

Case No. 401.

THE ANNA.

{10 Blatchf. 456.}²

Circuit Court, E. D. New York.

Feb. 25, 1873.

SALVAGE—DERELICT—APPORTIONMENT—DISCRETION OF THE COURT.

1. A vessel, having been in collision and injured, was abandoned by her master and crew, as sinking, about twenty miles to the eastward of Sandy Hook. She was afterwards discovered by another vessel, and brought safely into New York, with her cargo. The value of the saved vessel and her freight and cargo was \$34,589 06. The district court allowed \$6,000, as salvage, which included \$600 paid by the salvors to a tug, for towing the saved vessel; *Held*, that, on all the evidence, the allowance was not excessive.

{Cited in *The Loveland*, 5 Fed. 108.}

2. The discretion of the district court, in fixing the amount of salvage, is not to be overruled, when no principle of law has been violated, unless the error is very clear.

{In admiralty. Libel by the owners of the bark *Wiley Smith* to recover salvage of the brig *Anna* and her cargo. Decree for libellant. Case No. 39S. Claimants appeal. Affirmed.}

William R. Darling, William W. Goodrich, and Charles Donohue, for libellants.

Townsend Scudder, for claimants.

WOODRUFF, Circuit Judge. The evidence shows, that the brig *Anna*, having come into collision with another vessel, at about 11 o'clock in the night of the 9th of April, 1872, and been injured, her master and crew, under the apprehension that she was sinking, escaped from her to the colliding vessel, and were brought into this port, to which she was bound. At the time of the collision, she was about twenty miles to the eastward of Sandy Hook, the night was very foggy, "the thickest," her master and owner testifies, that he ever saw, it was blowing hard, from the southwest, and she was under "close reefs." Contrary to the expectation of her master and crew, she did not sink, but, in the morning, she was discovered by the master and crew of the brig *Wiley Smith*, tossed by the waves, driven off ten or fifteen miles further from Sandy Hook, and near to the Long island shore, and in great danger of going on the Long island beach, upon which, the master of the *Wiley Smith* says, she would have driven within an hour. The wind had somewhat abated, but it was still blowing fresh from the southwest. Perceiving that she was a vessel in distress, the *Wiley Smith* was hove to, and sent her mate and one of her crew on board, (the *Wiley Smith* having, in all, captain, mate, and four seamen,) and it was agreed, that the mate and man should remain on board and endeavor to save the injured vessel. They succeeded in getting her under sail, and directed her towards this port, and, after making some progress, were hailed by a tug, with the master of which they bargained for towage to New York, for six hundred dollars, and she was towed in. The *Wiley Smith* also arrived here in safety. The *Anna* was conceded to be of the value

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of \$7,500, though she was afterwards sold for less, and the net value of her cargo was \$25,589.06, and the freight was \$1,500, as was also conceded, making, in all, \$34,589.06. The libels herein being

filed by the owners, master and crew of the *Wiley Smith*, for salvage, the district court allowed to them the sum of \$6,000, (including therein the sum paid for the service of the tug.) The claimants of the *Anna* and her cargo have appealed to this court, claiming that the allowance is excessive.

The discretion of the district court, in fixing the amount of salvage, is not to be overruled, where no principle of law has been violated, unless the error is very clear. The amount allowed is, no doubt, liberal, if the time and service by the *Wiley Smith*, or even her danger, were alone considered; while, on the other hand, considering the state of the weather, the probable destruction of the *Anna*, the diminution of hands on the *Wiley Smith*, the hazard of her own insurance, and the importance of the service to the owners of the *Anna* and her cargo, it does not seem to me extravagant. Very true, she might possibly have been saved by other means. Possibly, her master, on arriving in New York, in the morning, might have gone, or sent a vessel, in search of her, and, perhaps, have procured one for a much less compensation. But this is a mere conjecture. He and his crew had left her, believing that she was sinking, and it does not appear that they thought otherwise, until they saw her under sail, in the hands of the finders. That, whether regarded as finders of a derelict, or salvors of a vessel being driven on shore, the libellants are entitled to salvage, is not, and cannot be, denied. To this it is not necessary to cite the authorities, numerous as they are on that point.

A narrow and inadequate appreciation of such services as were here rendered would not sufficiently encourage vessels and their crews to depart from their own voyage, to save the property, and, as the case may be, the lives of others. Confessedly, the share of the property allowed is greatly less than the early practice of courts of admiralty would have sanctioned, and, in the changed condition of navigation, it is properly so; but, I do not feel warranted in saying, that the share allowed, (but little over one-sixth,) is so great, that this court should reduce it.

Let the libellants have a decree for the sums awarded, with costs.

² [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]