

The Connemara

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Appeal No. : 108 U.S. 352

Appellant : The Connemara

Judgement :

The Connemara - 108 U.S. 352 (1883)

U.S. Supreme Court The Connemara, 108 U.S. 352 (1883)

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Decided April 30, 1883

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF LOUISIANA

SYLLABUS

1. A ship, towed by a steam tug down a river, came to anchor in the evening, and the tug was lashed to her side. In the night, no watch having been

set, a passenger on board of her was awakened by a smell of smoke arising from a fire which had broken out in part of the cargo stowed in the poop, and which endangered the ship and cargo. He gave the alarm to the officers and crews of the ship and of the tug, and he and the officers, crew and passengers of the tug, working together, and by means of a steam pump and hose upon the tug, and unaided by the officers and crew of the ship, put out the fire in twenty minutes. *Held* That this was a salvage service, and that the passenger on board the ship, as well as the owner, officers, crew and passengers of the tug, might share in the salvage.

2. Under the Act of Congress of 16th February, 1875, c. 77, a decree of salvage by the circuit court is not to be altered by this Court for excess in the amount awarded unless the excess is so great that, upon any reasonable view of the facts found, the award cannot be justified by the rules of law applicable to the case.

In admiralty. Libel for salvage. Decree below for libellants, and appeal. The act of salvage was done on a voyage down the River Mississippi, the vessel being fully freighted for Liverpool. The salvors were a tugboat, the officers and crew of the vessel, and passengers on the vessel. The main contention was as to the amount of the salvage and as to the right of a passenger to participate.

MR. JUSTICE GRAY delivered the opinion of the Court.

This is a libel in admiralty by the owner, master, and crew of the steam tow boat *Joseph Cooper, Jr.* for salvage on the ship *Connemara* and cargo. Louis Wurtz and Henry Holser, passengers on the tow boat, and John Evers, a passenger on the ship, were permitted to file intervening libels. The value of the ship and cargo was agreed to be \$236,637. The district court awarded as salvage EIGHT percent on that value, or

\$18,930.96, and the owners and claimants of the ship appealed to the circuit court.

The circuit court found the following facts:

On the 15th of April, 1879, the ship *Connemara*, being in the port of New Orleans with her cargo on board, consisting chiefly of pressed cotton, and bound on a voyage for Liverpool, England, engaged the tow boat *Joseph Cooper, Jr.*, to tow her to the mouth of the Mississippi River, and was by her towed about twenty-six miles down the river, and came to anchor about eight o'clock in the evening opposite the Belair Plantation. About eleven o'clock at night, the ship, with the tow boat lashed to her side, was lying with her bow to the current and her stern to the wind, which was blowing stiffly; no watch had been set -- and the two mates and the boatswain of the ship were under the influence of liquor, but the captain and the rest of the crew were sober. Evers, a passenger on board the ship, being then asleep in the second mate's cabin, was awakened by a smoke of burning cotton, sprang from his berth, and gave the alarm to the officers and crew of the ship and of the tow boat. The fire was not in the hold, but in the poop above the main deck and near the door, which could be opened by raising the latch, and the fire, when discovered, was confined to three bales of cotton, a spare sail, and two coils of tarred rope. There were 127 bales of cotton stowed in the poop. The fire was not caused by the fault of the tow boat or by any defect in her equipment or management. The tow boat had on her deck a pump worked by steam, and hose long enough to reach the fire on the ship. As soon as the alarm was given, and by the exertions of the tow boat's officers and crew, of her two passengers and of Evers, the hose was laid from the pump to the deck of the ship, and by their use of this pump and hose the fire was put out in fifteen or twenty minutes without any damage to ship or cargo beyond the burning of the sail and the two coils of rope, the partial burning of the three bales of cotton, and the charring of a part of the upper deck or roof of the poop. In extinguishing the fire, there was no serious risk of loss or damage to the tow boat or of injury to life or limb of any of the salvors. No efficient

effort was made by the officers or the crew of the ship to extinguish the fire. The ship had on her deck, within fifteen feet of the fire, two tanks of water, holding four hundred gallons each, one of which was full and the other half full, with six buckets near the fire and seven above, and a pump by which water could have been pumped upon the upper deck. At the time of the fire, the steam tug *Harry Wright* was lying about a quarter of a mile off, and there was a telegraph station on the Belair Plantation from which a dispatch could have been sent to the City of New Orleans for aid to put out the fire, and efficient aid might have reached the ship from the city in two hours and a half after notice. The agreed value, as aforesaid, of the *Connemara* and cargo, and the names and monthly wages of each of the officers and crew of the *Joseph Cooper, Jr.*, were also stated in the findings of fact.

From these facts the circuit court made and stated the following as conclusions of law:

1st. The services rendered by the tow boat *Joseph Cooper, Jr.*, her officers and crew, and the three passengers, Wurtz, Holzer, and Evers in the extinguishment of the fire on board the ship *Connemara* were a salvage service. 2d. A gross salvage on the ship and cargo of \$14,198, or six percent on the value thereof, should be allowed. 3d. This salvage should be equally divided, half to the owner of the tow boat and half to the salvors, 4th. The moiety allowed to the salvors should be distributed among them in proportion to their monthly wages, the passengers Wurtz and Evers to rank as pilots and Holser as a steersman.

A decree was entered accordingly, and the claimants appealed to this Court. A motion to dismiss the appeal for want of jurisdiction was made and overruled at October term, 1880. *The Connemara*, [103 U. S. 754](#) .

The errors assigned are first, that the facts found do not constitute a salvage service; second, that if a salvage service, it is salvage of the lowest grade, and the amount allowed is exorbitant; third, that the amount allowed to John Evers, he being a passenger on board the *Connemara*, is not warranted by law.

Neither of the grounds assigned will justify this Court in reversing the decree.

If the fire, which had made such headway as to wholly consume the two coils of tarred rope and the spare sail and to partly destroy three bales of the cotton stowed in the poop, had not been promptly discovered and extinguished, there was imminent danger that it would extend to the rest of that cotton, and, fanned by the stiff breeze which was blowing lengthwise of the ship, destroy or greatly damage the ship and the whole cargo. Saving a ship from imminent danger of destruction by fire is as much a salvage service as saving her from other perils of the seas. [The Blackwall](#), 10 Wall. 1. The shortness of the time occupied in rescuing the ship from danger does not lessen the merit of the service. *The General Palmer*, 5 Notes of Cases 159, note; *The Syrian*, 2 Marit.Law Cases 387; *Sonderburg v. Ocean Tow Boat Co.*, 3 Woods 146. The danger being real and imminent, it is not necessary, in order to make out a salvage service, that escape by other means should be impossible. [Talbot v. Seeman](#), 1 Cranch 1, [5 U. S. 42](#) .

The fact that no serious risk was incurred on the part of the salvors does not change the nature of the service, although an important element in estimating its merit and the amount of the reward. As has been well said by Mr. Justice Curtis,

"The relief of property from an impending peril of the sea by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of salvage. It may be a case of more or less merit according to the degree of peril in which the property was and the danger and difficulty of relieving it. But these circumstances affect the degree of the service, not its nature."

The Alphonso, 1 Curtis 376, 378.

The contract of the tow boat and her officers and crew was to tow the ship, and did not include the rendering of any salvage service by putting out fire or otherwise.

Such a service, which, by the use of the steam pump and engine of the tow boat, rescued the ship from an unforeseen and extraordinary peril, gave the owner as well as the officers and crew of the

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tow boat a right to salvage. *The William Brandt, Jr.*, 2 Notes of Cases Supplement 1xvii.; *The Saratoga*, Lush. 318; *The Minnehaha*, 15 Moore P.C. 133; S.C. Lush. 335; *The Annapolis*, Lush. 355, 361, 372. And no doubt is or could be raised as to the right of the passengers on the tow boat, whose exertions contributed to putting out the fire, to share in the salvage awarded to her officers and crew. *The Cora*, 2 Pet.Adm. 361; S.C. 2 Wash. C.C. 80; *The Hope*, 3 Hagg.Adm. 423.

Evers, the passenger on the *Connemara*, was also entitled to share in the salvage. A passenger cannot, indeed, recover salvage for every service which would support a claim by one in nowise connected with the ship. In the case of a common danger, it is the duty of everyone on board the ship to give every assistance he can by the use of all ordinary means in working and pumping the ship to avert the danger. Yet a passenger is not, as the officers and crew are, bound to stand by the ship to the last; he may leave her at any time and seek his own safety, and for extraordinary services, and the use of extraordinary means, not furnished by the equipment of the ship herself, by which she is saved from imminent danger, he may have salvage. *Newman v. Walters*, 3 B. & P. 612; *The Branston*, 2 Hagg.Adm. 3, note; *The Salacia*, 2 Hagg.Adm. 262, 269; *The Vrede*, Lush. 322; *The Pontiac*, 5 McLean 359, 363; *The Great Eastern*, 2 Marit.Law Cas. 148; S.C. 11 Law Times (N.S.) 516; 3 Kent Com. 246. The services of Evers were of peculiar value, and involved the use of means outside the ship. His promptness and vigilance gave the alarm which, by the supineness and neglect of the officers and crew of the ship, might not otherwise have been given in time to save her. This might not of itself have entitled him to reward, but beyond this he exerted himself, as if he had been one of the officers and crew of the tow boat, in the use of the steam pump and hose on board of her by which the fire on the ship was effectually subdued.

It may also be observed that this case comes before us on the appeal of the owners of the ship, and that there is no controversy, either between Evers and the other salvors or between

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the salvors who gave their personal exertions and the owners of the tow boat whose machinery was used, as to the distribution of the salvage.

The services performed being salvage services, the amount of salvage to be awarded, although stated by the circuit court in the form of a conclusion of law, is largely a matter of fact and discretion, which cannot be reduced to precise rules, but depends upon a consideration of all the circumstances of each case. [*The Blaireau*](#), 2 Cranch 240, [6 U. S. 267](#) ; [*The Adventure*](#), 8 Cranch 221, [12 U. S. 228](#) ; [*The Emulous*](#), 1 Sumner 207, 213; [*The Cora*](#), above cited; [*Post v. Jones*](#), 19 How. 150, [60 U. S. 161](#) .

In [*The Sybil*](#), 4 Wheat. 98, Chief Justice Marshall said:

"It is almost impossible that different minds contemplating the same subject should not form different conclusions as to the amount of salvage to be decreed and the mode of distribution."

And by the uniform course of decision in this Court during the period in which it had full jurisdiction to reverse decrees in admiralty upon both facts and law, as well as in the judicial committee of the Privy Council of England, exercising a like jurisdiction, the amount decreed below was never reduced unless for some violation of just principles or for clear and palpable mistake or gross overallowance. [*Hobart v. Drogan*](#), 10 Pet. 108, [35 U. S. 119](#) ; [*The Comanche*](#), 8 Wall. 448, [75 U. S. 479](#) ; [*The Neptune*](#), 12 Moore P.C. 346; [*The Carrier Dove*](#), 2 Moore P.C. (N.S.) 243; S.C. Brown. & Lush. 113; [*The Fusilier*](#), 3 Moore P.C. (N.S.) 51; S.C. Brown & Lush. 341.

By the Act of Congress of 16th February, 1875, c. 77, the appellate power of this Court is restricted within narrower bounds; its authority to revise any decree in

admiralty of the circuit court is limited to questions of law, and the finding of facts by that court is equivalent to a special verdict, or to facts found by the court in an action at law when a trial by jury is waived. *The Abbottsford*, [98 U. S. 440](#) ; *The Francis Wright*, [105 U. S. 381](#) ; *Sun Insurance Company v. Ocean Insurance Company*, [107 U. S. 485](#) .

The effect of this change may be illustrated by referring to

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the revisory power of the courts in actions at law tried by a jury. The facts are decided by the jury in the first instance. If the jury return a general verdict clearly against the weight of evidence or assessing exorbitant damages, the court in which the trial is had may set aside the verdict and order a new trial. But a court of error to which the case is brought by bill of exceptions or appeal on matter of law only cannot set aside the verdict unless there is no evidence from which the conclusion of fact can be legally inferred. [Parks v. Ross](#), 11 How. 362; [Schuchardt v. Allens](#), 1 Wall. 359.

Before the act of 1875, this Court, upon an appeal in a case of salvage, gave the same weight, and no more, to the decree of the court below than a court of common law would allow to the verdict of a jury, and might revise that decree for manifest error in matter of fact, even if no violation of the just principles which should govern the subject was shown. [Post v. Jones](#), 19 How. 150, [60 U. S. 160](#) . Since the act of 1875, in cases of salvage, as in other admiralty cases, this Court may revise the decree appealed from for matter of law, but for matter of law only, and should not alter the decree for the reason that the amount awarded appears to be too large, unless the excess is so great that, upon any reasonable view of the facts found, the award cannot be justified by the rules of law applicable to the case.

In the present case, a vessel and cargo of great value were rescued from imminent danger by the energetic efforts of the salvors, and the amount of salvage awarded is less than one-sixteenth of the value of the property saved. Although

upon the circumstances of the case, so far as they can be brought before us by the summary of them in the findings of fact by the circuit court, we might have been better satisfied with an award of a smaller proportion, we cannot say that the amount awarded is so excessive as to violate any rule of law.

Decree affirmed.

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