succession." And in section 34 the word "contributor" is used throughout the section, the words "member of the Faculty" never, while the phrase "widow or children of such contributor" frequently occurs. It is clear therefore that under all the sections the essential fact which must be proved in order to entitle a widow, or a child, to an annuity is, that the husband of the widow, or father of the child, must have been a contributor at the date of his death, unless he had already redeemed or paid his contribution for forty years. These are the only exceptions. In the face of the clear provisions of sections 9 and 16, which have already been quoted, I think the words "widows of deceased members of the Faculty," or words of the like kind, may, when used in the three sections above mentioned, well be held to mean the widows of men who were members of the Faculty, and who consequently became contributors, but subsequently ceased to be members of that Faculty but continued to be contributors, so that one is not constrained to adopt a construction which, at all events in the case of men who have paid their contributions for forty years or who redeemed them and thus purchased the benefits provided for their widows and children, if not in the case of others, would work the most gross injustice. Neither will this construction prejudice the interest of the Faculty or of the Society, while in my view it reconciles the several sections of the Statute of 1833, and makes them consistent with each other. If it be the correct construction, as it appears to me to be, then I think Colquhoun has not forfeited his interest in the fund as the respondents were not justified in the course they took. The decision of the First Division was wrong and should be reversed, and this appeal allowed with costs.

LORD COLLINS—At the close of the first hearing I arrived at the conclusion that the decision of the Court below was right. Afterwards, I had the opportunity of reading in print the opinion of Lord Robertson. I did not attempt the superfluous task of trying to modify or improve upon that opinion, for I frankly felt that I could not. Since then the case has been re-argued, and I am bound to say that the re-argument tended to confirm my original opinion. Since then, again, that opinion has been re-enforced by that of my noble and learned friend Lord Halsbury, with the result that, with all deference to those who hold the opposite view, I am compelled to give my opinion that the judgment of the Court below is right, and that this appeal ought to be dismissed.

LORD CHANCELLOR—As the majority of your Lordships are in favour of allowing this appeal, I shall propose the following Order—"That the minute or resolution of the 4th February 1901 be reduced, and that it be found and declared as concluded for." I apprehend if any question arises in the drawing-up of this Order, the parties will settle it themselves. Failing that it will be possible to submit it for your Lordships' consideration.

Their Lordships reversed the order dismissing the action, reduced the minute or resolution of the Society dated 4th February 1901, and declared as concluded for, with expenses.

Counsel for the Appellants (Pursuers and Reclaimers)—Macmillan—Maitland. Agents—J. Gordon Mason, S.S.C., Edinburgh—A. & W. Beveridge, Westminster.

Counsel for the Respondents (Defenders and Respondents)—Sir Robert Finlay, K.C. — Hunter, K.C. — Hon. Wm. Watson. Agents—Webster, Will, & Co., S.S.C., Edinburgh—Grahames, Currey, & Spens, Westminster.

COURT OF SESSION.

Tuesday, February 25.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

CLAN STEAM TRAWLING COMPANY, LIMITED, AND OTHERS *v.* ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED.

Ship—Salvage — Services Rendered in Respect of Obligation Contained in Contract of Insurance.

Services rendered by one vessel to another in distress are "salvage services" conferring a right to salvage remuneration only where rendered spontaneously and voluntarily, and not in respect of any duty, official or contractual, resting on the vessel rendering the services.

Under the policies of an insurance company the owners of vessels insured contracted that "ships insured in this company shall give assistance to any steamer broken down or in distress which is insured in this company" or other companies specified. *Held* that services rendered by one steamer insured in the company to another distressed steamer insured in the same company were not "salvage services," inasmuch as they were rendered in fulfilment of the obligation contained in the contract of insurance, and that accordingly the owners of the steamer rendering the services were not entitled to salvage remuneration.

On 13th June 1907 the "Clan Grant," owned by the Clan Steam Trawling Company, Limited, rendered assistance to the "Strathclyde," owned by the Aberdeen Steam Trawling and Fishing Company, Limited, ashore and in distress near Duncansby Head.

In October 1907 the Clan Steam Trawling Company, Limited, and the members of the

crew of the "Clan Grant" brought an action against the Aberdeen Steam Trawling and Fishing Company, Limited, in which they sued for "£500 sterling, or such other sum, more or less, as may be found in the course of the process to follow hereon to be the aggregate amount of salvage payable in respect of the salvage services" specified in the condescendence.

The defenders admitted their liability as regarded the members of the crew of the "Clan Grant," but denied it as regarded the owners, founding on the terms of their policy of insurance.

The "Clan Grant" and the "Strathclyde" were both insured with the Aberdeen Mutual Steamship and Trawlers' Insurance Company. The policies of insurance of the company contained the following clauses:—"And it is agreed that this writing or policy of insurance shall be of as much force and effect as the surest writing or policy of insurance heretofore made in Lombard Street or in the Royal Exchange or elsewhere in London, and is and shall be upon the principle that while the contracts of insurance are contracts with the company, the premiums, or contributions of the nature of premiums, payable in respect of the insurances are to be calculated according to the losses by way of mutual incurance. . . . And it is mutually agreed between the assured and the assurers that the articles of association of the assurers' company and the rules of the company shall be deemed part hereof, and be binding upon the assured and assurers as fully and effectually to all intents and purposes as if such articles were inserted in this policy, and in any breach thereof will invalidate the same."

The articles of association of the insurance company contained the following provisions:—"3. Every person who insures on behalf of himself or any other person any ship, or share or shares of a ship, in pursuance of the regulations hereinafter contained shall, as from the date of the commencement of such insurance, be deemed to have become a member of the company. . . . 9. The classes into which the members are divided, and the rights and obligations of the members of each class, shall be further defined by rules, and every member shall be deemed to accept and agree to be bound by the rules for the time being in force relating to the class of which he is a member. . . ."

The rules contained the following provisions:—"2. The company will insure steamships . . . upon the principle that while the contracts of insurance are to be contracts with the company, the premiums or payments in the nature of premiums (hereinafter called 'contributions') payable in respect of the insurances are to be calculated according to the losses upon the same basis as if the assured were mutual insurers, an entrance fee and contributions towards the current expenses of the company being payable, and allowances being made in respect of each insurance according to the articles and rules for the time being of the company. . . . 25. The company shall contribute towards any charges or expenses properly paid or incurred by any member for assistance rendered to any ship insured in the company such proportion of the total amount of such charges and expenses as the sum insured bears to the value of the ship as declared in the policy. 30. Ships insured in this company shall give assistance to any steamer broken down or in distress which is insured either in this company or in the Total Loss Mutual Steamship Insurance Company (Sunderland), or the United Kingdom Steam Tug and Trawler Insurance and Indemnity Association (Shields), or any other association with which an agreement is or may be entered into. . . . 32. The funds required for the payment of claims shall be raised by contributions from all the members in the following manner, viz.—All claims for total loss, damage done, and general average, and for particular average, shall be assessed on the capital at risk in each class respectively on the dates of such claims arising. The members of each class shall contribute only to the insurance claims of vessels insured in that class."

The following excerpt is taken from the rules of the Total Loss Mutual Steamship Insurance Company:—"92. Steamers insured in this Association bind themselves to give assistance to any vessel broken down or in distress insured in this Association or in the Associations of the United Kingdom Steam Tug and Trawlers Insurance and Indemnity Association (North Shields), Tyne Steam Tug Towing Mutual (Shields), Percy Mutual (Newcastle), Forth and North Sea Steamboat Mutual (Leith), it having been arranged that the vessels in these Associations shall be bound to like conditions, and that the compensation for services rendered be decided and determined by the committees of the Association or Associations in which the vessels were insured."

The following pleas were stated, *inter alia*:—For the pursuers—"(1) The pursuers having salved the defenders' ship, they are entitled to salvage from the defenders. (3) The conditions of the policies of insurance and rules of said insurance company libelled not excluding claims for remuneration for salvage services, the defenders' plea in bar of the pursuers' right to claim salvage should be repelled."

For the defenders—"(1) The pursuers, the Clan Steam Trawling Company, Limited, being under pre-existing obligation to render the services in question to the 'Strathclyde,' are not entitled to salvage, and the defenders are entitled to absolvitor *quoad* the claims of these pursuers, with expenses."

The Lord Ordinary (SALVESEN) on 7th January 1908 pronounced the following interlocutor:—"Repels the first plea-in-law for the defenders, and allows to the parties a proof of their respective averments, and to the pursuers a conjunct probation."

Opinion.—"The pursuers in this action are the owners, officers, and crew of the steam trawler 'Clan Grant'; and they seek to recover a sum of £500 in respect of salvage services rendered to the defenders' vessel 'Strathclyde.' It is not disputed

that the facts averred disclose a relevant case for compensation as for salvage services; and the defenders on record state that they are willing to pay reasonable compensation to the officers and crew of the 'Clan Grant.' They plead, however, that the owners' claim is excluded because they were under a pre-existing obligation to render the services in question to the 'Strathclyde'; and it was this matter alone which was the subject of discussion in the procedure roll.

"The pre-existing obligation in question is derived from the rules of the Aberdeen Mutual Steamship and Trawlers Insurance Company, with which company both the 'Clan Grant' and the 'Strathclyde' were insured." . . . [*His Lordship quoted articles* 3 *and* 9 *of the articles of association and article* 30 *of the rules.*] . . . "Appealing to this rule, the defenders say that the owners of the 'Clan Grant' were under a general obligation to render salvage services to any vessel in distress insured in the same company; and that the claim for salvage services as distinguished from a claim for actual loss incurred in rendering the services is accordingly barred.

"The authority relied on in support of this proposition was a decision of Lord Stowell in the case of the '*Zephyr*,' 2 Hagg. 43; and undoubtedly if the rubric is to be read as laying down an absolute rule on the subject apart from the special circumstances in which the question arose it supports the defenders' contention. In that case two vessels had agreed to sail as consorts, and to render to each other mutual assistance. In the course of the voyage one of the vessels rendered certain services to the other by standing by for several days; but these services were held in fact, as I read the decision, not to be such as would found a salvage claim. This was obviously a sufficient ground for dismissing the action. But the learned Judge prefaced his judgment with some observations in which he indicated that the claim would, in any event, have been barred by the mutual agreement to which I have referred. The case, however, was a very special one, and does not in my opinion support the general proposition that where the owners of two vessels have agreed to give assistance to each other if broken down or in distress no claim for remuneration as for salvage can ever arise. In the case of the '*Zephyr*' it must be held to have been implied in the agreement that such services as were actually rendered were to be mutually given by the vessels concerned without remuneration; and it is material to a proper understanding of the case that the Court held that the services which were the subject of the action were not salvage services at all.

"The defenders also referred to the case of '*Harriot*' 1 W. Robb 439; the '*Marie Jane*,' 14 Ju. 857; and the '*Sappho*,' L.R., 3 P.C. 690. In the last of these cases it was decided that when salvage services are performed by one ship to another belonging to the same owners the master and crew of the salving ship are entitled to salvage remuneration although no claim will lie at the instance of the owners. The decision therefore does not touch the present case; and it does not appear to me that the observations made by Lord Justice Mellish in delivering the judgment of the Court have any bearing upon the question at issue here. Nor does there appear to me to be any analogy between the case of seamen who render services connected with the saving of their own ship and the case of shipowners who are not otherwise connected than that both their vessels are insured in the same company rendering services to each other's vessels. In my opinion, therefore, there is no law to the effect that a pre-existing obligation constituted by an agreement between two shipowners to render salvage services to each other's ship operates in all cases as a bar to a claim for compensation. Such an agreement really does not add very much to the moral obligation which every ship is under to give assistance where possible to another ship that is in distress.

"I do not affirm that shipowners may not by agreement bar themselves from any claim for salvage remuneration in respect of services rendered to each other's property. Such an agreement might conceivably be objected to as being contrary to public policy. But assuming its validity I think it must be clear from the agreement that the rendering of assistance to a vessel in distress shall not found a claim for remuneration. The right to obtain salvage remuneration is one very much favoured in the law, and therefore cannot be excluded unless by express words or by very clear implication from the language used. Rule 30 contains no express exclusion of such a claim, and it does not appear to me that there is any implication at all that it should be excluded. If the question had arisen with a vessel belonging to The Total Loss Mutual Steamship Insurance Company of Sunderland, I find, from the rules of that association (Rule 92), that compensation would have been claimable, although the amount would require to be fixed by the committees of the associations in which the vessels were insured, and not by the ordinary tribunals of the country. The defenders here say that they are willing to pay the owners of the 'Clan Grant' any outlay they have incurred or any damage they have sustained in connection with the services rendered, and that it has been the practice of the insurance company to meet such claims. If their argument, however, is good for anything, I think they must maintain that even such a claim is barred by Rule 30. It is possible to read into Rule 30 an implication that no compensation shall be allowed for assistance given in terms of that rule, but I cannot understand on what principle compensation should be limited to those cases where loss or outlay has been incurred in rendering services. A similar question was mooted, although not decided, in the case of the '*Margery*' P.D., 1902, p. 157, but it was not necessary to arrive at any decision on the point now at issue because the

owners of the salving vessel were not parties to the suit but were content with the award of compensation which the committee of the Sunderland Association had made in their favour. Without, therefore, expressing any opinion as to the validity of a bargain between the members of a mutual assurance company that their vessels should mutually render assistance on the footing of not being remunerated for their services, however meritorious, I reach the conclusion that the present claim is not barred, because there is nothing in the agreement to exclude the right of the salvor to receive the remuneration for his services which the law gives him. I shall therefore repel the first plea-in-law for the defenders and allow parties a proof of their respective averments."

The defenders reclaimed, and argued—Services rendered by one vessel to another in distress were only salvage services if rendered voluntarily — "*The Neptune*," 1824, 1 Hag. Adm. Rep. 227, Lord Stowell at 236; "*The Zephyr*," 1827, 2 Hag. Adm. Rep. 43; "*The Calypso*," 1828, 2 Hag. Adm. Rep., Sir Christopher Robinson at 217; "*The Solway Prince*" [1896] P. 120, see especially Sir F. H. Jeune at 127; "*The Sappho*" 1871, L.R., 3 P.C.A. 690; "*The Harriot*," 1842, 1 W. Robinson Adm. Reps. 439; Abbott's Law of Merchant Ships and Seamen, 14th edition, p. 965; Kennedy on the Law of Civil Salvage, pp. 2, 71, 84, 97; Maclachlan's Law of Merchant Shipping, 4th edition, pp. 642, 643; Bell's Principles, sec. 444. Here the services were not voluntary but contractual and rendered in respect of the obligation contained in the contract of insurance. Accordingly they were not salvage services, and therefore could not form the basis for a claim of salvage remuneration in a salvage action. Any remuneration to which those rendering them might be entitled must be looked for in the contract, and could only be sued for in an action under the contract. The contract, however, provided no remuneration, but in its place, *inter alia*, the valuable consideration that every other co-insurer was bound if occasion arose to render like services. Their contention was supported by the law which had been applied in tug and towage cases, where the rule was that the tug could only claim salvage remuneration for services clearly outwith the scope of the contract under which it was employed—*Akerblom* v. *Price, Potter, Walker & Company*, 7 Q.B.D. 129. It was absurd to say that there was anything in this view repugnant to public policy, for the appellant did not dispute the right of the captain and crew (who were under no contractual obligation) to salvage remuneration. The "*Margery*," [1902] P. 157, on which the respondents relied, only dealt with the right of the master and crew to salvage, which was not disputed, and in the "*Waterloo*," 1820, Dodson's Admiralty Reports, vol. ii. 433, also relied on by them, there was nothing which controverted the general principle laid down in the authorities already cited.

Argued for the respondents — Salvage might be defined as the "compensation paid for the saving of a ship or her apparel or cargo"—Abbott, 14th edition 962. The respondents had saved the ship and now claimed compensation. Such compensation was highly favoured by law, and if excluded must be excluded by the clearest and most indubitable language—The "*Waterloo*," *cit. sup.* Was the language here clear? Quite the reverse. The appellants' whole case rested on reading into sec. 30 the words "without remuneration." If intended, these words could readily have been inserted, but that some remuneration was contemplated, or at anyrate that it was not excluded, was clear from a reference to the rules of the Total Loss Mutual Steamship Insurance Company, which referred in distinct terms to "compensation" for services. The obligation contemplated in all the definitions cited by the appellants was a contractual obligation to perform services *without remuneration*. The respondents' contentions were supported by the "*Margery*," *cit. sup.* The only classes of case in which remuneration could be excluded were (*a*) where the ships were engaged upon a common enterprise—the "*Swan*," 1839, Rob. Adm. Cases 68, Dr Lushington at p. 70; "*The Zephyr*," *cit. sup.*; "*The Sappho*," *cit. sup.*, per Mellish, L.J., 693; "*The Harriot*," *cit. sup.*—or (*b*) where the salvor stood in some particular relation of duty to the vessel salved (as to crew see Lord Stowell in "*Neptune*," *cit. sup.*; as to tug and pilot, *Akerblom* v. *Price, Potter, Walker & Company*, *cit. sup.*). It would be against public policy to uphold the view maintained by the reclaimers.

At advising—

LORD JUSTICE-CLERK—At the hearing of this case I formed a fairly decided opinion that this reclaiming note must be successful, and a subsequent investigation of the authorities to be found in previous decisions confirmed my view as taken at first. I agree with the Lord Ordinary that "salvage remuneration" is very much favoured in the law, but he seems to me to err in holding that this is a case of salvage. It does not appear to me that the services rendered by the "Clan Grant" to the "Strathclyde" fall under the description of salvage services. The whole tone of the authorities is to be found in the expression "voluntary." Services to be rendered by one vessel to another in distress are services for which salvage is exigible when the service is not a service of contract or obligation, but is a service which those rendering it could refuse to render without committing any breach of contract or duty undertaken as matter of obligation. It is of course true that there is a duty in the sense of the moral law to render succour as far as may be possible to those in distress at sea. This moral obligation applies on land as well as on sea, and its force as a moral obligation is only greater in the case of sea perils because these are in the general case more

clamant in their call for aid because of their exceptionally dangerous character. But this is an obligation which applies not to seafaring matters only but to all circumstances in which the citizen can by timely assistance save others from danger; and even that obligation can hardly be held to exist as regards saving of corporeal subjects. It applies only to persons. But whatever be the extent of it, it is plainly not an obligation in law. Its non-fulfilment cannot be visited with either public official censure or give claim in civil suit in respect of failure. Salvage in its true sense is suitable reward for services voluntarily rendered in circumstances where by the services offered on the one hand and accepted on the other there is saving of what otherwise was in risk of perishing or being lost.

It seems to me quite clear that the word "salvage" does not apply to services which those rendering them had by contract undertaken to render.

Here in this case the insurance conditions were that the vessels mutually insured gave as part of the consideration for the insurance an obligation to render assistance to vessels mutually insured with them. It may be taken to be quite certain that this obligation was as much a part of the premium of insurance as the money paid by the insurer. Each insured bargained for the assistance of the others, and undertook to render assistance to the others when any two vessels came to be the one in the position of being a vessel in distress and the other a vessel able to render assistance. It was a perfectly intelligible and efficient contract for benefit which the one had a right to claim and the other had contracted to give.

That being so, I have without hesitation come to the conclusion that the defenders' plea-in-law which the Lord Ordinary has repelled should be sustained. I do not think it necessary to go over the authorities in detail. I have had an opportunity of perusing an opinion of Lord Ardwall which reviews these authorities very fully, and in which I concur.

Accordingly I would move your Lordships to recal the interlocutor of the Lord Ordinary, to sustain the first plea-in-law for the defenders, and to grant absolvitor from the claim for salvage. The defenders are willing to meet such charges as may be necessary to meet outlays and payments to officers and crew of the "Clan Grant," and the case will be remitted back to the Lord Ordinary that this matter may be disposed of.

LORD STORMONTH DARLING—Had the proof allowed by the Lord Ordinary been a proof before answer I should have been disposed to think that the inquiry might have thrown some light on the question whether the sum claimed by the owners of the "Clan Grant" was for "salvage services" as claimed in the summons. But that is not the nature of the proof, for the Lord Ordinary prefaces his allowance of it by repelling the first plea-in-law for the defenders, which distinctly tables the proposition that the owners are not entitled to salvage. Now being thus brought face to face with the question whether this claim so far as at the instance of the owners is a salvage claim at all, I have come to agree with the opinion of your Lordship and also with that which my brother Lord Ardwall is about to read.

LORD ARDWALL—This is an action raised by the Clan Steam Trawling Company, Limited, as owners of the ship "Clan Grant," and the officers and crew of the said ship, against the Aberdeen Steam Trawling and Fishing Company, Limited, the owners of the steam trawler "Strathclyde," and it concludes for payment of £500 in name of salvage in respect of "the salvage services specified in the condescendence."

It is not disputed by the defenders that if the services in respect of which the claim is made had been rendered spontaneously and voluntarily, the owners of the "Clan Grant" would have been entitled to salvage; but in their first plea-in-law they plead that the pursuers, the owners of the "Clan Grant," being under pre-existing obligation to render the services in question to the "Strathclyde," are not entitled to salvage. With regard to the claim of the officers and crew, the defenders represent themselves as being willing to pay a reasonable amount of salvage, and with regard to them the only question that remains is as to the amount to be paid.

The question that has to be decided now is whether the first plea-in-law for the defenders ought to be sustained or repelled. The Lord Ordinary repelled the plea on the ground apparently that the services rendered by the "Clan Grant" were "salvage services," and that there is nothing in the contract founded on by the defenders to exclude the claim. He expresses himself thus—"The right to obtain salvage remuneration is one very much favoured in the law, and therefore cannot be excluded except by express words or by very clear implication from the language used. Rule 30 contains no express exclusion of such a claim, and it does not appear to me that there is any implication at all that it should be excluded"; and again he says—"I reach the conclusion that the present claim is not barred, because there is nothing in the agreement to exclude the right of the salvor to receive the remuneration for his services which the law gives him."

It humbly appears to me that the Lord Ordinary has in these passages and the rest of his opinion assumed that the services rendered were salvage services, giving the pursuers a right to remuneration unless such right was barred by contract.

I cannot help thinking that the Lord Ordinary by making the assumption alluded to has failed to attend to what is implied in the term "salvage services," and that the question is not whether the pursuers have barred themselves from claiming the

salvage remuneration they are entitled to, but whether they are entitled to any salvage remuneration at all — in other words, whether their services were of the nature of "salvage services."

Now I think it clear upon the authorities that in order to entitle a person to claim salvage remuneration the services in respect of which he claims must have been spontaneously and voluntarily rendered, and not rendered in respect of any contractual or official duty resting on the person rendering them. This I think is established by a series of dicta pronounced by Judges of the greatest eminence in a variety of cases.

In the case of the "*Neptune*," (1824) 1 Hagg. p. 227, at p. 236, Lord Stowell is reported as having expressed himself as follows—"What is a salvor? A person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship." And the same noble and learned Lord in the case of the "*Zephyr*," 1827, 2 Hagg. p. 43, refused to entertain a claim of salvage for services rendered by one vessel to another where the vessels were sailing as consorts and under an agreement to render mutual assistance. And in the same volume of reports, in the case of the "*Calypso*," (1828) at p. 217, Sir Christopher Robinson, in considering an alleged distinction between civil and military salvage, expressed himself thus—"It will be found, I think, that both these forms of salvage resolve themselves into the equity of rewarding spontaneous services rendered in the protection of the lives and property of others. This is a general principle of natural equity, and it was considered as giving a cause of action in the Roman law, and from that source it was adopted by jurisdictions of this nature in the different countries of Europe." He then refers to a judgment of Sir William Wiseman, in which he refers to the Digest, lib. 3, tit. 5.

The case of the "*Waterloo*," (1820) 2 Dodson, 433, was quoted by the pursuers for certain dicta therein which they alleged to be favourable to their contention. In that case the East India Company attempted to escape liability for a claim for salvage on the ground that there was a usage and practice exempting them from payment of salvage when ships belonging to them were salved by ships in their employment. Lord Stowell, then Sir William Scott, held that no such custom or usage was proved, and in the course of his judgment said that where an exemption is claimed from a submission to a general rule, the exemption must be so set forth as to be intelligible in its extent. An indefinite claim of exemption is "rank," and other remarks to the same effect, but nowhere, as far as I read the judgment, is there anything controverting the general principle that to bring services within the category of salvage services they must be rendered voluntarily, and not in respect of any contract or official duty. The soundness of the definitions and dicta above quoted have been recognised in a variety of cases—for instance, in the *Cargo ex "Schiller,"* L.R., 2 P.D. 145, Lord Justice Brett says at p. 149—"Both cases are therefore consistent with what was said in the '*Thetis*' and the '*Neptune*,' that salvage is the service which volunteer adventurers spontaneously render to the owners in the recovery of property from loss or damage at sea under the responsibility of making restitution, and with a lien for their reward."

In the case of the "*Solway Prince*," L.R., P.D., 1896, p. 120, it was held by Sir F. H. Jeune that a contract with underwriters which was not depending on success precluded the plaintiffs from asserting a 'maritime lien' on the vessel and claiming salvage remuneration from her owners. In delivering judgment he said—"There is not, so far as I know, any direct authority in the Court of Admiralty on the point, unless it is to be found in these cases which decide that persons who perform services in themselves of a salvage nature because they are bound by a pre-existing contract or a pre-existing duty to perform them are not entitled to claim as salvors. See the '*Neptune*' and the '*Hannibal*,' L.R. 2 A. & D. 53. . . . These authorities at least illustrate the voluntary character which is held to be essential to the claim of a salvor, and they show that if work be done in pursuance of a contract other than a salvage contract it does not under ordinary circumstances give rise to a salvage claim."

The rule of these decisions is very well set forth in Lord Justice Kennedy's Treatise on Civil Salvage. On p. 2 his definition of salvage services concludes thus—"If and so far as the rendering of such services is voluntary and attributable neither to legal obligation nor to the interests of self-preservation nor to the stress of official duty;" and again he says on p. 28 of the same work — "Voluntariness on the part of the salvor is equally with danger to the thing saved an essential element in the constitution of a salvage service."

The cases in which the services of a tug or a pilot were remunerated as salvage services were referred to as detracting from the universality of the rule regarding voluntariness that I have just been considering, and in particular the case of *Akerblom* v. *Price, &c.*, L.R., 7 Q.B.D. 129, was referred to. In that case some pilots had rendered important services towards a vessel, and it was held that they were entitled to be remunerated as for salvage services, but in concluding the judgment of the Court Lord Justice Brett spoke as follows:—"We have thought it right to give our reasons at length, but we might decide this case by saying that the service rendered was one which the pilots were not bound to render. It was a danger they were not bound to encounter; next, that the service was not one of pilotage; it was not a piloting to any port or place, but of taking out—a salving—from danger."

And so with regard to all similar cases, it appears that the services were considered

to be salvage services because they were outside of and not within the contracts of towage or pilotage. In the present case the alleged salvage services according to the pursuer's own averments were of a most ordinary description.

The law standing thus, the only question is whether in the present case the owners of the "Clan Grant" were or were not under a contractual obligation to render the services they did to the "Strathclyde." This depends on the effect to be given to the policies of insurance, the articles of association, and the rules of the Aberdeen Mutual Steamship and Trawlers' Insurance Company. The "Clan Grant" was insured with this company under a policy, and in that policy it is provided that the premiums or contributions of the nature of premiums payable in respect of the insurance are to be calculated according to the losses by way of mutual insurance, and the policy goes on to provide thus—"And it is mutually agreed between the assured and assurers that the articles of association of the assurers' company and the rules of the company shall be deemed part hereof, and be binding upon the assured and assurers as fully and effectually to all intents and purposes as if such articles were inserted in this policy, and any breach thereof will invalidate the same."

By No. 3 of the articles of association it is provided that every insurer is to be deemed to become a member of the company, and by article 9 the members bind themselves to accept and agree to be bound by the rules of the company. Article 30 of the rules of the Insurance Company provides as follows:—"[*quotes, supra*]." And rule 32 provides that the funds required for the payment of claims shall be raised by contributions from all the members.

The "Strathclyde" was insured with the same company under a policy of insurance in identical terms with the policy over the "Clan Grant."

It is obvious from the above contract of insurance, taken along with the articles and rules which are declared to be incorporated therewith, that there was established a mutuality of obligation between all the members of the Insurance Company —all the members had an interest in keeping down claims for loss, because the fewer of these the smaller would be the contribution periodically demanded from the various members, and while each member was bound by the rules to give assistance to ships of other members of the company he was on his part entitled to receive assistance from them, and if a ship belonging to any member of the company failed to give assistance to any other ship insured in the company which was broken down or in distress, it is, I think, clear, first, that the owners of the former ship would be guilty of a breach of contract, in consequence of which their own policy would be invalid, and they might in addition be subjected to an action for damages.

I therefore think that it is perfectly plain that in the present case the "Clan Grant" was bound to give assistance to the "Strathclyde," which was in distress at the time the services condescended on were rendered. If this is so, it appears to me that there is an end of the pursuers' case, so far as at the instance of the owners of the "Clan Grant," because there was a pre-existing contract under which that vessel was bound in the circumstances to give assistance to the "Strathclyde"—in other words, the services which were rendered by the "Clan Grant" to the "Strathclyde" were not in law salvage services at all, but were services rendered in pursuance of the contract between the owners of the "Clan Grant" and the Mutual Insurance Company, in which the owners of the "Strathclyde" had a *jus quæsitum*.

This being so, it is irrelevant and unnecessary to inquire whether the owners of the "Clan Grant" are barred by the contract from claiming remuneration as for salvage services, there being no salvage services for which remuneration can be claimed. But it is satisfactory to notice that the conclusion I have arrived at as matter of law is truly in accordance with the special contract, because I think it clearly appears from article 25 that no remuneration for services was contemplated by the contract except for charges and expenses, and rule 92 of the Total Loss Mutual Steamship Insurance Company, which was referred to by the pursuers as aiding their argument, is, I think, equally clear to the effect that salvage remuneration is not contemplated as a reward to steamers insured in that association giving assistance to vessels in distress, but only such "compensation" as may be determined by the committees of the association, and I need hardly point out that compensation and salvage remuneration, or "reward" as it is sometimes termed, are two very different things, and are arrived at in very different ways. To take one point of difference, the value of the property salved falls to be taken into account in salvage remuneration, whereas it has no place in a claim for compensation.

On these grounds I am of opinion that the Lord Ordinary's interlocutor should be recalled, that the first plea-in-law for the defenders should be sustained, and the defenders assoilzied from the conclusions of the action so far as at the instance of the Clan Steam Trawling Company, Limited, and that *quoad ultra* the case should be remitted to the Lord Ordinary for further procedure.

LORD LOW was absent.

The Court pronounced this interlocutor—

"Recal the said interlocutor reclaimed against: Sustain the first plea-in-law for the defenders, and assoilzie them from the conclusions of the action so far as laid at the instance of the Clan Steam Trawling Company, Limited."

Counsel for the Pursuers (Respondents) —Hunter, K.C.—D. Anderson. Agents—Davidson & Macnaughton, S.S.C.

Counsel for the Defenders (Reclaimers) —Scott Dickson, K.C.—Lippe. Agents—Beveridge, Sutherland, & Smith, S.S.C.