

BOUNTY V. KERRIN.

Case No. 1,697a.  
[Betts' Ser. Bk. 533.]

District Court, S. D. New York.

March, 1856.

SALVAGE—CONTRACT—TENDER—COSTS.

- [1. One who contracts to perform a salvage service for a specified gross sum can recover no more, although the work proves to be actually worth many times that sum.]
- [2. The merits of a libel in personam for salvage services are not affected by the fact that respondent has replevied the salvaged property from the salvor.]
- [3. Tender made before suit brought, and not repeated in court, does not bar costs.]

[In admiralty. Libel by John Bounty against Patrick Kerrin to recover salvage. Decree for libelant.]

A. Nash, for libelant.

F. C. Bliss, for respondent

Before BETTS, District Judge.

The libelant, with the aid of a sloop and several men, raised for the defendant the boiler and machinery of a wrecked steamboat. He claims a salvage reward for the service, or a quantum valebat compensation, of at least \$25 per day, amounting to \$218.50, and, upon the evidence, the latter sum appears no more than reasonable compensation for the service rendered, without considering it one of a salvage character. The respondent proves by his agent that he made a specific contract with the libelant to do the work for the gross sum of \$25. The witness was not discredited, nor was there evidence contradicting him on this point. Evidence was offered by the respondent that he had dispossessed the libelant of the machinery after it was raised, by replevin, and had tendered him in specie \$25 before suit brought.

Held, that libelant's recovery must be limited, on the testimony, to \$25; that the replevin action did not affect the merits of this suit; and that the tender proved, not having been made in court, did not bar costs. Decree for the libelant for \$25, with interest from October 10, 1854, and full costs.