

THE ONTARIO.

[8 Ben. 500.]¹

District Court, E. D. New York.

July, 1876.

SALVAGE—DERELICT—DISTRIBUTION.

1. Where a canal-boat in heavy weather broke loose from a tow, in going across the upper bay of New York, and was picked up by a tug and taken to Staten Island, the towing boat being present but not interfering with the labor of the tug; *Held*, that, while the canal-boat was not a derelict, as her towing boat was in sight and watching her, nevertheless the service rendered by the tug was a proper salvage service, and the court would award as a proper compensation 5400 and costs, the value of the canal-boat and cargo being \$1600.
2. A fireman, who at some risk, jumped on board the canal-boat to make a line fast, should receive a share equal to that of the master of the tug.

In admiralty.

Beebe, Wilcox & Hobbs, for libellants.

G. P. Hawes, for claimant.

BENEDICT, District Judge. This is an action to recover for salvage services rendered to the canal-boat Ontario, which boat, while being towed in the harbor, between Robbins' reef and Bedloe's Island in a heavy sea, broke loose from her tow and, thereafter, having no one on board, was picked up by the tug Conover and taken safely to Staten Island.

Clearly a salvage service was performed. The canal-boat was adrift, and in such weather would have been wholly lost, if she had not been picked up. But she was not strictly derelict, for the tug Virginia Jackson, from whose tow she had broken loose, was present, and it cannot be said that she would not have rescued the canal-boat, if the Con-over had not come to her assistance. It is nevertheless plain that, in view of the ability of the Conover to secure the canal-boat, the

Virginia Jackson, although ready to make the effort if necessary, considered it prudent to leave the boat to be so rescued, rather than endanger the other boats of the tow in an attempt to secure the one adrift.

The case being then not one strictly of derelict, I do not think it would be just to award one-third, although the value of the property saved is no more than § 1600. And yet, considering the importance of encouraging the rendition of aid to this class of vessels, which are often, when being towed about the harbor and the sound, exposed to weather which they are poorly adapted to withstand, I shall give a liberal compensation for the time and labor expended. The libellant may have a decree for \$400. In the distribution of this sum, the fireman, Matthew Kane, who, at some risk, volunteered to jump on board the canal-boat to fasten the line, will share equally with the master of the tug.

No tender having been made, the libellants must also recover their costs.

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