not reply to their call by V.H.F. and that as a result the tugboat did not intervene once there was no reply and the ship Hermia continued dragging the burning ship.

Turning now to the question of the damages to be awarded to the plaintiffs, I think there is clearly on the record a statement by both counsel on behalf of their clients on 19th December, 1980, that in the particular circumstances of this case the proper amount of damages to be awarded by this Court in favour of the plaintiffs is the amount of the agreed value of the scrap iron which was accepted as being the sum of US \$150,000.

For these reasons and in view of the agreement of the parties I award the amount of US \$150,000 for damages in favour of the plaintiffs and against the defendants. Costs to be assessed by the Registrar in favour of the plaintiffs.

Judgment and order accordingly.

*Judgment for plaintiffs for U.S.  
\$150,000 with costs.*