

duty to know the channel and its currents, and to govern their movements accordingly. Intending to pass the Beaver, they should have kept well over, especially in view of the unwieldy tows in charge; but instead of doing so they followed the Beaver's course so nearly, that when the danger became apparent it could not be escaped. They were then probably embarrassed by the adverse current, for which they should have provided higher up.

The decree of the district court must be reversed and a decree entered against the Harry Brown in favor of John Moren and Michael Munhall for \$3,775.41 with interest from October 4, 1890, together with the costs in the district court, and of the several appeals.

THE RESCUE v. THE GEORGE B. ROBERTS, et al.

(District Court, E. D. Pennsylvania. November 12, 1894.)

1. SALVAGE SERVICES—WHAT CONSTITUTE.

Where a barge, which was the only one of a tow of seven not stranded and sunk, was drifting in a severe storm, without motive power of any kind or an anchor suited to the occasion, and it is probable she would have sunk had she not been rescued by libelant, and conveyed to harbor, the service of libelant is a salvage service, though the barge was staunch and well constructed, and might have survived the storm, and it was possible she would have been picked up by others if libelant had not rescued her.

2. SALVAGE—COMPENSATION.

A tug rescued a barge adrift in a severe storm on Chesapeake Bay, off Ft. Carroll, and conveyed her to Baltimore. The time occupied was brief, and the expenses to repair the damage sustained in the work were small. The value of the barge and cargo was about \$3,700. *Held*, that \$800 was a just compensation.

Libel by Vivian Phillips, managing owner of the steam tug Rescue, against the canal barge George B. Roberts and her cargo of coal.

Curtis Tilton, for the Rescue.

John G. Johnson and J. Wilson Bayard, for the George B. Roberts.

BUTLER, District Judge. August 12, 1893, the tug "Stella" started with seven barges in tow, the "Roberts" being one, on a voyage from Baltimore to Philadelphia. Encountering a very severe storm, off Ft. Carroll, on Chesapeake Bay, she turned back, and after remaining in harbor at North Point creek during the night, she continued her course to Baltimore. On her way up five of the barges broke adrift, the Roberts among them, and all save the latter foundered and sank. The tug was unable to afford any aid, all her efforts, being required to take care of herself and the balance of her tow. While the Roberts was helplessly drifting before the wind and waves, the libelant who was coming up to Baltimore went to her relief, and making fast a hawser, (with some difficulty) conveyed her to that place.

The respondent does not deny liability for the service, but denies that it was a salvage service which should be compensated ac-

cordingly. This presents the only question involved. How it should be decided depends upon the testimony respecting the "Roberts" situation, whether she was in peril or not. The testimony respecting this is conflicting, and irreconcilable. A discussion of it would be unprofitable. It is simply a question who should be believed. A careful examination of all the evidence has satisfied me that the Roberts was in serious and immediate peril. She was adrift in a very severe storm, without motive power of any kind, without an anchor suited to the occasion, and was at the mercy of the wind and waves. It is improbable that even a much heavier anchor than the one she carried would have held her, and if she had been held it is more than probable that she would have sunk either from filling with water, or the shifting of her cargo which had already produced a serious list. Smaller vessels dragged much heavier anchors during the storm. When taken in charge she was helpless, and in serious danger of suffering the fate that overtook the other barges torn from the tow. It is true she was staunch and well constructed for a boat of her class; but she had little chance of weathering such a storm. Indeed that she was in peril is sufficiently attested by the fate of the other barges torn loose. Of course it is possible she might have been picked up by others if the libellant had not come to her rescue, or that she might have ridden out the tempest; but such possibility is immaterial; it is much more probable she would have gone to the bottom. That her tug the "Stella" would have returned from Baltimore in time to save her I do not believe. That the storm was very severe is put beyond question by the undisputed evidence of its consequences. The lower streets of Baltimore were flooded, and the running of cars stopped by the waves driven up: several vessels were wrecked or disabled and others torn from their anchorage and stranded in that vicinity. Indeed the consequences to this tow, alone sufficiently attests the violence of the storm.

The libellant rendered salvage service, and must be paid accordingly. While he encountered some risk it was not very serious; the time occupied was very brief, and very little expenditure was necessary to repair the damage sustained in the work. In view of all the circumstances, (the value of the barge and her cargo, which was about \$3,700 included) I think \$800 a just compensation. There is no rule by which the value of the services in such cases can be accurately measured. At best the award must be the result of an intelligent guess. I may be allowed to say in passing that I incline to believe the award in most cases is more likely to be too high than too low; and that I am not much influenced by what courts have allowed in other instances where the facts, though bearing a general resemblance, are not the same.

I attach no importance to the circumstance that the Roberts left Baltimore after the storm without settling with the libellant. She left on her voyage broken up by the weather, in pursuance of her usual business and habit; and not with intent I think to shirk responsibility.

A decree may be prepared accordingly.

THE ORANGE.¹

NEW YORK CENT. & H. R. R. CO. v. THE ORANGE.

(District Court, S. D. New York. July 21, 1892.)

COLLISION—STEAM VESSELS CROSSING—RULE 23—DUTY OF PRIVILEGED VESSEL—CONTRARY SIGNAL—CHANGE OF COURSE.

A tug was crossing the North river from Hoboken to New York, and heading a little above the New York slip of the ferryboat O. The O. left her slip, and, when some distance out in the river, gave two whistles to the tug. The evidence for the ferryboat was that, at the time when the signal was given, the ferryboat was heading nearly across the river, and had the tug well on her starboard hand. The tug's pilot testified that, when the whistles were given, the ferryboat was a little on his port bow, swinging up stream, so that he thought her signal was a mistake for one whistle, whereupon he answered with one, and ported his helm. The vessels almost immediately came in collision, the tug being struck on her port side and sunk. *Held*, on the evidence, that the ferryboat's signal was proper under the circumstances, and the tug was bound, under rule 23, to do nothing to thwart her maneuver, and hence was in fault for her contrary signal, and for changing her course to starboard; that the ferryboat, having stopped and reversed on hearing the contrary signal from the tug, and thus having done all she could do to avoid the collision, was not in fault therefor.

In Admiralty. Libel for collision.

Carpenter & Mosher, for libelant.

Leon Abbett, Jr., for claimant.

BROWN, District Judge. The above libel was filed to recover damages for injuries to the libelant's tugboat No. 3, sustained in a collision with the ferryboat Orange, a little before 2 p. m. of December 30, 1891, about 800 or 1,000 feet off the ferry slip at the foot of Barclay street, New York. The tug was unincumbered and bound from Hoboken for the libelant's docks a little above the Barclay street slip. She had come down the North river as far as Pavonia ferry, keeping a short distance from the Jersey shore, and then made across the river, heading, as the pilot says, for about the Courtlandt street ferry, though I am not satisfied of the accuracy of this statement. When on this course, and a considerable distance off from the Chambers street pier, she observed the ferryboat Orange, bound from Barclay street to Hoboken, coming out of her slip, and got from her a signal of two whistles, indicating that she would go to the westward of the tug. The pilot of the tug, considering the course of the Orange unusual in the situation, and in the very high northwest wind and strong tide, answered with one whistle and ported his helm. In about 45 seconds afterwards the boats were in collision, the stem of the ferryboat striking the tug at nearly right angles a little aft of amidships on her port side, and damaging her so that she sank.

The most important difference in the testimony is in regard to the heading of the two boats at the time the contrary signals were

¹ Decree affirmed by the circuit court of appeals, without opinion, (June 7, 1894), upon opinion of district judge.