

Case No. 7,338.

THE JOHN E. CLAYTON.

[4 Blatchf. 372;¹ 18 How. Pr. 319.]

Circuit Court, S. D. New York.

Oct. 6, 1859.

SALVAGE—AMOUNT OF—GENERAL RULE.

1. As a general rule, the rate of salvage allowed in the case of a vessel found derelict at sea, is a moiety of her value; and this, except in very special cases, is the extreme limit.
2. The considerations stated, which are taken into account, in fixing a salvage compensation.
3. An allowance by the district court, as salvage, in this cast, of two-fifths of the value of a derelict vessel, reduced by this court to one-fourth of such value.

[Appeal from the district court of the United States for the Southern district of New York.]

This was a libel in rem, filed in the district court, to recover salvage. The master and hands of the sloop Thomas E. Crocker, five in number, were on their way to the fishing grounds, which were about thirty miles from Sandy Hook, on the morning of November 27th, 1856, and, when some twelve or fifteen miles from the hook, discovered a vessel, which was afterwards found to be the schooner John E. Clayton, on her beam ends, with a large hole stove in her side, sufficiently to have sunk her instantly, had it not been for her cargo, which was wood. She lay in the open sea, about two miles from their track, and, when reached, it was ascertained that her crew had abandoned her. The weather was fair, but the sea somewhat rough, with a strong breeze from the land. The sea was breaking over the vessel, and drifting her further from the land. It was necessary to strip her of her sails, and cut away her foremast, in order to right her. The libellants were assisted by another vessel, the Tobiatha, and both vessels were engaged from six or seven o'clock in the morning till two in the afternoon, in righting the derelict vessel and preparing her to be towed to New York. They reached Jersey City about nine o'clock that evening. The vessel saved was admitted to be of the value of \$3,000. The district court

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allowed a gross sum of salvage, to the amount of \$1,200, being two-fifths of the value of the vessel. [Case unreported.] The claimants appealed to this court

Frederick B. Sherman, for libellants.

Charles Donohue, for claimants.

NELSON, Circuit Justice. As a general rule, it is undoubtedly true, that the rate of salvage of a vessel which is derelict at sea, is a moiety of her value. This, however, except in very special cases, in which great hardships and dangers have been encountered, is the extreme limit. The courts always look to the nature and character of the service, the time consumed by the salvors, the peril involved and the expense, as well as to the situation and condition of the vessel saved and its value, in fixing the compensation; not upon the idea of a quantum meruit, but by way of rewarding the service in proportion to the degree of merit belonging to the particular case.

Now, in the present case, there is nothing in the evidence showing any extraordinary degree of merit, or any great sacrifice of time or money. The vessel was found some twelve or fifteen miles from the bay of New York, within two miles of the track of the salvors on their fishing expedition, and only a day was consumed in raising and bringing the derelict to port. The weather was pleasant, and no particular hardship or danger was encountered. I cannot but think that the amount allowed by the court below exceeded a reasonable compensation for the service, and that one-fourth of the value will afford ample reward to the salvors, and is the most that should be awarded under the circumstances.

The service rendered by the Tobiatha seems to have been very slight, according to the evidence. I shall, therefore, modify the decree of the court below, by awarding to the Thomas E. Crocker and hands \$600, and to the Tobiatha and hands \$150, without costs on either side in this court; the costs to the libellants in the court below, as there decreed, to stand.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]