principal debtor's appeal was dismissed, and the plaintiffs were thereupon at liberty to claim from either or both the sureties the amount which they had bound themselves to pay. There must be judgment for £450 against both defendants jointly and severally with costs.

Judgment for the plaintiffs.

MACAULEY v. AFRICAN AND EASTERN TRADE CORPORATION LIMITED

Supreme Court (Tew, C.J.): February 16th, 1931

[1] **Agency — gratuitous agent — duty of care — gratuitous agent undertaking work without requisite skill only liable for failure to exercise reasonable care of ordinarily prudent man:** Where a person, not professing to be skilled in the particular matter, undertakes to do an act for another, without reward, he is only bound to exercise that care which he, as an ordinarily prudent man, would exercise if acting for himself; so that where a person who is not specifically trained for the job attempts, without reward, to float a submerged motor launch and tow her to safety and fails to exercise reasonable care in so doing, he is guilty of negligence only in so far as he has not exercised the degree of care which would have been exercised by an ordinarily prudent man (page 203, line 37—page 204, line 10).

[2] **Shipping — collisions — damages — measure of damages for loss of launch used in trade — cost of replacement plus loss of anticipated profits during period reasonably required for acquisition of new launch:** The primary measure of damages in tort is the amount of the party's loss which is one of actual outlay and anticipated profits; so that where a motor launch engaged in carrying goods for reward is sunk through the negligence of the guilty party, damages will amount to the replacement value of the launch plus the value of profits lost during the time it takes to acquire a new launch (page 209, lines 21—38; page 210, line 27—page 211, line 3; page 211, lines 27—31).

[3] **Shipping — salvage — duty of care — gratuitous agent undertaking salvage operation without requisite skill only liable for failure to exercise reasonable care of ordinarily prudent man:** See [1] above.

[4] **Tort — damages — measure of damages — loss of chattel used in trade — cost of replacement plus loss of anticipated profits during period reasonably required for acquisition of new chattel:** See [2] above.

[5] **Tort — negligence — damages — measure of damages for loss of launch used in trade — cost of replacement plus loss of anticipated profits during period reasonably required for acquisition of new launch:** See [2] above.

[6] **Tort — negligence — duty of care — gratuitous agent — gratuitous agent undertaking salvage operation without requisite skill only liable for**

failure to exercise reasonable care of ordinarily prudent man: See [1] above.

The plaintiff brought an action against the defendants to recover damages for negligence.

The plaintiff was the owner of a motor launch used for carrying cargo which was sunk as the result of a river collision with the launch owned by the defendants. The defendants undertook to attempt to salvage the plaintiff's launch without reward. At the second attempt they managed to raise it sufficiently to tow it a short distance, but after two tow-ropes had given way the launch had sunk much lower in the water and no progress could be made against the current. It was decided to abandon the attempt; the remaining tow-rope was cut and the launch was allowed to sink.

The plaintiff instituted the present proceedings to recover damages for the loss of the launch and the use of it, alleging negligence on the part of the defendants in (a) allowing their launch to collide with his through excessive speed and faulty navigation, and in (b) allowing his launch to founder while being towed by not using the necessary skill or proper implements for floating and towing it. He contended that the mere fact that his launch sank during the salvage operations raised a presumption of negligence on the part of the defendants and put upon them the the onus of disproving it; and that in any case the work of salving and towing a vessel was a work of skill and should not have been undertaken by anyone other than an expert, so that the failure of the operation was evidence of negligence for which the defendants were liable.

The Supreme Court considered (a) what degree of lack of care was required to establish negligence, in the case of a person unskilled in a particular matter who undertook to carry out a gratuitous service and in the case of one who was skilled and was paid for his work; and (b) whether the loss of anticipated profits in these circumstances was too remote so as to disentitle the plaintiff from recovering damages.

The court gave judgment for the plaintiff.

Cases referred to:

(1) *The Anselma de Larrinaga* (1913), 29 T.L.R. 587, considered.

(2) *The Argentino* (1888), 13 P.D. 191; 59 L.T. 914; on appeal, (1889), 14 App. Cas. 519; 61 L.T. 706, *dicta* of Bowen and Lindley, L. JJ. applied.

(3) *Beal v. South Devon Ry.* (1864), 3 H. & C. 337; 159 E.R. 560, *dicta* of Crompton, J. considered.

(4) *The Clarence* (1850), 3 Wm. Rob. 283; 166 E.R. 968.

(5) *Duncan v. Blundell* (1820), 3 Stark. 6; 171 E.R. 749.

(6) *Grill v. General Iron Screw Collier Co.* (1866), L.R. 1 C.P. 600; 14 L.T. 711.

(7) *H.M.S. Inflexible* (1857), Sw. 200; 166 E.R. 1094.

(8) *Jenkins v. Betham* (1855), 15 C.B. 168; 139 E.R. 384.

(9) *Jones v. Fay* (1865), 4 F. & F. 525; 176 E.R. 675.

(10) *Lord v. Midland Ry. Co.* (1867), L.R. 2 C.P. 339; 15 L.T. 576.

(11) *The Maréchal Suchet*, [1911] P.1; (1910), 103 L.T. 848, distinguished.

(12) *Moffatt v. Bateman* (1869), L.R. 3 P.C. 115; 16 E.R. 765.

(13) *The Notting Hill* (1884), 9 P.D. 105; 51 L.T. 66.

(14) *Pappa v. Rose* (1872), L.R. 7 C.P. 525; 27 L.T. 348.

(15) *Preston Corp. v. Biornstad*, [1898] A.C. 513.

(16) *The Robert Dixon* (1879), 5 P.D. 54; 42 L.T. 344, distinguished.

(17) *Ruddock v. Lowe* (1865), 4 F. & F. 519; 176 E.R. 672.

(18) *Shiells v. Blackburne* (1789), 1 H. Bl. 159; 126 E.R. 94.

(19) *Vaughan v. Taff Vale Ry. Co.* (1860), 5 H. & N. 679; 157 E.R. 1351.

(20) *The West Cock*, [1911] P. 208; (1911), 104 L.T. 736, distinguished.

(21) *Wilson v. Brett* (1843), 11 M. & W. 113; 152 E.R. 737.

Beoku-Betts for the plaintiff.

TEW, C.J.:

The plaintiff is the owner of the motor launch "Wilmac" which was sunk in the Sherbro River on October 30th, 1928 as the result of a collision with the motor vessel "Kite" owned by the defendants. Two days later the defendants' agent, Minall, made an attempt to salve the "Wilmac" and tow her to Bonthe; but the attempt failed and the "Wilmac" sank in deep water and was lost.

The plaintiff claims the sum of £500: £350 for the value of the "Wilmac" and £150 in respect of the loss of the use of the launch.

The plaintiff has delivered particulars of the alleged negligence of the defendants in (a) allowing the "Kite" to collide with the "Wilmac"; and (b) in allowing the "Wilmac" to founder while being towed. The particulars under these two heads are as follows:

(a) 1. The defendants were driving the said motor launch at an excessive speed.

2. The defendants drove their motor launch out of the usual channel in the river on to the motor launch of the plaintiff.

3. The defendants did not sound any horn or give any warning of the approach of their launch.

4. The motor launch of the defendants did not carry sufficient light.

(b) 1. The defendants did not use the necessary skill in floating or towing the boat of the plaintiff.

2. The defendants did not use proper implements for floating or towing the boat of the plaintiff.

3. The defendants did not use sufficiently strong rope for towing the boat of the plaintiff.

At the trial the plaintiff's counsel did not rely upon particulars 3 and 4 under (a).

The collision between the two vessels occurred about 7 p.m. on October 30th, 1928, between York Island and Bonthe, when the "Wilmac" was proceeding towards Bonthe and the "Kite" in the opposite direction. As might be expected after the lapse of more than two years, the evidence as to the collision is very conflicting and frequently obscure. The difficulty of arriving at a decision is enhanced by the fact that the court had not the advantage of a chart on a large scale, or of any expert evidence as to the width of the channel, or the customary method of navigation in the Sherbro River, or indeed on most of the material points.

Again, there were in 1928 no local rules providing either for the course to be taken by vessels meeting at night, or for the lights to be exhibited by a vessel at night. It was not until last year, when the Ports and Inland Waters Ordinance, 1930 was enacted, that any ordinance existed under which such rules could be made.

[The learned Chief Justice then reviewed the conflicting evidence as to the causes of the collision and found that there had been no negligence on the part of the "Kite," since it was the "Wilmac," apparently carrying no lights, who had left her course on her side of the river and had crossed the bows of the "Kite," and that the "Kite," carrying plenty of lights, had not been negligent in proceeding at full speed at that particular place of the river. The learned Chief Justice continued:]

The question whether the defendants were negligent in their attempt to salve the "Wilmac" is even more difficult to determine

and partly for the same reasons. There is an entire lack of really expert evidence, and it is probable that counsel, the court and the witnesses were all almost equally unfamiliar with the technical details of a salvage operation. It was argued for the plaintiff that the mere fact that the "Wilmac" sank during the course of the operations raised a presumption of negligence on the part of the defendants and put upon them the onus of disproving the negligence. Whether such an inference arises in any particular case must be decided on the facts of that case: see *Broom's Legal Maxims*, 8th ed., at 224 (1911); and in this case I do not think that the mere fact that the "Wilmac" sank while being towed by the defendants gives rise to that inference. The plaintiff's counsel referred to several cases of towage to which the maxim *res ipsa loquitur* had been held to apply: for example, *The Maréchal Suchet* (11) ([1911] P. at 12; 103 L.T. at 851), *The West Cock* (20) ([1911] P. at 224; 104 L.T. at 743), and *The Robert Dixon* (16) (5 P.D. at 57; 42 L.T. at 344). In all these cases there was a contract of towage by a tug presumably efficient and well equipped and capable of performing the contract without danger to the tow; and therefore, if the tow was damaged, it was reasonable to presume negligence on the part of the tug and it was for the owners of the tug to rebut that presumption. Here the facts were very different. The "Wilmac" had been sunk in a collision the responsibility for which had not then been determined, and the fact that she sank again while being towed might be due just as well to her own defects as to the fault of the defendants. This point, however, in this particular case is not one of any practical importance, as the evidence is all that of the defendants' witnesses, and this court has to decide on that evidence, as tested by cross-examination, whether the defendants were negligent or not.

It will be convenient here to refer to the defendants' pleading that they lent their vessels, men and implements to the plaintiff at his request to enable him to salve his launch. The evidence does not support this pleading in any particular; all the work was done by the defendants themselves, and the plaintiff had no hand in it at all.

The defendants, through their agent, undertook to attempt to salve the "Wilmac" without reward. The question for determination therefore is twofold: First, what degree of care were the defendants bound to exercise? Secondly, did they exercise the

requisite degree of care? The principle governing the matter is laid down in 21 *Halsbury's Laws of England*, 1st ed., at 374, para. 641 in the following terms:

> "Where a person, not professing to be skilled in the particular matter, undertakes to do an act for another, without reward, he is only bound to exercise honestly that care which he, as an ordinarily prudent man, would exercise if acting for himself. He is not to be held liable for a mistake, or for an error of judgment, which a reasonably prudent man might commit, or for mere non-success."

It has sometimes been said that a person performing a gratuitous service is responsible only for "gross negligence." This term was described by Rolfe, B. in *Wilson* v. *Brett* (21) as the same thing as negligence "with the addition of a vituperative epithet," but was employed by Lord Chelmsford in *Moffatt* v. *Bateman* (12) (L.R. 3 P.C. at 122; 16 E.R. at 768) as "a term which is sufficiently descriptive of the degree of negligence which renders a person performing a gratuitous service for another, responsible." I may also refer here to the *dictum* of Willes, J. in *Lord* v. *Midland Ry. Co.* (10) (L.R. 2 C.P. at 344): "The term 'gross negligence' is applied to the case of a gratuitous bailee who is not liable unless he fails to exercise the degree of skill which he possesses." [These words do not appear in the report of the case at 15 L.T. 576.] In *Shiells* v. *Blackburne* (18) the defendant, having undertaken voluntarily to enter a parcel of goods for export together with a parcel of his own, had made a mistake which resulted in both parcels being seized by the customs authorities. It was held that, as the defendant had received no reward and was not of a profession which implied the possession of skill in the particular service, he was not liable. It would have been otherwise if the defendant had, for example, been a clerk in the customs house, because his position would have implied "a competent degree of knowledge" in the making of such entries. In *Beal* v. *South Devon Ry.* (3) Crompton, J. said:

> ". . .[F]or all practical purposes the rule may be stated to be, that the failure to exercise reasonable care, skill and diligence is gross negligence. What is reasonable varies in the case of a gratuitous bailee and that of a bailee for hire. From the former is reasonably expected such care and diligence as persons ordinarily use in their own affairs, and such skill as

> he has. From the latter is reasonably expected care and diligence, such as are exercised in the ordinary and proper course of similar business, and such skill as he ought to have, namely the skill usual and requisite in the business for which he receives payment."

In *Grill* v. *General Iron Screw Collier Co.* (6) (L.R. 1 C.P. at 612; 14 L.T. at 715) Willes, J. said: "Confusion has arisen from regarding negligence as a positive instead of a negative word. It is really the absence of such care as it was the duty of the defendant to use." Similarly in *Vaughan* v. *Taff Vale Ry. Co.* (19) the same learned judge defined negligence as "the absence of care, according to the circumstances."

These are some of the leading authorities on the subject of the degree of care required from a person who undertakes a gratuitous service, and the facts of this case must be reviewed in the light of those authorities. But before proceeding to an examination of the facts, I have to consider an argument addressed to me by the plaintiff's counsel which is based on a *dictum* in 21 *Halsbury's Laws of England*, 1st ed., at 369, para. 634 that — "a man should not. . . undertake to do a work of skill unless he is fitted for it, and it is his duty to know whether he is so fitted or not." Mr. Betts argued that the work of salving and towing a vessel is a work of skill, and that Mr. Minall, not being an expert in such matters, should not have undertaken this work, and that his failure to perform it successfully is evidence of negligence for which the defendants are liable.

This question is discussed in *Beven on Negligence*, 4th ed., at 1321—1325 (1928) and the authorities referred to there are much the same as those cited in support of the *dictum* quoted above from *Halsbury*. *Beven* expresses the proposition thus: "A person holding himself out to do certain work, impliedly warrants his possession of skill reasonably competent for its performance. If he have not that skill he is liable as for negligence."

An examination of the authorities shows that in all the cases, not only was the work done for reward, but also the person adjudged negligent had held himself out as possessing skill in the particular work. In *Duncan* v. *Blundell* (5) the plaintiff had erected a stove which had failed in its object and sued his employer for work and labour done. In nonsuiting the plaintiff Bayley, J. said (3 Stark. at 7; 171 E.R. at 749): "Where a person is employed in a work of skill. . . he ought not to undertake the

work if it cannot succeed, and he should know whether it will or not." *Ruddock* v. *Lowe* (17) was a case of a person not qualified as a doctor undertaking for reward to treat a patient for disease, and *Jones* v. *Fay* (9) was a similar case of a chemist who undertook what was really a doctor's work. In *Jenkins* v. *Betham* (8) some country surveyors had undertaken work in connection with ecclesiastical dilapidations which required some knowledge of the branch of the law affecting such matters, and the court held that they might properly be expected to be familiar with the broad principles of the law. But in *Pappa* v. *Rose* (14) it was held, distinguishing *Jenkins* v. *Betham*, that where a broker had been employed as a sort of arbitrator to decide on the quality of some goods, there was no obligation to him to exercise any degree of skill, provided that he acted to the best of his judgment. Lastly, there is the case, cited by the plaintiff's counsel, of *Preston Corp.* v. *Biornstad* (15) where the appellants, who had undertaken a contract of towage under statutory authority, were held liable for damage caused to a vessel under tow by lack of reasonable care and skill on their part.

In none of these cases does the principle laid down seem to me to apply to the facts of this case. Here the service attempted was purely voluntary, whatever may have been the motives which prompted the offer. Mr. Minall never held himself out as possessing special skill in salving or towing vessels. The plaintiff knew exactly what was Mr. Minall's ordinary occupation, and was content to allow him to make the attempt. Can he now turn round and say "You ought never to have made the attempt, because you did not possess the requisite knowledge of a highly technical operation, and you must therefore compensate me because your attempt was unsuccessful?" Such an argument in my opinion has nothing either in law or in common sense to commend it.

The evidence as to the conduct of the salvage and towing operations is that of Minall, of Mosquito and Caulker, captain and engineer of the "Kite" respectively, and of Jones, the Super Cargo of the "Kite." It appears that on the day after the collision Minall sent a lighter and the launch "Swift" to try to float the "Wilmac." He says that Stott, his European assistant, who is not now in Sierra Leone, was in charge of the operations, and that he himself does not know what was done that day, except that the attempt was unsuccessful. Stott, he says, had no training in such matters, but had once assisted him to raise a launch that had been sunk near the wharf at York Island. Jones says that on that day he saw

Minall and Stott leave for York Island with a lighter, the "Kite" and the "Swift"; that they subsequently came back in the "Swift"; and that he was then ordered by the beachmaster, Lowe, to "go and see what the boys were doing." He went to the scene in the "Swift" and gave orders to the people who were working. That day the "Wilmac" was moved about 20 yds. and then all three vessels returned to York Island. The evidence of this witness is as unsatisfactory on this point as on others. He is directly contradicted, both by Minall, who says that only the lighter and the "Swift" were ordered to go that day and that he himself stayed behind, and by Mosquito, who says that he did not take the "Kite" there, but saw the lighter and the "Swift" proceeding in that direction. But, however that may be, it is quite clear that Minall adopted a very casual attitude in the matter that day. By his own admission that he does not know what happened, it seems certain that he never received a detailed report of what had been done and it is possible that Stott did not visit the "Wilmac" at all that day, even though he may have been ordered to do so. Surely it was the duty of Minall, as a prudent and sensible man, to see that any attempt to salve the "Wilmac" was conducted in the way most likely to ensure success. He was in charge of the defendants' affairs and, having been in the Navy as a seaman for three and a half years, he was obviously the person best qualified to superintend the salvage operations; yet he remained at York Island that day and entrusted the conduct of the operations to a subordinate. Would he have been equally indifferent if the "Wilmac" had belonged to his own company? I think the answer must be in the negative.

[The learned Chief Justice then reviewed the evidence as to the events of the following day when a further attempt was made to salve the "Wilmac," an attempt that was, after several mishaps, finally abandoned and the "Wilmac" was allowed to sink. The learned Chief Justice continued:]

Now up to this point on that day I am of opinion that all reasonable care had been exercised by the defendants. The towing ropes had to be attached under water — work which could only be done by the Africans — and I do not think that, in selecting the parts to which to attach them, these men showed any lack of care. Minall has given it as his opinion that, if these parts had held as they should, the "Wilmac" could have been towed to Bonthe quite safely, and I see no reason to disbelieve that. But I am by

no means satisfied that the attempt should have been abandoned at the time when Stott gave the order to cut the rope. Minall stated that, but for the strength of the adverse current, he could have towed the "Wilmac" to a bank about 200 yds. away and beached her. The river is tidal and there is a rise and fall of six to eight feet. Could nothing have been done to keep the "Wilmac" afloat until the tide turned? There may be reasons why it was impossible. If so, they are not apparent to the lay mind, and there is no expert advice available. Again, the question occurs, would the same course have been adopted if the "Wilmac" had been the property of the defendants? And again the answer must be in the negative. In my opinion there was lack of reasonable care in this matter on each of the days on which the attempt was made. On the first occasion Minall, the person in the responsible position, gave no personal attention to the matter, and it is impossible to say that the first attempt may not have left the "Wilmac" in a worse state and thus endangered the success of the second. As to the second occasion, I can only repeat my opinion that it was unreasonable to abandon the effort to save the "Wilmac" merely because at that time she could not be towed against the current. My conclusion is that the defendants have been guilty of negligence and must therefore compensate the plaintiff for his loss.

The evidence as to the value of the "Wilmac" at the time of her loss is naturally conflicting. It is proved that the plaintiff bought her for £25 and paid £15 to a carpenter named Campbell for repairs to her hull. He says that he bought her only two or three months before she was sunk, but on this point he is contradicted by his own witnesses. He estimates that he spent £300 in putting her into good condition, including an expenditure of about £140 on spare parts for the engine. He had no record of any expenditure and was loath to supply details, but under pressure gave details of expenditure on copper, oakum, nails and corrugated iron amounting to about £30. He says that he also paid £9 for repairs to the engine when he bought the launch and £3 for fitting spare parts which he procured from America. Mr. Minall's estimate of the cost of the materials required for the hull of a launch of the size of the "Wilmac" is less than half that of the plaintiff.

It can safely be said at the outset that the plaintiff's evidence as to his expenditure on spare parts for his engine is absolutely unworthy of credit, and that he has deliberately attempted to deceive the court. He produced a statement of account rendered

by a firm in New York showing that on October 15th, 1928 goods to the value of $104 were supplied to him on invoice No. 3709. He also had in his possession a credit note from the same firm dated October 31st, 1929 for $99 in respect of spare parts charged on invoice No. 3709 and returned, and a debit note of the same date for $31 on account of expenses incurred in connection with the return of that same case of spare parts. He swore that he had had two previous invoices for spare parts which had all been fitted on the "Wilmac," and that he had lost these invoices. He could give no details of the cost of those parts, and I do not believe for a moment that he ever bought them. I believe also that his estimate of expenditure altogether is grossly exaggerated. Nobody in his senses would spend £300 on a launch which was only worth £25 when he bought it. He would be far more likely, especially if he were an African, to put the launch into some kind of running order at as low a cost as possible and run her in that condition as long as she would hold together. Taking the mean between Minall's estimate of the value of materials and the plaintiff's, and conceding that some repairs were done to the engines, I assess the value of the launch at the time of her loss at £70.

The final question for decision is what amount, if any, the plaintiff ought to receive in respect of the loss of use of the "Wilmac." On the summons he claims £500 in all, and in the statement of claim £350 for the launch itself and an unascertained amount for loss of use at the rate of three guineas a day as from October 30th, 1928. What period is supposed to be covered by the second part of the claim is left absolutely uncertain; but the amount is impliedly limited to £150 and the period therefore cannot be more than 48 days. This is by no means an unreasonable period to enable the plaintiff to obtain another launch.

Whether the plaintiff is entitled to be compensated for the loss of the use of his launch is a very difficult question. In *Beven on Negligence*, 4th ed., at 113 (1928) the principle is stated thus:

> "The primary measure of damages then, whether in contract or tort, in Admiralty or at common law, is the amount of the party's loss, and this loss may be analysed into two components — actual outlay and anticipated profits. But the anticipation of profits must not be too sanguine."

The learned author then cites the case, which was relied on here by the defendants' counsel, of *The Anselma de Larrinaga* (1) in which it was held by Bargrave Deane, J. that the owners of a

trawler sunk in a collision could not recover from the owners of the wrong-doing vessel the loss of the profits which they might have made by fishing during the period which was reasonably necessary for the obtaining of a new vessel. The reason for this decision was that it was impossible to estimate with any certainty what profits, if any at all, would have been earned — in other words, that the damages were too speculative. This case, decided in 1913, has not been overruled and is still an authority; and I have to consider whether the principle is applicable to the present case. In *H.M.S. Inflexible* (7) damages for loss of profits were awarded to an East Indiaman injured in collision with a warship. In *The Argentino* (2) the House of Lords, affirming the decision of the Court of Appeal, held that a vessel injured in a collision could recover damages in respect of loss of earnings in an engagement which had been arranged for before the collision. Lord Herschell, however, in whose judgment the other Lords concurred, went further than that and expressed the opinion that, had no previous engagement been arranged, it would have been right, and the usual course, to award damages "in respect of the loss of earnings which it must reasonably have been anticipated would ensue during the time of detention" (14 App. Cas. at 523—524; 61 L.T. at 708). A similar opinion had been expressed in the Court of Appeal by Bowen and Lindley, L.JJ., whose joint judgment was adopted entirely by Lord FitzGerald in the House of Lords, in language so lucid and forcible that I think it desirable to quote it at some length. It runs thus (13 P.D. at 201—202; 59 L.T. at 917):

> "A collision at sea caused by the negligence of an offending vessel is a mere tort, and we have only therefore to consider what has been in the particular case its direct and natural consequence. This consequence (in the case of an innocent ship which is disabled by an accident) is that its owner loses for a time the use which he otherwise would have had of his vessel. There is no difference in principle between such a loss and the loss which the owner of a serviceable threshing-machine suffers from an injury which incapacitates the machine, or the loss which a workman suffers who is prevented from earning money by the wrongful detention of plant which cannot at once be replaced. A ship is a thing by the use of which money may be ordinarily earned, and the only question in case of a collision seems to me to be, what is the use which the shipowner would, but for the accident,

> have had of his ship, and what (excluding the element of uncertain and speculative and special profits) the shipowner, but for the accident, would have earned by the use of her. It is on this principle alone that it is habitual to allow in ordinary cases damages for the time during which the vessel is laid up under repair in addition to the cost of the repairs themselves. But this is merely an application of the general principle, and is not the measure in all cases of the loss. It might conceivably, upon the one hand, be the fact that the damaged ship would not and could not have earned anything at all while laid up for repairs, though such a case must necessarily be exceptional. In such circumstances nothing ought to be allowed for demurrage. Upon the other hand the direct consequence of the accident might be that the injured vessel was necessarily thrown out of her employment, not merely during the period of repair, but for a longer period still. In such a case the loss could not properly be measured by the time taken in repairs alone."

There are decisions in the books to the contrary effect, such as *The Clarence* (4) and *The Notting Hill* (13); but there is no such authoritative case as that of *The Argentino*. Each case must of course be decided on the evidence adduced, and it may well be that in the cases in which loss of profits was held to be too speculative or remote as a measure of damages, the court was not satisfied that any profits could with certainty be said to have been earned by the injured vessel in similar circumstances at other times. In this particular case the plaintiff has sworn that he used the "Wilmac" continuously for carrying produce for reward, and it has not been suggested that that was not so. I cannot think that it is a case in which damages for loss of use of the launch should be regarded as too remote.

The plaintiff estimates his daily profit at 3gns., that being the average amount at which he used to let the "Wilmac" out on hire. Mr. Minall agrees with that figure, but says that the net profit would not be more than £1 a day. In the absence of any other evidence, and allowing for a conservative estimate by Mr. Minall, I fix the amount due to the plaintiff under this head at £60, that is, 25s. a day for 48 days.

There will be judgment for the plaintiff for £130 with costs.

Judgment for the plaintiff.