

the general qualifications of the master and pilot as respects knowledge, care and skill, but not as warranting against single acts of possible error, negligence or mistake. The most intelligent and the most careful and skillful may at times be remiss; and it was this liability that the policy was designed to cover, provided the master and pilot were persons of knowledge, care and skill.

This construction is further supported by the fact that while the next two warranties provide for a duly licensed master and pilot, and that the tug shall be "well found in anchor cable, rigging, tackle and apparel," there is no other clause than the one in question which would warrant the actual possession by the master and pilot of the requisite character for knowledge, skill and judgment to insure prudent navigation.

In like manner the warranty "not to go out of the usual and regular channel" cannot be interpreted as a warranty that the tug shall never, through any fault or error of navigation, get out of the proper depth of water. The insurance against liability from stranding precludes any such construction, for there can never be stranding where there is plenty of water. What is meant by this clause is that in going from place to place the vessel shall go by way of the usual and regular channel, and shall not intentionally take any unusual channel or any route out of the usual course, but shall pursue the ordinary and accustomed route.

In the present case, the ordinary route and the usual channel were taken. But the channel had no defined limits. It was not buoyed. What was a fit distance from shore for vessels of one draft might be unfit and outside of the proper channel way for vessels of deeper draft. The *Morris*, with a tow drawing 7 feet, should have gone 50 or 100 feet more to the southward, in the deeper water; but in going 50 or 100 feet too near shore she did not go in any different channel, nor did she go "out of the usual channel" in the sense of this policy, for there was but one channel, and for vessels of a little lighter draft this channel was in common use much nearer shore than the *Morris* went.

In a word, the accident arose while the *Morris* was going by the usual channel; but through some miscalculation or inattention of the master, or through misunderstanding as to the exact draft of the tow, she got 50 or 100 feet too near shore, and so the tow stranded upon a projecting rock. This was precisely one of the risks which the policy was designed to cover.

Decree for the libellant, with costs.

LA HESBAYE.

NATIONAL STEAMSHIP CO., Limited, v. LA HESBAYE.

(District Court, D. New York. January 6, 1896.)

SALVAGE COMPENSATION—TOWAGE.

A steamer of about 2,800 tons, worth \$100,000, bound from London to New York, without passengers, found another steamer, bound for the

same port, of about the same size and value, which had lost her rudder, and was signaling for towage. As the vessel was too large to be towed without a rudder, it was arranged that she should tow the salving vessel, the latter acting as a rudder for her. In this manner they proceeded to New York, a distance of 1,100 miles; the service occupying nine days, and the salving vessel losing a little over four days. There was much rough weather, and the hawser parted three times. The service was difficult, owing to the necessity for regulating the speed of the tow so as to keep the hawser taut, but at not too great a tension. It did not appear that the delay occasioned any derangement in the salving vessel's business. *Held*, that \$8,000 was a proper award.

This was a libel by the National Steamship Company, Limited, against the tank steamer *La Hesbaye*, to recover compensation for salvage services.

Wing, Putnam & Burlingham, for claimants.
John Chetwood, for libelant.

BROWN, District Judge. At about 5 o'clock in the afternoon of the 8th of March, 1895, as the libelant's freight steamer *Spain* was on her way from London to this port, she found the tank steamer *La Hesbaye* in need of assistance at a distance of about 1,100 miles from New York. *La Hesbaye* was in ballast, bound from Antwerp to New York. At about 2 o'clock of the day before she had broken her rudder post, and lost her rudder. During the 27 hours following before the *Spain* came to her assistance, she had made about 68 miles. The *Spain* went to her assistance in answer to signals of distress, asking for towage. The two steamships were about the same size; *La Hesbaye* being 2,519 tons gross, the *Spain* 2,794, and each, according to the stipulation in the cause, were of the value of \$100,000. *La Hesbaye* being deemed too large a steamer to be towed without a rudder by the *Spain*, it was agreed that the *Spain* should go behind and act as a rudder while towed by *La Hesbaye*. The hawser from the *Spain* was attached, and the towing began on the evening of the 8th; but soon after starting, the hawser parted near the thimble through which it ran, and further work was suspended until the next day. The following morning another hawser from *La Hesbaye* was joined to that of the *Spain*, and the towage resumed. At first it was proposed to go to Halifax, the nearest port; but on the 12th it was concluded to continue on to New York, the destination of both vessels, where both arrived on the 17th, after nine days of towage, and without any further damage sustained by either. The time lost by the *Spain* in this service was a little over four days. She had no passengers, and it does not appear that this delay occasioned any derangement in her general business.

The service of the *Spain* was doubtless a highly meritorious one. *La Hesbaye* was in a helpless condition. Her sails could not be used to any advantage; and the vessel being light was unmanageable, except in favorable weather. It was also the stormy season of the year. During the nine days of towage there was much rough weather and one night of dense fog.

The master of the Thingvalla testified that a smaller vessel than the Spain, and even a fishing schooner, might have been more serviceable as a rudder. Other witnesses express a different opinion. This does not much affect the question, I think, for no other vessel was at hand.

The service, I am also satisfied, was one of no small difficulty. The hawser parted three times, and the necessity of regulating the superior speed of the Spain to that of La Hesbaye, so as to keep the hawser taut but not at too great a tension or so as to require too much towage from La Hesbaye, was a matter requiring constant watchfulness, and made the work more difficult and trying for the Spain than ordinary towage would have been. During the whole time all on board were kept in readiness for immediate action, and the watches were doubled. The lack, also, of any international rule for indicating by signals a tow at sea during fog, increased to some extent the danger to the Spain during fog, inasmuch as she had to rely upon the signals of La Hesbaye, a cable's length ahead. Though some of the other difficulties in the towage were no doubt owing to the speed of the Spain under her own engines, this I think is not to be considered as a fault on her part, but rather as a difficulty inherent in such an unusual undertaking under the existing circumstances.

The case has, however, no such features as seem to me to demand a very large award. In the case of *The Gallego*, 30 Fed. 271, the property saved was \$476,764, and the vessel was drifting rudderless along a lee shore. Here there was no such immediate danger. The salving ship was there also worth twice as much, lost thrice as much time, and missed her regular sailing day. In the case of *The Hekla*, 62 Fed. 941, there were 843 passengers on board; the value of the ship and freight subject to salvage was upwards of \$200,000; the *America*, the salving vessel, was double the value of the *Spain*, and she turned back upon her course, and was detained three times as long. The service there seems also to have been one of more difficulty, and the master in that case "received severe injury in its performance." In the case of *The Dania*, 70 Fed. 398, recently decided by Judge Benedict, the towage was less than in this case; but the value of the *Dania* and cargo was over four times as great, and the *Dania* had on board 402 passengers, while here there were none.

Taking all the circumstances into account, and having reference to the above cases and to others so far as analogies serve, I think that \$8,000 will be a proper award in the present case. See *The Florence*, 65 Fed. 248, and cases there cited. Of this amount \$5,600 should go to the owners and \$2,400 to the master, officers and crew. Out of the last I allow, first, \$300 to the master, and direct the residue to be divided among the master, officers and crew, in proportion to their wages, with costs.

THE L. W. PERRY.

(District Court, E. D. Wisconsin. February 3, 1896.)

1. SALVAGE COMPENSATION—DERELICT.

In the case of a derelict, even if the salvage services have been very meritorious, the fact that the vessel and cargo saved are of slight value, and insufficient even to compensate the salvors for their labor, does not authorize the court to award them the entire proceeds, especially where a claimant appears; for salvage, in its nature, implies a benefit to the owner of the property, and if he receives nothing, to deny him any share, is to repudiate the doctrine of salvage.

2. SAME—NATURE OF SALVAGE INTEREST.

Salvage constitutes an interest in the property saved, and is subject to the risk of subsequent depreciation of the value of the property by subsequent accidents or otherwise.

3. SAME—COMPENSATION.

Where a derelict vessel was stranded in the harbor after the rendition of salvage services, whereby large expenses were incurred, so that the net proceeds were insufficient even to compensate the salvors for their work and labor, *held* that 75 per cent. of the net proceeds should be awarded.

In admiralty.

The Flint & Pere Marquette Railway Company filed a libel against the schooner L. W. Perry and her cargo of tan bark for the salvage services rendered by the steamer F. & P. M. No. 1. An answer and a petition are filed by the claimants of the cargo, but no claimant of the schooner appears. The vessel foundered in the harbor immediately upon her arrival, and the principal part of the expense in the marshal's charges arose from the necessary lightering of the cargo and for services of tugs, as the wreck was obstructing the channel. By stipulation, an order was entered for the sale, forthwith, of vessel and cargo. The vessel sold for \$76, and the cargo for \$259.23, and application is made for distribution of the net proceeds. The libellant insists upon allowance of the entire net proceeds for salvage, and the claimants of the cargo petition for award to them of at least one-half the proceeds arising therefrom. The schooner L. W. Perry, laden with tan bark, was so damaged by collision upon the open waters of Lake Michigan that she became water-logged, and was abandoned by her crew. The steamer F. & P. M. No. 1, owned by the libellant, and engaged in the carriage of passengers and freight, while on her voyage from Chicago to Manistee, on the morning of November 15, 1895, fell in with this derelict about 25 miles N. N. E. of the port of Milwaukee; a storm which then prevailed having driven the steamer out of her usual course. Discovering the condition of the schooner, she was taken in tow, and the steamer put about for Milwaukee, the nearest port. The disabled vessel was delivered to a tug at the harbor entrance without serious difficulty, but grounded in mid-channel on arrival inside. The steamer departed from her voyage, and was detained one day by this service, and about \$100 a day would be her actual expense, aside from the value of the service rendered.

Van Dyke, Van Dyke & Carter, for salvors.

M. C. Krause, for owner of cargo.

SEAMAN, District Judge (after stating the facts). The main difficulty in this case arises from the inadequacy of the fund to furnish reasonable compensation for the service rendered, owing to the condition of the vessel and the cargo, and the expenses necessarily incurred to make them available for sale. It is undisputed that the