

Case No. 7,183. JAMES ET AL. V. THE SARAH A. BOICE.
[2 Int. Rev. Rec. (1865) 45.]

District Court, S. D. New York.

SALVAGE—PLUNDER OF PROPERTY—WORK AND LABOR.

[Where a vessel had been turned adrift by a privateer, and before she grounded on a bar had been plundered by libelants, they are not entitled to salvage for getting her off. The owners having expressed a willingness to pay them for work and labor done, the matter was referred to a commissioner to report what amount should be allowed.]

This was an action for salvage. The libel alleged that on August 17, 1864, the libelant [Zachariah R.] James discovered the schooner dismasted and apparently deserted, lying on the bar at the mouth of the inlet at Jones' Beach, on the south shore of Long Island, whereupon he boarded her, and found her to be the Sarah A. Boice, of Great Egg Harbor, N. J., with her hold filled with water, dismasted and abandoned by her master and crew, stripped, and dismantled; that accordingly he took possession, and, with the aid of the other libelants, succeeded, at great risk and peril, in getting her over the bar and into the inlet, and that he kept possession of her till September 12th, when she was removed by the owners. It is alleged that the vessel was worth about \$5,000, and claimed to be allowed salvages as in a case of a derelict. The answer alleged that about the 11th of August the schooner was captured by the privateer Tallahassee about thirty miles southeast from Fire Island; that her officers and crew were taken from her by force, and the schooner was, after being robbed, of furniture and stores by the privateer, left afloat, with her masts and rigging standing, and that she was carried by the winds and waves to the mouth of the inlet at Jones' Beach, where she grounded on the bar on August 19th; that she remained there till the 23d of August, when she worked off on a full tide, and floated into the inlet, where she grounded and remained till she was got off by the claimants; that on August 27th the claimants heard that the libelant, James, who was wreckmaster, under the statute of the state, was claiming to hold the schooner with the other libelants; that they went there and found she had been greatly plundered by the persons claiming to hold her; that they thereupon took possession of her and got her off themselves. The answer also denied that the vessel was derelict, and averred that the libelants had been exposed to no peril, nor was the vessel in peril while the libelants committed these depredations upon her, and that the conduct of the libelants was not with a fair and honest intent to save the vessel for her owners, but with the design to embezzle the entire property, and appropriate it to themselves. The evidence showed that when the libelants fell in with the vessel, she was adrift, and partially despoiled of her equipment and lading. It was notorious in the vicinity at the time that the vessel had been brought to that condition by capture by the Tallahassee, which subsequently landed her master and crew

on the south side of Long Island. As soon as the vessel was discovered thus abandoned, she was surrounded by numerous boats and small craft (many of them managed by some of the libelants), which eagerly purloined every article which could be torn away from her stealthily or by violence, which was openly appropriated to the use of the plunderers. Within a day or two after her abandonment, most if not all the libelants fell in with her without proffering her any relief by salvage, because engaged in thus plundering her. They not only plundered her, but cut away and detached valuable parts of her fixtures and equipment, and embezzled everything that they could remove. The weather remained calm for several days, while the vessel drifted, till on August 16th or 17th she drifted on the bar, and was there boarded by the libelants, or some of them, with the purpose of holding her as a wreck under the state law. The captain of the vessel, as soon as he was released, gave information to her owners of her seizure and position, and they took immediate means, by employing a steam-tug, and in other ways, to reclaim her. On the 27th of August they appeared on the scene and demanded the restoration of the vessel. They, however, expressed themselves as willing to pay the libelants, as for work and labor, for what they had done in getting the vessel off the bar and into the inlet, up to the time when the surrender was demanded, and even continued the services of James and some others during the getting the vessel off the beach.

HELD BY THE COURT: That the libel is only for salvage, and that to maintain it as such, it must be supported by proof that the motives and proceedings of the libelants were in all respects lawful, in good conscience, and meritorious. The maritime code in respect to the allowance of compensation for salvage-services is based upon principles of universal equity and integrity. The law

takes under its own authority of administration property rescued from peril by the aid of strangers, and compels it to satisfy them by a reasonable reward for an honest effort to save it from peril; but it shows no countenance or favor to plunderers. A seizure of wrecked property for culpable plunder, constitutes no lawful salvage. That when the libelants first fell in with the schooner in a helpless state, apparently abandoned and derelict, instead of approaching her with the manifestation of a desire to afford her relief, the whole purpose evinced was to embezzle, confiscate, and appropriate to themselves the ruins of the vessel and her effects, and no evidence is furnished that one individual of the multitude which flocked around the wreck evinced the slightest purpose to save her for the unfortunate proprietors. That the presumption is most forcible that all the libelants who engaged in that wrongful depredation and plunder, were well aware that she was not then a derelict, that her owners resided across the bay, in an adjacent state, and scarcely out of eyesight, and had been the victims of a sudden predatory seizure of their property. That it comports in no sense with the semblance of an honest and fair purpose to save and restore to its true owners a vessel discovered, as this one was by the libelants, to have thereafter followed its remains from day to day, as it floated on a smooth sea and in calm weather, making prey of anything that could be picked from it, till the vessel grounded on the bar. It is suspiciously late for them then to arrogate the position of rightful salvors in possession of the wreck, and claim to be entitled to invoke the law to authorize and confirm to them such a privilege. That on strict rules of pleading, therefore, the action would be dismissible, because there is no proof produced under the libel which sustains the only right averred and claimed by the libelants; but as the owners on demanding that the vessel should be delivered up to them by the libelants avowed a willingness to compensate them for the value of the services rendered by them, as work and labor, to the time when the surrender was demanded, and even to continue the services of James and some others of the libelants, the court sees no objection to considering the case as so opened in its legal issues by that assent, as to permit an account to be taken on a reference as to a quantum meruit allowable to the libelants for such work and labor. Had the respondents elected to put the same to trial upon the single issue of the pleadings upon the record, the decree of the court would logically and justly have been in their favor. But having recognized, on their part, that James and some of his associates had rendered services to the vessel before and after the respondents claimed her surrender to themselves as owners, and having called for the particulars of these services, with an offer to satisfy charges in that respect, which were just, and thus acquiesced in making a reasonable compensation to them; and being persuaded that it is competent to the court to regard the proceedings of the libelants, after the vessel grounded on the bar, or in aid of her reaching that point, to have been work and labor for the benefit of the owners, the court considers it equitable to allow such an amount as may be reported by a commissioner as due them therefor, but

JAMES et al. v. The SARAH A. BOICE.

without costs, except that the fees of the reference shall be taxed half and half to each party. Order accordingly.