

Case No. 6,801. HOWLAND ET AL. V. TWO HUNDRED AND TEN BARRELS OF OIL.
[7 Law Rep. 377.]

District Court, D. Massachusetts.

Oct., 1844.

SALVAGE—DERELICT—AMOUNT.

1. The rule allowing a moiety to salvors in cases of derelict, is not inflexible.
2. Under the extraordinary circumstances of this case, considering the desperate situation of the property, abandoned by the crew, at a distance of one thousand miles from any country where assistance could be procured, the great risk incurred in saving it, the forfeiture of insurance by the salvors, and the nature of the voyage, it was decreed, that the salvors should receive \$5,740.36, and the claimants \$1,000.

In admiralty.

This was a libel for salvage. It appeared that the ship London Packet sailed from New Bedford on the 24th of November, 1841, fitted for a voyage of three and a half years in the sperm whale fishery. On the 18th of August, 1842, having taken one thousand barrels of sperm oil, she discovered the wreck of the whale ship Benezet, on a reef about forty miles from the Feejee Islands, a place dangerous to navigation from sands, calms and currents. The captain of the London Packet, hoping to save the crew, went in his boat to the wreck, and at some hazard succeeded in getting on board. None of the crew were found. He took some coils of warp from the wreck, and returned to his own ship. On the two following days he boarded the wreck again, and took some articles of her apparel. He cut a hole through the deck in order to take oil from the hold, but without success, and cut away the masts in order to prevent her going to pieces. On the night of the 20th the wreck went to pieces, and the next day the crew of the London Packet picked up About two hundred and twenty-four barrels of oil, and some sails and rigging, adrift from thirty rods to a mile from the reef. The following night the ship in a calm was carried by the swell and current within twenty or thirty rods of the reef, and was relieved from her perilous situation by the springing Tip of a breeze. The salvors described the weather, after the discovery of the wreck, And before picking up the oil, as rough and squally. Having been carried by the current some distance from the wreck, the London Packet beat back in two or three days, and took some other articles from the remnants of the wreck. On the 27th they picked up at sea a cask of oil containing six barrels. On returning to the reef about the 3d of September, no vestige of the Benezet or cargo remained. The captain and crew of the Benezet reached the Bay of Islands, New Zealand, about a thousand miles distant from the wreck, in a whale ship called the Hoogly; at what time did not distinctly appear, although there was evidence tending to show that it was in the month of August. The master, after advertising ten days, sold the Benezet and cargo at auction, for the sum of fifty-five shillings sterling. The London Packet arrived at the Bay of Islands about the

18th of October following. The purchaser was then preparing to send a small schooner to the wreck, but, upon information then received, abandoned the enterprise. The London Packet arrived at New Bedford on the 27th of June, 1844, with two thousand one hundred and fifty-five barrels of sperm oil, including that which had been picked up. She could have carried about two thousand two hundred barrels. She was insured for the voyage at six per cent. for three years, and pro rata for a longer time, and, at the time of the salvage, was, with her cargo, worth \$40,000.

Mr. Coffin, for libelants.

Mr. Page, for claimants.

SPRAGUE, District Judge, in giving judgment, stated that although, in cases of derelict, a moiety only is generally given to the salvors, yet this rule is by no means inflexible. It yields to extraordinary circumstances. In this case should be considered on the one hand, (1) The desperate situation of the property; deserted by the master and crew of the Benezet—the Hoogly not choosing to go to the wreck to endeavor to save anything, although she took up the master and crew; the trifling sum for which the Benezet and cargo were sold by the captain's order, at public auction, after advertising ten days—the distance of the wreck from any country where assistance could be procured, being about one thousand miles—while the vessel and cargo actually went to pieces and disappeared. (2) The meritorious conduct of the salvors, in boarding the vessel for the humane purpose of saving life, and the personal hazard incurred by the master and crew. (3) The risk of the London Packet and cargo while rendering the salvage service. (4) The forfeiture of her insurance, the new insurance for the residue of the voyage being worth four or five per cent. on \$40,000, equal to \$1600 or \$2000. (5) The situation of the London Packet, the nature of her voyage, the place she was in, her prospects of obtaining a cargo from whales, being then twenty-one months out, on a voyage for three years and a half, having already taken one thousand barrels of oil, on whaling ground, and with good prospects. On the other hand, (1) That not more than one-tenth or one-twentieth of the vessels engaged in the business get full cargoes; the average being about two-thirds of a cargo. (2) That they actually returned, having been three years and seven months out, with two thousand one hundred and fifty-five barrels, including the property saved, while they could have carried forty-five barrels more, and, if they had been able to take more, might have sent these casks home by

another vessel. (3) That time and expense would have been required to take the same amount of oil from whales.

THE COURT then adverted to the opinions of a number of witnesses which had been given in evidence, as to the amount which would be a just compensation for salvage; and proceeded to say, that although it had been suggested that the oil was sold on the arrival of the vessel, and brought ninety-two cents a gallon, the salvors had no right to sell, and there was no evidence that they had sold. The marshal's return showed it to be in custody. It was therefore to be estimated at the market price, which was proved to be ninety-six cents per gallon. The oil, calculated at six thousand seven hundred and forty-one gallons, at ninety-six cents, would amount to \$6,471.36, and the other articles saved, estimated at \$269, would make the amount \$6,740.36. In conclusion, THE COURT said, on consideration of the circumstances, particularly the desperate condition of the property, the remote part of the world where it was found, the nature of the voyage of the London Packet, the actual hazard incurred, the forfeiture of her insurance, on so large an amount of property, a case was presented requiring a wide departure from the usual rule of a moiety, and decreed \$1000 to the claimants, \$5,740.36 to the salvors.