

vannah a cargo of lumber of certain sizes and lengths by specifications. She was chartered to take this lumber and none other, and the only right the master had was to demand such small stowage as would make the cargo stow safely, so as not to endanger the ship. If the cargo provided was not such as to give suitable stowage, so as to make a "full and complete cargo" according to measurement, the right of action, if at all, is against the sub-charterer and not against the ship.

The reason why the vessels referred to have averaged so much more per ton than the Lloyd took in, is, I consider, fully explained by the facts—*First*, that each vessel was selected by the specification for a particular cargo, and adapted to it; and, *secondly*, that the ship has had a special interest in getting such a cargo as would give her the greatest measurement, or the charterer, where the charter has been for a lump sum, has had an active agent present to look after his interests; and also the fact, as I think, plainly appears that this vessel was not adapted to carrying a lumber cargo unless it contained quite a large proportion of short lengths. These reasons, I think, justify the presumption of honesty and reasonable diligence on the part of the master, which has not been overcome by any evidence on behalf of the libellant.

The charter under which the vessel loaded specifies a full and complete cargo, "all under deck." The libellant is therefore estopped from claiming damage for the master's refusing a deck-load, even if the vessel could have carried it safely, of which the evidence, though, raises a doubt.

This conclusion renders unnecessary a consideration of the question as to whether or not the stevedore was agent of the ship or charterers.

The libel will be dismissed, with costs. .

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### THE GRID.<sup>1</sup>

(District Court, S. D. Georgia. May 1, 1884.)

#### SALVAGE—PILOTS ACTING AS SALVORS.

The service rendered by pilots must be beyond their ordinary duties as pilots to entitle them to salvage; but where there is unusual and extraordinary risk incurred in rendering service to a vessel in distress, although it be but a pilotage service, courts of admiralty may give an additional compensation to encourage meritorious action in such cases.

In Admiralty.

*Robert Falligant*, for libellant.

<sup>1</sup> Reported by W. B. Hill, Esq., of the Macon bar.

*Chisholm & Erwin, for claimant.*

LOCKE, J. The libellant, Michael P. Usina, a pilot belonging to the port of Savannah, while returning from his cruising grounds outside the bar of that harbor, on the nineteenth of January, 1884, discovered the Norwegian bark Grid coming up from the southward and running in, in the direction of Stone Horse shoal. He waved his flag and made what signals he could, but she kept on her course and soon struck. There was a strong southerly breeze, with a heavy sea, it breaking around and sometimes throwing the spray over her. Libellant came as near the bark as it was considered safe with his schooner, lowered his small boat, and boarded her with one man. While coming around under her bows, he shipped a sea that nearly filled his boat. The bark went ashore at low water, where the tide rises about five feet, and was pounding, and soon commenced leaking. Libellant ordered the anchor to be let go to prevent her dragging further upon the shoal, as the tide rose, and directed the bark's crew to keep pumping, which they did. As the tide rose the vessel floated, and the wind having come around to the westward, but having died out until it was too light to enable her to stem the rising tide, he piloted her through and over the shoals into Tybee roads. There was plenty of water, but she needed careful piloting. She was there taken in tow by a tug and brought to the city. She was injured some and leaked badly, having about six feet of water in her when she reached the dock. When libellant left his pilot-boat he ordered her to send out a tug from Tybee, but before her arrival there the tug had learned of the bark's being aground and gone out. She was not able to come near enough to take a line, and did nothing until the bark reached Tybee, when she took her in tow.

The connection of a pilot with a vessel in distress, his duty towards her, and his right to extra compensation for efforts in her behalf, always raise delicate questions as to just how far his position as pilot demands his services, and when his labor as salvor begins. There are frequently cases where the services are so unmistakably salvage and not pilotage, that there is no difficulty in determining his rights; but in others the character of the service is not so distinctly marked, and its nature more difficult to determine. Where a vessel is discovered aground and is relieved from the bottom by a pilot and his crew by carrying out an anchor, making jettison of cargo, or heaving at windlass or capstan; or where a vessel is leaking badly and is kept afloat by a pilot's crew pumping; or service is rendered by working an abandoned vessel, or one whose crew are worn out or disabled by sickness, and the vessel is in danger,—there can be no question but what such service would be one of salvage rather than pilotage, and that he would be entitled to compensation as such; but when the labor performed and service rendered consist only of such acts as the duty of a pilot demands, notwithstanding the fact that the vessel is in distress, or his exposure is unusual and the risk incurred more than

ordinary, it is against public policy to construe it as salvage; but, whenever unusual compensation appears to be demanded, it is given as extra pilotage.

The peculiar knowledge required of a pilot is as to the depth of water, and the rise, time, and strength of the tides; and where these items of knowledge only are used, or orders given based upon them, it can at no time be considered more than pilotage service. It is also the duty of a pilot at any time, in order to prevent a vessel in his charge from grounding, to let go an anchor; nor could such an act be considered beyond what might be demanded of him as pilot, or entitle him to extra reward. Nor can danger in boarding a vessel be taken into consideration, when unattended by other peculiar circumstances, to give salvage compensation, as it is in the worst weather that his services are the most required and demanded, and his duty becomes most imperative.

In this case, had the libelant reached the bark while she was approaching, or even while in the breakers, but before she had struck, and by correct and timely orders succeeded in extricating her from the difficulty with a skillful use of the sails and helm, can it be claimed that he would have been entitled to extra compensation because he had encountered danger in boarding her, or on account of the little water under her keel? I think not; for if such questions could be successfully raised in such a case there would be no end to demands on account of the severity of the weather, or the danger encountered in such services, or the shoalness of water, and danger of the vessel on such account, and any fixed rates of pilotage would be useless. The vessel when boarded was not afloat, and could not at that time be piloted; neither the libelant nor the man with him did any labor in extricating her from the bottom or in pumping, but his knowledge of the rise and direction of the tide, as pilot, enabled him, by ordering the anchor let go, to hold her in her position until the tide floated her, when his labors as salvor, if he could by any possible construction ever be so considered, ceased, and he became a pilot. There can be no question as to this. Had he found the vessel safely anchored at high tide in the place from which he piloted her, it could not be claimed that he was doing more than his duty as pilot in piloting her in; no more could it because he was on board before. But the vessel was aground in a dangerous place, and the weather bad; the evidence shows conclusively that the risk in boarding her was extraordinary and unusual; and the promptness and readiness to go to her aid praiseworthy, and entitled to recognition.

In *The C. D. Bryant*, 19 FED. REP. 603, which has been cited by claimant, the facts seem nearly similar, with the exception that in that case Judge DEADY did not consider that the libelant incurred even the ordinary danger of a pilot service, while in this case it was certainly considerable and unusual, although perhaps not greater than is occasionally but not frequently met in boarding vessels at

sea in tempestuous weather. In that case the libel was dismissed with costs, but in this, I think, the difference in the state of the weather and sea, and consequently the risk incurred, will justify a different decree. The bark was in ballast; her expenses, port charges, and repairs something over \$7,000; her value when repaired from ten to twelve thousand dollars, according to the demands of the market; leaving the net value saved from three to five thousand dollars. The libelant has presented a claim for pilotage, and been paid in full, and a tug paid extra towage from Tybee. The claimant has made a tender of \$250, and deposited that amount in the registry of court. I consider that amount will amply compensate for the extraordinary risk incurred, and that it is sufficient to encourage to like exertions under similar circumstances.

There will be a decree in favor of the libelant for \$250, and the costs incurred prior to the time of the deposit; subsequent costs to be deducted from the money on deposit, and the residue paid him.

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### THE PIONEER.<sup>1</sup>

(District Court, S. D. Georgia. June 7, 1884.)

#### 1. SEAMAN'S WAGES.

Where suit has been commenced by a seaman for wages in a state court against the owner, but it has been dismissed before hearing, an admiralty court may entertain jurisdiction upon the same subject-matter.

#### 2. SAME—COURT MAY DECREE WAGES, WHEN.

A court of admiralty may decree seaman's wages, although earned on a steamer of less than five tons, engaged in carrying freight and passengers upon navigable waters.

#### In Admiralty.

*Geo. A. Mercer* and *M. A. O. Bryne*, for libelant.

*J. J. Abrams*, for claimant.

LOCKE, J. This is a libel for seaman's wages, the libelant having been engineer on the steam-boat Pioneer. It is not denied that the amount sued for is due, but it appears that (1) the libelant had commenced an action against the owner of the boat under the lien law of the state; but subsequently came before the commissioner in a petition for seaman's wages, and upon obtaining a certificate of probable cause for action had dismissed the former suit at his costs; and (2) that the vessel upon which the services were rendered was a small steam-yacht or launch of less than five tons measurement, and neither enrolled nor licensed; both of which grounds are urged to defeat the jurisdiction of this court.

<sup>1</sup>Reported by W. B. Hill, Esq., of the Macon bar.

The steamer was inspected and licensed to ply for a distance of a hundred miles on the bays, sounds, rivers, and waters along the coast of Georgia, and to carry not exceeding 20 passengers, and had been engaged in carrying freight and passengers between Darien and Hammersmith landing, about eight miles, and out to Sapello High Point. The residence of the libelant is not shown, nor does there appear to have been any privity of interest, relationship, or acquaintance between him and the owner; but it is testified that when he was employed it was remarked that Mulligan, the then owner, "was good for his wages; if not, the boat was."

It is claimed that, having elected his forum, the libelant is estopped from abandoning it and bringing suit in another, and *The Highlander*, 1 Spr. 510, is relied upon. The decision there is that "a seaman's lien for wages is not defeated by a previous attachment of the vessel at common law in a state court, abandoned before the filing of the libel." Certainly that in no way declares that it would have been lost had not such suit been abandoned before the filing of the libel, but had been before the hearing of the case. The court was then only considering the case before it, and its decision cannot go beyond the state of facts therein existing. In this case the former suit was against the owner, and not *in rem*, nor was the property, at the filing of the libel, under attachment from another tribunal, which would prevent the valid execution of one under this. The suit in the state court had been dismissed at plaintiff's costs before this case came on to be heard. In the state court the seaman's lien is not the prior lien, without exception, as in the case of seamen's wages in admiralty. The matter has not been adjudicated, nor is there any other action now pending; and that is all that is necessary for this court to consider, if it has jurisdiction otherwise. This was a contract for services to be performed by assisting in the navigation and working of a boat or vessel on navigable waters by a person who appears in the case to be a marine engineer, and if the court has no jurisdiction it must be from facts sufficient to establish an exception to the general rule.

In regard to the size and character of the boat, and character of the services rendered by libelant, *The Bolivar*, Olcott, 474, and *The Farmer*, Gilpin, 524, have been cited and relied upon. In *The Bolivar*, the principal ground for dismissing the libel was that the lien had been lost by unreasonable delay until it became stale, and the character of the vessel, and the relations existing between the owner and libelant, were but incidentally mentioned, and not as controlling or determining the action of the court. In *The Farmer*, the small craft was engaged in carrying wood across the Delaware river to Philadelphia, from a place nearly opposite, and the opinion of the learned judge shows that he considered the objection to the jurisdiction on account of the general business and occupation of the libelants as laborers, they being engaged in navigating the boat but about eight hours a week, and because applications from the same

class of persons, whom he did not consider seafaring men, had become, as he plainly declares, annoyingly frequent. In this case the character and occupation of the libelant was that of an engineer of a steam-boat, engaged in transporting freight and passengers on water within the ebb and flow of the tide, in a small way, it may be true, but, nevertheless, sufficient, I think, to determine jurisdiction, and if on account of any local or temporary reason a judge may have declined to entertain jurisdiction, such decision need not be binding in cases where it is considered circumstances so differ that they justify another conclusion. In this case the commissioner, after examination, certified the case to this court. The libelant has, I consider, an action *in rem*. He has dismissed, at his own costs, the suit pending in the local court against the owner. There is no claim that the money is not justly due, and it would certainly be a hardship, not demanded by justice, to dismiss him without redress. Had the case come before me as commissioner originally, I will not say but what I might have referred the libelant to the local court, in which his suit was then pending, if as economical and speedy justice could have been obtained; but courts of admiralty are to give inexpensive and speedy redress to this class of litigants, and for this class of services, and I do not think the smallness of the vessel should protect it from an action *in rem*.

Let the decree follow for the amount proven,—\$129.67,—with costs.

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### THE HAROLD.

(District Court, S. D. New York. June 30, 1884.)

#### PERSONAL INJURIES—FELLOW-SERVANTS—MASTER AND SERVANT—COMMON UNDERTAKING.

The libelant was one of several men procured by a stevedore to shift coal in a vessel, all of whom were paid for by the ship, by the day, and he was injured, without his own fault, by a board which fell through the hatch in consequence of the winchman's starting up the steam-winch without notice to his fellow-workman, whose business it was to tend the ropes at the platform. The winchman was furnished by the ship and not by the stevedore, and was a competent person. *Held*, that all were in the common service of the ship, and were co-laborers in the same undertaking, and that the ship, therefore, was not liable for the injury, no breach of any duty owed by the ship or her officers being shown. *Held, also*, that it was immaterial that the winchman was paid by the month directly by the ship, and the other men by the day, through the stevedore; the former being under the direction of the men at the platform when to start or stop, and all being under the common supervision of the stevedore, or his foreman, and employed in a common undertaking.

In Admiralty.

L. C. Dessar, for libelant.

Jas. K. Hill, Wing & Shoudy, for claimants.