

the shore down into the bed of the river. When the grantees removed from the premises the buildings and other improvements reserved by the conveyance, they left standing above and below the water the pilings which had supported the railway. The respondents put up a bulk-head in front of the dock, partially filled in the same, and covered up the pilings where the filling in was done, but did not disturb those outside the bulk-head in the bed of the river. Mr. Atha excuses himself for leaving them by saying he did not know they were there. But he made no inquiry, and took no steps to ascertain whether they were there or not. I think it was negligence for not doing so on completing his wharf for use, and, being aware of the existence of the railway, he owed it to the public to remove, or at least to attempt to remove, the obstructions left by the former owners. From the large number of pilings afterwards taken out by Van Ness it is manifest that a little inquiry would have given him knowledge of the obstructions to the navigation, and of the perils to the use of the wharf, which had been left in front of the dock. Holding that the omission of such inquiry was negligence, there must be a decree for the libelant, and a reference to ascertain the damages.

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THE INDIANA.

(District Court, E. D. Pennsylvania. January 13, 1885.)

1. SALVAGE—AMOUNT, HOW DETERMINED.

What is a proper allowance for salvage is a question for the sound discretion of the court, to be determined by a consideration of the time, labor, expense, and risk expended and incurred by the salvors, and the value of their services.

2. SAME—STEAMER NEAR BURNING PIER—COMPENSATION OF TUGS.

An iron steam-ship, with about 30 men on board, and 45 pounds of steam on her donkey-engine, was lying next to a pier that caught fire, endangering the steamer, and, as a precautionary measure, the captain summons two tugs to render assistance, and they remained by her for several hours. The steamer could have moved, but not without some risk. *Held*, that the service rendered by the tugs was a salvage service, but that, under the circumstances, \$1,100 would be sufficient compensation therefor.

3. SAME—EXCESSIVE CLAIM—COSTS.

Although a vessel has been arrested for an exorbitant claim, costs may be allowed libelants where the respondent has made no offer of compensation whatever for the services rendered.

In Admiralty.

*Flanders & Pugh*, for libelants.

*Morton P. Henry* and *H. G. Ward*, for respondents.

BUTLER, J. That the libelants rendered a salvage service I cannot doubt. The respondent (in the brief submitted) admits that it was "a technical salvage service, in respect that the parties were not connected with the ship, and there were circumstances which required

removal in consequence of peril, not for the purpose of a voyage." When it is considered, however, that the vessel is constructed of iron, that the sails were packed away, that she was without cargo, had capacity to move, (though limited,) that a number of tugs, capable and willing to aid her, were at hand, the peril seems to have been very slight, indeed. What is a just compensation for the service it is difficult to determine. There is no rule by which it can be accurately measured. The time, labor, expense, and risk expended and incurred, and enterprise shown, by the libelant, and the value of the services to the respondent, must be considered. An examination of adjudicated cases involving salvage affords little, if any, aid. Each case stands upon its peculiar facts; and no two are alike. What is a proper allowance is a question for the sound discretion of the court. In some of the reported cases the allowance, viewed in the light of the reported facts, seems unreasonably small; while in others it seems so grossly excessive as to look almost like robbery. While the value of the property saved is entitled to consideration, it is by no means entitled to a controlling influence.

Considering the circumstances before adverted to,—the time, labor, expense, and risk expended and incurred, and the enterprise shown by the libelants, and the value of this to the respondent,—what compensation should be allowed? The time occupied was but a few hours; the labor and expense were little, if any, greater than that involved in ordinary towage for the same period; the risk involved (to the libelants) was very slight, and the enterprise displayed was not extraordinary. If the respondent had been entirely without power to move, and no other help than that of the libelants been within reach, the value of the service to her would have been very great. As we have seen, however, she could move, (though probably with some risk,) and abundant aid was at hand awaiting call. In view of all the circumstances I believe \$1,100 to be a just allowance. I do not doubt that the libelants would very cheerfully have contracted, in advance, to render the service for a smaller sum, and I think it improbable that the respondent would have contracted to pay more, considering her situation, and the abundant means of escape at hand. I do not think the damage sustained by one of the tugs should be charged to the respondent. This occurred as she passed out of the slip in which she lay when the fire broke out. While it is possible she might have remained in with safety, I cannot believe she would have stayed so near the fire and taken the risk of destruction, even if the respondent had not required aid.

I am asked to withhold costs from the libelants because of the extravagant claim (\$10,000) for which the vessel was arrested. Were it shown that the respondent manifested willingness to pay a reasonable compensation, I would grant this request. The arrest of vessels for claims so exorbitant as to justify a conclusion that the libelants know them to be grossly unjust is reprehensible and deserves

rebuke. But, in the absence of any offer of adequate compensation, and considering the ease with which the respondent here might have had relief by application to the court, I do not feel called upon to withhold costs. It is unnecessary to determine at this time how the sum awarded should be distributed among the several libelants, or whether the Toy is entitled to any part. It may not be improper, however, to say that upon the facts before me I would allow her nothing. A decree will be entered for \$1,100.

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THE SUPERIOR.

(District Court, N. D. New York. January, 1885.)

SEAMEN'S WAGES—INSOLENT COOK—DISCHARGE.

A woman, who had shipped on a barge for the voyage from Buffalo to Bay City and return as cook, used insulting and impertinent language to the master, refused on one occasion to obey his orders as to the time when she should do the washing for the crew, and finally was forcibly removed from the vessel by a deputy-marshal employed by the master, when she reached Bay City. She refused to receive the amount tendered her for wages up to the time of her discharge and to sign a release in full, and on her return to Buffalo filed a libel to recover wages for the whole voyage, car fare from Bay City to Buffalo, and alleged damages to her clothing. *Held*, that the master, notwithstanding her conduct, was not justified in turning her away penniless, friendless, and alone in a foreign port, and that she was entitled to recover wages for the voyage, and her traveling expenses, but not for any damage to her clothing.

In Admiralty.

On the fourteenth day of June, 1884, the libelant shipped on the respondent's barge as cook for a voyage from Buffalo to Bay City and return, "if not sooner discharged." The libelant testified that the words quoted were inserted in the shipping articles without her knowledge or consent. The vessel reached Bay City on the twenty-first of June. During the voyage the libelant used indecent language to the master on several occasions, and once refused to obey him as to the time when she should do the washing for the crew. On arriving at Bay City he discharged her, but she refused to leave the vessel, and was insulting and impertinent in her demeanor. Finally, the services of a deputy United States marshal were secured, and she was removed. The master tendered her \$3.50, the amount due at that time, upon her signing a release in full. This she declined to do. Her clothes were put by the deputy-marshal in a tug office, where they remained several weeks during her stay at Bay City. They were considerably damaged when she took them away. She was obliged to pay six dollars railroad fare to Buffalo. The barge completed her return trip July 1st.

The libelant seeks to recover—*First*, wages at the rate of fifteen dollars per month, eight dollars; *second*, car fare from Bay City to

Buffalo, six dollars; *third*, damage to clothing at Bay City, eight dollars.

*Clinton & Clark*, for libelant.

*Josiah Cook*, for respondent.

COXE, J. That \$3.50 was due to the libelant at the time of her discharge can hardly be disputed. This sum has not been paid, and, although a tender of the amount was made, it was coupled with conditions which she was not required to accept. The offer made at Bay City was not renewed in the answer or upon the hearing. Being a conditional tender, it was, even in the admiralty, insufficient. *Boulton v. Moore*, 14 FED. REP. 922; *The Cornelia Amsden*, 5 Ben. 315. It would seem, therefore, that in no event could there be a decree dismissing the libel. But, irrespective of these considerations, I think the libelant entitled to recover wages for the voyage. The weight of evidence has convinced me that her temper was ungovernable, her language obscene, profane, and disrespectful, and her conduct, upon at least two occasions, reprehensible in the extreme. I fail, however, to find anything in the testimony which justified the master in turning her away penniless, friendless, and alone—a stranger in a foreign port. The books have been searched with some anxiety to find an authority sustaining the respondent's view, but without success. Discharges, pending the voyage, have been upheld where there has been "mutinous and rebellious conduct, persevered in; gross dishonesty or embezzlement, or theft, or habitual drunkenness; or where the seaman is habitually a stirrer-up of quarrels, to the destruction of the order of the vessel and the discipline of the crew." But lesser offenses are looked upon as venial, and are leniently dealt with in the admiralty courts. The damage to the libelant's clothing is too remote to be recovered in this action.

There should be a decree in favor of the libelant for \$14, with interest from August 13, 1884, besides costs.