

Case No. 7,546.

[2 Blatchf. 322.]¹

THE JOSEPHINE.

Circuit Court, S. D. New York.

Oct., 1851.

SALVAGE—SERVICES RENDERED BY CREW OF VESSEL OF WAR.

1. Where the officers and crew of a vessel of war belonging to the United States government rendered, under the direction of her commander, and in obedience to the general instructions of the government to all its vessels to render relief freely and promptly to American vessels in distress, services in towing into an American port an American merchant-vessel found abandoned at sea five hundred miles distant, but the delay thus caused was one of only two days, and no extraordinary service was rendered, and no unusual hardship or peril was encountered: *Held*, that the officers and crew were not entitled to salvage.
2. Whether the officers and crews of the naval vessels of the United States are in any case entitled to salvage for services rendered to American merchant-vessels in distress, notwithstanding such instructions, quere.

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

Joseph Smith, on behalf of himself and others, the crew of the United States sloop-of-war Plymouth, filed a libel for salvage in the district court against the American brig Josephine. The libel charged that the Plymouth, on her passage from Rio Janeiro to Boston, on the 30th of September, 1846, fell in with the wreck of the Josephine on the high seas, some five hundred miles from the port of New York, drifting about at the mercy of the waves, entirely abandoned by

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her crew, derelict and partly plundered; that a boat was lowered from the Plymouth and a boat's crew sent to take possession of the wreck; that, after considerable exertion, a hawser was made fast to her, and the course of the Plymouth was altered to New York, to which place she towed the brig and her cargo in safety, being engaged in such towing for four days; that, but for the assistance so rendered to the brig and her cargo, the same would have been entirely lost; that the libellants were on board the Plymouth at the time and assisted in saving the brig and her cargo; and that the captain, officers and crew of the Plymouth, for the service thus performed and the risk run, were justly entitled to reasonable salvage. The answer, after admitting substantially the facts set forth in the libel, set forth that the Plymouth, in rendering assistance to the brig, was acting under instructions from the government of the United States to render relief freely and promptly to American vessels in distress; that, in the opinion of the government, it best comported with the interest of the navy and the policy of the government, that no compensation should be asked or received for such services; that, in rendering assistance to the brig, the officers and crew of the Plymouth were in the discharge of their legal duty only, for which they were paid by the government, and that such services were not within either the reason or the policy of the ordinary maritime law in regard to salvage. The district court dismissed the libel, but without costs, on the ground that there was probable cause for filing it. The libellants appealed to this court.

Erastus C. Benedict, for libellants.

I. Salvage is the compensation due to persons by whose voluntary assistance a ship or its lading has been saved to the owner from impending peril or recovered after actual loss. *Abb. Shipp.* 554; *Hand v. The Elvira* [Case No. 6,015]. The right to salvage depends solely upon the consideration that property has been saved to the owner from maritime peril by the salvor. His intrepidity, humanity, relief to distress or preservation of life do not affect his right to compensation; they only affect its amount. *The Emblem* [Id. 4,434]; *The India*, 1 *W. Rob. Adm.* 406, 408. II. Salvage does not depend upon the character of the parties rendering the service, nor upon the character of the assistance rendered, nor upon the kind of peril or cause of loss, nor upon the national character or ownership of the property saved or of the owners. 1. There is no limitation to the kind of persons who may be entitled to this compensation, (a) Persons in the employ of the nation. Officers and seamen of vessels of war. *The H. M. S. Thetis*, 3 *Hagg. Adm.* 14; *The Porcher*, 2 *Hagg. Adm.* 270, note; *The Gage*, 6 *C. Rob. Adm.* 273; *The Lord Nelson*, *Edw. Adm.* 79; *The Pensamento Feliz*, Id. 115; *The Mary Ann*, 1 *Hagg. Adm.* 158; *Pritch. Adm. Dig.* 385; *The Lustre*, 3 *Hagg. Adm.* 154; *The Ewell Grove*, Id. 209; *The Helene*, Id. 430, note; *The Wilsons*, 1 *W. Rob. Adm.* 172; *The Iodine*, *Pritch. Adm. Dig.* 385, note; *U. S. v. The Amistad*, 15 *Pet.* [40 *U. S.*] 518. The royal coast-guard and revenue-officers. *The Helene*, 3 *Hagg. Adm.* 430, note; *Le Tigre* [Case No. 8,281]; *Pritch. Adm. Dig.* 393,

§ 323, and note, (b) Semi-official persons. Pilots. *The Balsemao*, 2 Hagg. Adm. 270, note; *The Nicolaas Witzen*, 3 Hagg. Adm. 369; *Hobart v. Drogan*, 10 Pet. [35 U. S.] 108. Lloyd's agent. *The Traveller*, 3 Hagg. Adm. 370.

(c) Persons having some relation to the subject saved. Passengers. Pritch. Adm. Dig. 360, § 38; *Newman v. Walters*, 3 Bos. & P. 612; *Abb. Shipp.* 560. The crew, in extraordinary circumstances. *The Neptune*, 1 Hagg. Adm. 227, 237; Pritch. Adm. Dig. 385, note 55. Consorts. *The Waterloo*, 2 Dod. 433, 443; *The Ganges*, Pritch. Adm. Dig. 389, note 62. (d) Persons of no independent right. Women. *The Jane and Matilda*, 1 Hagg. Adm. 187, 194. Apprentices. *Bell V. The Ann* [Case No. 1,245]; *Mason v. The Blaireau*, 2 Cranch [6 U. S.] 240, 270; *The Two Friends*, 8 Jur. 1011; *The Columbine*, 2 W. Rob. Adm. 186; Pritch. Adm. Dig. "Salvage" (Civil) §§ 308, 314, 320, 335, 337. Boys. *Id.* §§ 327, 330. Slaves. *Small v. The Messenger* [Case No. 12,961]; *Mason v. The Blaireau*, 2 Cranch [6 U. S.] 240, 241. Masters, mates, sailors, cooks, surgeons, carpenters, passengers and landsmen of every national character. 2. Neither does salvage depend upon the character of the assistance rendered, nor upon the kind of peril or the cause of loss. It need only be the saving a vessel or cargo in danger—supplying stores—loaning an anchor—going for assistance—towing—helping to navigate in a storm—piloting into a port—fishing up from the bottom—quelling a mutiny—taking from pirates—recapturing from an enemy. 3. Neither does it require a request. It must be voluntary; that is to say, it must not spring from any particular duty, or from any particular relation to the saved property, or from any specific contract. It must be a service which the party may lawfully decline to render. 4. Nor does it depend upon the national character of the property saved or of the owners. III. Salvage service is highly favored in law in all commercial countries, from motives of clear public policy and a regard to the interests of commerce. *Mason v. The Blaireau*, 2 Cranch [6 U. S.] 240, 266; *The Joseph Harvey*, 1 C. Rob. Adm. 312, note; *The William Beckford*, 3 C. Rob. Adm. 355; *Hand v. The Elvira* [supra]; *The Louisa*, 1 Dod. 317–319; *The Emblem* [supra]; *The Centurion* [Case No. 2,554]; *The Boston* [Id. 1,673]. IV. The stimulus which public policy and the interests of commerce supply is simply the spur of private interest. *Adams v. The Sophia* [Id. 65]; *The Emblem* [supra]. V. Compensation

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for salvage service is an absolute legal right. VI. This right is personal to the salvor, notwithstanding his relation to others. *Le Tigre* [supra]. VII. It being thus, a personal right, a party cannot be deprived of it except by law. VIII. The right to salvage depends upon the saving of the property; but the rate or amount of salvage depends upon the amount of the property, the probability of loss, the amount of peril to the property, the value of the service to the owner of the property, and the personal toil, loss of time, daring and danger of the salvors. The highest order of merit, in a pecuniary estimate, is the safe bringing in of property entirely abandoned and lost to the owner—derelict. For such a service courts have sometimes awarded seven-eighths for salvage, and it is usual to give one-half. The present is such a case. IX. The only real point is, that the salvage was performed by an American vessel of war, in saving American property. There was never, before this, a case decided in which the right of a national vessel to salvage was denied on that ground. The contrary has been held in numerous British, French, American, Mexican and South-American cases. *The Hope*, 3 C. Rob. Adm. 215; *The Edward and Mary*, Id. 305; *The Helen*, Id. 224; *The John and Jane*, 4 C. Rob. Adm. 216; *The Gage*, 6 C. Rob. Adm. 273; *The Lord Nelson*, Edw. Adm. 79; *The Louisa*, 1 Dod. 317; *The Mary Ann*, 1 Hagg. Adm. 158; *The Iodine*, Pritch. Adm. Dig. 384, note 54; *The Charlotte*, Id., note 55; *The H. M. S. Thetis*, 3 Hagg. Adm. 14, 42; *The Lustre*, Id. 154, 155; *The Ewell Grove*, Id. 209, 224, 225; *The Helene*, Id. 430, note; *The Wilsons*, 1 W. Rob. Adm. 172; *The Iris* (S. C. Dist. Ct.) MS.; *Ex parte Kearney*, Id.; *The Ant*, in Mexico, National Intelligencer, Sept. 29, 1849; *The Active*, in Montevideo, Id.; *U. S. v. The Amistad*, 15 Pet. [40 U. S.] 518; *The Eugenie*, Evening Mirror, Sept. 26, 1849; *Op. Attys. Gen.*, Supp. N. Y. Tribune, Sept 24, 1849. X. The same law and the same principles, in civil and military salvage, apply to the navy of the United States and to that of Great Britain. XI. Neither the navy in the aggregate, nor any individual national vessel, nor any officer or seaman thereof, holds any particular relation to any commercial vessel, much less to property wrecked and deserted on the high seas. XII. The various acts of congress in relation to vessels in distress make no distinction between American and foreign vessels. XIII. The executive circular does not apply, in its letter or spirit, to salvage cases, nor has it any general or permanent operation. *The Josephine* was not a vessel in distress. She was wrecked property, abandoned at sea. XIV. There is no rule that salvage is to be withheld because the services were not extraordinary. XV. The objection that salvage is not due to the salvors because the commissioned officers declined to receive their share, is immaterial, if the right to salvage be personal. *The Lustre*, 3 Hagg. Adm. 154. XVI. This is a case of highly meritorious salvage services. It is of that class for which the highest pecuniary allowance is made—a case of actual total loss—of property deserted and derelict, which could not otherwise have been saved.

William Bliss, for claimants.

NELSON, Circuit Justice. The proofs show that no very extraordinary or hazardous service was required of the officers or crew of the Plymouth, or was rendered by them in saving the brig. She was discovered in latitude 37° N. and longitude 73° W. about one hundred and forty miles from the port of New York. The weather was fine from the time she was taken in tow till her arrival at that port, with the exception of some twenty-four hours, during which there was a pretty heavy blow, and on which occasion an additional hawser was used; but none of the crew were exposed on account of, remaining on the wreck during the blow, as the officer and the few men on board were removed to the Plymouth. The only delay that occurred to the Plymouth in her usual service was one of about two days, owing to the change of her course from Boston to New York. All the service rendered was under the direction of the commander of the Plymouth, and agreeably to the general instructions of the secretary of the navy to all the naval vessels of the government. The officers renounced all claim to salvage for the service, and so advised the secretary of the navy; but the crew refused to renounce. It is not necessary to determine, in this case, in order to dispose of it, whether or not the officers and crews of the naval vessels of the United States are in any case entitled to salvage for services rendered to American merchant-vessels in distress, notwithstanding the instructions on the subject, given by the government. I have no doubt that cases may exist in which they are entitled to salvage compensation, both on principle and authority. *The Gage*, 6 C. Edw. Adm. 273; *The Lord Nelson*, Edw. Adm. 79; *The Peusa-mento Feliz*, Id. 115; *U. S. v. The Amistad*, 15 Pet. [40 U. S.] 518; *The Alligator and The Enterprise* [Case No. 247], MS. decision of Judge Lee, S. C. Dist.; *The H. M. S. Thetis*, 3 Hagg. Adm. 14; *The Helene*, Id. 430; *The Lustre*, Id. 154; *Le Tigre* [Case No. 8,281]. But, in such cases, something more than the usual peril should be encountered by the officers and crew, and an extraordinary service should be rendered, exceeding the duty imposed upon them by their employment in the public service and the special instructions of the government on the subject. Ordinary service in rescuing American vessels in distress, requiring no great hardship or peril on the part of the officers and crew, would seem to fall directly within the line of the general duty thus enjoined. It is a service bestowed by the government

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for the protection and encouragement of its commercial marine, and the right to impose this duty on government vessels is too clear to be controverted. Great and extraordinary service and peril in rescuing a vessel and her cargo would present a different question and stand upon different principles and policy. Such acts should of themselves be the subject of reward and encouragement, and would not be necessarily comprehended in the duty resulting from the public employment of the persons rendering it or from the instructions of the government. It appears, from the proofs in this case, that the services upon which the claim for salvage rests were in no way extraordinary or perilous, and consisted wholly in boarding the schooner, securing to her the hawsers, and towing her into port, the crew having been removed from her when the weather rendered it dangerous for them to remain. As a service performed in obedience to the orders of the officer in command of the sloop-of-war, and, also, in itself, it was very commendable, and is deserving of all praise; but it was not specially meritorious, nor did it at all hazard the lives of any portion of the crew. There would be neither reason nor sound policy in construing this description of service, on the part of the officers and crew of a naval ship of the government, as a salvage service, or in placing them on the footing of common salvors. I shall therefore affirm the decree of the court below dismissing the libel, with the costs of this court. Decree accordingly.

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