

THE O. C. DE WITT.

BATES v. THE O. C. DE WITT.

(District Court, E. D. New York, January 11, 1894.)

SALVAGE — EXAGGERATED CLAIM — COSTS — PROPERTY FORCIBLY TAKEN FROM SALVOR.

Where one-half of the value of a boat and cargo worth \$1,700 was claimed as salvage, but on the trial the claim was shown to have been greatly exaggerated, only \$50 salvage being awarded, claimants would have been allowed costs but for the fact that shortly after the service they forcibly took the property from the salvors; and no costs were given to either party.

In Admiralty. Libel for salvage. Decree for libelant, without costs to either party.

Hyland & Zabriskie, for libelant.

T. C. Campbell, for The O. C. De Witt.

Carpenter & Mosher, (Mr. Symmers,) for the cargo.

BENEDICT, District Judge. This is an action to recover salvage compensation for services rendered by the steam canal boat Columbia in towing the canal boat O. C. De Witt back to the slip from which she had drifted on the evening of the 9th of September, 1893.

The service rendered is a salvage service, because it was voluntary, and rendered to a vessel that was adrift, without any person on board, and therefore in some peril. The peril, however, was very slight, as other tugs were present who might have rendered the same service; and, upon the evidence, the probability is that the boat, if left to itself, would have brought up on adjacent mud flats, where she could have remained without injury. The service rendered, although of some value, was very slight, occupying but a short time, and involving no risk and very little labor. The description of the service given in the libel is greatly exaggerated. It is there stated that the boat was derelict, when the fact was that the boat got adrift in the slip during the temporary absence of her master, and because third parties moved her during such absence. It is also stated that the Columbia, at great risk to her own safety, started after the canal boat, when in fact there was no risk whatever. The weight of the evidence is that the service occupied but a very short time, and not two or two and a half hours, as stated in the libel. The libel also untruly alleges a demand and refusal. The value of the canal boat is \$1,000, and the value of the cargo of coal is \$700. The libelant claims half of the value of the canal boat and coal. In my opinion, for such a service, in such a case, \$50 would be an ample salvage award.

In view of the exaggerated claim made, I should feel it my duty to award costs to the claimants in this case, were it not for the fact that shortly after the rendition of the service, and while the boat was in the possession of salvors, she was forcibly taken away from their possession by the master of the canal boat, and others acting

with him. By reason of this circumstance I do not mulct the libelant in costs, but I award \$50 salvage compensation, without costs to either party.

MILLER et al. v. O'BRIEN.

(District Court, S. D. New York. February 5, 1894.)

1. SHIPPING—SHIP-OWNER—INTEREST OF IN VESSEL — DAMAGES FOR TORTIOUS DESTRUCTION—BOTTOMRY—WHEN COVERS DAMAGES RECOVERED.
Unlike insurance moneys, damages recovered from an offending vessel by the owner of a vessel lost in collision are a substitute for the ship, and any such recovery represents the interest of the owner in his vessel. Hence a transfér, under a bottomry bond, of all the owner's interest in the vessel, includes by necessary implication the fund recoverable for her tortious destruction.
2. SAME — BOTTOMRY AND RESPONDENTIA BOND — TOTAL LOSS OF VESSEL IN COLLISION—DAMAGES RECOVERED—LIABILITY OF SHIP-OWNER TO CONTRIBUTE TO PAYMENT OF BOND—CONSTRUCTION.
A ship was totally lost in collision, but a portion of her cargo, previously transshipped upon another vessel, was saved, and the cargo-owner, under a bottomry and respondentia bond previously given on ship and cargo, including the transshipped cargo, was compelled to pay the entire amount of the bond. The ship-owner afterwards recovered large damages from the colliding vessel for the loss of his ship. *Held*, that a bottomry bond conditioned to be void "upon the utter loss of said vessel" was not wholly avoided; that the damages recovered represented the ship lost; and that the ship-owner was liable to the cargo-owner for his pro rata share of the amount paid on the bottomry bond by the cargo-owner, to be determined upon a proper general average adjustment.
3. BOTTOMRY—LIEN—ATTACHES TO SALVAGE OR PROCEEDS.
It is a rule of the general maritime law that, if there be any salvage or proceeds of any of the effects covered by a bottomry bond, the bondholder's lien attaches thereto, although the ship be lost. This is virtually a part of the bond by implication, and it is not necessary that the right thereto be expressly reserved in the bond.

In Admiralty. Libel by Brice Alan Miller and others against Edward E. O'Brien for contribution of payment on bottomry bond. Decree for libelants.

Butler, Stillman & Hubbard and Mr. Mynderse, for libelants.
Sidney Chubb, for respondent.

BROWN, District Judge. The above libel was filed against the respondent in personam as owner of the American ship Andrew Johnson, to recover £1,617.4.3, the defendant's alleged pro rata share of certain moneys which the libelants were compelled to pay at Hamburg, Germany, in order to redeem their cargo from a bottomry bond executed by the master at Callao, Peru, on September 15, 1884.

Most of the facts are stated in the decision upon the argument of exceptions to the libel. 35 Fed. 779. It was there held that the bond remained a valid bottomry lien upon the 1,200 tons of nitrates which had been transshipped from the Andrew Johnson to the Mary J. Leslie, and which reached safely the port of Hamburg, although the Andrew Johnson, to whose cargo all the nitrates had formerly belonged, was lost at sea by collision. The exceptions to the libel