

7FED.CAS.—23

Case No. 3,739.

THE DEER.

{1 Lowell, 95;¹2 Am. Law Rev. 101.}

District Court, D. Massachusetts.

1866.

PRIZE JURISDICTION—SERVICES BY STRANGERS—SALVAGE IN LIEU OF PRIZE-MONEY.

1. A court of prize has power to give salvage in lieu of prize-money to persons not of the navy, who have rendered valuable service in making a capture.
2. Four per cent of the value of the prize and counsel fees granted to two persons who made known the rebel signals, and thus enabled the naval officers to make the prize.

Two men, who had escaped from Charleston and given themselves up to our fleet, made important disclosures concerning the signal lights used by the rebels, and thus enabled the navy to make the prize. This was done under a promise of payment if their services should prove to be of value. They now petition against the proceeds in the registry.

H. Flanders, for petitioners.

R. H. Dana, Jr., Dist Atty., for naval captors and government submitted the case without argument.

LOWELL, District Judge. The petitioners have rendered very useful services, and the only question is whether they can be paid out of the fund. The prize acts do not meet the case; but they are not exhaustive of the subject of prize. In *The Dos Hermanos*, 10 Wheat [23 U. S.] 306, cited at the bar, noncommissioned captors were allowed one-half the value by way of salvage. The whole has sometimes been given: *The Haase*, 1 C. Rob. 286. So in case of recapture by the crew of the prize, or by the army, or by non-commissioned persons, salvage is awarded: *The Hope, Hay & M.* 216; *The Helen*, 3 C. Rob. 224; *The Progress*, Edw. 214.

That the petitioners ought to be rewarded cannot be denied, and that the government as well as the captors would be under a strong moral obligation to remunerate them is clear. In the case of the steamer *Planter*, which was run out of Charleston, with great skill and at great hazard, by the negro Robert Small and his associates, and delivered to our fleet, congress granted them one-half the value. 12 Stat. 904. As that vessel does not appear ever to have been taken before a prize court the action of the legislature became necessary. But, in this case, the simple and practical mode of arriving at the compensation, and the mode by which the burden will be properly distributed in exact proportion to the benefit conferred, is to make it a charge on the fund. And it comes fairly within the analogy of the cases cited, which hold those to be salvors who are not technically captors, but who have made or contributed to the capture. The amount of salvage suggested was five

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per cent of the net value of the prize. I have concluded to award two thousand dollars to each petitioner, which is about four per cent in all, and a reasonable counsel fee.

¹ [Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.]