

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*.

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.

boat, says that the running expense of the *Flora* is about \$30 per day and four barrels of coal per hour, but there the investigation stopped. The master of the bark, when asked what agreement he made with the tow-boats that completed the towage, refused to answer, and, in refusing, was sustained by his proctor. This question, if answered, would have shown what the actual cost of furnishing the towage was, and while it might not have been conclusive upon the libelant, would have been somewhat of a guide to the court. If the claimant desired to reduce the damages, the master should have answered the question propounded to him, and furnished other evidence to show the actual expense to the *Flora* in case she had completed the towage. As this evidence was not furnished, there is nothing left for the court to do but award the contract price as damages.

The judgment of the district court is affirmed, with costs.

See *The Leipzig*, 10 FED. REP. 585, and note, 591; *The Hyderabad*, 11 FED. REP. 749, and note, 758.

THE W. B. CASTLE.

(*Circuit Court E. D. Michigan. May 8, 1883.*)

LIBEL AGAINST TUG—NEGLIGENCE—CROSS-LIBEL—DECREE.

Where a libel is filed against a tug for negligence, and a cross-libel by the owners of the tug for towage services, and the libelant recovers his damages, less the value of the towage services, no mention being made of the cross-libel in the decree, libelant's proctor is entitled to but one docket fee.

In Admiralty. On appeal from the clerk's taxation of costs.

The original libel was filed in "a case of negligent towage and collision." It set up a contract of towage, and averred that, while in the performance of said contract, the barge *McDougall*, by the mismanagement or fault of the tug *W. B. Castle*, was brought into collision with the schooner *Foster*, and suffered damages, which libelant sought to recover. The answer admitted the towage contract, but averred that the collision was not the fault of the tug, but of the barge. A cross-libel was filed on behalf of the tug, claiming to recover for services in towing the barge from her port of departure to the place of the collision, and also for certain services rendered to the barge after the collision. The answer to the cross-libel averred that the towage claim ought not to be allowed against said barge, if at all, otherwise than as a set-off to libelant's claim for damages by reason of

the collision set forth in the original libel. The only substantial question at issue between the parties concerned the negligence of the tug. A decree was entered in the district court, finding the tug in fault for the collision, and referring it to the clerk, who reported the damages. The clerk, in his computation of damages, allowed the cross-libelants the sum of \$100 for the towage services rendered. A decree was rendered in favor of the original libelants for the difference between the damages claimed by them and the amount so allowed cross-libelants. One appeal only was taken from this decree, and upon such appeal the decree of the district court was affirmed. In the taxation of costs in the circuit court, libelant claimed not only the usual proctor's fee upon a final decree, but also a proctor's fee upon the cross-libel.

H. H. Swan, for libelant.

F. H. Canfield, for cross-libelants.

BROWN, J. Without expressing an opinion whether, in an ordinary case of libel and cross-libel for collision, the successful party would be entitled not only to a docket fee upon his libel, but another upon the cross-libel, it is entirely clear to my mind that, in this case, the libelant is entitled to but one fee. These cases were not only treated as one suit, but in the decrees rendered, both in the district and circuit courts, no mention is made whatever of the cross-libel for towage. The original libelant was allowed his claim for damages, less a part of the sum claimed by the cross-libelants for their services. This claim was settled between the parties at \$100, and was deducted by the clerk from libelant's claim for damages. To this extent, at least, the cross-libelant was successful, and I cannot conceive upon what principle his adversary is entitled to a proctor's fee upon his libel.

The clerk will proceed to tax the costs by allowing the libelant but a single fee.