

THE HENRY R. TILTON.

CHAPMAN DERRICK & WRECKING CO. v. THE HENRY R. TILTON.

FIVE OTHER LIBELS v. SAME.

(District Court, S. D. New York. November 28, 1892.)

SALVAGE—CAPSIZED VESSELS—TOWAGE AND RIGHTING—AWARDS.

A schooner in ballast, while passing Sandy Hook, was struck by a shot from the government practice works, in consequence of which she capsized, after having been abandoned by her crew. During a period of over two days, six tugs, working at different times, and a wrecking company rendered service in getting her off the beach where she first grounded, lying by her during one night, towing her to shallow water near the entrance to New York harbor, and righting her, and finally beaching her in Gravesend bay. The court regarded the services as one continuous operation, begun and continued by the tug which first reached her, with assistance from other tugs, the chief and most valuable service being rendered by the wrecking company, without whose aid the vessel could not have been saved. At a marshal's sale she was sold for \$2,900. *Held* that, as the vessel was derelict and of small value, about 75 per cent. of her value should be awarded as salvage, and divided among the tugs and the wrecking company in proportion to the services.

In Admiralty. Libels by the Chapman Derrick & Wrecking Company and the tugs Babcock, Hoehn, Vosburg, Protector, Wolcott, and Veit against the schooner Henry R. Tilton for salvage. Decree for libelants.

Mr. Murtha, for the Chapman Derrick & Wrecking Co. and The Protector.

Mr. Hough, for the Babcock.

Carpenter & Mosher, for the Veit and the Wolcott.

Hyland & Zabriskie, for the Hoehn.

BROWN, District Judge. At about 2 o'clock in the afternoon of July 9, 1892, the schooner H. R. Tilton, bound from the southward up past Sandy Hook for New York, in ballast, was struck by a shot from the government practice works at Sandy Hook, and a ball went directly through her, a little below the water line, carrying away several planks and causing her to take in water so that in a few minutes she capsized, and lay upon her beam ends to starboard, a little of her port rail remaining out of water. All her sails were set, and all of them, except the topsails, went down under water. Shortly after the accident the master and crew abandoned her in a small boat, and were soon towed up to New York. The tug Babcock was the first to come to her aid at about 4 or 5 o'clock P. M., and a few minutes afterwards the tug Hoehn arrived. Both got out lines to pull her into deeper water, as she was then aground about three miles to the southward of Sandy Hook lightship in 4 1-2 or 5 fathoms of water. Within an hour afterwards the tug Vosburg and the Protector appeared, and all four went to work pulling from time to time. Several of the hawsers were parted one or more times, and the schooner was got into deeper water. The schooner's anchor, to which the Vosburg's hawser had been made fast, was drawn overboard. When the pulling stopped, the anchor served to hold the schooner fast. About sunset the Hoehn

and the Vosburg returned to New York. It was understood that the Babcock, which was first upon the ground, and the Protector, would remain by the schooner during the night, and that nothing more could at that time be done by the tugs, or was immediately necessary.

The witnesses for the Protector and the Babcock claim that after the Vosburg and the Hoehn left, they towed the schooner a considerable distance towards Sandy Hook, and there is other evidence to substantiate this. Whether this was so or not, I do not find it of any great importance; since the principal service at that time was in getting the schooner off the beach. That was a dangerous position; and the fresh wind and considerable sea that night would have subjected her to danger of great additional injury, had she not been got off.

During the night of the 9th she was held fast by her anchor until about 2 or 3 o'clock A. M., when she began to drag, going out to sea. The Babcock and the Protector in the mean time lay near her, showing danger lights, as she was in the track of incoming vessels. As she dragged and went seaward, the Babcock and the Protector did not follow her until daylight. In the mean time the Wolcott had found her and lay by her until morning for the purpose of rendering assistance, and the Veit, also receiving notice of a vessel going adrift, had gone down in search of her, and reached her just after the Babcock had at daybreak overtaken her. These three tugs with the Protector, which arrived soon after, towed the schooner up near the easterly outlet of Gedney's channel, where she again grounded about 9 A. M. of the 10th. The Veit and the Wolcott claim that they did most of this towing, having run a sweep forward from under the stern of the schooner until they got a bight upon the chain above the anchor, being thus enabled to haul along the anchor and the schooner. The Protector's hawser had the night before parted near her bits, and the other end was made fast to the anchor. The Protector having no other hawser, considerable time was occupied by her and the Babcock in finding and getting in this hawser, while the others were towing, after which she and the Babcock joined with the other two tugs in towing until the schooner grounded as above stated.

During Sunday, the 10th, the tug Chapman was sent down to render assistance; but it was found impossible to move the schooner further without first righting her. The Veit and the Protector had made some endeavors to right her by pulling on the topmast; and for the same purpose the Veit had previously taken off the foresails, some blocks, and running rigging; but these efforts to right her were unsuccessful. The articles taken by the Veit were afterwards stored. The Wolcott and the Veit left Sunday afternoon and did nothing further. The Babcock and the Protector after failing to move the schooner with the Chapman, went that night to New York for the steam derrick and pumping boat Reliance, which was procured Monday morning, and towed by them down to the wreck, where, by means of chains got under the schooner with a diver's help, she was righted about 6 o'clock P. M. of Monday, the 11th, held up in position by the Reliance alongside, and both then towed by the Babcock, the Protector, and the Chapman, through Gedney's channel into Gravesend

bay, where she was run upon the beach at about half past 9 P. M. That position not being a safe one for all weathers, she was there temporarily repaired by planking over the holes, and pumped out by the small wrecking boat, No. 13, and afterwards taken to Twenty-Seventh street, Brooklyn, where she was attached by the marshal on the 16th of July, 1892, upon the first above libel for salvage; and afterwards upon the libels subsequently filed. The repairs not being sufficient to prevent considerable leaking, No. 13 was still kept alongside, pumping more or less, night and day, to keep her afloat, until the schooner was sold by the marshal by order of the court in these causes on July 29, 1892, netting \$2,900.

I cannot sustain the contention that all the service rendered prior to the grounding of the schooner near the easterly outlet of Gedney's channel on Monday forenoon is not to be regarded as a salvage service, on the ground that a place of safety had not then been reached. It is probably true that the schooner's position there was no safer and no better than on the beach some three miles below the Scotland light-ship on Saturday afternoon, when the other tugs first reached her; and if the other tugs in the mean time had rendered no real service, and if in leaving her they had left with the idea of an abandonment of the enterprise of saving the vessel, then, no doubt, salvage compensation could not now be claimed by the tugs that rendered no service after the grounding at Gedney's channel.

But the narrative does not admit of this interpretation, either as to the fact or as to the intention. The drawing of the schooner off from the beach into deep water Saturday afternoon was immediately necessary; it tended to save the vessel, and probably did save her, from additional damage. The salvage service commenced by the Babcock, which was first on the ground, was a continuous service from that time until the schooner was beached in Gravesend bay. The attempt to rescue the schooner was never abandoned, or thought of being abandoned. Each step taken was a legitimate and proper step in the work. The Babcock, the first to take hold, had she been able to do the whole work, might and naturally would, have ordered the others to keep off from time to time as they came to render aid. But she was wholly unequal to the task, and on Saturday afternoon the other three tugs took hold upon her request. The Vosburg and the Hoehn left Saturday evening, because no further service from them was then needed. The Babcock and the Protector, which remained for the night, were apparently sufficient, with the schooner at anchor.

So on the following morning, the Veit and the Wolcott acted as helpers to the Babcock and the Protector, with the Babcock's acquiescence, if not express request, to tow the vessel in as far as possible on the flood tide. That was another proper step in the course of the salvage undertaking. According to the testimony of the captain of the Reliance, it was a necessary work, since upon his view the schooner in her capsized state would not have floated more than 24 hours; and even if the contrary opinion be true, that she would have floated several days, as in the similar case of the Ireland off the capes of Delaware, as stated by one of the witnesses, still it would have been a most singular mode of conducting a salvage operation to allow

the schooner to sink in deep water some three miles below the Scotland lightship, if there were tugs at hand ready to tow her into port. The fact that she would ground at Gedney's channel was not then foreseen. The attempt to move her in was a proper one; and the Veit and the Wolcott, which rendered essential aid in that stage of the work, are, therefore, entitled to some recognition as helpers in a continuous salvage service.

When the schooner had grounded off Gedney's channel, it soon became apparent that she could not be got in without being first righted; and the tugs alone could not right her. There was no more occasion, therefore, after her second grounding, for the Veit and the Wolcott to remain by, than for the Hoehn and the Vosburg before. When righted, through the employment of the Chapman Derrick & Wrecking Company, there would be no further need of their service.

Treating the whole service as one continuous salvage operation, begun and continued to the end by the Babcock, with assistance from the other tugs at its various stages, by the request or acquiescence of the Babcock, there were four stages in the work in each of which the vessels rendering aid are entitled to some allowance, viz.: (1) Getting the schooner off the beach on Saturday afternoon; (2) lying by during Saturday night; (3) towing in from sea on Sunday morning, until the grounding near Gedney's channel; (4) the operation of righting her, towing in, and beaching her at Gravesend bay. Besides these services there was additional work bestowed upon her by the Chapman Company in making temporary repairs at Gravesend bay, and in the subsequent removal and keeping of her afloat at Twenty-Seventh street, until she was sold by the marshal. Inasmuch as the vessel was derelict, the handling of her difficult, and her proceeds small, I shall allow about 75 per cent. for the whole salvage operation.

I cannot approve, or sustain in full, the charges made for the care of the schooner after she was beached. From that time until attached by the marshal she was in the hands of the representatives of the Chapman Company, and it is that company that is responsible therefor. If repaired at all, it should have been in a way that would not have required the continual service of the pumping machines afterwards. By placing the schooner upon a dry dock, the evidence shows that she could have been made temporarily tight for a comparatively small sum, and the large subsequent bills would have been avoided. I do not find that the charges made per hour are unreasonable upon the method adopted; but the method adopted was unjustifiable, and I must hold the Chapman Company, on the evidence, responsible for that. After the attachment by the marshal, his deputy declined to assume the responsibility for such expense. The service of the Chapman Company, however, in the salvage operation was the most important part of the service, in men, vessels and equipment. Without the use of a derrick, such as the Reliance had, I am satisfied the schooner could not have been saved at all.

Taking every circumstance into account, the following will, I think, be a proper distribution:

To the Chapman Company for its salvage services and all subsequent services down to the time of the sale by the marshal, \$1,000;

to the Babcock, \$350; to the Protector, \$300; to the Hoehn and to the Vosburg, each of which broke a hawser, \$75 each; to the Wolcott, \$60.

I do not find that the Veit intended to appropriate the blocks, rigging, etc., which she took off and stored. But she is chargeable with misconduct in not reporting the articles to the marshal and causing them to be delivered to him when the vessel was attached. She neither did this, nor did she refer to these articles in her own libel, although those articles were under her control; but after the sale of the vessel, she caused them to be sold at private sale to the second vendee of the vessel, for \$25, which sum has not been collected by any one. Her acts were calculated to injure the sale of the vessel much more than the value of the articles, and she took no pains to prevent this. Though she broke a hawser in towing, I allow her, therefore, but \$40. Decree accordingly.

THE LIGHTER NO. 14.

MILLARD et al. v. THE LIGHTER NO. 14.

(District Court, S. D. New York. December 1, 1892)

SALVAGE—TUG—PUMPING ON FIRE—INTERFERENCE BY FIRE DEPARTMENT.

A tug was summoned to the assistance of a burning lighter, and began playing water on the fire. An engine of the city fire department came about the same time, and soon after a city fire boat. At about the time of the latter's arrival, the foreman of the fire department ordered the tug to stop pumping and to go away. She stopped pumping, but remained alongside of the lighter, and was afterwards used by the department as a landing to work on the lighter. Afterwards the department, finding itself unable to extinguish the fire, ordered the lighter filled and sunk, whereupon the tug again assisted in pumping. The time of the tug's service was about three hours, though her actual pumping service was much less, owing to the action of the department. The value of the property saved was about \$25,000. *Held*, that the prompt response of the tug and her assistance should not be allowed to suffer disparagement through the arbitrary, ill-judged, and erroneous action of the fire department in interrupting her service. Four hundred dollars was therefore awarded as salvage.

In Admiralty. Libel for salvage.

Wilcox, Adams & Green, for libelants.

Carpenter & Mosher, for claimants.

BROWN, District Judge. At about half past 12 o'clock on the morning of July 21, 1892, a fire broke out on the lighter No. 14, loaded with cargo, and lying on the south side of pier 2 at Prentiss' stores at the foot of Joralomon street, Brooklyn. The fire was almost immediately noticed by the mate of the libelants' tug America, which was lying with her steam up and crew aboard, nearly opposite at pier 13, East river, New York, and was well provided with appliances for extinguishing fire. Attracted by the continuous sound of the whistle given by No. 14 as a signal for assistance, the America crossed at once, preparing her hose pipe and nozzle on the way. Coming alongside the lighter, she immediately commenced playing her hose through the after manhole upon the fire below. An engine

belonging to the fire department of Brooklyn arrived at about the same time. For a few minutes before, there had been a small and weak stream thrown down the companion way by the watchman on the dock, who had connected a hose with the dock hydrant. The fire boat Seth Low also came in shortly after the America, and took a position across the bow of the lighter, from which she operated with her hose. About the time that the Seth Low came, or shortly after, the foreman of the fire department, finding that the America's hose was not from a fire department boat, ordered it shut off, and that the America should remove from the lighter, threatening to cut her hose and lines if this order was not obeyed. The hose was accordingly removed to the America; but she remained alongside the lighter.

Afterwards the fire department finding itself unable to extinguish the fire, made use of the America as a landing from which to burst open the door in the gangway on the outer or starboard side of the lighter, in order to remove to the America some of the cargo which blocked up the lighter, and thus open up a more direct approach to the fire. The same was also done on the port side. Being still unable, however, to extinguish the fire, the department finally ordered that the lighter be filled with water and sunk; whereupon the America's hose was again used in pumping in water for a time, until the lighter began to settle down, when she drew away. The lighter soon after sank and the fire was thus extinguished. Most of the cargo that was at first put upon the America was put back upon the lighter before she sank, under orders of the fire department. A few packages of lard remained on the America, which were afterwards delivered to the owners. The value of the barge was \$35,000 and of the cargo \$20,000. The value saved was, of the barge, \$17,000; of the cargo, \$8,000.

It is to be regretted that there should be any such jealousies between the fire department on land and tugs rendering assistance on the water, as should interfere with the speediest possible relief to vessels in flames. Cases before me are not infrequent in which, under threats of violence, tugs rendering assistance are ordered to desist by the fire department on shore, under its claim of exclusive control; and this, not because the help of the tugs may not be timely and useful, but from an arbitrary assumption of control of the matter by the department. It would be a great misfortune if, through liability to such interference and exclusion, tugs having efficient appliances for extinguishing fires about the slips or docks, should become less prompt, as would be likely, to go to the relief of vessels on fire with all possible speed. The first moments are the most important of all. Cases are frequent when the tugs are not only more quickly on the ground, but are better able to get at the fire; and emergencies often arise, requiring the removal of the vessel aflame, or of other vessels threatened with danger, in which the fire department can do little or nothing. Common interest and the public safety, therefore, require that all due encouragements be maintained for the most prompt and efficient assistance in cases of fire on the water, from the tugs of the harbor, as well as from the fire department. Both ought to co-operate, without unnecessary interference from each

other. If in the cases of vessels moored to the land, the fire department and police may assume control so far as to prevent disorder or inefficient work, this power does not rightfully extend to the exclusion of efficient help from tugs previously engaged. In this court, therefore, where a tug has proceeded with dispatch to the scene of the fire, upon a recognized signal for help from tugs, as in this case, and has rendered valuable assistance, her claim to salvage will not be allowed to suffer disparagement, through any arbitrary and improper interference by the fire department, which prevented an uninterrupted continuance of her aid until completion of the salvage work.

In the present case, the event shows that the action of the fire department was not only arbitrary, but grossly ill judged and erroneous; and that both the lighter and her cargo have suffered from the unwarrantable interference and threats which caused the America for a time to suspend playing with her hose. Her work did not in the least interfere with the work of the fire department. The event was unfortunate. The fire department could not put out the fire without finally sinking the lighter, whereby less than half the value of the vessel and cargo was saved. The work was a continuous one from the time the America arrived. She is entitled to at least her proportion of the whole salvage work considered as one undertaking. See *The Henry R. Tilton*, 53 Fed. Rep. 139. She was more or less occupied on the work for about three hours, though the actual playing of her hose was, through the interference of the fire department, much less than that. But she responded with alacrity to the lighter's signal, and her claim is meritorious. I award her \$400. Of this amount, two thirds will go to the owners; and of the remaining third, \$25 is allowed to the mate or pilot, who was in charge, and the residue to the mate and other men on board of the America in proportion to their wages.

Decree accordingly, with costs.

THE SIR WILLIAM ARMSTRONG.

MERRITT WRECKING ORGANIZATION v. THE SIR WILLIAM ARMSTRONG.

(District Court, E. D. Virginia. August 17, 1892.)

1. SALVAGE—COMPENSATION—ENFORCEMENT OF CONTRACT.

A steamship bound to Havre from New Orleans, with a large cargo of cotton, stranded on the shoals 20 miles north of the Virginia capes during a storm. Intelligence of her situation and request for assistance were sent by a passing steamer to Norfolk, the nearest port. In response, libelants, who were considered the best equipped wreckers on the Atlantic coast, sent out two barges, with a total capacity of 1,800 bales, two large wrecking steamers, and three or four tugs chartered for the purpose, the whole being manned by a force of between 90 and 100 men. On arrival the stranded ship was found to have sunk 6 or 8 feet in the sand, with several feet of water in her compartments, in a helpless condition and a dangerous position. A salvage contract in writing was entered into with libelants by the captain, after consultation with the chief mate and engineer, and with the approval of all three, which, in substance, provided that the salvors, if successful, should have 25 per cent. of the value of the dry cotton saved, 40 per cent. of the value of the wet cotton, and 20 per cent. of the appraised value of the ship. The cost to the salvage company of the enterprise, after it was completed, was over \$20,000. The work of the salvors was entirely successful. The ship and all the cotton, amounting to