

Hobart Vs. Drogan

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Appellant : Hobart

Respondent : Drogan

Judgement :

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Hobart v. Drogan

35 U.S. (10 Pet.) 108

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

Salvage. The brig *Hope*, with a valuable cargo, had been conducted in the evening by a pilot inside of Mobile Point, where pilots of the outer harbor usually leave vessels which they pilot inside of that bar. The pilot was discharged, and the

Hope proceeded up the Bay of Mobile. The wind soon after changed, blew a violent gale from the northwest, both anchors parted, and the *Hope* was driven on a shoal outside of the point among the east breakers. The gale increased to a hurricane and forced the vessel on her beam-ends, and her masts and bowsprit were cut away. The master and crew deserted her to save their lives. After various fruitless efforts to save her, the libellants, all pilots of the outer harbor of Mobile, two days after she was stranded and while yet in great peril, succeeded, and she was brought up to the City of Mobile by them, towed by their pilot boat, assisted by a steamboat employed by them. On a libel for salvage, the District Court of the United States for the District of Alabama allowed as salvage one-third of \$15,299 58, the appraised value of the brig and cargo. The owners of the brig and cargo appealed to this Court.

The amount of salvage allowed by the district court is certainly not, under the circumstances of the case, unreasonable. This Court is not in the habit of revising such decrees as to the amount of salvage unless upon some clear and palpable mistake, or gross overallowance of the court below. It is equally against sound policy and public convenience to encourage appeals of this sort in matters of discretion unless there has been some violation of the just principles which ought to regulate the subject.

Suits for pilotage on the high seas and on waters navigable from the sea as far as the tide ebbs and flows are within the admiralty and maritime jurisdiction of the United States. The service is strictly maritime, and falls within the principles already established by this Court in the case of [*Thomas Jefferson*](#), 10 Wheat. 428, and [*Peyroux v. Howard*](#), 6 Pet. 682.

The jurisdiction of the district courts of the United States in cases of admiralty and maritime jurisdiction is not ousted by the adoption of the state laws by the act of Congress. The only effect is to leave the jurisdiction concurrent in the state courts, and, if the party should sue in the admiralty, to limit his recovery to the same precise sum to which he would be entitled under the state laws, adopted by Congress, if he should sue in the state courts.

A pilot, while acting within the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation for extraordinary services, as contradistinguished from ordinary pilotage for ordinary services, cannot be entitled to claim salvage. In this respect he is not distinguished from any other officer, public or private, acting within the appropriate sphere of his duty. But a pilot, as such, is not disabled, in virtue of his office, from becoming a salvor. On the contrary, whenever he performs salvage services beyond the line of his appropriate duties or under circumstances to which those duties do not justly attach, he stands in the same

Page 35 U. S. 109

relation to the property as any other salvor -- that is, with a title to compensation to the extent of the merit of his services viewed in the light of a liberal public policy.

Seamen, in the ordinary course of things in the performance of their duties, are not allowed to become salvors, whatever may have been the perils or hardships or gallantry of their services in saving the ship and cargo. Extraordinary events may occur in which their connection with the ship may be dissolved *de facto* or by operation of law, or they may exceed their proper duty, in which cases they may be permitted to claim as salvors.

It is not within the scope of the positive duties of a pilot to go to the rescue of a wrecked vessel and employ himself in saving her or her cargo when she was wholly unnavigable. That is a duty entirely distinct in its nature, and no more belonging to a pilot than it would be to supply such a vessel with masts or sails, or to employ lighters to discharge her cargo in order to float her. It is properly a salvage service, involving duties and responsibilities for which his employment may peculiarly fit him, but yet in no sense included in the duty of navigating the ship.

This was a case where the libellants acted as salvors, and not as pilots. They had at the time no particular relation to the distressed ship. They proffered useful services as volunteers, without any preexisting covenant that connected them with

the duty of employing themselves for her preservation. The duties they undertook were far beyond any belonging to pilots and precisely those belonging to salvors.

The ship *Hope* was bound to Mobile from Havana in January, 1832, with a cargo of fruit, sugar, coffee, segars, and tobacco. She arrived off the port of Mobile on 24 January, 1832, took a pilot, and was carried safely within Mobile Point to a place at which the pilots are usually discharged; the pilot then left her, and she proceeded some distance up the bay and came to anchor about six miles within Mobile Point.

In the night, the wind rose to a powerful gale, in the course of which the brig parted her cables and was driven by the force of the winds and waves below Mobile Point, where she grounded. The master and crew, in order to save their lives, took to the boat and left the brig and cargo.

The vessel remained grounded for some time in great peril, having bilged, and having four feet water in her hold. The libellants, who were pilots of the outer harbor of Mobile, after having, without success, made previous efforts to board her, at length succeeded, and less than half an hour afterwards, the wind having changed, the vessel and cargo floated off and the libellants took her in charge. Had not the libellants been on board

Page 35 U. S. 110

the *Hope* at the time the wind changed, she would have been driven on the opposite shore and would, with her cargo, in the opinion of the witnesses examined in the district court, have been totally lost. She was towed by the boats of the libellants into the port of Mobile.

The libellants proceeded for salvage against the *Hope* and cargo, and the district court awarded to them, as salvage, one-third of the value of the ship and cargo. The total value of the property saved was \$15,299.58.

The owners appealed to this Court.

Page 35 U. S. 117

MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from a decree of the District Court for the Southern District of Alabama in the case of a libel for salvage instituted in the court below by the appellees. That decree awarded to the appellees one-third of the appraised value of the brig and cargo as salvage, the appraised value being \$15,299 58.

The material facts of the case are as follows.

The brig *Hope*, belonging to Charlestown, near Boston, being on a voyage from the Havana to the port of Mobile on 24 January, 1832, took a pilot (who was one of the libellants) about ten miles W.S.W. from Mobile Point, by whom she was conducted inside of Mobile Point to the place where the pilots at the outward bar of that point usually leave vessels which they pilot inside of that bar, about half past seven o'clock of the evening of the next day, and he was then discharged by the master of the brig. The brig then proceeded on her course up the Bay of Mobile, and came to

Page 35 U. S. 118

anchor about nine o'clock the same evening. About this time the wind changed to the northwest, and in the course of the night it blew a violent gale; the brig parted both her anchors and was driven outside of Mobile Point about two miles, and then brought up among the east breakers. At this time the gale had increased to a hurricane, the sea broke over the brig in every direction and forced her on her beam-ends. At five o'clock in the morning, the masts and the bowsprit were cut away to relieve and right her for the safety of the vessel, cargo, and crew, and a signal of distress was hoisted. At noon, the flood tide making, the breakers increasing, and the gale continuing, there being two feet of water in the hold, and the pumps being choked with coffee, the master and crew, to save their lives and the ship's papers, left the brig in the longboat and made for the shore, and were taken up by the custom house boat. On the evening of the next day, the master of the brig made arrangements with the libellants, who are all pilots of the port of Mobile, with their boats and the crew of the brig, to make efforts to extricate the

brig and cargo from their perilous condition. Accordingly, the next morning an attempt was made by the libellants and the master (the mate and the crew of the brig declining to assist) to get on board of the brig, but it still blew so fresh that it became impossible to board her. The master of the brig then went on shore from the pilot boat, which anchored at Mobile Point. About one o'clock of the same day, the brig shifted her position and the libellants discovered her to be nearly afloat. The pilot boats were then got underway, and in about three-quarters of an hour afterwards the libellants, being then on board, and no other persons, the brig floated. At this time the wind was blowing fresh from E.S.E.; and if the brig had not been taken possession of by the libellants, she would have been drifted on the west bank, and have become a complete wreck. The brig was then towed by the pilot boats and a steamboat, procured by the libellants, to the port of Mobile, in the course of the two succeeding days. Such are the material facts.

In the course of the proceedings in the court below, an agreement was asserted to have been made between the parties that in case the vessel and cargo should be saved, the compensation

Page 35 U. S. 119

should be fixed by the Chamber of Commerce of Mobile. That agreement, however, is denied by the libellants to have been applicable to the actual circumstances of the case, and no compensation was in fact awarded by the Chamber of Commerce. That agreement has not been insisted on here in the argument on either side, and indeed, being to a mere amicable tribunal as arbitrators, could not in a case of this sort be now insisted upon to bar the jurisdiction of the court. It is wholly unlike the case where a positive law has fixed the mode of ascertaining the compensation.

No objection has been made to the amount of salvage decreed by the court below if the libellants are entitled to any. And the objection has been properly abandoned, for the amount under the circumstances is certainly not unreasonable. Besides, this Court is not in the habit of revising such decrees as to the amount of salvage unless upon some clear and palpable mistake or gross overallowance of

the court below. It is equally against sound policy and public convenience to encourage appeals of this sort in matters of discretion unless there has been some violation of the just principles which ought to regulate the subject.

Three objections have been made to the decree:

First, that it was the duty of the libellants, as pilots, to give every assistance in their power to a vessel in distress within the limits of their pilot ground, and that this, being a service rendered in the discharge of their duty, forms no case for a claim of salvage.

Secondly, that the act of Congress on this subject, Act of 7 August, 1789, ch. 9, leaves the regulation of pilots to the state laws, and that by the laws of Alabama any extra allowance claimed by these pilots must be fixed by the wardens of the port.

Thirdly, that the district court had no jurisdiction of the case.

In respect to the last objection it has been urged in a very limited form, not as an objection to the jurisdiction of the courts of admiralty to entertain suits for pilotage generally, but only for pilotage under circumstances like the present, where a fixed compensation is established, under the authority of Congress, by the state laws. We are of opinion that suits for pilotage on the high seas and on waters navigable from the sea as far as the

Page 35 U. S. 120

tide ebbs and flows are within the admiralty and maritime jurisdiction of the United States. The service is strictly maritime and falls within the principles already established by this Court in the case of [*The Thomas Jefferson*](#), 10 Wheat. 428, and [*Peyroux v. Howard*](#), 6 Pet. 682.

The other part of the objection is not in our opinion maintainable. The jurisdiction of the district courts of the United States in cases of admiralty and maritime jurisdiction is not ousted by the adoption of the state laws by the act of Congress. The only effect is to leave the jurisdiction concurrent in the state courts, and if the

party should sue in the admiralty to limit his recovery to the same precise sum to which he would be entitled under the state laws, adopted by Congress if he should sue in the state courts.

The second objection has been met at the bar by an argument of a grave cast, *viz.*, that the act of Congress, so far as it adopts the future laws to be passed by the states on the subject of pilotage, is unconstitutional and void, for Congress cannot delegate their powers of legislation to the states, and that as Alabama was not admitted into the union as a state until the year 1819, and its laws on this subject have been long since passed (in 1822), these laws are *ipso facto* nullities. This question was much discussed in the case of [Gibbons v. Ogden](#), 9 Wheat. 207-208, and may not be without difficulties. But we are spared from any discussion of it on the present occasion because we are of opinion that the present is not a case of pilotage, but of salvage, and Congress have never confided to the states any power to regulate salvage on the sea or on tidewaters, but the same belongs to the district courts in virtue of the delegation to them of admiralty and maritime jurisdiction.

Whether, indeed, this be a case of salvage or not is the point involved in the first objection, and we shall now proceed to state the reasons why we are of opinion that it is.

We agree to the doctrine stated in the cases cited at the bar that a pilot, while acting in it in the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation for extraordinary services, as contradistinguished from ordinary pilotage for ordinary services, cannot be entitled to claim

Page 35 U. S. 121

salvage. In this respect he is not distinguished from any other officer, public or private, acting within the appropriate sphere of his duty. But a pilot, as such, is not disabled in virtue of his office from becoming a salvor. On the contrary, whenever he performs salvage services beyond the line of his appropriate duties or under

circumstances to which those duties do not justly attach, he stands in the same relation to the property as any other salvor -- that is, with a title to compensation to the extent of the merit of his services, viewed in the light of a liberal public policy.

Sir William Scott, in the case of *The Joseph Harvey*, 1 Rob. 306, speaking upon this subject where pilots were claiming as salvors, said

"This is a petition praying salvage, and it is said by his Majesty's advocate that it is impossible for these persons to claim salvage, as there is little more than pilotage due, although it is allowed that the court may, in cases of pilotage as well as of salvage, direct a proper remuneration to be made. It may be in an extraordinary case difficult to distinguish a case of pilotage from a case of salvage properly so called, for it is possible that the safe conduct of a ship under circumstances of extreme personal danger and personal exertion may exalt a pilotage service into something of a salvage service. But in general, they are distinguishable enough, and the pilot, though he contributes to the safety of a ship, is not to claim as a legal salvor."

From this language it is obvious that the learned judge had in his mind the distinction between extraordinary pilotage services and salvage services properly so called, the one clearly going beyond the mere line of duty and the other going merely to the extreme line of duty. In the case of *The Aquilla*, 1 Rob. 37, where a magistrate, acting in discharge of his public duty, demanded to be considered as a salvor, the same learned judge said:

"This, however, is certain -- that if a magistrate, acting in his public duty on such an occasion, should go beyond the limits of his official duty in giving extraordinary assistance, he would have an undeniable right to be considered as a salvor."

The same principle was fully recognized by Mr. Justice Washington in the case of *Le Tigre*, 3 Wash.Cir. 169, 170, 171, in which, after stating that ordinary official duties were not to be compensated by salvage, he added:

"Of this class of cases is that of a pilot

who safely conducts into port a vessel in distress at sea. He acts in the performance of his ordinary duty, imposed upon him by the law and nature of his employment, and he is therefore not entitled to salvage unless in a case where he goes beyond the ordinary duties attached to his employment."

MR. JUSTICE THOMPSON, in the MS. case of *The Wave*, cited at the bar, maintained the same doctrine upon an elaborate review of all the cases. It has been also applied to another very meritorious class of cases -- we mean that of seamen who in the ordinary course of things, in the performance of their duties, are not allowed to become salvors, whatever may have been the perils or hardships or gallantry of their services in saving the ship and cargo. We say "in the ordinary course of things," for extraordinary events may occur in which their connection with the ship may be dissolved *de facto*, or by operation of law, or they may exceed their proper duty, in which cases they may be permitted to claim as salvors. Such was the case of the seaman left on board in the case of [*The Blaireau*](#), 2 Cranch 268, and such was the exception alluded to in the case of *The Neptune*, 1 Hagg. Adm. 236, 237. [*](#) In this last case, Lord Stowell, after saying that the crew of a ship cannot be considered as salvors, gave what he deemed the definition of a salvor:

"What [said he] is a salvor? A person who, without any particular relation to a ship in distress, proffers useful services and gives it as a volunteer adventurer without any preexisting covenant that connected him with the duty of employing himself for the preservation of that ship."

And it must be admitted, that, however harsh the rule may seem to be in its actual application to particular cases, it is well founded in public policy and strikes at the root of those temptations which might otherwise exist to an alarming extent to seduce pilots and others to abandon their proper duty that they might profit by the distresses of the ship which they are bound to navigate.

Such, then, being the rule, let us see whether it has any application to the actual circumstances of the present case. In the first place, none of the libellants were, at the time of the service

Page 35 U. S. 123

performed, at all connected with the *Hope* in the character of pilots. The pilot had been regularly discharged at the usual place after arriving at Mobile Point, and he became, therefore, as to her, *functus officio* until there was some new call for pilot duty. Now the subsequent services, asked by the master and proffered by the libellants, as the very agreement suggested in the proceedings abundantly shows, was not understood by either of the parties to be for mere pilot services, but for services of a far different and more extensive nature and character than belong to such an employment.

Indeed in no just sense can the services of these libellants be deemed to fall within the scope of the duties of pilots. Lord Tenterden, in his excellent Treatise on Shipping, part 2, ch. 5, s. 1, 148, has defined a pilot to be "a person taken on board at a particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port." His duty, therefore, is properly the duty to navigate the ship over and through his pilotage limits, or, as it is commonly called, his pilotage ground. The case therefore necessarily presupposes that the ship is in a condition capable of being navigated -- distressed, if you please, and laboring under difficulties, but still capable, in point of crew, equipments, and situation, of being navigated. No one ever heard of its being within the scope of the positive duties of a pilot to go to the rescue of a wrecked vessel and employ himself in saving her or her cargo when she was wholly unnavigable. That is a duty entirely distinct in its nature, and no more belonging to a pilot than it would be to supply such a vessel with masts or sails or to employ lighters to discharge her cargo in order to float her. It is properly a salvage service, involving duties and responsibilities for which his employment may peculiarly fit him, but yet in no sense included in the duty of navigating the ship. Lord Alvanley, in *Newman v. Walters*, 3 Bos. & Pull. 616, puts a case far short of that, which is here presented as a clear case of salvage.

"Suppose [said he] a tempest should arise while the pilot is on board, and he should go off in a boat to the shore to fetch hands, and should risk his life for the safety of the ship in a manner different from that which his duty required; in such a case it seems to me that he would be entitled to a compensation in the nature of

Page 35 U. S. 124

salvage, and I am glad that Sir William Scott appears to entertain the same opinion."

Now in the case here supposed, the pilot had already acquired a relation to the ship by having actually entered upon the service as such, and yet the learned judge holds it upon principle a clear case of salvage.

What were the circumstances under which the present service was performed? The brig was stranded upon a bank, with the sea rolling over her; her masts, and bowsprit were cut away; her pumps were choked; two feet of water were in her hold; she was deserted by her master and crew, and incapable of navigation by herself, and even when gotten off, she was navigated only by being towed by two pilot boats and a steamboat into port. At this time the libellants had no official connection whatsoever with her as pilots. Where, then, was the obligation on them to go on board and take charge of a wreck, and to hazard their lives and property and to apply their labor to deliver the brig and cargo from their present imminent perils, any more than on any other persons? We know of none. We think the whole enterprise was an enterprise of salvage, and not of pilotage. It was a case where they acted as salvors strictly according to the definition of Sir William Scott. They had at the time no particular relation to the distressed ship; they proffered useful services as volunteers, without and preexisting covenant that connected them with the duty of employing themselves for her preservation. The duties they undertook were far beyond any belonging to pilots and precisely those belonging to salvors.

For these reasons, therefore, we are of opinion that the decree of the district Court of Alabama ought to be

Affirmed with costs.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Alabama and was argued by counsel, on consideration whereof it is adjudged and decreed by this Court that the decree of the said district court in this cause be and the same is hereby affirmed with costs and damages at the rate of six percentum per annum on the amount decreed by the said district court as salvage.

* See 3 Kent Comm.Lect. 47, 199 (1st edition); *The Two Catherines*, 2 Mason 319; *Newman v. Walters*, 3 Bos. & Pull. 612.

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