

America, about in the ratio of from two or three to one; so that if the two occupied the same *status* as independent salvors, the Merritt Company should receive about two and one half or three parts to the North America's one. But as the North America came in merely as a subordinate and temporary helper to the Merritt Company, one half the share of an independent salvor, or from one seventh to one eighth, will, I think, be a fair adjustment of the North America's compensation as between themselves.

As for the Tamesi's service, as a lighter towed by the Buckley, \$1,500 will, I think, be a very ample allowance. Deducting from the \$40,000 the sum to be allowed for the Buckley, and the expenditures of the Merritt Company, the above proportion of the residue, including the \$100 expended, will be about \$5,000, which I award to the North America. This sum appears to me a liberal award to that vessel, taken as she was for temporary and special use without any obligation on the part of the Merritt Company to share the work with her in any degree, and when the rest of their own forces were expected to be present on the following day. Her actual service in pulling was but for 20 minutes on the 6th, when her hawser broke; and less than two hours on the following midnight tide.

On the other hand, if a reduction of \$6,500 in the receipts of the Merritt Company for a brief use of these two vessels seems large, it must be considered that the very fact of their use of that additional force, and the fortunate result and speedy relief to the Venezuela and her cargo without loss, presumably entered to some extent at least into the concession of the liberal allowance of \$40,000, which was agreed upon for the whole service.

A decree, with costs, may be entered for the Merritt Company for \$33,500; and for the other libelants for \$6,500.

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### THE DESPATCH.

#### MILLARD *et al.* v. THE DESPATCH, (two cases.)

(District Court, S. D. New York. May 13, 1892.)

#### 1. SALVAGE—DIFFERENT SETS OF SALVORS—AWARD TO LATER ARRIVALS.

Though subsequent events sometimes show that of several salvors the services of those arriving later could have been dispensed with, such later salvors are not to be deprived of all share in the award if they rendered accepted aid.

#### 2. SAME—FIRE ON VESSEL—TUGS—CITY FIRE DEPARTMENT.

Fire broke out on a lighter lying in a slip in New York city. The city fire department began work on the fire, and shortly afterwards came two tugs, which pumped water on the flames. Afterwards came the harbor fire boat, to which one of the tugs surrendered her place. The value of the property saved was \$17,000; one tug was worth \$15,000, the other \$12,000. *Held*, that the tug first to arrive should receive \$200 as salvage, and the other \$75.

In Admiralty. Libel for salvage. Decree for libelants.

*Wilcox, Adams & Green*, for libelants.

*Robinson, Bright, Biddle & Ward*, for claimants.

BROWN, District Judge. At about quarter past 9 in the evening of March 29, 1892, fire was discovered on board the lighter *Despatch*, which was moored outside of the steamship *Saratoga* on the upper side of pier 16, East river. Only one person, a watchman, was on board of the *Despatch*. He gave an alarm, and sent a signal to the city fire department, in answer to which an engine came near the dock, and a hose was run along and across the *Saratoga* upon the *Despatch*. A stream was also played for a short time from the deck of the *Saratoga*, but without much effect. Shortly after the fire department's hose began to play, several tugs came from the slip above to render assistance. The first to arrive was the libelants' steamtug *Adelaide*, which went to the starboard side of the lighter forward; next, the libelants' tug *America*, which went to the lighter's port quarter. Both played upon the lighter, and now claim salvage compensation.

The defense is that the services rendered by these tugs were of no value, inasmuch as there was sufficient help from the fire department without any aid from them. This defense, however, does not meet the whole case. It often appears at the end of the work that the services of the later of several salvors could have been dispensed with, since those which arrived earlier could have done the work. But in such cases those who come later are not wholly excluded, if they take part in the work; the amount of salvage is apportioned among all according to their merit. The present case must be decided in the same way. When the *Adelaide* arrived and began playing upon the boat, the extent of the fire and its probable persistence were not known, and could not be foreseen. Her service was accepted. She first played as directed by some of the firemen. Her hose was next played into the boiler house, where there was a good deal of smoke, and the light of fire was visible; and finally, when an opening was made through the deck, her hose was played into the hold forward, where most of the fire was. Nor can I doubt the testimony of the three persons on the *America*, that their hose was played into the boiler house on the port side, where smoke and the light of fire were visible for some little time before the city fire boat *New Yorker* arrived and ordered off the *America* to make room for the *New Yorker*. Whether such an order was authorized or not, it does not diminish the merit of the *America* that she gave way to the city tug, which was doubtless more fully equipped for the best service. The evidence makes it clear that the fire was not put out for one or two hours after the two tugs arrived. The *Adelaide* played her hose most of the time; the *America*, until the *New Yorker* came.

It is of the highest necessity that tugs as a rule shall hasten to help put out fire on vessels in the harbor, with all possible speed and alacrity. Reliance cannot be placed exclusively upon either the land or the water force of the city fire department, since circumstances very often occur in which the latter cannot render timely and effective aid. The first

minutes in cases of fire are also the most important. Sound policy requires that tugs which proceed promptly to the scene of danger and render accepted service shall be awarded a reasonable compensation.

The fire in this case, though at first seemingly slight, occasioned considerable damage, namely, about one quarter of the value of the lighter. Her value after the fire was \$17,000; that of the two tugs \$15,000 and \$12,000 respectively. The fact, however, that there were abundant other means at hand to put out the fire diminishes greatly the allowance that otherwise might be properly made. A just allowance to the tugs, as their fair proportion of the whole service, will, I think, be \$200 for the Adelaide, and \$75 for the America; two thirds of these amounts to go to the owners of the tugs, and the other third to the officers and crews in proportion to their wages. Decrees may be entered accordingly, with costs.

PROVIDENCE WASHINGTON INS. CO. v. BOWRING *et al.*

(Circuit Court of Appeals, Second Circuit. February 16, 1892.)

No. 59.

1. MARINE INSURANCE—CONSTRUCTION OF POLICY—EXCESSIVE INSURANCE.

Where a vessel valued at and insured for \$100,000 is a total loss, and all the policies have been paid except one for \$5,000, an action thereon cannot be defeated merely because other insurance, to the amount of \$28,750, "on advances" incident to the operation of the vessel, has also been paid; and it is immaterial whether such advances were the proper subject of insurance or not, so long as such insurance did not cover the vessel or any of her belongings.

2. SAME—INSURANCE ON ADVANCES.

Where marine insurance is effected at Lloyds' "on advances," and those words are written in the valuation clause, which already contains a printed description of all parts of the ship, the policy must be construed to be not upon advances for repairs, but upon something independent of the ship, such as moneys advanced in her business.

46 Fed. Rep. 119, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

In admiralty. Libel by Thomas B. Bowring and others against the Providence Washington Insurance Company. Decree for libelant. 46 Fed. Rep. 119. Respondent appeals. Affirmed.

*Harrington Putnam*, for appellant.

*Convers & Kirlin*, for appellees.

Before WALLACE and LACOMBE, Circuit Judges.

WALLACE, Circuit Judge. By the policy in suit the appellant insured the steamship for the benefit of all persons interested in her in the sum of \$5,000 against the peril by which she became a total loss. By its terms the value of the steamship was agreed upon at \$100,000. The libelants, the owners of the steamship, before this suit was brought, had been paid \$95,000 by other insurers of the steamship upon policies similar to the one in suit. They had also been paid about \$28,750 for