

Case No. 7,322.

THE J. L. BOWEN.

[5 Ben. 296;<sup>1</sup> 4 Am. Law T. Rep. U. S. Cts. 214.]

District Court, S. D. New York.

Aug., 1871.

SALVAGE—SERVICES OF NAVIGATOR—DISTRIBUTION.

1. A brig left New York, bound on a voyage to Gibraltar. Four days afterwards an affray took place on board, in which the master was killed, the second mate so hurt as to be incapable of doing duty, and the first mate seriously hurt. He, however, took command, and headed the vessel back to New York, remaining on deck and in charge, without sleep, for two days. On the morning of the second day the ship E., attracted by a signal of distress, came to her, and H., the mate of the E., went on board the brig, and navigated her back to New York, the services lasting sixty hours. The brig and her cargo were worth \$50,000. *Held*, that the service was a salvage service.
2. \$3,000 was a proper compensation, to be divided as follows: \$1,600 to the owners of the E.; \$450 to her master; \$650 to H.: and \$300 to the rest of her crew, according to their wages.

[Cited in *The Marie Anne*, 48 Fed. 748.]

In admiralty.

Beebe, Donohue & Cooke, for libellant.

Scudder & Carter, for claimant.

BLATCHFORD, District Judge. On Sunday, the 28th of May, 1871, the brig J. L. Bowen left New York, bound to Gibraltar. Her ship's company consisted of a master, two mates, a cook and six men before the

mast. She had one passenger. The vessel and her cargo were worth \$50,000. On Thursday, the 1st of June, an affray occurred between four of the seamen and the officers, in which the master was killed, the second mate was so injured that he was incapable of doing duty, and the first mate was very much hurt. The seamen were all of them colored men, and the officers were white men. Two of the seamen and the cook took no part in the affray. The men who were engaged in the affray were at work at the time, using the capstan. The difficulty arose in reference to the manner of putting a turn on the capstan, and the blows which killed the master and injured the mates were inflicted by capstan bars. The outburst was a momentary one, but a very violent one. The first mate, though hurt, remained on deck at his duty, and headed the vessel back for New York. His orders were obeyed by all the men who were fit for duty, two of the four who were concerned in the disturbance having been disabled. The cook exhibited fidelity, but he was a colored man. The passenger rendered what assistance he could. But the first mate was the only officer left for duty, and the only person left alive, except the second mate, who was acquainted with navigation. From the time of the affray until Saturday morning, the 3d of June, the first mate remained on deck all the time, and obtained no sleep. He had been wounded twice in the head, his shoulder had been knocked out of joint, and one of his arms was in a sling. On Friday a signal of distress was set. On Saturday morning the ship Europa, bound from Bremen to New York, with a general cargo and 130 passengers, came in sight of the brig, and noticed the signal of distress, and made for her. The Europa had a master and only one mate, the libellant Hilmer. The mate was the only person on the Europa, besides her master, who could navigate the ship. As the Europa neared the brig, the brig sent a boat off with the cook and one man. The cook reported to the master of the Europa the condition of things on board of the brig. The master of the Europa sent the libellant in the boat to go on board of the brig, and ascertain the facts of the case, with instructions to return and report them. He went on board of the brig, and had an interview with the first mate of the brig, and saw and learned what had happened. The first mate of the brig requested assistance, and the result was, that the libellant, after he had returned to the Europa and reported, went, by the permission of the master of the Europa, on board of the brig, in order to assist in her navigation. He went alone. On board of the brig he discharged the duties of his position as mate, the first mate of the brig also assisting. The brig reached an anchorage in the lower bay of New York late on Monday night. The services of the libellant covered a period of a little over sixty hours. The weather was fine all the time, though, soon after the libellant went for service on board of the brig, a fog came on, and the brig and the Europa lost sight of each other, and neither again saw the other, the Europa having reached New York twenty-four hours before the brig did.

The libel is filed on behalf of the libellant and all others who are salvors, and claims salvage compensation for the libellant, and for the Europa and her crew. The answer denies that the service was one of great peril or danger, and denies that the brig and her cargo were rescued from any considerable peril, or were in any peril beyond the power of her mariners to control.

There can be no doubt that the service in this case was a salvage service, in respect of which the owners of the Europa and her master and crew, as well as the libellant, are entitled to a salvage compensation. *Williamson v. The Alphonso* [Case No. 17,749]; *The Czarina* [Id. 3,531]; *The Roe, Swab.* 84; *The Janet Mitchell, Id.* Ill; *The Golondrina, L. R.* 1 Adm. & Ecc. 334; *Jones, Salv.* 14.

The only contest in the case is as to the amount to be awarded. The answer avers that the owners of the brig and cargo are willing to make ample compensation for the services rendered, but that the sum demanded has been so unreasonable and inequitable that no settlement could be made. What that sum is, is not stated in the answer, nor shown by the evidence. The libel specifies no amount, but claims reasonable compensation.

In the case of *Williamson v. The Alphonso* [supra], the two mates of the Alphonso were disabled, the master was ill with the yellow fever, a signal of distress was flying, the mate of the salving vessel took command of the Alphonso, and ran her a distance of 23 miles to a port of safety, and the Alphonso and her cargo were worth \$15,000. The court allowed \$750 salvage in all, giving \$300 of it to the mate.

In the case of *The Czarina* [supra], the master and two mates of the Czarina had been killed, no one was left to navigate her, she and her cargo were worth about \$95,000, and the first mate of the salving vessel was put on board of the Czarina, and navigated her for twenty flays. The owners, master, mate and sailors of the salving vessel brought suit, and the court awarded to them \$5,485, of which the owners received \$3,500, the master \$800, the first mate \$1,000, the second mate \$25, and sixteen sailors \$10 each.

In the case of *The Roe, Swab.* 84, some of the crew of the Roe were dead and some were ill with the scurvy, a signal of distress was flying, the value of the property saved was \$9,350, two of the crew of the saving vessel volunteered to serve on the Roe and

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they were paid £20 each for their services, which continued for a period of seventeen days. The rest of the crew of the salving vessel, with her master and owners, sued for salvage. The court awarded £150, of which the owners received £60, the master £25, and the remainder was divided among 27 seamen in proportion to their wages.

In the case of *The Janet Mitchell*, Swab. 111, the master of the *Janet Mitchell* had been drowned, and some one was required to navigate her. The mate of the salving vessel volunteered to do so, and the owners of the *Janet Mitchell* gave him £200 for his services. The owners, the master, and the rest of the crew of the salving vessel sued for salvage, and, the value of the property saved being £29,700, the court awarded to them £1,000.

In the case of *The Golondrina*, L. R. 1 Adm. & Ecc. 334, the two mates of the *Golondrina* had deserted her, and her master had jumped overboard, and the second mate of the salving vessel was, at the request of the crew of the *Golondrina*, put on board of her, by the master of the salving vessel, to navigate her. The value of the property saved was £26,000, and the court awarded £1,800, of which the owners received £1,000, the second mate £300, the master £200, and the crew £300, according to their ratings.

In the present case, I think the sum of \$3,000 is a proper allowance. Of this I award to the owners of the *Europa* \$1,600, to her master \$450, to the libellant Hilmer \$650, and to the rest of her crew \$300, according to their wages. Let a decree be entered accordingly, with costs.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]