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SAMUEL B. HOBART and others, Claimants of the BRIG HOPE and cargo,
Appellants, v. ANDREW DROGAN and others, Libellants.

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 north-west, 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 over-allowance 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 the *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 contradicting 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 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.¹ [*109]

¹ A pilot, while acting in the line of his strict duty, cannot entitle himself to salvage. The *Wave*, 2 Paine 131; s. c. 1 Bl. & H. 235; The *Dido*, 2 Paine 243; The *Alexander*, Id. 466; The *Elvira*, Gilp. 60; *Love v. Hinckley*, 1 Abb. U. S. 436. The court will not favor a claim for salvage, by a party originally engaged as a pilot; but at the same time, pilots are not to be compensated by mere pilotage remuneration for salvage services. The *Jonge Andries*, 1 Swabey 226, 303; s. c. 11 Moore P. C. 313. The exceptions to the general rule, that a pilot

cannot claim as salvor, ought to be few and well-defined, the services of a pilot cannot easily be converted into those of a salvor. A pilot entering into an engagement to pilot a vessel, undertakes to supply local knowledge, and the peculiar skill of his class, and will not be allowed, even though he contributes to the safety of the vessel, to change the character of his service from pilotage to salvage, except when the vessel was in distress, before the went or board to render the service, or where such circumstances of extreme danger and persona

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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.¹

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 that time, no particular relation to the distressed ship; they proffered useful services as volunteers, without any pre-existing 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.

APPEAL from the District Court for the Southern District of Alabama. The brig 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 the 24th 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 an 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 of 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 *110] her in charge. Had not the libellants been on board 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

exertion intervene, which exalt his service into a salvage service. The *Æolus*, 4 L. R., Adm. 29. And see The *Richmond*, 4 Law Rep. 20; The *Susan*, 1 Sprague 499; The *Leathers*, Newb. 421; The *Grace Brown*, 2 Hughes 112; The *C. D. Bryant*, 16 Chicago Leg. News 227; *Akerblom v. Price*, 7 L. R., Q. B. 129.

¹ As a general rule, seamen can only be salvors, when their connection with the ship has been entirely broken up. The *Antelope*, 1 Lowell 180; The *Olive Branch*, Id. 286. Salvage service may be performed by the seamen, when an abandonment of her has put an end to their original contract. The *Vrede*, 30 L. J., Adm. 209. And see *Mesner v. Suffolk Bank*, 1 Law Rep. 249; The *Acorn*, 3 Ware 98; The *Alphonso*, 1 Curt. 376; The *Le Jonet*, 3 L. R.,

Adm. 556. So, the rule is, that passengers rendering services, to a ship, when there is a common danger, are not entitled to salvage reward. The *Vrede*, *ut supra*. But where a ship being in danger, and the master and part of the crew having made their escape, a passenger, at the request of the rest of the crew, took the command, and brought the ship safe into port, he was allowed salvage. Id. So, a passenger, of the nautical profession, who has rendered extraordinary and peculiar services, in a moment of extreme peril, after the loss of the master and first and second officers, may claim compensation as a salvor. *Brady v. American Steamship Co.*, 10 Phila. 283; The *Great Eastern*, 11 Law Times (N. S.) 516.

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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.

The case was argued by *Ogden*, for the appellants; and by *Southard*, for the appellees. The facts of the case are stated more at large in the opinion of the court.

Ogden contended, that as the libellants were pilots of the outer bay of Mobile, they could not be considered as salvors; and could not claim salvage for such services as those which had been rendered to the Hope. The proceedings in the district court were for salvage, as appears by the bill; and the decree of that court, made on the 18th January 1833, is for one-third of the amount of the appraised value of the property saved, "as salvage." Having claimed as salvors, and the law not authorizing such a claim, they cannot now, by an amendment of the libel, state such a claim as this court will ratify. The amendment would alter the whole nature of the case; and although amendments are, in many cases, allowed in an appellate court, this is not such a case. Cited, 9 Cranch 244, 284; *The Edward*, 1 Wheat. 261; 7 Cranch 570; *The Divina Pastora*, 4 Wheat. 52.

The following points were presented for the consideration of the court:

1. That it was the duty of the libellants, as pilots, to give any assistance in their power to vessels in distress, within the limits of their pilot ground; and this being a service rendered in discharge of their duty, forms no case for a claim of salvage. 2. That the act of congress leaves the regulations of pilots *to the state laws; and by the law of Alabama, any extra [*111 allowance claimed by pilots, must be fixed by the wardens of the port. 3. That the district court of Alabama had no jurisdiction in this case.

By the libel, it appears, that the libellants were pilots of the port of Mobile, in Alabama; and the first question for the consideration of the court is, whether pilots can claim salvage under the circumstance of this case? The principles of law which regulate such claims—claims for compensation and reward for services which are performed in the ordinary course of the duties of the situation of the person who performs them, *virtute officii*, are reported in the case of *Le Tigre*, 3 W. C. C. 570–71. A pilot is not entitled to salvage, unless he goes beyond his ordinary duties. A person who is bound to render assistance in saving a ship, cannot be considered a salvor. *The Neptune*, 1 Hagg. Adm. 266; *The Joseph Harvey*, 1 Rob. 257. A pilot is not to claim as a salvor. Bee 212. A case has been decided by Mr. Justice THOMPSON, in the circuit court of the southern district of New York, in which pilots who had rescued the ship from great danger, were not admitted to be salvors. *The Wave*, 2 Paine 131. The danger in which the vessel may be, does not lessen the duty of a pilot to rescue and save her. When a vessel is in distress, and is found in that situation by pilots, on their cruising ground, it is their duty, as pilots, to bring her into port. If the services have been great, they are entitled to extra pilotage, to be decided according to the laws of the state of which the

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port out of which the pilots cruise is a part. The regulations of pilots of the port of Mobile, make provision for extra compensation in such cases ; and in conformity with these regulations, and under them, the libellants were bound to present their claims. It was contended, that the case of *The Wave* was, in all important particulars, the same as the case before the court. The *Wave* was outside of the port of New York, was in great peril, and was boarded, off Sandy Hook, by the pilots. The court would allow no salvage.

*112] On the second point, it was argued, that if the libellants cannot *claim as salvors, they cannot claim extra compensation by proceeding in the district court by a libel. The compensation or extra allowance must be fixed, according to the laws of Alabama, by the wardens of the port of Mobile. It is admitted, that claims for services rendered by pilots which may entitle them to extra allowances, may be entertained in the admiralty ; but the admiralty jurisdiction of the courts of the United States in such cases is concurrent with that of the courts of the states—it is not exclusive. In the same manner, actions for seamen's wages may be maintained in the courts of common law, although they are more properly of admiralty proceedings. It is for convenience, as all the seamen of a ship may be joined in a libel for wages, that such claims are generally presented in the admiralty ; and not because the admiralty has exclusive cognisance of them. The jurisdiction of the courts of common law and of courts of admiralty being concurrent, the recovery in both courts should be the same, and should be regulated and limited by the provisions of a law applicable to the case. To suppose, that proceedings in one court would produce a different result, a higher or a lower rate of compensation, would not be proper. The principles of the law in both courts should be alike, as would be the evidence ; and the application of these principles should be the same. If, then, a compensation is fixed by law for the services of a pilot, he cannot, by coming into the admiralty, ask a greater compensation than is allowed him by a law applicable to the case. If, by the provisions of a law, extra compensation is to be given, and the manner in which the amount of such compensation is to be determined is fixed ; no recovery can be had in the admiralty, until after a proceeding under the provisions of the law, shall have determined the amount of the allowances ; and that alone can be recovered in the admiralty. Has the law fixed any compensation for the services of pilots, who perform ordinary or extraordinary duties ?

The constitution of the United States gives to congress the power to regulate commerce. Under this power, it may be, that congress might regulate the pilots in all the ports of the United States ; but it is not admitted, that they could do this to the full *extent ; they could not regulate *113] the compensation to pilots, for, if they could, they might regulate the wharves and fix the rate of wharfage in all the sea-ports. The duties of pilots, their regulation, their compensation, are properly left to the legislatures of the states of the Union. Congress, whatever may be their powers, have, by an act passed on the 7th of August 1789, § 4 (1 U. S. Stat. 54), declared that pilots in the ports of the United States shall be regulated by state laws. By this provision, the laws of the states are to govern in all the claims made by pilots, until congress shall interfere. Alabama has passed laws for the government and regulation of pilots and pilotage ; the rate for

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the ordinary service of pilots is fixed, and provision is made for determining the compensation for extraordinary services. This is to be determined by the wardens of the port. Their law is in all respects the same as the law relative to pilots in New York.

It has been decided by Mr. Justice THOMPSON, in the case of *The Wave*, that congress has, by their act of 1789, adopted all the laws of the states in relation to pilots. If so, then the libellants could not proceed in the district court of Alabama, as that court had no jurisdiction of the case.

Southard, for the appellees.—The libellants are pilots of the outer harbor of Mobile; and their duty is to conduct vessels from the gulf of Mexico into the bay of Mobile. They performed services by which the brig Hope and cargo were saved from a total loss and entire destruction; and by the district court of the United States for the district of Alabama, they have been allowed one-third of the value of the property saved, as salvage. They presented themselves before that court as salvors, and their claim is purely a question of salvage. This claim is distinctly made in the libel, as a claim for salvage; and it will be treated as such, in the argument now addressed to the court.

It is not denied, that the services of the libellants were meritorious. They boarded the vessel, when she was in extreme peril, while she was yet aground, before she floated off, by the change of wind; she was saved from being driven to the opposite shoal, *where she would have been totally wrecked. All the duty required from pilots had been done, when [*114 the Hope had been conducted up to the inner harbor of Mobile. For twenty-seven hours, the pilot who had navigated her up to Mobile had been on board of the Hope, and he was properly discharged; all that could be required of a pilot of the outer harbor had been done, and his connection with the vessel was at an end. If, after a vessel arrives in the inner bay, a pilot is wanted, a pilot of that bay is called upon. Thus, one of the libellants who had piloted the vessel up the bay, had ceased to have any connection with her; and the other libellants never had anything to do with her, until they went on board of her, after the disasters had occurred which had driven her on shore. For two hours after the pilot had left her, she had remained at anchor. If, within that time, her situation had become such as to require a pilot, if she had become dismasted, cast away, sunk, no duties could have been called for from the pilot of the outer harbor. Pilots are not general conservators of shipping. They are not to be called upon, more than any other persons, to save vessels.

The Hope had been driven out to sea; she was on shore half a mile out of Mobile point; she was in no "port," no "harbor," no "bay," which are the places mentioned in the act of congress of 1789. The place where she lay was on "the high seas," beyond the local jurisdiction of the state of Alabama, or of any state—in no county. All the authorities make the place the "high seas." It was where "the winds and waves prevail without check or control;" beyond the *faucēs terræ*. She was a wreck on the ocean.

Other facts are proper to be considered. The ship and cargo were in a situation of imminent peril; her masts and spars were cut away; she had no cable, no anchor; all were lost. She was striking on the ground, amidst

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the breakers ; had sprung a leak, and had two feet of water in her hold, before she struck on the bank, and upwards of three feet, when she floated, with the libellants on board ; her pumps were choked ; she had a signal of distress at the stump of the mast ; the captain and crew had deserted her to save their lives, and there was no living man on board. *The Hope *115] was not in a situation to require a pilot. No pilotage services would have been useful to her ; and the evidence shows, that such was the opinion of the master, for he did not call on the libellants as pilots, to go to the rescue of the vessel. While she was in this situation, some persons, other than the libellants, went on board of her and saved some articles. They could not remain with her, and she was again abandoned and deserted. Twenty-four hours afterwards, the libellants took charge of her. The articles saved from the vessel, before the libellants boarded her, were the subject of salvage. These circumstances, and others of equal importance, of the same character, exhibit a case of property actually rescued by the libellants from entire loss, at a general hazard to them, and with great labor and difficulty. If they are considered as salvors by this court, the allowance of the district court must be ratified. Salvage is the reward for efficient services ; and it is a premium which is given to induce like efforts, when, by the casualties of the ocean, they are required. The proposition of the counsel for the appellants is, that the libellants were pilots, and not salvors. If this is the case, pilots can never be salvors. To show that this is not the law, the following cases were cited : *The Helen*, 3 Rob. 183 ; *The Apollo*, Ibid. 249 ; *The Two Catharines*, 2 Mason 335, 338 ; 2 Cranch 268.

To carry the principle contended for by the counsel of the appellants into effect, would produce the highest injustice. An officer performing acts within the sphere of his duty, is not to ask for more than his regular compensation ; but beyond it, and out of the line of his duty, there is no reason why services so extensive, if meritorious, shall not be rewarded. 3 Kent's Com. 197-8. To say, that pilots shall not have salvage in any case, is a dangerous position ; dangerous to humanity, dangerous to commercial property, and ought not to be admitted.

As to the appellant's second point, it is submitted, that to maintain it, counsel must show that, by law and regulation, it was the duty of the pilots to save the Hope in the situation in which she was. As she was not in any of the places mentioned in the act of congress of 1789 ; in no "port," no "harbor," no "bay," no "haven," the act does not apply : the law, *116] on a doubtful point, should not receive a severe construction.

But the constitutionality of that law, if correctly construed by the counsel for the appellants, may be doubted. If there can be power in the states to regulate pilots in the bays, harbors and havens of the United States ; if congress can give such powers ; the whole jurisdiction of the admiralty may be surrendered, and no longer exist in the courts of the United States. If congress can authorize the regulation of pilots in harbors, by the states, no power exists in congress to give to the states the regulation of pilots on the high seas. It may be doubted, if congress can say to a party who has a case of admiralty and maritime jurisdiction, your case shall be decided by the wardens of a port, in one of the states. The act of 1789 was but temporary, as it provides for the regulation of pilots by the states, until otherwise regulated. Pilotage is a subject, from its very nature, of admiralty juris-

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diction ; and it is also of common-law jurisdiction. But it is denied, that congress can prevent its being cognisable in courts of admiralty, incumbered by state laws ; although it shall be allowed to be within the concurrent jurisdiction of the courts of common law. The argument, that pilotage cannot be the subject of jurisdiction in two courts, is not sound. Such concurrent jurisdiction frequently exists. Cases are sustained in courts of common law, which are also cognisable in courts of chancery. A larger relief is often sought and obtained in chancery, than is afforded at common law.

If the case of *The Wave* shall be considered as influencing the claim of the libellants, it is submitted, that, as the pilot laws of New York were passed before the act of congress of 1789, that act might be considered as having adopted those laws : but Alabama was not a state in 1789 ; and it will not be claimed, that by prospective legislation, congress could adopt state laws to be enacted at a future period. The case of *The Wave* was, in all its material features, different from that of the *Hope*. The *Wave* was within the *fauces terræ* ; within the pilot ground ; within a bay, a haven, and subject to the laws regulating pilots : and in that case, it was said by *the judge, that pilotage is of admiralty jurisdiction ; and he also [*117 says, that there may be cases in which pilots may be salvors. This is stated after a full examination of all the decided cases.

Ogden, in reply, argued, that in the situation the *Hope* was, when boarded by the libellants, nearly afloat, she should have been brought by the libellants into Mobile, in their capacity of pilots. Had she been found at sea, and in a state of wreck, deserted, the pilots, as pilots, should have taken charge of her.

Until congress shall pass laws regulating pilots, they are necessarily of state regulation. They reside in the particular states, and their transactions are essentially connected with the safety and welfare of the citizens, and with the business of the states where they reside. Unless prohibited by congress, the establishment of a system for their government seems of essential importance and necessity. When congress declared that pilots should be regulated by state laws, they did not take away the admiralty jurisdiction. They oblige the pilot to submit to the regulations of the states as to the amount of pilotage ; but this ascertained, he may enforce its payment, in an admiralty proceeding.

STORY, Justice, 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 the 24th of 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

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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 *anchor, about nine
*118] o'clock the same evening. About this time, the wind changed to the north-west, 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 long-boat, 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 under weigh, 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
*119] and cargo should be saved, the compensation *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, it 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 over-allowance of the court below. It is equally against sound policy and public convenience, to encourage appeals of this

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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 7th of 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 *tide ebbs and flows, are within the admiralty and maritime jurisdiction of the United States. The service is strictly maritime, and falls [*120 within the principles already established by this court in the case of *The Thomas Jefferson* (10 Wheat. 428) and *Peyroux v. Howard* (7 Pet. 324). 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. 207-8), 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 tide-waters ; 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 such a case. We agree to the doctrine stated in the cases cited at the bar, that a pilot, while acting as such, in the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation, for extraordinary services, as contradistinguished from ordinary services, cannot be entitled to claim *salvage. In this respect, he is [*121 not distinguished from any other officer, public or private, acting

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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 Harley* (1 Rob. 257), 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 Aquila* (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 recognised by Mr. Justice WASHINGTON, in the case of *Le Tigre* (3 W. C. C. 169-71), 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 *122] 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 case of *The Wave*, cited at the bar, maintained the same doctrine, upon an elaborate review of all the cases. (2 Paine 131.) It has also been 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 seamen 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. 236-7.(a) In this last case, Lord STOWELL, after saying,

(a) See 3 Kent Com. Lect. 47, p. 199 (1st edit.); *The Two Catharines*, 2 Mason 319; *Newman v. Walters*, 3 Bos. & Pul. 612.

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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 pre-existing 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 *performed, at all connected with the Hope, in the character of pilots. The pilot had been [*123 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, § 1, p. 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 pre-supposes, 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, equipment 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. & Pul. 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 *salvage; and I am glad that Sir [*124 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

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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 any pre-existing 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 per centum per annum, on the amount decreed by the said district court as salvage.

*125] *UNITED STATES, Plaintiffs in error, v. The Heirs and Representatives of JOSEPH H. HAWKINS, deceased.

Suits against public officers.

Although a *venire de novo* is frequently awarded by a court of error, upon a bill of exceptions, to enable parties to amend, and though amendments may, in the sound discretion of the court, upon a new trial, be permitted, the *venire de novo* is, in no instance, anything more than an order for a new trial, in a cause in which the verdict or judgment is erroneous in matter of law ; and is never "equivalent to a new suit:" no statute of the United States alters the law in this regard.

It has never been the practice of the circuit courts, in suits under the law of the 3d March 1797, to deny to defendants a claim for credits against the United States, because they had not been presented and disallowed, before the commencement of the suit ; the practice to allow a claim for credits, after the suit has been commenced, is sustained by the spirit and letter of the third and fourth sections of the statute. When a defendant seeks to obtain a continuance, to prevent judgment from being granted to the United States, at the return-term of the cause, he is required by the third section, to make oath or affirmation, that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the consideration of the accounting officers of the treasury department, and rejected ; but the fourth section, which directs that no claim for a credit shall be admitted upon trial, but such as shall appear