

vage upon the Lakes different from that which obtains upon the high seas; and reference was made to a decision by Judge Baxter, in *Mattingly v. Cotton*, 2 Flip. 288, Fed. Cas. No. 9,294, in which he points out the great differences between cases of salvage upon the Western rivers and those upon the high seas. The difference recognized is a mere absence from cases of salvage on the rivers of some of the factors which increase the amount of the salvage on the high seas. It is quite certain that the dangers of salvors upon the Lakes are more like the dangers upon the high seas than those upon the Western rivers; but we do not think it profitable to attempt to lay down any general rule distinguishing salvage upon the Lakes from that on the high seas. Each case must be determined by its own circumstances. In the present case we hold that the court might reasonably have found impending peril for the steamer salvaged, and real danger to the steamer and cargo of the salvor, and that the amount allowed by the court below was not so manifestly excessive as to justify us in disturbing it.

Another point made by the counsel for the appellant is that there was a contract for services made between the captain of the *Rhodes* and the captain of the *Westcott*, and that this should not be treated as a salvage case, but only as a suit for services upon a contract. The evidence does not bear out this claim. The language upon which it is based was the mere request for aid by the captain of the stranded vessel to the captain of the vessel then about to aid her. A mere request for aid, without any discussion as to terms, certainly cannot exclude the right to salvage. If so, then all signals of distress must exclude it, for they are certainly requests for aid. The decree of the district court is affirmed.

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THE H. E. RUNNELS.

JENKS SHIP-BUILDING CO. v. WALLACE & CUNNINGHAM TRANSIT CO.

(Circuit Court of Appeals, Sixth Circuit. October 5, 1897.)

No. 450.

**SALVAGE—AMOUNT OF COMPENSATION.**

An award of \$2,450 to a steam barge, worth, with her cargo, about \$80,000, for going to the rescue of another barge loaded with coal, which was on fire in the Great Lakes, *held* not excessive, where the risk to the rescuing vessel was considerable, and the value of the vessel and cargo saved amounted to \$15,000.

Appeal from the District Court of the United States for the Eastern District of Michigan.

This was a libel in admiralty by the Wallace & Cunningham Transit Company against the steamer *H. E. Runnels*, whereof the Jenks Ship-Building Company was claimant, to recover compensation for salvage services. The circuit court rendered a decree for libellant in the sum of \$2,450, and the claimant has appealed.

Harvey D. Goulder (S. H. Holding, of counsel), for appellant.  
Moores & Goff, for appellee.

Before TAFT and LURTON, Circuit Judges, and SAGE, District Judge.

TAFT, Circuit Judge. This, like the last case considered (*The R. R. Rhodes v. Fay*, 82 Fed. 751), is an appeal from a decree of the district court for salvage. On May 29, 1895, the steam barge *New Orleans*, owned by the Wallace & Cunningham Transit Company, was bound on a voyage from Buffalo to Chicago, laden with a cargo of 1,976 tons of hard coal. About 6 o'clock in the morning, when 40 miles above Long Point, the steam barge *Runnels* was discovered on fire and flying a signal of distress, about 10 miles away and 3 or 4 miles off the course of the *New Orleans*. The *New Orleans* hastened to the assistance of the *Runnels* as fast as her engines could be made to drive her, and the hose was gotten ready to fight the fire. About 7 o'clock the *New Orleans* reached the *Runnels*. The fire, which had begun near the smokestack, had by this time swept away the after-house, the cabin, and the deck, and had burned through the hull about two feet above the water line. The vessel was a mass of flames aft the smokestack. One of her boats had been burned, and, when the *New Orleans* reached her, her crew had constructed a raft preparatory to leaving her. The *New Orleans* ran up on the port side of the *Runnels*, made fast to her with two lines,—one amidships, and one from the port quarter of the *New Orleans* to the port bow of the *Runnels*. Subsequently a third line was run from the port bow of the *New Orleans* to the port quarter of the *Runnels*. Two streams of water were put upon the *Runnels*, and in about a half hour the flames were under control. At that time the steam barge *Milwaukee* came to the starboard side of the *New Orleans*, and, running a line of hose across the deck of the *New Orleans*, assisted in throwing water upon the fire. The three vessels lashed together, with the *New Orleans* in the middle, then started for Ashtabula, 30 miles distant, the *Runnels* being towed stern foremost. About 12 o'clock, when off Ashtabula Harbor, the *Milwaukee* left, and continued on her voyage; and the *New Orleans* took the *Runnels* into the harbor, where she turned her over to some harbor tugs, who took her in, and ran her on the bottom, where she sank. The evidence is quite satisfactory that, had the fire been allowed to go on for half an hour longer, the *Runnels* would have sunk in midlake, in deep water, and have been a total loss. The value of the *Runnels* in Ashtabula Harbor, as fixed in the adjustment for insurance, was \$15,000, and the value of the *New Orleans* and her cargo was about \$80,000. Judge Swan, sitting in the court below, allowed \$2,450 as a reasonable and proper compensation, and allowed the mate \$50 for gallantry in carrying a line from the *New Orleans* to the *Runnels* at great personal risk. In the adjustment with the insurers, the owner of the *Runnels* asserted a claim against the insurance companies, which was allowed, of \$1,500 salvage for the *Milwaukee*, and \$1,500 for the *New Orleans*; thus admitting that the work done and

the risk involved merited an award of salvage of, at least, \$3,000. It is clear that the services of the Milwaukee were quite small as compared with those of the New Orleans, and that, if the amount of salvage to be allowed was \$3,000, the amount awarded to the New Orleans by the district court was by no means too great. The fact that the Milwaukee got more than she deserved by the concession of the owners of the Runnels cannot affect the amount which the New Orleans should receive. The New Orleans arrived upon the scene at the nick of time, and rendered very prompt service; and, while the risk of fire to her may not have been very great, yet the bringing of a vessel and cargo worth \$80,000 up to a burning steamer, and near enough to throw water onto the flames, must have in it some element of risk. Of course, the main reason for making the salvage substantial in this case was the certainty that there would have been a total destruction of all the property salvaged had it not been for the efficient aid rendered by the New Orleans. We have discussed somewhat more at length the elements which should enter into salvage in the case preceding this one, that of *The R. R. Rhodes v. Fay*, and it is not necessary to consider the matter further. The decree of the district court is affirmed.

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CANADA SUGAR-REFINING CO. v. INSURANCE CO. OF NORTH  
AMERICA.

(District Court, S. D. New York. June 3, 1897.)

**MARINE INSURANCE ON "PROFITS" — VALUED POLICY — CONSTRUCTIVE "TOTAL LOSS"—ABANDONMENT.**

The libellant was insured in the respondent's company for \$15,000, on "profits" on a cargo of sugar, against "total loss only," valued at amount of insurance. Before insuring, the respondent had notice of a previous insurance of the same cargo by the Atlantic Mutual for \$163,145. The policy on "profits" was designed to cover the additional value of the cargo above the prior insurance upon a rise in the market price. The vessel was afterwards stranded, and but \$9,000 net was eventually saved out of the cargo, the salvage work being superintended by the agent of the Atlantic Mutual to whom the cargo was virtually abandoned; that company settled with the libellant as for a total loss, returning to the libellant on account, the cargo saved to the net value of \$9,000. *Held*: (1) That there was a constructive total loss of the cargo; (2) and an actual total loss of the "profits," the subject of the insurance in the respondent's policy, that is to say, the value of the cargo over and above the amount insured by the Atlantic Mutual, which both parties understood to be the subject of the respondent's policy; (3) that no act of abandonment to the respondent was required, because there was no possibility that any part of the subject-matter of this policy could remain after the stranding, the right of the Atlantic Mutual to the possession of the whole cargo being superior, and incompatible with any possible abandonment of the sugar to the respondent; (4) that the subsequent receipt of a part of the sugar on account in settlement with the Atlantic Mutual, was merely by way of payment of its liability, and in no way inured to the defendant's benefit; and the libellant was therefore *held* entitled to recover the amount insured.

Butler, Notman, Joline & Mynderse, for libellants.  
Hand & Bonney, for respondents.