

THE PERSEVERANCE.¹*District Court, E. D. New York.*

June 4, 1885.

SALVAGE—FIRE—CARE OF
PROPERTY—CHARGES—MARSHAL'S COSTS.

Where three tugs had been engaged in putting out a fire on a bark at a pier in New York harbor, and the value of the property saved was reduced by the condition in which vessel and cargo were left after the fire was extinguished to \$5,477.57, the sum of \$2,100 was awarded as salvage to the tugs,—\$1,000 to the tug first at the fire, and \$800 and \$300 to the other two, respectively, with costs to each. Marshal's costs were not first deducted, but the sum paid by the ship agent in caring for and delivering the cargo was first deducted.

In Admiralty.

On the nineteenth of July, 1883, a fire broke out on a pier at Harbeck's stores, Brooklyn, at which the bark *Perseverance* was lying loaded with a cargo of jute. The fire spread rapidly from the pier to several vessels lying near, among them the *Perseverance*, and one of them, the *Lawrence Delap*, was totally destroyed. The tugs *Jack Jewett*, *Charm*, and *R. W. Burke* came to the assistance of the *Perseverance*, and towed her out in the river, and allowed her to drift towards Governor's island, in the neighborhood of which she grounded, the tugs continuing to pump streams of water on her. She was finally filled with water and the flames extinguished. The value of the vessel and cargo saved was some \$40,000, but this was greatly reduced by expenses for storage and watching. The three tugs brought an action against the property saved for salvage compensation, and offered testimony showing the relative value of their services. The *Jack Jewett* was the first of the three to arrive at the fire.

Benedict, Taft & Benedict, for the tugs.

Sidney Chubb, for claimants.

BENEDICT, J. This is an action to recover salvage compensation for services rendered by the tug Jack Jewett, the tug Charm, and the tug B. W. Burke, in saving the bark Perseverance and her cargo from destruction by fire at her berth in the dock. There is no question but that the services rendered by the tugs saved the bark from the total destruction which actually befell one ship lying at the same pier. The value of the property saved was, however, greatly reduced by the condition in which both vessel and cargo were left when the fire had been extinguished. The money realized from the sale of the property was further reduced by the method of sale adopted, in which all the parties acquiesced, including the salvors. These circumstances reduce the compensation receivable by the salvors. The value of the property actually saved is always an element of the calculation in a case of salvage. In this case I consider the value of 479 the property saved to be \$5,477.57. I do not deduct the marshal's costs from the proceeds of sale. I do deduct \$7,115.92 paid by the ship agent in caring for and delivering the cargo, and this, upon the ground that the circumstances created a charge to that amount upon the cargo in the hands of the salvors. To that extent, therefore, the property saved was reduced in value. The services rendered by the three tugs mentioned in effecting this salvage, if compensated at the rate of ordinary towage, would make the compensation rather more than \$1,800. Owing to the small amount of proceeds, they can recover but little more than this, meritorious as were their services.

Looking at all the circumstances, I fix the salvage amount for the three tugs mentioned—the Jack Jewett, the Charm, and the E. W. Burke—at \$2,100. This sum I apportion among these tugs as follows: To the Jack Jewett, which was first at the fire, for her owners and crew, the sum of \$1,000; to the Charm, for her owners and crew, the sum of \$800; to the R. W. Burke, for

her owners and crew, the sum of \$300; and I further direct that the costs of the salvors be first paid out of the funds in the registry. If any further apportionment be required, it will be made on the application of the parties interested.

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

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