

## THE CHARLES WETMORE.

UPTON v. THE CHARLES WETMORE *et al.*, WOOD, Intervener.

(District Court, D. Oregon. July 9, 1892.)

## SALVAGE—TOWAGE SERVICE—COMPENSATION.

The "whaleback" steamer *W.*, valued, with her cargo, at \$409,219, lost her rudder plates, and was drifting shoreward in a storm near Tillamook rock, about 30 miles south of the mouth of the Columbia river. The steamer *Zambesi*, worth \$220,000, bound from Victoria, B. C., to Portland, Or., having been driven south of the Columbia, discovered the *Wetmore* flying signals of distress. With some difficulty a hawser was made fast, and the *Wetmore* was towed near the mouth of the Columbia, but, no pilot being available, the vessels were held off the bar until next morning. The *Zambesi* then steamed for the river, but when three and a half miles off McKenzie's head the hawser parted. It was recovered, and again made fast during a period of increasing danger. A pilot was procured, and the bar was crossed in safety. The *Wetmore*, being very heavy, yawed from side to side, rendering it necessary to cross the bar very slowly, and, as the tide was flooding, the heaving seas traveled faster than the *Zambesi*, thus beating upon and sweeping over her, straining her decks, breaking in her house, and otherwise injuring and imperiling her. *Held*, that \$20,000 should be allowed for salvage, and distributed, \$7,000 to the *Zambesi*, \$5,000 to her master, \$5,000 to her crew, \$2,000 to the pilot, and \$1,000 to the mate.

In Admiralty. Libel by Frank Upton against the steamer *Charles Wetmore* and cargo for salvage, the American Steel Barge Company being claimant of the vessel, and the Pacific Steel Barge Company claimant of the cargo. George W. Wood intervened, claiming compensation for services as pilot. Decree for libelants and intervener.

*Mr. Alfred F. Sears* and *Mr. Paul R. Deady*, for libelant.

*Mr. Zera Snow*, for intervener.

*Mr. C. E. S. Wood* and *Mr. Couch Flanders*, for claimants.

DEADY, District Judge. This suit was commenced by Frank Upton, libelant, against the steamer *Wetmore*, her tackle, apparel, and cargo, on December 10, 1891, to obtain compensation for a salvage service rendered them by the libelants.

On December 11th the vessel was arrested and delivered to the claimants on the 16th, on the stipulation of William S. Ladd and R. Williams in the sum of \$200,000.

On January 4, 1892, George W. Wood, the pilot on the *Zambesi* when she crossed the bar of the Columbia with the *Wetmore* in tow, filed a libel of intervention, asking for compensation for his services to the *Wetmore* in conducting her across the bar as a salvor.

After a careful examination of the evidence I find the material facts of the case to be as follows:

1. On the morning of Tuesday, December 8, 1891, the *Charles W. Wetmore*, an iron, screw steamer of the type called "whaleback," being of 10,750 tons register, 17½ feet draft when loaded, and valued, with her cargo, at \$409,219.09, while on a voyage from Philadelphia to Puget sound, was lying 4 or 5 miles from the shore in the Pacific ocean, a

short distance south of Tillamook rock, and about 30 miles south of the mouth of the Columbia river, disabled by the loss of her rudder plates.

2. A strong sea was running to the northwest, the result of a violent blow on the 6th and 7th of the month. Her machinery was in good condition, and an attempt had been made on the morning of the 8th to rig a drag as a jury rudder, composed of a lot of rope and chains, but it proved of no use, and she was unable to steer, and was drifting slowly but surely towards the shore in about six or seven fathoms of water.

3. On the same morning the Zambesi, an iron, screw steamer of 1,654 tons register, valued at \$220,000, and lightly loaded, was on a voyage from Victoria, B. C., to Portland, Or., and in the bad weather had run below the mouth of the Columbia to the neighborhood of Tillamook rock, when she discovered the Wetmore, flying a signal of distress, "H. V.," which means, according to the "International Code of Signals," "Damaged rudder; cannot steer."

4. The master of the Zambesi signaled the Wetmore, and asked her if she wanted a tow, to which he replied, "Yes," and signaled for a boat. The sea was very rough, and the master of the Zambesi did not care to risk a boat, but with the aid of lifebuoys sent out a small line, and steamed around the ship, in hopes they would be able to get it on board, but, although they grappled it, they could not hold it. After some three hours spent in this way the Zambesi signaled to the Wetmore to send a boat off, when the master of the Wetmore, in response to the signal, went to the Zambesi, the latter lying to and making a lee for him, and gave the latter a line, attached to his hawser, which was then taken on board and made fast.

5. The Zambesi then steamed up the coast to the mouth of the Columbia, which she reached about dark, where, not finding a pilot, and not caring to cross in on such a heavy sea without a pilot, with the Wetmore in tow, the master of the Zambesi signaled to the Wetmore that he would not go in, and offered him another hawser, which he declined. The Zambesi then, with the Wetmore in tow, dogged off the bar at easy speed within sight of the Cape Disappointment light, until daylight, when he stood southward for the bar; but about 8 o'clock in the morning, and when some three and a half miles off McKenzie's head, and in six or seven fathoms of water, the hawser parted in the chocks of the Wetmore.

6. The master of the latter then sent his mate in a boat to the Zambesi for her hawser. The master of the latter offered his hawser, but the mate replied he was ordered to get his own hawser. The people on the Zambesi then drew in the hawser, and, making fast a line, passed it to the people in the boat, who carried it to the Wetmore, and made it fast.

7. Considerable time was lost in this operation, while the vessels, by force of the heavy sea which was setting to the northwest, were drifting towards the shore. Before the hawser was made fast to the Wetmore, the master of the Zambesi sung out, "If you don't make that hawser fast quickly I must leave you, and seek safety;" to which the master of the Wetmore replied: "For God's sake, hold on to me; don't let me go." The

Zambesi held on a few minutes longer, the hawser was made fast, and the Zambesi proceeded with the Wetmore in tow in the direction of the mouth of the river, where they took on a pilot, George W. Wood, and came over the bar and up to Astoria by nightfall.

8. Before starting over the bar the master of the Wetmore was called on board the Zambesi, where between him, the pilot, and the master of the Zambesi, some signals to be used in crossing the bar were agreed upon. The master of the Wetmore took with him, when he left the Zambesi, a small hawser, to aid in the tow of the vessel, which parted when they were over the bar on safe anchorage.

9. Owing to the weight of the Wetmore, and the fact that she could not be steered, but yawed from side to side, it was absolutely necessary for the Zambesi to go slowly. The tide was flooding, and the heavy seas traveled faster than the vessel, so that they beat upon her, and swept over her all the way across the bar, thereby straining her decks, breaking in her house, and otherwise injuring her and imperiling her safety.

10. In rendering this service to the Wetmore, the Zambesi did not incur any serious risk to the vessel or crew, except in crossing the bar, while the Wetmore was rescued from a position of great danger when the Zambesi took hold of her near Tillamook rock, and preserved from a like danger until she was brought to Astoria.

11. On the argument counsel for the libelant claimed that the compensation should not be less than \$50,000, while counsel for the claimants insisted that no greater sum should be allowed than \$10,000.

After mature consideration I have concluded to fix the sum at \$20,000,—a little less than 5 per centum of the value of the Wetmore and cargo,—and this amount to be apportioned as follows: \$5,000 to be divided equally among the crew, \$5,000 to the master, \$1,000 to the mate, \$2,000 to the pilot, and \$7,000 to the Zambesi.

There will be a decree entered that the stipulators, Ladda and Williams, pay this sum into the clerk's office for the use of the parties named within 10 days from this date, or, in default thereof, that execution issue against them therefor.

## THE HERCULES.

## THE BRANDON.

## THE HERCULES v. THE BRANDON.

(District Court, D. South Carolina. July 23, 1892.)

## COLLISION—TUGS—MUTUAL FAULT.

The tug H., having left a ship about the middle of Cooper river, off the wharf front of Charleston, S. C., was proceeding down stream in a curve towards her berth, with her wheel hard aport. While on this course, and about a quarter of a mile from and heading towards the wharf front, the tug B. was also proceeding downward, and much nearer to the piers, bound for her berth, below that of the H. The B. blew one blast, which was answered by one from the H., and the B. then ported. Soon after the H. gave two blasts, not to indicate that she would direct her course to port, according to the rules of navigation, but to induce the B. to go under her stern. The B. answered with one blast, and each tug kept its course. Collision impending, both stopped and reversed, but the B. struck the H., causing injury to both. *Held*, that the H., having the B. on her starboard side, was bound to keep out of the way; that she was in fault in giving the two blasts, and keeping her course; and that the B. was also in fault for not starboarding, as she might have done, when she saw that the H. was crossing her bow; for under rule 23 a vessel has no right to run into collision for the enforcement of her right of way.

In Admiralty. Cross libels for collision. Decree for divided damages.

*Bryan & Bryan*, for libelant.

*Mitchell & Smith* and *W. H. Parker*, for respondent.

SIMONTON, District Judge. This is a libel and cross libel for collision in Cooper river, on the wharf front of the city of Charleston. It is well to explain the topography of that portion of this wharf front where the collision occurred. Coming down the river to the southward, and passing a number of pier heads, with docks adjacent, we reach Atlantic wharves, with four pier heads and docks between. Below Atlantic wharf, and next adjacent to that one of them known as "South Atlantic Wharf," is Boyce's wharf, with two pier heads and intervening docks. Then come Adgers' North wharf and dock, and Adgers' South wharf. Below this last are Commercial wharves. Between each pier head is a dock wide enough to hold two seagoing vessels of size, abreast of each other. The distance between South Atlantic dock and Adgers' South wharf is nearly 300 yards. Cooper river, at the place opposite these docks, is about a mile wide,—a little more, perhaps.

On the morning of the 29th October, 1891, a little before 7 o'clock, the steam tug Hercules left a steamship lying in midstream, opposite Atlantic wharves, started down the river, and proceeded to her own berth, at South Atlantic wharf. Her purpose, on reaching the dock, was to back into her berth. Her course, after leaving the steamship, was on a curve. Her wheel was put hard aport, and she was going, her master says, at half speed, say  $5\frac{1}{2}$  miles an hour. When she was on this curve, about half way from the steamship, probably a quarter of a