

Melbourne .... October 1952

JAMES PATERSON & COY. PTY. LTD.

V.

STANFIRTH AND CARGO.

REASONS FOR JUDGMENT.

CORAM....

WEBB J.

DELIVERED. *Sydney... 12/12/52*

*Leave d question till 11/3/52*

JAMES PATERSON & COY. PTY. LTD.  
& ORS.

v.

THE SHIP "STANFIRTH" AND HER CARGO.

JUDGMENT ON RESERVED QUESTIONS

WEBB J.

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v.

THE SHIP "STANFIRTH" AND HER CARGO.

JUDGMENT ON RESERVED QUESTIONS

WEBB J.

On the 12th December 1952 I announced the award of £10,500 to the plaintiffs for salvage services to the "Stanfirth" and her cargo; but I reserved the questions as to the apportionment of the reward among the plaintiffs and the proportion thereof to be paid by the cargo owners, as I understood the parties desired to endeavour to agree on those matters. I also reserved the question of costs.

I am now informed by the solicitors for the parties that the proportion to be borne by the cargo owners will be settled by the defendants; but that it is desired that I should apportion the award among the plaintiffs without hearing further evidence or argument. In making this apportionment I have had no difficulty as between the tug owners and the crew; but as to the share of each member of the crew I have had little to guide me. It is clear enough that a heavy burden rested on the Master <sup>Master</sup> and Chief Engineer, and more particularly on the Master; as to the others I have nothing better than <sup>their ranking and</sup> the rates of their remuneration ~~and their ranking~~.

DECREE.

Award the plaintiffs £10,500 for the salvage services rendered by them to the ship "Stanfirth" and her cargo together with costs, including reserved costs and costs of the transcript of the shorthand notes, and condemn the defendants in the said sum and costs.

Decree that of the said sum of £10,500 the sum of £7,000 be awarded to the plaintiffs the owners of the tug "James Paterson", and the sum of £3,500 be awarded to the plaintiffs the master and crew of the said tug "James Paterson".

Decree that the said sum of £3,500 be apportioned among the master and crew of the tug "James Paterson", as follows:-

To

The Master (Captain Uttley)	£400
Mate (N. C. McBain)	300
Chief Engineer (J. Y. McDonald)	300
Second Engineer	250
Wireless operator and Leading hand each	225
Other members of crew, each	200

Reserve liberty to apply for further relief or otherwise consistently with this decree.

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JAMES PATERSON AND COY. PTY. LTD.  
AND ORS

V.

THE SHIP "STANFIRTH" AND HER CARGO

JUDGMENT

WEBB J.

This is an action in the Admiralty jurisdiction of this Court brought by James Paterson & Company Proprietary Limited as owners of the steam tug "James Paterson" and by her Master and crew against the ship "Stanfirth" and her cargo, claiming compensation for salvage services performed by them to the "Stanfirth" and her cargo off the east coasts of the States of Victoria and New South Wales between the 12th and 18th August 1951.

The defendants entered an appearance in the action; that for the cargo required a statement of claim to be delivered. On a summons for directions Dixon G.J. ordered that the action proceed to trial without pleadings; that the agreed values of the "Stanfirth" and her cargo be filed before trial; that lists of documents, including scrap and bridge and engine room logs, relevant to the matters in issue be exchanged by the parties; and that such documents or photostats be made available for mutual inspection. It was also ordered by consent that the parties be at liberty to adduce the evidence of the master and members of the crew of the "Stanfirth" by affidavit, subject to any application as to cross-examination of any deponent.

The agreed values as filed are :-

1. "Stanfirth" - £383,750 Sterling or  
£479,687 Australian currency
2. Cargo - £47,973 Sterling or  
£59,966 Australian currency

Converted at £125 Australian - £100 English.

An order by Dixon C.J. for the viva voce examination of certain members of the crew of the ship "Heronspool" before the Principal Registrar on the 3rd October 1952 lapsed, as the action came on for trial before me on that date and the evidence of the members of the crew of the "Heronspool" was, by consent, taken as soon as the case was called on for hearing, to enable them forthwith to rejoin their ship and proceed abroad.

On 9th August 1951 before the tug "James Paterson" proceeded to render to the "Stanfirth" the services for which the compensation is claimed an agreement was made between the plaintiff company as owners of the tug and as agents for the Master and crew of the tug and the agents for the "Stanfirth" and her owners and the British Phosphate Commissioners, the owners of the cargo and freight. This agreement provided inter alia that :-

1. The tug "James Paterson" was engaged to proceed from Melbourne and to endeavour to save or assist the "Stanfirth" then approximately 32 miles west of Cape Everard on the Victorian coast (38.10 S. 148.45 E.).
2. (a) If the "Stanfirth" should be brought to port or her safety otherwise secured by or with the assistance of the tug "James Paterson" the services of the tug should be remunerated on a salvage basis, and in ascertaining such remuneration no regard should be paid to clauses 2(b), 3(a), 3(b) and 4 of the agreement.

- 2.(b) If the ship should not be brought to port or her safety otherwise secured by or with the assistance of the tug, the tug's remuneration should not be less than a sum equal to £12.16.0 per hour from the time of commencement of preparation for the departure of the tug from Melbourne until she returned to her berth there, with a minimum charge of £350.
- 3.(a) There should be the same hourly payment if the services of the tug became unnecessary after she left Melbourne, or if the "Stanfirth" should be lost.
- 3.(b) If the order for the tug to proceed should be cancelled prior to the tug leaving Melbourne payment should be made at the same hourly rate from the time of commencement of preparations until the tug was again ready for harbour service, and in addition all costs incurred in preparing the tug for sea and restoring her to harbour working conditions should be borne by the hirer.
4. £12.16.0 per hour was based on normal award rates for towage work in the Port of Melbourne. If the plaintiff company in order to render assistance to the "Stanfirth" should be obliged to pay the crew increased rates of pay, or to provide for additional manning, the extra costs should be a charge against the hirer.
5. £10.10.0 per day should be charged for the use of the tug's hawser from the time the tow commenced. Loss of or damage to the hawser should be charged against the hirer.

The plaintiff company claims that the account, if rendered for services on a towage basis only, would amount to £9,454. 14. 11, covering a period of

17 days 14 hours 15 minutes that elapsed between the time that preparations were commenced for the tow, i.e. 10.30 a.m. on 9th August and the time of completion of the tug's voyage on her return to Melbourne at 12.45 a.m. on the 27th August 1951. Extra remuneration was paid and additional crew engaged.

I propose to deal first with the evidence showing how the "Stanfirth" came to require the services of the tug "James Paterson".

The British Phosphate Commissioners were the charterers of the "Stanfirth", which is a steel screw steamship belonging to the Port of London, of 7285 tons gross and 5147 tons net register, 447.8 feet in length, 56 feet in beam, 38.1 feet moulded depth, powered with triple expansion engines of 510 N.H.P. working up to 2500 indicated, and fitted for burning oil fuel. The charter party was dated the 25th April 1951 and was originally for twelve months; but this was extended for a further six months in direct continuation. Under the charter party the charterers were to provide the fuel oil for the "Stanfirth" and accordingly on the 17th July 1951 at Melbourne the "Stanfirth" received into her bunkers about 605 tons of fuel oil. She then proceeded in ballast to Nauru and there loaded 9300 tons of phosphates. She was on her way back to Melbourne when her bunkers became exhausted, although it was calculated that there was enough oil to take her back to Melbourne and still leave a three days' reserve. However, it was discovered later that the bunkers contained a large quantity of sludge.

On the 8th August 1951 when the "Stanfirth" was north of Cape Green the Chief Engineer reported a sudden drop in the tank soundings, and later that day estimated that there was only 66 tons remaining.

which, however, the Master thought would be sufficient to make Port Phillip at a speed of 10 knots. But at 7.30 p.m. when Gabo Island was abeam a fresh to strong north westerly wind was encountered with rough seas which freshened to a full west by south gale at 2 a.m. on the 9th August. At 5 a.m. strong head gales and rough seas were encountered and the "Stanfirth" was shipping water overall and making little progress and practically hove to. Visibility was poor. The weather persisted with full head gales and rough seas and heavy swell, and at 6 a.m. the Master, realising there would not be enough fuel to make Port Phillip, radioed to Melbourne for tug assistance. He estimated the position of the "Stanfirth" at that time as  $38^{\circ}.17' \text{ S } 148^{\circ}.36' \text{ E}$ , approximately 29 miles south of the Snowy River. At 9 a.m. the "Trienza" then forty miles astern was requested by the "Stanfirth" by radio to stand by, and at 11.30 p.m. she arrived and stood by.

During the 9th August the weather persisted with fresh to gale force head winds and rough seas, and at about 5.45 p.m. the Master ordered the engines to be stopped to preserve fuel for the auxiliaries, after he had brought the "Stanfirth" around to lie with the wind to starboard beam. With the wind slightly abaft the starboard beam the "Stanfirth" gradually edged away from the coast. The estimated position at noon that day was  $38^{\circ}.23' \text{ S } 148^{\circ}.18' \text{ E}$ , about  $31\frac{1}{2}$  miles south of the Snowy River.

At 10.30 a.m. on the 10th August all fuel oil was exhausted, with the exception of a very small quantity which the chief engineer was using to assist the burning of timber, and all power on dynamos, galley and auxiliaries was shut down, the wireless being operated by battery.

The position of the "Stanfirth" at noon was about 35 miles south of Cape Everard, revealing an easterly drift of 38 miles since noon on the previous day.

The weather conditions throughout the 10th August were such that the "Stanfirth" was rolling heavily with violent lurches and was shipping water forward and aft. She was also drifting. The direction of the wind varied from west by south to south west and its force from 8 to 10 on the Beaufort scale. There were heavy squalls and gusts. At 3.30 p.m. the "Trianza", without having been able to render any service to the "Stanfirth", due to adverse weather conditions proceeded on her voyage, but having first requested the "Heronspool" to stand by the "Stanfirth". At 4.45 p.m. the "Heronspool" was standing by. As the weather conditions were then too bad for the "Heronspool" to make any attempt to take the "Stanfirth" in tow it was agreed between the two Masters that the "Heronspool" would stand by until the tug, then on its way, had arrived, and the "Heronspool" would then consider the possibility of towage. The wind was backing from west by south to south west by south, but continued to remain at gale force. When the "Heronspool" reached the "Stanfirth" the latter was drifting east by north parallel with the shore. Had the wind shifted to a more southerly direction the "Stanfirth" would, in the opinion of the Master of the "Heronspool", have been in very grave danger, as she would have been on a lee shore, and if she did not get assistance she would have gone ashore and possibly become a total wreck.

Throughout the 11th August the adverse weather continued with fresh gales, the wind force being 8 to 9. There was a very rough sea and a heavy swell.

The "Stanfirth" was rolling violently and shipping water overall. At 6.12 a.m. she was  $38^{\circ}.13'$  S  $150^{\circ}.01'$  E, and at noon  $38^{\circ}0.2'$  S  $150^{\circ}.16'$  E, that is, about 32 miles south east of Gabo Island, showing a north easterly drift of 50 miles since noon on the 10th August.

On Sunday 12th August the wind was of fresh gale force with frequent squalls. There were rough seas and a heavy beam swell. The "Stanfirth" was still rolling violently and shipping water overall. At noon she was about 59 miles east of Gabo Island, which revealed a drift to the north and east of about 49 miles since noon on the previous day. On this Sunday afternoon 12th August the tug "James Paterson" reached the "Stanfirth". At that stage the "Stanfirth" was wallowing beam on to the sea. She had lost all power of propulsion, of direction and of communication by wireless. She had no power to operate a winch, which meant that the ropes and wires to the tug would have to be man-handled. This was then the plight of the "Stanfirth" as stated by the Master of the "Heronspool", whose evidence I accept on the question as to the "Stanfirth's" situation at this stage.

I now proceed to deal with the weather and other conditions operating, and with events that took place, in the course of the voyage of the tug "James Paterson" to the "Stanfirth"; but I will first state some particulars of the tug, and its Master on this expedition.

The tug "James Paterson" is a two funnel vessel of 247 tons gross, with a length overall of 125 feet, a breadth of about 24 feet and a depth of 12.5 feet. She has a nominal horse power of 98, and indicated horse power of 875. She was built fifty years ago at a cost of about £13,000 or £14,000. She is capable of towing the biggest ships entering the Port of Melbourne,



including the "Himalaya" of 28,000 tons and the "Greaves" 26,000 tons. She was maintained in good condition and was in good condition on this operation. She is classified A1 at Lloyds. The only reliable evidence I have as to her value is that of her net earnings over a period of 2½ years immediately preceding this expedition and about a year thereafter. This indicates her special value to the owners: what her market value is I am not able to determine on the evidence called. Having regard to her age on the one hand and to her good condition and net earnings on the other, I think her value should be taken for the purpose of these proceedings to be £20,000. Her crew within the Port of Melbourne is seven in number; but for this venture it was fifteen, namely the Master, mate, wireless operator, two engineers, two greasers, three firemen, three seamen and two cooks. There was no suggestion that fifteen was too large for the occasion.

The tug master was William Henry Uttley. He was not ordinarily the master of the tug when she was operating in Port Phillip. The mate on this expedition had held that position, but did not have a master's certificate, except for Port Phillip itself and three miles beyond. Uttley had held a foreign going master's certificate for 25 years. He had been 38 years at sea, in fact since he was 14. He had 12 years experience as master of tugs. During the war he took tugs to Queensland; and he had other deep sea towage experience, including the towage of a ship of 45,000 tons.

The "James Paterson" left Williamstown in the Port of Melbourne at 8.30 a.m. on the 10th August. Before she left she was inspected by Uttley, who found everything on board necessary for such an expedition.



Uttley had been informed that the "Stanfirth" was about 20 miles south of Cape Everard. About noon the "James Paterson" was off the Heads of Port Phillip. The weather conditions in Port Phillip were then very severe. The sea was very rough. The tug was shipping water on the way to the Heads. The wind was practically a whole gale. Its direction was west south west or south west. About 1.00 p.m. the tug went through the Heads on a flood tide. There was a very high running sea. The wind was of gale force with squalls. There was a danger of foundering due to the possibility that one heavy sea could not be shaken off before the next came over. The waves broke over the whole of the deck, and the tug was flooded fore and aft. It took an hour and half to get through the Rip, a distance of only two and half miles. After clearing the Rip the wind was about south west and at gale force. On several occasions the tug shipped water and it was necessary to heave to. Cape Shanck light was passed about 6.00 p.m.

About 7.30 a.m. on Saturday the 11th August the tug was abeam of Wilson's Promontory light. The wind had not changed in the meantime. The tug kept close to land for shelter. At 9.00 a.m. Sealer's Cove, about 140 miles from Melbourne, was reached. The tug remained there until 2.00 p.m. to effect storm damage repairs, to clear the engine room and bilges of water, and to put the life boats back in position. Uttley then radioed a message to the Director of Navigation asking for the latest position of the "Stanfirth" and was given  $38^{\circ}.8' \text{ S } 150^{\circ}.00' \text{ E}$  as at 11 a.m. On receipt of that message he made a calculation as to the probable position of the "Stanfirth", allowing for a drift of two knots in a north easterly direction parallel to the shore, with a slight set in.

The wind was south west where Uttley was, but he had no information as to what its direction was at the "Stanfirth". At 3.00 p.m. the "James Paterson" was at Cliffy Island. The direction of the wind was south west; its force between 7 and 8. The sea varied from rough to high. The tug was shipping water, but still was doing about 9 knots.

On Sunday 12th August at 5.20 a.m. the wind was still south west and had increased a little, if anything. It was very squally. The sea was very high. It had not moderated. Uttley then made an estimate of the position of the "Stanfirth" at 8.00 a.m. as about 41 miles east of Gabo Island and slightly to the south. This was based on a communication from the "Heronspool" sent at 11.51 on the previous evening, Saturday 11th August.

As the tug made her way out into the Pacific Ocean the seas got longer and the swell increased. At 9.00 a.m. on 12th August the "Heronspool" sent out directional finding bearings of the "Stanfirth" position, and about 1.00 p.m. the "James Paterson" sighted both ships. Their position then was approximately  $37^{\circ}.34'$  S,  $151^{\circ}.20'$  E. The tug then got her tow line ready. It was necessary to have regard to the weather in opening the hatch to get the tow line on deck. The tug's speed was slackened to reduce the amount of water being shipped. The sea was very rough with a high swell. The wind was south westerly with a force around 7. To prevent water from getting down the hatch when it was opened to get the tow line out the tug was run directly before the wind and sea at a reduced speed. The "Stanfirth" was then lying in the drift of the sea and wallowing in a big swell. The sea was on her beam. Because of the winds and sea the tug could not get close enough to speak to those on

board the "Stanfirth", and messages were sent by morse lamp. Nor could the tug get close enough to pass its tow line to the "Stanfirth", which, however, successfully fired a rocket over the tug with a line attached. To this line the tug attached a light rope which was hauled aboard the "Stanfirth". At the end of that rope there was attached a heavier rope and then a wire rope, actually the towing line, attached to this heavy rope. Meanwhile the "Heronspool" distributed oil on the sea to windward of the tug to assist in getting the tow line on the "Stanfirth". The tow line was taken on to the "Stanfirth" by hand. During these operations the tug came within 20 feet of the "Stanfirth" and as a very high sea was running there was the risk of collision. The crew of the tug were knee deep in the water shipped by the tug, which was rolling and pitching. While the crew were playing out the tow line they were in danger of being swept overboard. The seas were breaking over the poop. However by 4.00 p.m. the tow line was secured and the tug commenced to head the "Stanfirth" northwards for Sydney. Uttley told the Master of the "Stanfirth", who agreed, that the best proposition was to tow the "Stanfirth" to Sydney. There is no contest about the wisdom of that course.

Up to this stage of the movements of the "James Paterson" I have accepted the evidence of her Master Uttley. Actually there is so far no important conflict of testimony and so there has been no necessity to express an opinion as to the credibility of the witnesses. However, a serious conflict arises as to the merit of the services of the "James Paterson" in connecting with the "Stanfirth" and moving her between the afternoon of Sunday the 12th August and the late afternoon of Friday 17th August. As to this, I prefer

the evidence of Uttley to that of the Master of the "Heronspool" where there is a difference of opinion. After all in every instance the difference is really one of opinion, and more particularly as to the location of the respective vessels, the "James Paterson", the "Stanfirth" and the "Heronspool" from time to time and their rate of progress and distance travelled in a northerly direction towards Sydney. The Master of the "Stanfirth" was not called as a witness but his affidavit was tendered and admitted. I have decided to act on this affidavit only to the extent that it is not contradicted by the evidence for the plaintiffs. Uttley is a man of considerable experience at sea in operations of this kind; and, moreover, I formed a favourable opinion of him as a witness. I think he know the location from time to time of the "James Paterson" and also of the "Stanfirth" and "Heronspool" whenever he was in contact with them. It was vitally important for the safety and success of a small vessel like the "James Paterson" far out at sea in severe weather that he should make sure of the location of all three vessels, and he was well capable of so doing. I am satisfied that he took bearings and locations and decided on and calculated courses and distances with due care and after proper consideration. Farther I have no doubt that he has given a true account of what he found and did in this regard. The differences between Uttley and the Masters of the "Stanfirth" and the "Heronspool" as to the location of the vessels from time to time are no greater in some instances, than are such differences between those two masters, and the Master of the "Heronspool" was self contradictory on at least one important matter of location.

So in my findings of what happened during the salvage operations I am guided mainly by the evidence of Uttley, which is confirmed in large measure by other members of the crew of the "James Paterson" who gave evidence and who impressed me as reliable witnesses.

The "Stanfirth" as already stated was wallowing in the sea, and she started to yaw as soon as she had way on. At about 4.30 p.m. while the tug was correcting this yawing the tow line snapped. The "Stanfirth" then offered the tug a towing wire with some chains. These were accepted; but in that sea it was a matter of great difficulty to take the wire on board the tug. As Uttley said : wire cable is heavy and sinks in the water; if it is too heavy the men on the tow playing out the wire cannot hold on to it sufficiently well, but unless there is a slack the men on the tug cannot pick it up; if too much wire is given it weighs down the tug too much and droops too heavily into the water, causing a danger of fouling the tug's propellor. However the tug and tow were reconnected in about an hour and a half, and the tow proceeded again in a northerly direction from about 6.00 p.m. to 11.45 p.m. when the tug slipped the tow line, because there was too much water in the tug for the pumps. Meanwhile the tug had informed the "Stanfirth" that the latter had let out too much of her anchor chain as part of her tow line, which was too deep in the water and hampered the tug. The Master of the "Stanfirth" was unable to take back any of the wire and chain. As a result the tug was kept down in the water and this led to the shipping of water by the tug beyond the pumping capacity. The Master of the "Stanfirth" agreed that the tug should slip the towing line at the tug's end.

The tug then left for Eden but before leaving was given by the "Heronspool" a bearing of west quarter south (where the tug was already heading) and a distance of 90 miles. On the way to Eden the condition of the tug was very bad. The wind was gale force. There was a very high swell but diminishing towards Eden. The tug reached Eden about noon on Monday 13th August. The distance proved to be 85 miles.

There is a very important difference of opinion between Uttley and the Masters of the "Stanfirth" and the "Heronspool", and for a time I had considerable doubt as to how far north the tow by the "James Paterson" of the "Stanfirth" had proceeded on Sunday 12th August when the tug slipped the tow line. But I have resolved the doubt in favour of Uttley's opinion to the extent of finding that the "James Paterson" had towed the "Stanfirth" for most of the distance that Uttley claims to have been covered. On the one hand I am satisfied that on leaving the "Stanfirth" he took the route to Eden that he says he did, and the fact that he reached Eden on that course tends to confirm his opinion as to his location when he left the "Stanfirth" and also the length and direction of the tow on the afternoon and evening of the 12th August. It is true that if he did not allow (and he does not claim that he allowed) for the north easterly drift on the voyage to Eden he must have left the "Stanfirth" in a position further south than he calculated; but the extent of the distance further south would depend on the strength and duration of that drift. On the other hand Uttley's opinion receives support from the evidence of the Master of the "Heronspool", which indicates that at 3.54 p.m. on Tuesday 14th August the "Stanfirth", after drifting two hours during which the "Heronspool" had towed her about six miles north at a rate of about three knots per hour from the time the "James Paterson" left for Eden at



11.30 p.m. on Sunday 12th August, was at a point to which she would have drifted if she had been left by the "James Paterson" about six miles south of where Uttley claims he left her.

At Eden the engine room and the ship's plates were examined and found in order. The chief engineer had suspected before it was decided to proceed to Eden that a plate might have been sprung in the rough seas and that this might have been to some extent responsible for some of the water shipped by the tug. The strums were also cleared of coal dust and ashes at Eden. This could not have been done at sea. The weather was too rough to permit of the ashes being jettisoned at sea, so they had to be kept on the tug and were swept into the strums by the sea water.

After some repairs had been made, and coal, water and other supplies and a new tow line had been taken on board, the tug left Eden about 11 a.m. on Wednesday 15th August for the "Stanfirth".

I am satisfied that Uttley and the chief engineer desired to abandon the salvage operation as being beyond the capacity of the "James Paterson" in the conditions prevailing when they set out for Eden on Sunday night 12th August. But apparently the tug owners felt differently about it and consented, to the request of the agents of the "Stanfirth", that the "James Paterson" should renew her efforts, more particularly as she was found to be in order at Eden and fresh equipment was available. The agents of the "Stanfirth" would appear to have taken the view that the failure of the "James Paterson" was due not to her construction or lack of power, but to the conditions of the weather and other external conditions.

On being given the position of the "Stanfirth" the tug proceeded in a northerly direction with a rough following sea. It was equally and a heavy swell rolled up from the south west. Montague Island, 50 miles from Eden, was passed about 4.00 p.m. Meanwhile about 1.10 p.m. the tug had received a message from the "Heronspool" giving the "Stanfirth's" position as  $35^{\circ}.37' S$   $152^{\circ}.07' E$ , which revealed that the "Stanfirth" had gone north about 90 miles since the "James Paterson" had left her about midnight on Sunday 12th August. When the tug received this message from the "Heronspool", and then steered east north east and continued on that course until about midnight, a distance of about 42 or 43 miles. Uttley then observed lights on his port bow and altered his course again to north north east to bear down on the lights. About 1.00 a.m. on the 16th August the tug closed in on the "Heronspool" and "Stanfirth". The position was then  $35^{\circ}.24' S$   $151^{\circ}.43' E$ . As far as could be observed from the "James Paterson" in the darkness the "Heronspool" was towing the "Stanfirth". It appears from the evidence of the Master of the "Heronspool" that he commenced to tow the "Stanfirth" at 11.30 a.m. on Monday 13th August; that there was then a strong breeze and a heavy swell but the sea was moderating; the ships were moving (and had been moving about two hours) at an hourly rate of about three knots when the tow line broke; that it was connected again on Tuesday 14th August at 3.54 p.m.; that the tow continued until 6.30 a.m. on Thursday 16th August when the tow line again parted; that during the 14th and 15th August the weather was still abating; it went from strong to fresh and from fresh to moderate; that on Wednesday 15th August the "St. Giles", a tug from Sydney, came up when the sea was rough and there was a heavy swell and a fresh breeze; that the "St. Giles" was made fast to the "Stanfirth's" stern to stop her



from yawing, which the "St. Giles" did succeed in doing; and that the "Heronspool" had towed the "Stanfirth" about 150 miles since the 13th August.

The "James Paterson" was told by the "Stanfirth" to stand by till daylight. When daylight came "Stanfirth" was adrift, the tow line to the "Heronspool" having parted, as already stated. The tug "St. Giles" was also standing by. Uttley then asked the Master of the "Stanfirth" if he wanted the tugs to take him in tow and received the reply that the "Stanfirth" did not know what the "Heronspool" was going to do, and that the "Heronspool" had broken a lot of towing gear. At the suggestion of the Master of the "Stanfirth" Uttley spoke to the Master of the "Heronspool", then about three quarters of a mile away, and asked him if he was going to take the "Stanfirth" in tow. The Master of the "Heronspool" replied that he did not know; that he had used up all his wires, but that he had a good mind to tow the "Stanfirth" on all chain - that is, all cable without wires or ropes. Uttley warned the Master of the "Heronspool" against that course, as chains had no spring like wires or ropes. Then the "Heronspool's" Master told Uttley to go ahead with the tow. Uttley reported this to the Master of the "Stanfirth" who told him to get his lines up if he could, and enquired about the "St. Giles". Uttley radioed the "St. Giles", then two miles off, to put his tow line up too. Uttley made the suggestion that the "Stanfirth" should be towed stern first to lessen the yawing. This was adopted by the "Stanfirth". Accordingly about 9.00 a.m. the "St. Giles" and the "James Paterson" were hooked up to the "Stanfirth",

one on the starboard quarter and the other in the fore quarter. Sydney was then about 100 miles away. The weather was squally, and the wind at moderate gale force at times. There were very hard squalls.

The tugs towed the "Stanfirth" until at 5.00 p.m. the tow line of the "James Paterson" parted where it was connected with the "Stanfirth"; but connection was made again at 7.00 p.m., and towing was resumed and continued without interruption until about 1.00 p.m. the next day, Friday 17th August. Meanwhile the towing speed was about two knots through the water, but there was a drift from the north that reduced the rate of the tow. All the tugs' strain was on the line. The tugs had about the same pulling strain. The "Stanfirth" yawed very badly. As she did so the tugs took the strain in turn. The weather then had a tendency to moderate.

During the morning of the 17th August the "Heronspool" signalled to the tugs to let go the tow, and the tow stopped at 1.00 p.m. At 2.00 p.m. the second officer of the "Stanfirth" said he was going to slip the tugs' lines, as they were making very little progress, and that the "Heronspool" was going to take the "Stanfirth" in tow again. The "Stanfirth" then slipped the tow line. At about 4.00 p.m. the "Heronspool" went close to the "Stanfirth" and made an all-chain connection; but the chain broke. Uttley then asked the Master of the "Stanfirth" what he intended to do, and why he let the tugs go. He replied that the Master of the "Heronspool" had said that the tugs were not making progress. He also asked if it was desirable to send for another tug. Uttley told him that three tugs would lead to trouble, and that if the two tugs were allowed to take on the tow they would have the "Stanfirth" in Sydney on the afternoon of the following day, Saturday, 18th August.

The Master of the "Stanfirth" then told Uttley to take the tow. Uttley told him they would now tow by the stem. He added that the men were tired of all the "towing drill" they had had, i.e. putting lines on and off the tow, and that if they took the "Stanfirth" in tow again they did not want to be again told to slip the tow. They were then about 65 to 69 miles from Sydney; about  $34^{\circ}.53'$  S  $151^{\circ}.44'$  E. The "James Paterson" then secured her tow line on the starboard bow and the "St. Giles" secured hers to the port bow. The weather started to moderate. The "Stanfirth" still yawed, and the tugs took the strain in turn. They arrived in Sydney on Saturday the 18th August.

There was some difficulty in taking the "Stanfirth" through Sydney Heads. This was in stopping the yaw. The "Stanfirth" was very much swamped and weighed down and it was necessary to correct her and steady her into the west channel and keep her there until the tugs from Sydney made fast.

On Sunday 19th August repairs were effected to the "James Paterson". These were finished on 20th August. The tug left Sydney at noon on Tuesday the 21st August. On the way down the coast rough seas and hard squalls were encountered and the tug had to put in at Port Kembla until Wednesday 22nd August when she left Port Kembla. But she was forced by heavy seas to return. On Thursday 23rd August the tug left Port Kembla again, but was forced into Eden for shelter from very rough weather. These adverse weather conditions on the 21st, 22nd and 23rd August would appear to have been a continuation of those operating before and during the towing of the "Stanfirth" between 12th and 18th August. At all events there is no evidence to the contrary, and no submission that these later weather conditions

constituted an entirely new hazard for the consequences of which to the movements of the "James Paterson" the owners of the "Stanfirth" and her cargo should not be called upon to pay. In the morning of Friday 24th the tug left Eden and arrived at Williamstown in Port Phillip early Monday 27th August 1951.

There is no submission that the services rendered by the "James Paterson" were in fact towage services and not salvage services. The distinction between these two kinds of services has been stated as follows :-

"Salvage services arise when the ship is in such danger that the master has no real choice in the matter but must, as a reasonable man, accept them from somebody or lose his ship, or leave it in some remote place; whereas towage services arise when the ship has reached such a position of safety that the shipowner has a freedom of choice either to refuse the services or to have repairs done locally or to contract for towage to get his ship home". The Troilus (1950 P. 92 per Denning L.J. at pp. 110 and 111).

Clearly the services rendered to the "Stanfirth" by the "James Paterson" were salvage services.

In determining the value of these salvage services consideration is required to be given to -

- (1) the risk of life;
- (2) the risk of property salvaged;
- (3) the value of the salvaged property;
- (4) the skill of the salvors and their conduct;
- (5) the value of the salvors' property employed in the salvage service, and the danger occasioned to it thereby;

- (6) the labour employed;
- (7) the special risks and responsibilities incurred by the salvors;
- (8) the damages, repairs and loss of profits incurred by the salvors; and
- (9) the effect on the award of an agreement for a remuneration independently of success.

The Law of Civil Salvage by Kennedy L.J. 2nd. Edn.

p. 131 et seq.

"The Court endeavours always to combine the consideration of what is due to the owners, in the protection of their property, with the liberality due to the salvors in remunerating meritorious services".

The Thetis (3 Hagg. 14 at 62; 166 E.R. 312 per Sir Christopher Robertson at 329).

I proceed now to deal with the different considerations to be taken into account, as set out in The Law of Civil Salvage supra. As to (1), (2) and (3) the risk of life and property and the value of the property salvaged; there is no doubt that the "Stanfirth" was in a position of grave danger when she decided to seek the assistance of a tug, and the "James Paterson" was offered for the service. Having run out of fuel the "Stanfirth" was quite helpless, and at the mercy of the weather, winds, tides and currents. This was not simply a case of a vessel becoming disabled through running out of fuel; this misfortune occurred just when the weather conditions were becoming extremely unfavourable, with high winds and rough seas, and they became and remained so for a lengthy period. If some vessel had not come to her assistance she and her crew and cargo would probably have been lost. The best that could have been hoped for in that event was that she would run ashore, in which case, however, she would have become a wreck. It is not an answer to say to a vessel claiming to have

saved her that if that particular vessel had not done so, it could have been expected that another vessel would, and that actually the salved vessel was never in real danger. Still, it is a consideration that the prospects of being rescued in any event were favourable. This was then a case where there was risk to life and to the salved property. The risk was not only to the lives of the crew of the "Stanfirth", but also to the lives of the crew of the "James Paterson". The risk to the latter was present from time to time as and after the tug passed through Port Phillip Heads, and was considerable on the occasions which the tug connected with the "Stanfirth", and also during the five hours' tow on Sunday 12th August.

For the purposes of this action it is agreed that the salved values of the "Stanfirth" and her cargo at the time of the rendering of the salvage services were as follows :-

- |                     |  |
|---------------------|--|
| (1) The "Stanfirth" | £383,750 Sterling or<br>£479,687 Australian currency |
| (2) Cargo           | £47,973 Sterling or<br>£59,966 Australian currency   |

The salvage service to the cargo was the same as that to the ship.

The value of the salved property is "a most material and important consideration"; but where its value is large, as it is in this case, the amount of the reward usually bears a smaller proportion to the value than when it is small. The value of the salved property must not be allowed to raise the quantum to an amount altogether out of proportion to the service rendered. The Law of Civil Salvage supra at 140 (citing the Lindfield 10 T.L.R. 606 and the Amerique L.R. 6 P.C. 468).

As to (4): the skill of the salvors and their conduct: it is common ground that the master and crew of the tug displayed courage and skill throughout. The defence directed their attack not to the conduct or qualifications of the master and crew of the tug, but to the tug's construction and fitness for the task.

As to (5): the value of the salvor's property and the danger occasioned to it: as already stated I have, with some hesitation, fixed £20,000 as the value of the "James Paterson" at the time of this salvage service. This is really based on the special value to the owners, having regard to the tug's earning capacity and condition on the one hand and on the other hand to her age. I have already indicated the extent of the danger occasioned to the tug. The rough seas made it far from a remote possibility that a quantity of sea water would be shipped by the tug when proceeding to the "Stanfirth" and when connecting with and towing the "Stanfirth", and more particularly on Sunday 12th August, so great as to cause her to founder. Further, the tug when connecting with the "Stanfirth" in the rough seas and high winds had to come so close to her as to run serious risks of collision that might well have meant disaster.

As to (6): the labour employed: that was not more than required for the task. There was no submission to the contrary, nor was the duration of the task greater than the circumstances warranted.

As to (7): the special risks and responsibilities incurred by the salvors: I have already indicated what these were and have nothing to add.

As to (8): the damages, repairs and loss of profits incurred by the salvors: little damage was occasioned to the "James Paterson" as a result of this



operation. The tow rope and the hawser lost were replaced by new ones. The old tow rope had been some years in use and was due for replacement within a year or two. As to the old hawser, I have really no particulars, but I think I must make allowance for the fact that the new hawser will have a much longer life. I also allow for the fact that some of the other expenditure cannot properly be regarded as productive or essential only in relation to the particular enterprise of salving the "Stanfirth".

If the "James Paterson" had not been employed on this venture she would have been profitably employed in and about Port Phillip. It is not desired that I should state exactly what were the profits, of which I have fully considered the details, set out in Exhibit AB.

As to (9): the agreement for payment in the event of non-success: it has been said that the effect of an agreement entitling the salvors to remuneration independently of success is to diminish an award. "One of the main reasons why salvage remuneration is so high is, that it involves this, that unless some of the property is saved, no remuneration is obtainable at all". The Lepanto (1892 P. 122 per Jeune J. at 130). However, it has also been observed that, ".... it is very difficult to say what precise amount of effect it is to have on the reduction of the amount of the award where the services have turned out to be successful. But it does not minimise the danger to the salvors, because they run their risk whether they get paid for their services, or whether they get remunerated by salvage...". The Edenmore (1893 P. 79 per Gorell Barnes J. at 83).



The position here is, I think, as indicated by Dixon J. (as he then was) in Huddart Parker Limited v. The Ship "Mill Hill" and her Cargo (6th July 1951 unreported). His Honour there took the view that "Usually salvage rewards are enhanced by the consideration that failure to bring the salved vessel to safety would mean that the intending salvors would get no remuneration". But where the salving vessel "in the case of non-success would have been paid towage rates, it is difficult to see how this element could be taken into account as a reason for increasing the salvage award where the salving vessel is a tug adapted for salvage as such craft are always encouraged by placing on their services a greater value".

But in the case not one but four ships came to the rescue, and so it is not possible to remunerate any of them on the basis that it was a single-handed rescue. If a major contribution was made by the "James Paterson" it is clear that such a contribution was made by the "Heronspool" also, and perhaps by the "St. Giles". There is this difference, however, that the "Heronspool" did not attempt to tow the "Stanfirth" while the weather was at its worst, because that would have involved grave risks to the "Heronspool", which is a vessel of over 10,000 tons. When the "Heronspool" began to tow the "Stanfirth", first on the 13th and again on the 14th August, the weather had moderated as compared with what it was when the "James Paterson" connected and, after a parting, reconnected with the "Stanfirth" on the afternoon of the 12th August and towed her for about five hours some considerable distance in a northerly direction towards Sydney. It is true that the "James Paterson" had not brought the "Stanfirth" to a position of safety at the

end of those five hours: the weather conditions were still severe at that stage and the "Stanfirth" with her crew and cargo were still in peril. But her situation had improved as a result of that tow, inasmuch as she had been brought nearer to Sydney and the weather was moderating. This improvement had been made by the "James Paterson" at considerable risk to the tug and her crew, more particularly when connecting and reconnecting with the "Stanfirth" in the very rough seas and persisting for five hours with the heavy tow, while the seas were washing over the tug (which was then weighed down with the tow rope and the chains of the "Stanfirth"), and carried the ashes into the strums, chocking them and thereby preventing the pumps from coping with the sea water in the tug. It is contended by the defendant that the construction of the ship was at fault in that no provision was made for getting rid of the ashes in the heavy seas. But in the absence of expert evidence on this point I am not prepared to regard this as a defect in construction which could have been overcome, and so to decide that this defect, and not the heavy seas and the weight of the tow and her chains on the tug, was responsible for the inability of the tug to continue towing beyond five hours. I attribute for the breaking off of the tow to the severe conditions external to the tug, and not to her construction or lack of power and so as not being due to the unfitness of the tug for the task.

So far I have dealt with the merits of the salvage services of the "James Paterson" only up to the point where she departed for Eden. While she was in Eden the "Heronspool", in better weather conditions, was able to tow the "Stanfirth" for a considerable distance towards Sydney, first alone and later with the

assistance of the tug "St. Giles". But there was still the need for the services of the "James Paterson" to the "Stanfirth", as the agents of the "Stanfirth" had judged to be the case when they asked for the renewal of the efforts of the "James Paterson" after she had departed for Eden. The "Heronspool" appears to have given a tow to the "Stanfirth" when she could do so without risk to herself; but, owing to the state of her towing equipment, she appears to have reached the limit of her capacity in that regard when she left to the "James Paterson" and the "St. Giles" on the afternoon of Friday 17th August the responsibility of taking the "Stanfirth" to Sydney. However, the "Heronspool's" contribution to the salvage of the "Stanfirth" and cargo was considerable, and if I had to make a comparison I would not necessarily view it as being less than that made by the "James Paterson". The length of effective towage in the direction of Sydney given by the "Heronspool" was equal to, if not greater than, that given by the "James Paterson". Each vessel towed the "Stanfirth" for upwards of 100 miles - exactly how far it is difficult, but unnecessary, to determine. It is not for me to make an assessment of the amount due for the "Heronspool's" services or for those of the "St. Giles". I am to make an award only for the services rendered by the "James Paterson", taking into consideration among other things the presence and contributions of the other vessels.

Having regard to all the considerations stated I fix the salvage reward to the plaintiffs at £10,500.

I understood the parties desired to be given an opportunity to agree upon the apportionment of the amount of any reward I order; and also upon the proportion, if any, to be paid by the cargo owners. Failing agreement,

I shall decide these further matters; if necessary after hearing the additional evidence and argument confined to these two questions.

Accordingly, I reserve these two questions for further consideration, after hearing from the parties as to the result of their efforts to agree.

I shall deal with the costs of the action after disposing of all other matters.

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