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**Court :** US Supreme Court

**Decided On :** May-27-1887

**Appeal No. :** 122 U.S. 256

**Appellant :** irvine

**Respondent :** The Hesper

**Judgement :**

Irvine v. The Hesper - 122 U.S. 256 (1887)

U.S. Supreme Court Irvine v. The Hesper, 122 U.S. 256 (1887)

**Irvine v. The Hesper**

**Argued Slay 6, 1887**

**Decided May 27, 1887**

**122 U.S. 256**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF TEXAS*

**SYLLABUS**

On an appeal by the libellants in a cause of salvage from a decree of the circuit court which awarded to them a less amount than the district court had awarded, on an appeal from that court taken only by the libellants, this Court, being unable to say from the findings of fact by the circuit court that that court did not properly exercise its discretion in making the allowance it did, affirmed its decree.

An appeal in admiralty from a district court to a circuit court vacates altogether the decree of the district court, and the case is tried *de novo*, and this is true whether both parties appeal or whether only the one or the other appeals.

This is a libel *in rem*, in admiralty brought in the District Court of the United States for the Eastern District of Texas by Robert Irvine and Charles L. Beissner, owners of the steam lighter *Buckthorn* and the steam tug *Estelle* against the steamship *Hesper* in a cause of salvage.

The libel sets forth salvage services rendered to the *Hesper* by the *Buckthorn* and the *Estelle* in pulling her off from the shore at Galveston Island, about twenty-five miles from Galveston, Texas, where she had grounded on her voyage from Liverpool to Galveston with a cargo of salt in December, 1882. The answer of the owners of the *Hesper* avers their readiness to pay a reasonable compensation for the services actually rendered by the two vessels, but denies that more than compensation for actual services and time is due, and denies that the services rendered were salvage services.

Proofs were taken, and the district court in April, 1883, 18 F. 692, made a decree adjudging that the libellants were entitled to compensation in the nature of salvage, for the saving of the *Hesper* and her cargo, and allowing to the libellants, for the services of each of the two vessels, \$3,000,

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and to the owners of the schooner *Mary E. Clark*, and men who had been employed to load upon her part of the cargo of the *Hesper*, and to jettison such cargo, \$2,000; and, the claims of the owners of that schooner and of those men having been settled by the *Hesper*, it was ordered that the \$2,000 should go to

the *Hesper*.

Both parties gave notice of appeal from this decree to the circuit court. The libellants perfected their appeal, but the claimants of the *Hesper* did not perfect theirs. Some further proof was taken in the circuit court, and on the 13th of November, 1883, that court, having heard the cause, filed the following findings of fact and conclusions of law:

"This cause came on to be heard on the transcript and evidence, and was argued. Whereupon the court, being advised of the evidence, finds the following as the facts of the case:"

"1st. That about 5:45 A.M., of the 12th day of December, A.D. 1882, the steamship *Hesper*, bound on a voyage from Liverpool to Galveston, being out of her course, ran aground at the southwest side of Galveston island, about twenty miles southwest from Galveston and nearly opposite the lifesaving station. The *Hesper* was an iron propeller, and built in Hartlepool, England, in 1881 at a cost of twenty-two thousand pounds; her registered tonnage is, gross, 1,654 tons; net, 1,069 tons. Her freight capacity is 1,950 tons. She has powerful engines of 750 horsepower, with steam windlasses and winches, and on said twelfth of December was well found and well manned in every respect. She was laden with a cargo of about 900 tons of salt."

"2d. That when the *Hesper* went ashore, her engines were slowed down and she was making about four knots per hour. She struck easily, without shock, and remained upright. Her draught was then thirteen feet nine inches. The sea was smooth and there was very little wind. What there was was from the south, and the ship headed, when she struck, northeast by north. Kedge anchors were immediately put out to the east southeast, and efforts made to get the ship off in that direction, with the ship's engines heaving on those anchors. At

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the same time, a message was sent overland to Galveston, the nearest port, to the ship's agent, to send assistance."

"3d. That the agent of the ship applied to the agent of the tug *Estelle*, and procured that tug to go to the assistance of the *Hesper*. The *Estelle* was a long, narrow, deep boat, drawing about eight feet eight inches, and was the most powerful towboat in Galveston Harbor, and had aboard the usual appliances of such boats. The *Estelle* reached the *Hesper* about 5 P.M. of the twelfth of December, and reported. The master of the *Hesper* endeavored to bargain with the master of the *Estelle* as to the cost of pulling the *Hesper* off, but the master of the *Estelle* refused to make any agreement, on the ground that he did not know how much labor and time it would take. A line was then given the *Estelle* from the stern of the *Hesper*, which was then more off the shore than the bow, and the *Estelle* hauled on said line for about two hours, during which time the crew of the *Hesper*, with some four or five hands from the lifesaving station, were throwing over cargo. No appreciable result came from this towing of the *Estelle*, and she desisted on the orders of the master of the *Hesper*. "

"4th. That in the meantime the sea, which had been smooth, with very little swell, had become more turbulent, and there was a very decided increase in the groundswell from the southeast -- not so much, however, but that small boats were flying around the *Hesper*, and lifeboats were running easily to and from shore. At this time of stopping hauling by the *Estelle*, the master of the *Hesper* requested the *Estelle* to come alongside and run a heavy anchor out seaward from the *Hesper*, both to keep the *Hesper* from drifting further in and for the *Hesper* to heave on to pull herself off. This the master of the *Estelle* refused to do on the ground that there was too much sea on, and that he would thereby endanger his own boat, and thereupon the *Estelle*, taking aboard the *Hesper's* agent, who had come overland, proceeded back to Galveston, to procure more assistance. It was then found that the *Estelle* was making some water from a leak caused by a defect in the staff of the stuffing-box, which was not tight enough, and was worked loose by the strain in

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hauling on the *Hesper*. However, the *Estelle* proceeded that night [of the 12th] to Galveston Bar, where she laid until morning, reaching Galveston wharves about

noon of the 13th of December. The *Estelle* lay at the wharves repairing until the morning of the 14th of December, when she took the schooner *Clark*, which had been engaged by the *Hesper's* agent to lighter cargo, in tow and towed her down to the *Hesper*. "

"5th. That on the 13th of December, the ship *Hesper* was lively, though still aground, shifting her position slightly, but not affecting her safety, some 450 tons of water having been pumped into her ballast tanks to put her down, and keep her from going nearer in shore, and her crew being engaged in throwing over cargo while waiting for assistance. And on the same day the agent engaged the *Buckthorn*, a steam lighter belonging to libellants, of lighter draught and power than the *Estelle*, to proceed to the *Hesper*, which she did, taking down a heavy anchor and cables, and two new hawsers (the latter purchased by the *Hesper's* agent), and a gang of men employed by the *Hesper's* agent, to help lighter cargo and generally assist, and also provisions and other necessaries, arriving in the night and lying by until morning."

"6th. That on the morning of the 14th of December, the position and condition of the *Hesper* was much the same as on the preceding day, the weather being calm and the sea smooth. About nine o'clock in the morning, the gang of men brought down by the *Buckthorn*, after breakfasting aboard the *Hesper*, commenced to jettison cargo, and the *Buckthorn* carried out seaward and dropped the heavy anchor brought down from Galveston, in about 18 feet of water, connecting the same, by hawsers and cables of about 210 fathoms in length, with the steam winch of the *Hesper*. The *Buckthorn* then also took a line from the *Hesper* and pulled on her while the machinery of the *Hesper* was heaving on the hawsers leading to the heavy anchors, but no relief was given. Towards noon on the 14th, the *Estelle* arrived, with the *Clark* in tow. The *Clark* was placed alongside of the *Hesper*, and cargo was transferred to her by the crew and the gang aforesaid. This lightering

was kept up until about four o'clock in the afternoon, when about one-third of the cargo was removed, and nearly all the ballast water pumped out, and then the *Estelle* took a line from the *Buckthorn*, and a general effort was made by the *Buckthorn*, the *Estelle*, and the *Hesper's* engines to get the *Hesper* off, which succeeded, whereupon the *Hesper*, which was uninjured, steamed to Galveston."

"7th. Where the *Hesper* went aground, the slope of the ground seaward is gradual, and the bottom is sand."

"8th. The prevailing and probable winds on that shore during the month of December are from the south and southeast, sometimes of great violence."

"9th. During the three days the *Hesper* was aground, there was no wind nor sea of any danger to ships, large or small, and the services rendered to the *Hesper*, aiding her to get safely off, were not attended with any hazard or danger, or any circumstances unusual to the towage and lighterage business, as carried on in Galveston roads when the wind is moderate and the sea smooth."

"10th. That the value of the *Hesper*, which was entirely uninjured by going ashore, was one hundred thousand dollars, and the value of her cargo saved was six thousand five hundred dollars. The value of libellants' two boats, the tug *Estelle* and the lighter *Buckthorn*, was thirty-five thousand dollars."

"11th. That the *Hesper*, when aground as aforesaid, was in a condition of peril and distress, hardly likely to be able to get out of danger by her own efforts, even if the weather had been certain to continue favorable for many days, and certain to be wrecked if the weather should prove to be bad."

"12th. That the services rendered the *Hesper* by the libellants' boats, the *Estelle* and *Buckthorn*, were salvage services, but of the lowest grade, involving neither risk of property, peril of life or limb, nor unusual expense, nor gallantry, courage, or heroism, and the same will be fully compensated by double compensation on the basis of towage and lighterage services."

"13th. The *Estelle* was engaged in these services three days

and one night, and the *Buckthorn* two days and one night. The outside earnings of either of these boats, with their appliances, is three hundred dollars per day, which, allowing as much for night work, would make the sum of twenty-one hundred dollars compensation, and double compensation is the sum of forty-two hundred dollars."

"And the court finds the following as conclusions of law:"

"1. The services rendered by the libellants' boats the *Estelle* and the *Buckthorn* and their respective masters and crews were salvage services of the lowest grade."

"2. That the court should award for said services the sum of forty-two hundred dollars."

"3. That libellants should have judgment for the sum of forty-two hundred dollars, and costs incurred in the district court."

"4. That the libellants should pay the costs of this Court."

Thereupon a decree was made by the circuit court in favor of the libellants for \$4,200, and the costs of both courts. 18 F. 696. From this decree the libellants have appealed to this Court. Their notice of appeal states that they claimed, as their compensation for the salvage services to the vessel and cargo, one-fourth of the sum of \$106,500 found by the circuit court as the value of the *Hesper* and her cargo.

MR. JUSTICE BLATCHFORD, after stating the case as reported above, delivered the opinion of the Court.

It is assigned for error that the circuit court erred in deciding that the services rendered by the *Estelle* and the *Buckthorn* were salvage services of the lowest

grade. This is found by the circuit court both as a conclusion of fact and a conclusion of law. Regarding it as a conclusion of fact, it is not reviewable here. Regarding it as a conclusion of law, it is based upon the finding of fact that the salvage services involved "neither risk of property, peril of life or limb, nor unusual expense, nor gallantry, courage, or heroism." The *Estelle* having been engaged in the services three days and one night, and the *Buckthorn* two days and one night, the court, treating the whole service as a service for seven days, and finding that the outside earnings of either of the boats, with its appliances, was \$300 per day, being \$2,100 for seven days, doubled the compensation, and made it \$4,200,

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stating that that would be a full compensation on the basis of towage and lighterage services.

The circuit court, in its opinion, 18 F. 698, says:

"Proctor for respondents in this case admits in argument that by reason of the service of the extra anchor furnished by the libellants, the service amounts to salvage service. But for this admission, I have grave doubts whether I could have found as a fact that the services ranked above towage and lighterage service, to be compensated on the principle of a *quantum meruit*. But salvage services being taken as established, the question is one solely of amount. As a fact in the case, I have found that there was neither risk of property, peril of life or limb, nor unusual expense, nor gallantry, courage, or heroism. The evidence shows there was no enterprise in going out in tempestuous weather, as the weather was moderate, and the libellants' tug only went out when called upon and employed so to do. The labor and skill furnished were of the ordinary kind, such as libellants' boats were seeking as ordinary employment. Salvage, then, is to be determined entirely by the distress in which the salvaged property was. The distress of the *Hesper* was the salvors' opportunity, and the amount of salvage, on this point, determines the whole case."

The principle upon which the circuit court proceeded, as stated in its opinion, was that although storms might have come which would have destroyed the *Hesper*, the services actually rendered to her by the tug and the lighter were ordinary services, and that if storms had come, the tug and the lighter might easily have sought safety.

We recently had occasion to fully consider the question of salvage in the case of *The Connemara*, [108 U. S. 352](#) , where it was contended that the facts found by the circuit court did not constitute salvage service, and that if a salvage service, it was salvage of the lowest grade, and the amount allowed was exorbitant. Holding the services to have been salvage services, this Court, speaking by MR. JUSTICE GRAY, said (p. [108 U. S. 359](#) ):

"The amount of salvage to be awarded, although stated by the circuit court in the form of a conclusion of law, is largely

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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."

It is further there said that by the uniform course of decision in this Court during the period in which it had jurisdiction to reverse decrees in admiralty upon both facts and law, the amount decreed below was never reduced unless for some violation of just principles or for clear and palpable mistake or gross overallowance, and that since the Act of Congress of February 16, 1875, c. 77, restricting the appellate power of this Court within narrower bounds and limiting its authority to revise any decree in admiralty of the circuit court to questions of law, this Court may, in cases of salvage as in other admiralty cases,

"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."

The decree appealed from in that case was affirmed upon the ground that this Court could not say, upon the findings of facts, that the amount awarded was so excessive as to violate any rule of law. The same principle was applied in *The Tornado*, [109 U. S. 110](#) , [109 U. S. 115](#) .

These views are equally sound in the case of an alleged underallowance. We cannot say from the facts found in the case at bar that the circuit court did not properly exercise its discretion in making the allowance it did, even though that amount was less than the amount allowed by the district court.

The claimants not having appealed to the circuit court, it is suggested that they are liable for at least the amount awarded by the district court, and that the circuit court could not reduce that amount, but had jurisdiction, on the actual appeal, only to increase it. It is well settled, however, that an appeal in admiralty from the district court to the circuit court vacates altogether the decree of the district court, and that the case is tried *de novo* in the circuit court. [Yeaton v. United States](#), 5 Cranch 281; *Anonymous*, 1 Gallison

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22; *The Roarer*, 1 Blatchford 1; *The Saratoga v. 438 Bales of Cotton*, 1 Woods 75; [The Lucille](#), 19 Wall. 73; *The Charles Morgan*, [115 U. S. 69](#) , [115 U. S. 75](#) . We do not think that the fact that the claimants did not appeal from the decree of the district court alters the rule. When the libellants appealed, they did so in view of the rule, and took the risk of the result of a trial of the case *de novo*. The whole case was opened by their appeal, as much as it would have been if both parties had appealed or if the appeal had been taken only by the claimants.

*The decree of the circuit court is affirmed, with costs, and without interest to the libellants on that decree.*