and the officers and crew divide the rest in proportion to their ratings. But where the salving ship has sustained special damage in the service, or her owners have been put to loss by it, that is taken into account. On the other hand, where special personal services have been rendered by members of the crew they are specially rewarded.

As an illustration take the case of the “ *Rasche* ” (L.R. 4 A. and E. 127). The brigantine “ Rasche,” derelict, was fallen in with by the ship “ Scythia ” (carrying a very valuable cargo) 220 m. N. of the Lizard. The mate and three hands of the “ Scythia ” were put on board, and in circumstances of much hardship and danger they brought her after eighteen days safely to Liverpool. After deducting expenses incurred by the owners of the “ Scythia,” the value of the property saved was £6294. Sir R. Phillimore awarded £3290; and of this he gave £600 to the mate, £510 to each of the three men who had accompanied him; £500 to the owners of the "Scythia"; and £350 to her other officers and crew.

An agreement as to the salvage to be paid is sometimes made at the time the assistance is given. When made fairly the court will act upon it, though it may turn out to be a bad bargain for one or other of the parties. But if the facts were not correctly apprehended by one or both, or if the position was one of such difficulty that those salved had no real option as to accepting the salvor’s terms, the courts will set the agreement aside.

This happened, for instance, where the salving ship refused to rescue 550 wrecked pilgrims from the Parkin Rock in the Red Sea for a less sum than £4000. An agreement had in consequence been signed for their conveyance for that sum to Jedda, two or three days' sail. The Parkin Rock stands 6 ft. above the water, and had bad weather come on the lives would have been in great danger. It was held that the sum asked for was exorbitant; and that the agreement, made under practical compulsion, could not stand (the “ *Medina,”* 2 P.D. 5). On the other hand, an agreement to tow, for a fixed sum, a vessel which had suffered considerable damage, was set aside, and salvage awarded, on the ground that the damaged condition had not been disclosed to the tug when the contract was made (the “ *Kingaloch”* 1 Spink, 265).

The award of salvage is generally made in one sum against ship, freight and cargo; and those interests contribute to the amount in proportion to the value saved. No distinction is made between the degree of service rendered to one interest and another. But, with a possible exception in the case of life salvage, there is not a joint liability of the several interests. Each is liable to the salvors for his own share, and for no more. The ship cannot be made to pay the cargo’s share, nor the cargo the ship’s. If, however, the shipowner pays the cargo’s share, he has a lien upon it for the amount. In practice the liabilities for salvage are ordinarily adjusted as part of general average. Strictly, however, there is a difference. The liability to pay salvage is a direct liability to the salvors, arising at once, *e.g.* at the port of refuge, and proportional to the values there; whereas the liability to contribute to a general average loss or expenditure is postponed until the completion or break up of the adventure, and depends upon the values of the interests which have arrived there; which may be very different. (See Average, Insurance, *Marine,* and also Admiralty Jurisdiction.)

Authorities.—Kennedy, *On the Law of Civil Salvage* (London, 1907); Abbott, *Law of Merchant Ships and Seamen* (14th ed., London, 1901); Carver, *Carriage by Sea* (5th ed., London, 1909).

(T. G. C.)

2. *Military Salvage* is analogous to civil salvage. It is defined as such a service as may become the ground for the demand of a reward in the court as a prize court, and consists in the rescue of property from the enemy in time of war. Such cases almost invariably relate to ships and their cargoes; and they have always been dealt with by courts having Admiralty jurisdiction, sitting as prize courts. They involve the determination of two questions : first, whether the property is to be restored to its original owner or condemned as prize to the recaptor ; and second, what amount of salvage, if any, is to accompany restitution. Generally speaking, the first question depends upon the law of nations, which may be taken to be that where a ship has been carried by an enemy *infra praesidia,* and especially after a sentence of condemnation, the title of the original owner is divested, and does not revest upon recapture by third parties. In such a case, therefore, *jure gentium* restitution cannot be claimed. The municipal law of civilized countries, however,

does not encourage subjects to “ make reprisals upon one another ” (the “ *Renard”* Marr. Adm. Dec. 222), and laws are generally found, as in England, which as between subjects of that particular state provide for restitution irrespective of any change in the title to the subject matter which may have occurred. But (speaking henceforth of England) in cases which do not fall strictly within these acts, the old maritime law, which was in unison with the general law of nations, is applied by the courts. Moreover, the English Prize Acts do not apply to foreign owners of recaptured prizes, and therefore no award can be made against them unless in accordance with the law of nations. In practice the courts have acted upon the “ rule of reciprocity ” where recaptures have been made of the property of formal allies, dealing with them as the allied state would have dealt with English property. In the case of neutral recaptures restitution is always ordered. An exception to the rule of restitution as between British subjects is made in the case of a British ship which has been “ set forth as a ship of war ” by the captor, and subsequently retaken by a British ship. Such a ship is not liable to restoration, but is the prize of the recaptor. This exception, the object of which is to encourage the capture of armed ships, dates from 1793, previous acts having provided for restitution upon payment of a moiety as salvage. The condition of setting forth as a ship of war is satisfied, where under a fair semblance of authority, which is not disproved, the ship “ has been used in the operations of war, and constituted a part of the naval force of the enemy ” (the “ *Ceylon,”* 1 Dod. 105). Such a user perma- nently obliterates the ship’s original character, and extinguishes all future claims to restitution (“ *L’Actif,”* Edw. 185).

As to the right to salvage and the amount which will be allowed, this is also a question of the jus *gentium,* though usually governed by municipal law. The right was recognized so long ago as the 11th century, when the “ *Consolalo del Mare ”* (see Consulate of the Sea) laid down elaborate provisions on the subject. In England the first statutory recognition of the right occurs in 1648, when an act of the Commonwealth, which in its outline has been the model for all subsequent Prize Acts, provides that British vessels captured by an enemy and retaken by British ships shall be restored upon payment of one-eighth of the value of the property in lieu of salvage, or one-half in the case of a prize “ set forth as a ship of war.” From that date until 1864, the date of the act now in force, there have been thirteen Prize Acts dealing with recapture, each of which, except that of 1864, has been passed to meet a particular occasion, and has expired with the cessation of the then existing hostilities. Since the first act, and down to the act of 1805 inclusive, a distinction has always been drawn between a recapture effected by one of the royal ships of war and a recapture by a privateer or other vessel. In the former case the allowance has always beèn one-eighth, in the latter it varied, but was usually one-sixth. In the act of 1692 a clause taken from a Dutch law gave salvage to a privateer, rising in amount from one-eighth to one-half according to the number of hours the prize had been in the enemy’s possession, but this clause has disappeared since 1756. There is no provision in the present act for the payment of salvage, except in case of recapture by one of His Majesty’s ships, but it seems beyond question that recaptors are entitled at law to salvage, although they may hold no commission from the crown. “ It is the duty of every subject of the king to assist his fellow-subjects in war, and to retake their property in the possession of the enemy: no commission is necessary to give a person so employed a title to the reward which the policy of the law allots to that meritorious act of duty ” (the “ *Helen*,’’ 3 C. Rob. 226, *per* Sir W. Scott). Though it is improbable that privateers will figure in any future war, it may reasonably be anticipated that recaptures may be made by private vessels, and in such cases salvage would probably be awarded, the proportion lying in the discretion of the court. Similarly, salvage is awarded in the case of recapture from pirates or from a mutinous crew. In the case of royal ships the present act allows one-eighth salvage, which in cases of “ special difficulty or danger ” the court may increase to a quarter. The latter provision is an innovation.