

ual. It seems to us, however, a not unreasonable assumption, and it has some support in the sounding taken by Capt. Melberg. The only evidence to contradict it is the evidence of Capt. Welt, the port pilot, who testified that at high water on that day the depth would be a little over 15 feet. If we assume that Capt. Welt's measurement is correct, and adopt the very lowest estimate given of the water on that day, there is still nothing in the evidence to convince the court that at 45 minutes past 2 o'clock a vessel drawing 14 feet 6 inches could not have crossed the bar in safety.

In this case the most of the evidence was taken before the district judge, and it would seem to be a proper case for the application of the rule that on appeal in admiralty from the district court, where questions of fact are involved depending upon conflicting testimony, the decision of the district judge, who has had the opportunity of seeing the witnesses, hearing them testify, and judging of their credibility, will not be reversed unless clearly against the weight of evidence. *The Sampson*, 4 Blatchf. 28; *The Sunswick*, 5 Blatchf. 280; *The Thomas Melville*, 37 Fed. Rep. 271; *The Albany*, 48 Fed. Rep. 565. The decree of the district court is affirmed, with costs to the appellees.

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PILOT BOAT NO. 5.

KASIT et al. v. PILOT BOAT NO. 5.<sup>1</sup>

(District Court, E. D. New York. February 21, 1893.)

**SEAMEN'S WAGES—SERVICE ON PILOT BOAT—CONSTRUCTION OF CONTRACT.**

The contract by which certain seamen on a New York pilot boat were hired specified only the nature of the employment, and that the wages were so much a month. At the termination of a cruise, but before the end of a month, they left the vessel. Owing to the nature of a pilot boat's occupation, it is impossible for her to be in port at regular monthly intervals. *Held*, that the effect of the contract was that the seamen should serve for at least a month, and until the termination of the cruise, if, at the expiration of the month, the vessel should happen to be at sea. Libelants not having served a month, *held* that their departure from the vessel was a desertion.

In Admiralty. Libel for seamen's wages. Dismissed.

Alexander & Ash, for libelants.

Carter & Ledyard, for claimants.

BENEDICT, District Judge. This is an action for seamen's wages brought by the crew of a New York pilot boat. The libelants were hired to serve as hands on board the New York pilot boat No. 5, at the wages of \$25 and \$20 a month, respectively. They served until the 20th day of November. On the termination of a cruise on that day they left the boat, a month from the time of their hiring not having elapsed. They now sue for wages for the time they served, at the rate of wages agreed on. The defense is that, by

<sup>1</sup> Reported by E. G. Benedict, Esq., of the New York bar.

leaving the boat when they did, the crew deserted, thereby forfeiting their wages. The contract made with the libelants specified two things only,—the nature of the services, viz. that of a hand on board pilot boat No. 5; and that the wages were to be so much a month. The question to be determined is whether such a contract gave the crew the right to leave the pilot boat when they did, that being at the termination of a cruise, but before the expiration of a month from the time they were hired. Ordinarily, in the hiring of seamen, their engagement at monthly wages is not regarded as an engagement by the month, but the term of service is fixed either by a stated limitation of time or by a described voyage. In this contract no voyage was described, nor was the term of service fixed by any limitation of time. Of course, some limitation must be inferred, as an unlimited service could not have been intended. The cruise of the New York pilot boats is as follows: The boats take on board a company of pilots in the Upper bay of New York, proceed with them to the pilot ground, and put the pilots on board incoming vessels, as such vessels arrive. When all the pilots have left, the pilot boat returns to the Upper bay, where the pilots rejoin the boat, and she again proceeds to sea. The cruise is sometimes of two or three days' duration, and sometimes two weeks or more. The boat is never long in port. If the boat arrives up early enough before dark, the pilots may join her, and she proceeds to sea on the same day. Sometimes the boat remains only a couple of hours in port. Every pilot boat is liable to go on station duty outside for four days in each three months, at designated times, under a penalty of \$100 a day in case of the boat's failure to be in the station at the time.

In the case of a pilot boat, it is therefore impossible for the vessel to be at the port of departure at monthly periods; and, when she is not in port, she is upon the high seas, where it is impossible for the seamen to leave, and impossible to permit the seamen to leave. The understanding of the parties, therefore, must have been that the time of service was to end when the boat was in port, and also the understanding that she was not to be expected to be in port at monthly periods. Plainly, these men were not considered as hired by the day; the agreement was for so much a month. Effect can, I think, be given to this method of hiring the crew by considering the intention to have been that the men should serve at least for a month; and, if at the expiration of the month the boat should be at sea, where a termination of the service would be impossible, the service should continue until the boat arrived in port, at the end of a cruise, the wages of the crew continuing until the time of such arrival. From this understanding of the contract in question, the conclusion follows that the libelants were not entitled to leave the boat when they did, because a month had not elapsed from the time of their shipment. The departure, under such circumstances, was therefore desertion, and they forfeited the wages then unpaid.

The libel must be dismissed, but without costs.

## THE J. E. POTTS.

## HOWARD TOWING ASS'N v. THE J. E. POTTS.

(District Court, N. D. Illinois. February 23, 1893.)

## 1. SALVAGE—LIEN—WAIVER—BURDEN OF PROOF.

Where a lien for salvage has once attached, and notes are given for the salvage, the burden of proof is upon the party asserting that the notes were intended to detach the lien.

## 2. SAME—AMOUNT OF COMPENSATION—AGREEMENT.

In the absence of proof to the contrary, the acceptance of such notes shows that the amount of the notes is the proper salvage.

In Admiralty. Libel by the Howard Towing Association against the barge J. E. Potts for salvage. Decree for libelant.

C. E. Kremer, for libelant.

W. H. Condon, for respondent.

GROSSCUP, District Judge. The libel in this case is for services rendered in pulling the barge Potts off the beach at North Fox island, in Lake Michigan. The claim is for \$750, and a number of witnesses have testified that that, under the circumstances, would be a reasonable amount. The defense is that subsequent to the services the owner of the Potts entered into negotiations with the representatives of the libelants, which resulted in the execution of notes amounting to \$600 in full payment of the services. The claim is also made that the delivery and acceptance of these notes operated as a waiver of libelant's lien upon the barge saved. The testimony respecting the execution of these notes, and their purpose, is limited to two witnesses. I can see no reason in their testimony why one should be given greater credence than the other. Where a lien for salvage has once attached, and notes have been given for the services, the burden of proof is upon the party alleging that these notes were intended to detach the lien to show that fact. Under this rule, I am of the opinion that the delivery and acceptance of these notes is not shown to have been intended to detach the lien.

I think, however, that the acceptance of these notes, in the absence of proof to the contrary, shows that the amount agreed upon is the proper salvage, and, accordingly, that the libelant's claim is limited to \$600. The decree, therefore, will be in favor of the libelant for \$600, with a lien upon the barge for its payment.

## THE BRIXHAM.

## VELASCO TERMINAL RY. CO. v. THE BRIXHAM.

(District Court, E. D. Virginia. March 1, 1893.)

## 1. SALVAGE—AWARD—RIGHT OF CHARTERER TO SHARE.

A steamer was chartered to carry a cargo to a certain port. The charter party provided that the steamer should "have liberty to tow and to be towed, and to assist vessels in all situations;" and the bill of lading provided that she should "have liberty to tow and assist vessels in dis-