

The proceedings have been conducted in open court, appraisers have been appointed, sworn, and filed their report, and the United States district attorney has had notice, and offers no opposition to granting the prayer of the petition upon a deposit of a sufficient amount to secure the government for the entire value of the property and the duties.

To whom should the warrant or order for such delivery run? The marshal is the messenger and executive officer of the court to enforce its orders. The final judgment of the court, deciding upon the disposition of the property, determines the collector's custody of it, and if a disposition extends beyond simple custody, it must be the marshal who must carry it into effect. If the order was to sell, it would be the marshal who would sell. In this case I am of the opinion that the order of delivery should be made to the marshal, who will serve a certified copy thereof upon the collector.

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**COPE and others v. VALLETTE DRY-DOCK Co.\***

(Circuit Court, E. D. Louisiana. June, 1883.)

**1. SALVAGE—MARITIME SERVICE.**

A service is not necessarily a maritime service because rendered upon the high seas or a navigable river; it must have some relation to commerce or navigation; some connection with a vessel employed in trade,—with her equipment, her preservation, or the preservation of her crew.

*Thackeray v. The Farmer*, Gilp. 524.

**2. SAME—DRY-DOCK.**

A dry-dock which had remained securely and permanently moored to the bank for a period of 14 years, was not a subject for salvage services; it partook more of the nature of a fixture attached to the realty, than of a boat or ship.

Admiralty Appeal. [See S. C. 10 FED. REP. 142.]

On the fifteenth day of December, 1881, the British steamer *Clintonia*, while proceeding down the Mississippi river in front of New Orleans, took a sheer and collided with the Vallette dry-dock, moored on the right bank of the river, breaking a large hole in the side of the dock, which at once began to leak, whereupon two or more tug-boats went to its assistance, pumped it out, and prevented it from sinking, and then libeled it for salvage. There was a plea that the court had no admiralty jurisdiction.

\*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.  
Affirmed. See 7 Sup. Ct. Rep. 336.

*J. R. Beckwith* and *Chas. S. Rice*, for libelants.

*M. M. Cohen*, for claimants.

WOODS, Justice. Upon the findings of facts the question is presented whether the services rendered by the libelants to the Vallette Dry-dock Company were of such a nature as to give the district court and this court, sitting in admiralty, jurisdiction over this case. We are of opinion that the services did not partake of the nature of salvage services. The structure to which they were rendered was not designed for navigation, and being practically incapable of navigation, it had no more connection with trade or commerce than a wharf, a ship-yard, or a fixed dry-dock, into which water-crafts are introduced by being drawn up on ways. As shown by the findings, it had remained securely and permanently moored to the bank for a period of more than 14 years. It partook more of the nature of a fixture attached to the realty than of a boat or ship.

A service is not necessarily a maritime service because rendered upon the high seas or a navigable river. It must be a maritime service; it must have some relation to commerce or navigation; some connection with a vessel employed in trade,—with her equipment, her preservation, or the preservation of her crew. *Thackeray v. The Farmer*, Gilp. 524.

So, in the case of *The Hendrick Hudson*, when the hulk, a dismantled steam-boat, fitted up as a hotel and saloon, had got ashore, and it became necessary to lighten her by pumping, and a steam-propeller was employed for that purpose, whose owners afterwards filed a libel for salvage, it was held that the hulk was not at the time engaged in commerce and navigation in such a sense as to be liable *in rem* in admiralty. 3 Ben. 419.

A case in all respects similar to the present one was decided by Mr. DILLON, lately circuit judge for the eighth circuit. We refer to the case of *The Salva Wrecking Company* in the United States circuit court for the eastern district of Missouri. It has not been reported, but we have been furnished with a copy of the opinion delivered. It was a suit *in personam* to recover for salvage services for raising docks similar to the Vallette dry-dock, which, without breaking away from shore or parting the cables, had sunk so deep that they could not be raised by their own pumps. It was held that the services did not relate to navigation business, or commerce of the sea or public navigable waters, in such a sense as to make the services maritime, and the libel was dismissed for want of jurisdiction.

The cases cited by counsel for libelants are cases of derelict, or of property found floating at sea, or wrecked or washed upon the shore. *Taber v. Jenny*, 1 Spr. 322; *Fifty Thousand Feet of Timber*, 2 Low. 64; *A Raft of Spars*, 1 Abb. Adm. 485; *Twenty-three Bales of Cotton*, 9 Ben. 48. Other cases cited refer to salvage services rendered boats of different kinds. *The Old Natchez*, 9 FED. REP. 476; *Maltby v. A Steam Derrick Boat*, 3 Hughes, 477; *The Senator*, Brown, Adm. 372; *The Union Express*, Id. 516.

These cases are not in conflict with the views expressed in this case.

Our conclusion is that neither the district court nor this court has jurisdiction of this case, and the libel must therefore be dismissed.

PARDEE, J., concurs.

See *The Hyderabad*, 11 FED. REP. 749, and note, 758; *The Vincenz Pinotti*, *infra*.

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#### THE VINCENZ PINOTTI.\*

*Circuit Court, E. D. Louisiana. May, 1883.*

##### TOWAGE CONTRACT—MEASURE OF DAMAGES.

The rule for the measure of damages for the violation of a towage contract is the contract price, less the expense necessary to complete the contract; and where the master of the vessel to be towed refuses to state what he paid to other tow-boats for the same labor, the court will award the contract price as damages.

##### Admiralty Appeal.

*W. S. Benedict and W. C. Cage*, for libelant.

*Emmet D. Craig*, for claimants.

PARDEE, J. The case made shows a clear, unreasonable breach of a towage contract, fully entered upon, and the only question in the case that would justify an argument is the amount of damages to be awarded. The rule in such cases I understand to be the contract price, less the expense necessary to complete the contract. The contract price is admitted to have been 55 cents per ton on a tonnage of 633 tons, amounting to \$348.15. There is no evidence in the record showing the expense of completing the contract after the breach on the part of the bark. The agent of the *Flora*, the contracting tow-

\*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.