

Case No. 1,748a.
[Betts' Scr. Bk. 517.]

BOYD V. THE TOWNER.

District Court, S. D. New York.

May 7, 1855.

SALVAGE—FAILURE TO COMPLETE SERVICE—PREMATURE FILING OF LIBEL.

[A salvor who undertakes to put a boat in a safe position, and keep her afloat until her cargo is discharged, has no right to compensation until his undertaking is ended, and a libel filed before that time is premature.]

[In admiralty. Libel by James Boyd against the canal boat Towner and 130 tons of coal. Libel dismissed.]

The libel in this case was filed to recover remuneration for alleged salvage services. On the afternoon of September 28, 1854, the boat was lying at the wharf at the foot of Spring street. She had been detained by the claimant, the owner of the coal, for the purpose of storing a quantity of coal in her, until he should need to use it. On putting in the 130 tons it was found that she leaked badly. Efforts were made to keep her afloat, and towards evening an agent of the claimant went to his store to procure hands to unload the coal. While he was gone the person who had been put in charge of the coal by the claimant, without his knowledge, engaged the libellant to take the boat to the foot of Clarkson street, put her in a place of safety and keep her afloat until she could be discharged. This employment was at first for the night, but was continued next morning. The libellant accordingly took the boat to the foot of Clarkson street, and while still engaged in keeping the boat free from water and discharging the coal, he libelled the boat and the coal for his services, and they were taken possession of by the marshal on the 29th of Sept. No one appearing for the boat, she was sold under the process of court, and the proceeds not being sufficient to pay the libellant's claim, he proceeded against the coal. The claimant objected to this libellant's claim, that he was never employed by him, and rendered no service of value; that the demand was not maritime or within the jurisdiction of the court; and that the suit was prematurely brought.

Before INGERSOLL, District Judge.

HELD BY THE COURT that the libellant had undertaken to put the boat in a safe position and to keep her afloat until the coal was discharged, and until that was done he had no right to demand anything for his services; that, the libel having been filed before this was done, the suit was prematurely brought; and the other questions need not be considered. Libel dismissed, with costs.