

age, shows that, except in the case of derelicts, where the old moiety rule, though no longer followed, has yet left traces of its influence, and in a few other cases, where there were exceptional circumstances, no such large percentage on so large a net value saved, the property being in like straits, has been awarded, when there has been neither risk of life or property, nor extraordinary exertion in saving it. The case relied on chiefly by the claimant is *The Lone Star*, 34 Fed. Rep. 807, a decision by the same district judge who decided the case at bar, (affirmed in the circuit court, 35 Fed. Rep. 793.) In that case 22 per cent. to 30 per cent. was awarded, but the service rendered in moving the vessel, "enveloped in flames," from the slip, was attended with danger, there being such risk of fire that several tugs applied to by the superintendent to go into the slip refused to do so; and the subsequent service in throwing water upon the steamer, which "was burning furiously," involved some danger to the vessels engaged in the performance, with hard labor and exposure to a north-west gale in freezing weather. The case at bar bears a strong analogy to that of *The Blackwall*, 10 Wall. 1, where an award of \$10,000 for saving property to the amount of \$100,000 was approved by the circuit court and by the supreme court, and to that of *The Avoca*, 39 Fed. Rep. 567, where \$5,000 was awarded on \$70,000 saved.

Upon all the facts we are of the opinion that the amount of salvage awarded by the district court is so much in excess of the usual rate for services of like character, rendered under similar circumstances, as to call for a material reduction, and think that \$12,000 is a liberal allowance. The evidence shows that the ferry-boat *Sylvester* was, for a time, unreasonably obstructive to the police-boat *Patrol*, preventing it from bringing its powerful pumps into service for nearly half an hour. The award to her owners and crew should, for that reason, be reduced one-third. The decree of the circuit court is reversed, and the cause remitted to that court for further proceedings, in accordance with the views above expressed. Costs of this appeal to the appellants.

DUMPER SCOW No. 11.¹

LOVE *et al.* v. DUMPER SCOW No. 11.

(District Court, E. D. New York. November 20, 1891.)

SALVAGE—EVIDENCE—PREPONDERANCE OF PROOF.

Libelants produced two witnesses, themselves libelants, from their tug R., who asserted that after a certain scow, which had been in tow of the tug T., had sprung a leak and sunk, the R. had rendered salvage services to her, by pushing her further on the shore and notifying her owners. Their story was flatly contradicted by the witnesses from the tug T., who asserted that, after the scow was left by the T.,

¹Reported by Edward G. Benedict, Esq., of the New York bar.

she was never moved by any vessel. *Held*, on this conflict of testimony, that the libelants had failed to prove their case by preponderance of evidence, and the libel should be dismissed.

In Admiralty. Suit to recover salvage compensation.

Wing, Shoudy & Putnam, for libelants.

Goodrich, Dady & Goodrich, for claimant.

BENEDICT, J. This is an action by the owners and crew of the steam-tug Chas. Runyon to recover salvage. Its decision turns upon a question of fact not ordinarily presented in actions of this character. The circumstances are as follows: A dumper scow, while in tow of the tug Talisman, sprung a leak, and sank off Coney island, in the lower bay. After an ineffectual effort by the Talisman to get the scow afloat, she was left by the Talisman where she had grounded. On the next day, or the day thereafter, a derrick was sent down by the owners of the scow to raise her. This derrick was towed down by the tug Chas. Runyon, and by the same tug the derrick, with the scow in slings, was towed up to New York city. For this last service of towing the derrick down, and the derrick and scow to the city, the Runyon was paid. She now claims to have rendered other services prior to the time of towing down the derrick, which entitle her to salvage. The assertion is that on the day after the day when the scow sank, while the tug Runyon was proceeding from Barren island to New York, the scow was observed by those on board her, abandoned; that they proceeded to her, and, finding her afloat, put a hawser upon her, and towed her a mile and a half towards the iron pier, and until she fetched up on the bottom; that, in order to prevent her from floating off again, the Runyon, by pushing against her, shoved her still more aground, and then left her, and proceeded to the city, and there notified her owners of her situation; that about 6 o'clock in the evening of the same day the Runyon went down to the scow again, and, by hooking an anchor on her, succeeded in pulling her somewhere near a quarter of a mile further up on the shore, where she was left fast on the ground, and there remained until raised by the derrick. These services, asserted to have been rendered by the Runyon prior to the arrival of the derrick, and subsequent to the time the scow grounded, are testified to by two witnesses from the Runyon, who are themselves libelants. The claimants produced two witnesses from the Talisman, who were on board the Talisman at the time the scow was sunk, and who assert that the account given by the master and the deck-hand of the Runyon, in regard to any services rendered on the Runyon between the time when the scow was left by the Talisman and the time when she was taken hold of by the derrick sent down by the owners, is wholly false. They assert in positive terms that the scow was never moved by the Runyon or any other vessel between the time when she was left by the Talisman and the time when she was taken hold of by the derrick; that the scow when left by the Talisman was so fast aground that the Talisman, after strenuous efforts, was unable to move her, and that it would not be possible for the Runyon (being of less power than the

Talisman) to move her at all; that it was not possible for the scow to float, for the reason that she was in a sinking condition, and that she in fact sank to the bottom as soon as the chains of the derrick were loosed. Furthermore, those witnesses say that the position where the scow was left by them was carefully observed by them at the time, that ranges were taken, and that they saw the scow when the derrick raised her, and she was then in the same position where she had been left by the Talisman. In this conflict of evidence, the general rule that the libellant, in order to succeed, must prove his case by a preponderance of evidence, is to be applied. Here there is no preponderance of evidence in favor of the libelants, and the libel must therefore be dismissed, with costs.

THE MARIE ANNE.

(District Court, E. D. Virginia. February 10, 1883.)

SALVAGE—TOWAGE SERVICES BY OCEAN STEAMER—YELLOW FEVER—COMPENSATION.

An ocean steamer worth \$150,000, with a valuable cargo, and about 50 men, as crew and passengers, while running on schedule time from New York to Cartagena and other Caribbean ports, encountered a brig, in a practically helpless condition, about 130 miles off Cape Henry. Only three men were on the brig, the captain and the rest of the crew having died of yellow fever. It being considered unsafe to put men aboard her, the brig was towed into Hampton Roads, during a high and dangerous wind, the steamer deviating from her course about three days for that purpose. The brig and cargo were appraised at \$7,045 as the auction value in Norfolk, which was much below their commercial value. Held, that \$2,750 should be awarded as salvage in addition to the expenses incurred by the deviation.

In Admiralty. Libel for salvage services performed by the steamer Bellver and crew, in towing the brigantine Marie Anne into Hampton Roads. Decree for libelants.

The other facts fully appear in the following statement by HUGHES, J.:

The steamer Bellver, Antonio Planas, master, left New York on the 18th of October, 1882, for Limon, Cartagena, and other ports on the Caribbean sea. At 6 o'clock on the morning of the 20th, she saw the Marie Anne, a French brigantine, showing signals of distress, and went to her. Most of the crew of the Bellver were Spanish, but Rossello, the first mate, spoke French. At the direction of the captain, Rossello spoke to those on board the Marie Anne in their own language. He asked them what they wanted. They replied, "We want to be saved." He asked if their captain was on board. They replied, he was dead. He asked if they had any navigator. They replied, "None," adding, "We are but three;" all the rest of the crew and the captain were dead. They requested to be taken on board the Bellver. When denied, they requested that their vessel and themselves should be taken into port. Their captain and the rest of their crew had died of yellow fever. The captain of the Bellver held a conference with his officers and passengers, and it was decided to tow them into port. They were then about 130 miles off the capes of the Chesapeake. The Bellver had on board a crew of 40 men, 7