CANDEE *v.* SIXTY-EIGHT BALES COTTON.[1]

(District Court, S. D. Alabama. March 9, 1891.)

1. SALVAGE—WHEN ALLOWED.
   Salvage is allowed as a reward for the benefit conferred on the person whose property is saved.
2. SAME—RATE.
   There is no rule governing absolutely the rate of salvage, but, when the property is derelict, *it seems* at least one-third of the value of the property saved may be allowed.
3. SAME—PASSENGERS AS SALVORS.
   A passenger is entitled to salvage when his services are extraordinary.
4. SAME.
   When mariners left in charge of cargo, necessarily thrown overboard, desert their post, and a passenger, by persuasion and rewards, induces them to return, and successfully directs them in the rescue of the cargo with the ship's appliances, he is entitled to salvage, but not to the extent of the full value of the service rendered by all.

In Admiralty. Libel for salvage.

The steam-boat Anderson, while coming down the Mobile river, had a part of the cargo, consisting of cotton in bales, to catch fire. An effort was made by the officers and crew of the vessel to extinguish the fire while the cotton was still on board. Being unsuccessful the master had the burning bales thrown overboard into the river, and ordered one of his officers and five or six members of his crew to take to the small boats, with proper appliances, and to endeavor to save the cotton from burning, and to secure and keep it until he could go with his steamer to Mobile, (some 20 miles distant,) and send up a tug-boat for it. The steam-boat went on without delay to Mobile. The libelant was at the time a passenger on said steam-boat. He voluntarily left the boat, abandoned for the time his trip to Mobile, and, with the crew left by the master, joined in the effort to save the cotton. Most of the cotton was saved, but some of it in a damaged condition.

M. D. Wickersham and *Pillans, Torrey & Hanaw*, for libelant.

Overall & Bestor, for respondent.

TOULMIN, J. The general principle is that salvage is only payable where a meritorious service has been rendered. It is allowed as a reward for the meritorious conduct of the salvor, and in consideration of a benefit conferred on the person whose property he has saved. There is no positive rule which governs absolutely the rate of salvage. In this case if the cotton had been derelict,—that is, had been deserted or abandoned by the vessel,—and it had been saved as set forth in the libel, I would award at least one-third—perhaps more—of its value as salvage. But I find from the proof that the cotton was not derelict,—was not abandoned,—but that the master of the vessel left an officer and six members of his crew to secure and preserve it until he could go to Mobile, and return or send for it. If this officer and these men had diligently and faithfully

[1] Reported by Peter J. Hamilton, Esq., of the Mobile bar.

performed their duty under their obligations to the boat and cargo, the services of the libelant would have been unnecessary. But it appears from the proof that one-half of the crew left by the master to perform the salvage service were about to desert their post of duty. They proposed to abandon their trust and to leave the work undone, so far as they were concerned. Here the efficiency and value of libelant's services came in, and his superior intelligence, will power, and energy were displayed. It appears from the proof that he induced these men to remain and continue in the work, and proposed to pay them $3 apiece if they would do so. They did continue, and under his directions worked to save the cotton, (which it was their duty to do,) and he paid them the amount agreed on. The libelant's advice and direction must have constituted the chief merit of his service in the work actually done, as he had no appliances with which to do the work other than those furnished by the boat, and which were in the possession and charge of the boat's crew left for the purpose. The libelant states in his libel that he got a boat from the bank, and hired four men at $5 apiece to perform the service, and that he with them saved the 68 bales of cotton. From the allegations of the libel, it would be inferred that the libelant had hired four men disconnected with the boat, and under no obligations to the vessel and cargo, to aid him in the work. If this was the proof I would at least allow $6 a bale as salvage, which I consider a fair award for the whole service rendered, although the cotton was not derelict. The proof shows that the service was rendered by the boat's crew, with its appliances, in conjunction with the libelant, but it also shows that he mainly bossed the undertaking, and generously rewarded some of the men for performing their duty in the matter. It is sufficient to entitle the salvor to a just compensation that a beneficial service has been rendered; it is only in estimating the quantum of compensation that the motives by which he was actuated should be taken into account. The libelant in this case has rendered beneficial service. But, under the circumstances of the case, I do not consider him entitled to the full value of the service rendered by all engaged in it, but that he is entitled to a large proportion of it. Although a passenger, he is entitled to salvage. His services were extraordinary. *The Brabo*, 33 Fed. Rep. 884. But I consider $200 ample compensation for the services rendered by him; and such will be the decree.

HEAD v. PORTER.

(Circuit Court, D. Massachusetts. December 3, 1891.)

FEDERAL COURTS—JURISDICTION—INFRINGEMENT OF PATENT—SUIT AGAINST FEDERAL OFFICER.

An officer of the United States, in charge of a government armory, may be sued in the circuit court for infringement of a patent, notwithstanding that all his acts in relation thereto have been performed under the orders of the government.

In Equity. Suit by Charles Head, as administrator of William S. Smoot, against Samuel W. Porter, master armorer at the Springfield armory, for infringement of a patent. Heard on plea to the jurisdiction. Plea overruled.

William A. Hayes, 2d, for complainant.

Frank D. Allen, U. S. Atty., for defendant.

COLT, J. The plea in this case raises the single question of jurisdiction. The suit was originally brought by William S. Smoot, the complainant's intestate, against James G. Benton, an officer of the United States army in command of the national armory at Springfield, Mass., charging him with infringement of two patents, dated, respectively, January 1, 1867, and August 27, 1867, for improvements in cartridge retractors for breech-loading fire-arms. Subsequently the defendant died, and thereupon the complainant moved to amend his bill by substituting the present defendant, Porter, master armorer at the Springfield armory. The amendment was allowed, reserving the right of the defendant to object. The defendant appeared, and without objections filed an answer in the case. The United States attorney, on behalf of Porter, urges this circumstance as tending to show that this suit is in substance, though not in form, against the United States, but I fail to see the force of this argument. The complainant, on the death of Benton, might have proceeded against his representatives; but he chose to sue the present defendant, who consents to be substituted for Benton. The suit, therefore, stands as if originally brought against Porter.

The defendant admits that since the date of the patents, and before the filing of the bill, he has superintended, and still superintends, the making of breech-loading fire-arms, at the Springfield armory, as the master armorer, but he alleges that all his acts in relation thereto have been done in obedience to specific orders from the secretary of war, and his superior officers, directing the construction thereof, and in no other way; in other words, his defense is that he has acted only as the agent of the government, and under its authority. The subject-matter of this suit is a patent issued by the United States, and it became important at the outset to determine the nature of this grant. It has been authoritatively declared by the supreme court that the right of a patentee under letters patent was exclusive of the United States, and that it stands on the same footing as other property. *James* v. *Campbell*, 104 U. S. 356; *Hollister v. Manufacturing Co.*, 113 U. S. 59, 5 Sup. Ct. Rep. 717. As-