

## \*The BLAIREAU.

WILLIAM MASON and others, libellants, v. The SHIP BLAIREAU.

*Salvage.—Deviation.—Jurisdiction.*

One-third part of the gross value of the ship and cargo allowed for salvage, and one-third of the salvage decreed to the owners of the salving ship and cargo.<sup>1</sup>

If one of the salvors embezzle part of the goods saved, he forfeits his right to salvage.<sup>2</sup>

A detention at sea, to save a vessel in distress, is such a deviation as discharges the underwriters, and the owner stands his own insurer.<sup>3</sup>

If a vessel in distress be abandoned at sea, by the master and all the crew, excepting one man who is left, either by accident or design, he is discharged from his contract as a mariner of that vessel, and entitled to salvage.

If apprentices are salvors, their masters are not entitled to their share of the salvage, but it will be paid to the apprentices themselves.

The courts of admiralty of the United States have jurisdiction, in cases where all the parties are aliens.

THIS was a libel for salvage, filed in the District Court of the United States for Maryland district, by the master, officers, crew, owner and freighters, of the British merchant ship *The Firm*, against the French ship *Le Blaireau*. The facts stated in the proceedings and evidence, were as follows :

The ship *Le Blaireau*, James Anquetil, master, on a voyage from Martinique to Bordeaux, laden with sugar, on the 30th of March 1803, at 10 o'clock at night, in lat. 35° 46' N., long. 46° west from Paris, was run down by a Spanish 64-gun ship, called the *St. Julien*, commanded by Francisco Mondragora, which struck the bow of the *Blaireau*, carried away her bowsprit and cut-water, close to the seam of the stem, started three planks of the bends, and all above them, and crushed to pieces the larboard cat-head. Before

<sup>1</sup> See note to *The Mary Ford*, 3 Dall. 191.

<sup>2</sup> Salvors are bound to the same degree of diligence, in keeping the property in their custody, that a prudent man ordinarily exercises in keeping his own. *The Mulhouse*, 22 Law Rep. 276. Whilst the law gives to salvors a reward exceeding any value of the labor bestowed, it exacts from them all diligence, and is careful to mark any relaxation of that anxious solicitude for the safety of a vessel in distress, the encouragement of which is the object of all salvage reward. *The John G. Paint*, 2 Ben. 174. A right to compensation for salvage presupposes good faith, meritorious service, complete restoration, and incorruptible vigilance, so far as the property is under the control of the salvors. *The Island City*, 1 Black 121. Negligence in taking care of the property saved diminishes the amount of salvage; gross negligence, embezzlement, or fraudulent concealment, works a forfeiture of all claims to salvage. *The Mulhouse*, *ut supra*; *The John Perkins*, 3 Ware 87. Any embezzlement, however small, incurs an entire forfeiture of all claims for salvage. *The Island City*, *ut supra*; *The Bella Corunna*, 6 Wheat. 152; *The Leander*, Bee 260; *The Rising Sun*, 1 Ware 378. But if the embezzle-

ment be secret, and purely an individual act, it will not prejudice the rights of innocent co-salvors. *The Island City*, *ut supra*; *The Boston*, 1 Sumn. 329; *The John Perkins*, *ut supra*; *Henley v. Gawley*, 2 Sawyer 7. All however, are guilty, who consent to, connive at, or conceal it; or who encourage it, or fail to prevent it when they can. *The Island City*, *ut supra*. Salvors are not only bound to strict honesty themselves, but must take all reasonable care to prevent plundering by others; negligence in this respect will diminish the amount of salvage, and if gross, work an entire forfeiture. *The John Perkins*, *ut supra*. But the innocent owner of a salvor vessel is entitled to compensation, where a valuable service has been rendered, notwithstanding the misconduct of the crew. *The Mulhouse*, *ut supra*. Where the shares of any of the salvors are forfeited for misconduct, they do not go to the co-salvors, so as to increase their shares, but are reserved for the owners of the property. *The Rising Sun*, *ut supra*; *The Island City*, 1 Cliff. 221.

<sup>3</sup> See *The Boston*, 1 Sumn. 328; *The Henry Ewbank*, Id. 401; *The Cora*, 2 W. C. C. 80; *Crocker v. Jackson*, 1 Spr. 141; *The George Nicholas*, Newb. 449.

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morning, there were three and a half feet of water in the hold, and the Spanish commander, not being able to wait for an attempt to repair the Blaireau, took her crew and passengers on board his ship, excepting one man, Thomas Toole, an Irishman, who could not be found, as it was alleged by the officers and crew of the Blaireau, in their protest, but who was, as he himself alleged, prevented by force from getting into the first boat, and afterwards, refused to go in the second boat, being determined to remain on board the Blaireau. Toole, being thus left alone, cut away, as he alleged in his libel, the anchors and the bowsprit (which had been left hanging), to lighten her bows, put her before the wind, and hoisted a signal of distress. In this situation, she was, the next day, found and boarded by the ship Firm, bound on a voyage from Lisbon to Baltimore. The persons on board of the Firm were,

Charles Christie, one of the charterers of the ship.

William Mason, master.

William Stephenson, mate, shipped at 4*l.* sterling per month.

*241]	*John Falconer, carpenter,	at £5	5	0	
	Daniel Ross, boatswain,		2	10	
	George Glass, cook,		2	10	
	Samuel Monk,	} mariners,			
	Martin Burk,				
	John Brown Hall,				
	John Blackford,			2	0
	John Wilson, and				
	Mark Catlin,				
	Joachim Daysontas, a boy,		1	1	
	John Moat, and	} apprentices to the owners of The Firm,			
	John McMon,	} and			
	Negro Tom, a slave of the Rev. Mr. Ireland.				

It was admitted, that the ship Firm was about the burden of 330 tons, carpenters' measure, but 500 tons could be laden on board of her; that she was of the value of \$10,000, and was owned by John Jackson, of London, but chartered to Charles B. Young and Charles Christie, who had a cargo of salt on board, of the value of \$4000. The proper complement of men to navigate the Blaireau was at least sixteen hands. She was a faster sailer than the Firm. They laid to, together, for two or three days, during the bringing in the Blaireau, for the purpose of taking out part of her cargo, and rendering assistance from the Firm. The sum of 2000*l.* sterling was insured upon the Firm, to cover her value and freight.

Upon taking possession of the Blaireau, she had about four feet of water in her hold, and could not have swam more than twelve hours longer. There was great risk and peril in taking charge of her. She was brought into the Chesapeake Bay, after a navigation of nearly 3000 miles, by six persons who went on board of her from The Firm, and the man who was found on board. Part of her cargo was taken out to lighten her forward, and put on board the Firm; and part of it shifted aft. The Blaireau was navigated by the people of the Firm, without boat or anchors. She was obliged to be pumped, in fair weather, by all hands, every two, three or four hours, half an hour at a time, and in blowing weather, every hour, a quarter of an hour at

\*242] a time. Her bow was secured by coverings of leather, copper \*and sheet lead nailed on, and pitch and turpentine in large quantities

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poured down hot between the planks and the coverings. The labor of working the Blaireau by the men on board was great and severe, and they had frequently thought of abandoning her, but fortunately persevered. She was a slight built vessel, and constructed without knees, and was very weak. The forestay was gone, and the foremast was secured by passing a large rope through the hawse-holes, and securing it to the foremast head. It was the opinion of several experienced sea captains, that the bringing in the Blaireau was a service of great risk and peril, and nearly desperate; and such as they would not have undertaken.

The persons who went on board the Blaireau from the Firm were, Charles Christie, supercargo, and one of the charterers of the Firm; William Stevenson, first mate; John Brown Hall and John Wilson, seaman; John Moat, a boy, and Negro Tom. Mason, the master, and Stevenson, the mate, were the only persons capable of taking an observation and navigating the vessels, or either of them, into port.

A claim was put in by the French consul, in behalf of the owners of the Blaireau.

It appeared in evidence that William Mason, the master of the Firm, had embezzled part of the cargo of the Blaireau, to the amount of at least \$1760.71.

On the 14th of July 1803, his Honor Judge WINCHESTER, made the following decree:

The counsel for the parties respectively intervening in this cause were heard by the court, and their argument, together with all and singular the proceedings and testimony in this cause, were by the court maturely considered: And it appearing to the court, that the circumstances of extreme danger under which the salvage of the ship Blaireau and cargo was effected, require a salvage and compensation as liberal as is consistent with precedents and legal principles; that the danger, labor and service \*of the [\*243 persons actually employed in navigating and bringing in the said ship, greatly exceeded the danger, labor and service of the persons who remained on board the ship Firm; and that their compensation should exceed, at the rate of fifty per cent., the compensation of those who remained on board the ship Firm; that among the persons on board the Blaireau, the station, trust and services of William Stevenson and Charles Christie, entitle them to a compensation exceeding that of seamen, at the rate of 50 per cent., and that the apprentices, cook and negro slave should not be classed with seamen, nor seamen with the carpenter and second mate, and there not being any general rule by which to settle the proportions of salvage among persons of those different stations, but that the same must depend upon the sound discretion of the court, applied to the circumstances of every particular case; that William Mason, captain of the said ship Firm, having fraudulently embezzled and secreted, with intent to appropriate the same to his own use, lace and other articles of a large value, which constituted a part of the cargo of the said ship Blaireau, is not entitled to any salvage or other compensation; that in strictness, the officers and crew are the only salvors; and the owners of the ship Firm and cargo, as such, can only come in for any share of salvage, upon the consideration of the risk to which their property was exposed; that upon these principles, salvage should be paid to and among the

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persons entitled thereto, at the rate of three-fifths of the net proceeds of the sales of the said ship and cargo ; and that of this sum one-ninth part of the net salvage will be a just and liberal compensation to the owners of that ship and her cargo for any hazard to which their property was exposed : It is, this 14th day of July 1803, by me, James Winchester, judge of the district court of the United States for Maryland district, and by the power and authority of this court, ordered, adjudged and decreed, that the net amount of sales of the said ship Blaireau, her tackle, apparel, and furniture and cargo (after deducting the costs in the cause, and the sum of \$388, heretofore decreed by consent to Charles Christie for expenses and disbursements relative \*244] to the said ship Blaireau and cargo), \*amounting, as stated by the clerk of this court, to the sum of \$60,272.68, shall be paid, applied and disposed of, to and among the persons, and in the manner following, to wit :

To the owners of the ship Firm and cargo, the sum of \$4018.14 $\frac{3}{4}$ , to be divided between them in the proportions of their respective interests agreeable to the admitted estimation thereof, to wit : To the owners of the ship Firm, for the value of the said ship and freight on \$18,000 ; and to the owners of the cargo of the said ship on \$4000.

To the persons on board the said ship Blaireau, as follows, to wit : To William Stevenson, the sum of \$3403.63 $\frac{1}{4}$  : to Charles Christie, the sum of \$3403.63 $\frac{1}{4}$ . To Brown Hall, John Wilson and Thomas Toole, seamen, each, the sum of \$2269.08 $\frac{3}{4}$  : to John Moat, an apprentice boy, the sum of \$1134.54 $\frac{3}{4}$ . And that there be retained a like sum of \$1134.54 $\frac{3}{4}$  in this court, to and for the benefit of such person or persons as may hereafter make title to the same, as owner or owners of the said Negro Tom.

To the persons on board the said ship Firm, as follows, to wit : \*245] \*To John Blackford, second mate, the sum of \$1890.90 $\frac{3}{4}$  : to John Falconer, carpenter, the sum of \$1890.90 $\frac{3}{4}$  : to George Glass, the cook, and John McMon, an apprentice, each the sum of \$1756.36 $\frac{3}{4}$  : to Daniel Ross, Samuel Monk, Martin Burk, Mark Catlin and Joachim Daysontas (sailors of the Firm), the sum of \$1512.73 each.

That no salvage or compensation whatever shall, for the cause above recited, be paid to the said William Mason, but that the libel in this cause filed, so far as it relates to the claim of the said Mason personally and only, shall stand and the same is hereby dismissed.

And it is by these presents further ordered, adjudged and decreed, that the residue of the proceeds of the sales aforesaid shall be deposited in the bank of Baltimore, in the name of this court, and to the credit of this cause, to the use and benefit of such person or persons as may in this court make title thereto, as owner or owners of the said ship Blaireau and cargo, or such person or persons as may be legally authorized by them to receive the same.

(Signed)

JAMES WINCHESTER, Judge Md. Dist.

From this decree, an appeal to the circuit court was prayed by William Mason, the master of the Firm ; by the owner of the Firm ; by the claimants of the Blaireau, and by the charterers of the Firm.

Upon the appeal, additional testimony was adduced in the circuit court, but it does not seem to affect the principles upon which the rates of salvage ought to be awarded.

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\*On the 27th of December 1803, the circuit court, held by his honor Judge CHASE, decreed as follows: The court having heard the parties on the appeal in this cause, by their counsel, and fully examined the evidence, exhibits and proofs, and maturely considered the same, do order, adjudge and decree, and it is hereby ordered, adjudged and decreed by the said court, that the decree of the said district court be, and hereby is, in all things affirmed (and with respect to the said Mason, with the costs of his appeal), except only so far as the said decree shall hereinafter, by this decree, be changed or altered.

And it is now further ordered, adjudged and decreed by this court as follows, to wit: That there be paid to John Jackson, of St. Paul's parish, in the county of Middlesex, in the united kingdom of Great Britain and Ireland (who appears to this court to be the owner of the ship Firm), the sum of \$2870.12 $\frac{8}{10}$ , on the amount of the value of the said ship, estimated at the sum of \$10,000. That there be paid to Charles Bedford Young and Charles Christie, jr. (who appear to this court to be the owners of the cargo on board the said ship Firm), the sum of \$1148.05, on the amount of the value of the said cargo, estimated at the sum of \$4000. That there be paid to William Stevenson, the sum of \$2269.08 $\frac{9}{10}$ .

That the salvage money adjudged by the district court, and affirmed by this court, to be paid to John Moat (who appears to this court to be an apprentice to the above-named John Jackson, owner of the ship Firm), be paid by the clerk of this court to the said John Moat, or to his proctor or attorney in fact, for the use and benefit of the said John Moat; and that the said salvage money be not paid to the said John Jackson, or to his \*attorney, [\*247 or to any other person or persons whatsoever, who shall claim the said salvage money, as owner or master of the said apprentice; and that the said salvage money remain in court, until paid according to this decree.

That the salvage money adjudged by the district court, and affirmed by this court, to be paid to John McMon (who appears to this court to be an apprentice to the above-named John Jackson), be paid by the clerk of this court to the said John McMon, or to his proctor or attorney in fact, for the use and benefit of the said John McMon; and that the said salvage money be not paid to the said John Jackson, or to his attorney, or to any other person or persons whatsoever, who shall claim the said salvage money, as owner or master of the said apprentice; and that the said salvage money remain in court, until paid according to this decree.

That the salvage money adjudged by the district court, and affirmed by this court, to be retained for the owner of Negro Tom, be paid to the Rev. John Ireland (late of this state, but now of the united kingdom of Great Britain and Ireland), who appears to this court to be the owner of the said Negro Tom, or to the Rev. Joseph G. I. Bend and Lewis Atterbury, who appear to this court to be the attorneys in fact of the said John Ireland, and who have expressed in writing to this court, that they, being duly authorized by the said John Ireland, will immediately, on the receipt of the said salvage money, manumit the said Negro Tom, according to the law of the state of Maryland, and will pay the said Negro Tom one-fifth part of the said salvage money, and have consented that the same may be retained by the clerk of this court for the use of the said Negro Tom.

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And it is further ordered, adjudged and decreed, that the appellants (except William Mason) pay no costs in this court on the appeal.

(Signed)

SAMUEL CHASE.

Upon this judgment, separate writs of error were sued out by William \*248] Mason, the master, John Jackson, \*the owner, William Stevenson, the mate, Charles Christie and Charles B. Young, the charterers of the Firm, and by the French claimants of the Blaireau.

William Mason assigned for error, that no part of the salvage was decreed to him for his own use, on account of his merits and services.

John Jackson, the owner of the Firm, assigned for error, that he was not allowed a reasonable proportion of salvage ; that the whole sum allowed and decreed to the owner and freighters, ought to have been decreed to him; and that the sums decreed to the two apprentices ought not to have been ordered to be paid to themselves or their proctor only.

William Stevenson, the mate, assigned for error, that the share assigned him was inadequate to his services, merits and situation.

Christie & Young, the freighters of the Firm, alleged that the proportion allowed to the owner and freighters of the Firm was too small, in proportion to their risk ; and that the proportion awarded the freighters was too small, compared with that awarded to the owner.

The case was now argued by *Harper*, for the owners of the Blaireau, for Christie & Young, and for the apprentices ; by *Hollingsworth*, attorney of the United States for Maryland district, for the libellants generally ; by *Martin*, attorney-general of Maryland, for Jackson, the owner, and Mason, the master, of the Firm, and for the owners of the Blaireau ; and by *S. Chase, Jr.*, for the owners of the Blaireau.

As this was the case of a French ship saved by a British ship, and brought into a port of the United States, a preliminary question was suggested by *Martin*, whether a court of the United States had jurisdiction, and could condemn a part as salvage. He did not mean to urge the point, but he thought it his duty to read some authorities for the consideration of the \*249] court. He believed the question had not been finally settled ; but his \*own opinion was in favor of the jurisdiction. Sir W. Scott, in the case of *The Two Friends*, 1 Rob. 234, inclined to the same opinion ; which seems also to be adopted by Browne, in his View of the Civil and Admiralty Law, vol. 2, p. 278.

To carry the property saved into the ports of the salvor, or of the owner of the property, would, in many cases, be impossible, and in most cases, would be attended with great difficulty and inconvenience to the salvors, and would expose the property to risk. There seems to be no good reason why the question of salvage, which is a question of the *jus gentium*, and depending upon general principles, should not be decided by the courts of admiralty of any civilized nation.

In reply to the doubt suggested respecting the jurisdiction, it was said by *Hollingsworth*, that an admiralty court may have jurisdiction, by submission, where it may be withdrawn by protest. Here, all the parties have submitted themselves to the jurisdiction.

The claimants of the Blaireau assigned for error, 1st. That the whole

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amount of salvage was more than in equity and good conscience the salvors were entitled to, and that it ought not to have exceeded one-third of the value of the ship and cargo. 2d. That Toole having been shipped as a mariner on board the Blaireau, at certain wages, was not entitled to salvage. 3d. That William Stevenson ought not to be allowed any part of the salvage money, because he had embezzled a part of the property on board of the Blaireau, and had also concealed a part, with intent to convert it to his own use.

I. For the *claimants* of the Blaireau, it was urged, 1st, that three-fifths of the value of the ship and cargo was too great a proportion for salvage. 2d, That Mason's share of the salvage, and the reduction made by the circuit court in the amount of \*Stevenson's share, ought to go to the use of the claimants, and not to the benefit of the other salvors. 3d, That Toole ought not to have salvage. 4th, That the amount of embezzlement, over and above what was proved upon Mason, should be deducted out of the general sum allowed for salvage.

1st. That the salvage is too high, appears, 1st. from general usage; 2d, From the principles of reciprocity between the courts of this country and those of Great Britain; 3d. From analogy to cases of re-capture.

(1.) As to general usage. Vessels derelict are *droits* of the admiralty, and in these cases, the crown is liberal in its reward of the salvors. But where a claim intervenes, it becomes a question of *quantum meruit*. A vessel totally abandoned is in much more danger than when even one man only is left on board. He may hoist a signal of distress, he may cut away the anchors, or he may even stop a leak. Beawes' Lex Mer. 158. This, then, is a case less meritorious than that of derelict. One is a case of liberality, the other of justice. Yet in the case of *The Aquila*, a derelict, 1 Rob. 38, 39, only two-fifths were allowed to the salvors. And in 1 Rob. 263, in the note, Sir WILLIAM SCOTT declares the liberal principles by which he is governed in cases of salvage. If, then, Sir WM. SCOTT, acting upon these principles, allowed but two-fifths in a case of absolute derelict, in a country where it is the national policy to encourage adventurous seamen, and where the very existence of the nation depends upon its maritime spirit, surely three-fifths is too much to be allowed in a case of simple salvage. The case of *The Beaver*, in 3 Rob. 237, was more desperate, and the service more hazardous and meritorious than the present, and yet only one-fourth was allowed for salvage.

The lives of those on board of the Firm were in very little danger. They were a little to the S. W. of the \*Azores; and near the trade-winds. They might have gone to a French island, or to the Azores, without the least danger. What hazard was there to those on board the Blaireau? They were nineteen days in company with the Firm. A fact which shows what idea they had of their danger, is, that the Blaireau, being the fastest sailer, parted from the Firm for several days, when they might have shortened sail, and kept in her company.

Of late, the English courts of admiralty have inclined to diminish the rate of salvage. Formerly, one-half was allowed to England, in cases of derelict. In the time of Colbert, it was fixed by France at one-third. But in England, it has since varied, and now depends upon the particular circumstances of

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the case ; but in no case, has so high a salvage as three-fifths been allowed. In the case of *The William Beckford*, 3 Rob. 286, one-thirteenth was allowed ; and in the case of *The Franklin*, 4 Ibid. 147, only one-sixteenth. In case of re-capture, it has been fixed by statute at one-sixth, and one-twelfth. In the case of *The Mary Ford*, 3 Dall. 188, which was a derelict, only one-third was given for salvage.

(2.) The principles of reciprocity will not warrant so large a proportion as three-fifths. The salvors are British subjects ; and the courts of England adopt the rule of reciprocity. If no rule has been established by the nation of the salvor, they make a rule. What is the rule in the English courts ? Two-fifths is the greatest rate of salvage allowed by them, during the last century, and if the salvors had carried the *Blaireau* into their own country, this is the utmost they would have received. If our citizens should have a case of salvage in their courts, they will not be allowed more than two-fifths. Indeed, there is only one case where so much as one-third has been allowed, and that was a case of derelict.

(3.) The principles of analogy to cases of re-capture, will not justify so large a proportion for salvage as has been decreed by the district court. \*252] \*By the Laws of the United States, (1 U. S. Stat. 716), one-eighth only is allowed for re-captures made by a public vessel of the United States, and one-sixth if made by a private vessel. The same proportion is also adopted by England. Abbott 258.

2d Point. Mason's share of the salvage, and the reduction made by the circuit court in Stevenson's share, ought to go to the benefit of the owners of the *Blaireau*. The crime of one of the salvors ought not to inure to the benefit of the others.

3d Point. Toole is not entitled to salvage. When seamen save their own vessel, by re-capture, or otherwise, they cannot claim salvage, for the same reason that their wages are refused in case of wreck or capture. To reward them for saving their vessel from peril, would be a temptation to put her in danger. If Toole had voluntarily remained on board for the purpose of endeavoring to save the vessel, after she had been abandoned by all the rest of the crew, the case might be different. But his remaining on board was an involuntary act, and what he did was with the sole view of saving his own life. When the *Firm* approached him, he begged to be taken off from the wreck. He did only his duty, in continuing on board, after there was a chance of saving her. His services were not meritorious, inasmuch as he was bound to do everything in his power to save the vessel, and yet he is put upon a par with the seamen of the *Firm*, who were volunteers, and under no obligation to do anything towards saving the *Blaireau*. While a sailor remains on board, contending with no other enemies than the elements, he is entitled only to his wages. No case can be produced, in which he has been considered as entitled to salvage. Salvage does not consist in being saved, but in saving. Beawes' Lex Mer. 157, 158.

The reason why a seaman shall lose his wages, if the ship be lost, is, that he may be induced to use his utmost exertions to save it ; and this \*253] shows that he is obliged to hazard his life to the utmost for that purpose. And even if he actually loses his life, and the ship is also lost or captured, his representatives cannot recover his wages. It is upon the same principle, that a common carrier is answerable for the whole value of the goods, if

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they are taken from him by superior force of robbers, and even if he should lose his life in their defence.

When did Toole lose his character of a mariner of that vessel? It is answered, when the master and the rest of the crew deserted her. But they could not discharge him from his contract with the owners. They lose their wages, but Toole does not. The danger may possibly justify them in quitting the vessel; but because he was left alone, he did not cease to be a mariner of the ship. Suppose, the rest of the crew had died, or were so sick as to disable them, and Toole had made a signal of distress, by means of which the ship should be saved; would that have entitled him to salvage? The real truth of the case is, that Toole was saved, not a salvor. The cases cited from 19 Viner 275, 1 Ld. Raym. 393, and 2 Salk. 654, to prove that mariners are entitled to salvage, by saving their own ship, do not warrant the conclusion attempted to be drawn from them. The only exception to the general rule is the case of rescue. In that case, and that only, it is admitted, that the mariners are entitled to salvage.

4th Point. By comparing the original bill of lading, of the Blaireau with the account of sales, it appeared that there was a deficiency, over and above what was chargeable to the embezzlement of Mason, and it was contended, that as this could not be fixed upon any one of the salvors, it ought to be a charge against them all. But it did not appear, whether a part had not been taken on board of the Spanish ship.

In answer to these arguments in behalf of the owners of the Blaireau, it was said by the counsel for the salvors—

\*1. As to the general rate of salvage. That no fixed rate of salvage has yet been adopted in cases of this kind, but that it depends <sup>[\*254</sup> upon the sound discretion of the court applied to the circumstances of each particular case. *McDonough v. The Mary Ford*, 3 Dall. 190-1; 3 Rob. 249. "It is a claim upon the general ground of *quantum meruit*, to be governed by a sound discretion, acting on general principles." *The Two Friends*, 1 Rob. 234-5. And in the case of *The Sarah*, 1 Rob. 263, Sir W. Scott thus expresses his opinion. "I do not think, that the exact service performed is the only proper test for the *quantum* of reward in these cases. The general interest and security of navigation is a point to which the court will also look, in fixing the reward. It is for the general interest of commerce, that a considerable reward should be held up; and as ships are made to pay largely for light-houses, even where no immediate use is derived from them, from the general convenience that there should be permanent buildings of that sort provided for all occasions, although this or that ship may derive no benefit from them, on this or that particular occasion: so, on the same principle, it is expedient, for the security of navigation, that persons of this description, ready on the water, and fearless of danger, should be encouraged to go out for the assistance of vessels in distress; and therefore, when they are to be paid at all, they should be paid liberally. It is on these general considerations, and not merely to mete out the payment for the exact service performed in the particular instance, that the rewards should be apportioned in these cases; and it is in this view, that I shall always consider them." It does not depend upon principles of re-capture, or of reciprocity; nor do the prize acts constitute any rule of salvage in cases not within those acts. 3 Rob. 249. There can be no general rate of salvage

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stated, when it is acknowledged that the only rule is a sound discretion. A rule which brings all cases to one dead level, can leave no discretion. How can we make reciprocity the rule, when every case must depend on its own circumstances? How can we compare dissimilar cases?

\*255] \*In this case, the Blaireau was in imminent danger. It is a fact admitted, that she could not have swam twelve hours longer. She must have been totally lost. She was derelict; abandoned by the master and all the crew, except Toole, whom they did not know they had left in the vessel. As they could not find him, they supposed he must have fallen overboard. The ordinance of Lewis XIV., allows one-third in cases of wreck. But there can be no wreck, according to that ordinance, if any claimant appears. So that, in cases like the present, neither France nor England has any fixed rate of salvage. *The Two Friends*, 1 Rob. 235.

None of the cases cited equals the merit of this. Here was a navigation of 3000 miles, with death constantly staring them in the face; and a great part of the time almost constantly at the pumps. In the case of *The Aquila*, and of *The Mary Ford*, the two-fifths of the one, and the one-third of the other, were of the gross value; but in the present case, the three-fifths awarded, are of the net amount of sales. It is denied, that the rates of salvage have of late been diminished. In the case of the *Dutch East Indian*, at Dunkirk, mentioned in Beawes Lex Mer. 158, one-half was given for salvage.

As to Toole, he was abandoned by his commander, and was, therefore, discharged from the service: he was no longer to be considered as a mariner belonging to the ship.

No general deduction can be made from the whole amount of salvage for any defalcation, if it be not fixed upon any one of the salvors; and in this case, the deficiency is so small, that it might have been taken on board the Spanish ship.

The next writ of error was by the owner and freighters of the Firm, who contended, that one-ninth part of the whole salvage money was too small a share, in proportion to the risk of the ship, cargo and freight, and the service rendered by the ship. \*256] \*In the case of *The Mary Ford*, 3 Dall. 191, two-thirds of the whole salvage were given to the owners of the ship George; and in the case of *The ship William Beckford*, 3 Rob. 186, 289, 50l. were given to the owners of the boats. In the case of *The Haase*, 1 Rob. 240, one-third of the salvage was given to the owner. In *The Amor Parentum*, Ibid. 255, something less than one-fifth of the salvage was given to the owner of the boat; and in the case of *The San Bernardo*, Ibid. 151, one-half was given to the owner.

In France, the rule is two-thirds to the owners, and one-third to the officers and crew; the same proportion which was awarded in the case of *The Mary Ford*. In 2 Valin 392, art. 33, of the French ordinances, the words are, "S'il n'y aucun contrat de société, les deux tiers appartiendront à ceux qui auront fourni le vaisseau avec les munitions et vituailles, et l'autre aux officiers, matelots et soldats;" and in his comments upon this article, in page 395, he says, the same rule is also laid down as to private unarmed vessels.

In behalf of the freighters of the Firm, it was urged, that their proportion of the sum to be allowed to the owner and freighters ought to be

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increased, because they became liable to the owner for the freight, even if the ship Firm had been lost. The general principle is, that the freight does not become payable, if the ship is lost, unless there has been a deviation by the freighters. But if there has been a deviation by the freighters, for their benefit, then they become liable for the freight, whether the ship arrives or not. There is the same law upon charter-parties as upon policies of insurance. In this case, the stopping on the ocean two days for the purpose of saving the Blaireau was a deviation, and this was done with the assent of the freighters, by Charles Christie, who was one of them, whereby they became the insurers of the freight to Jackson, the owner of the Firm. After the deviation, the whole risk of the freight, to the amount of \$8000, fell upon Christie & Young, and they ought to have salvage in proportion to \*that risk ; whereas, it has been allowed them only upon the amount [\*257 of the cargo, valued at \$4000.

In answer to these arguments, it was urged by the counsel for Jackson, the owner of the Firm, that he clearly risked his ship ; for the underwriters were discharged by three circumstances : 1st. By the stopping, (a) which was a deviation for the benefit of the owners. 2d. By taking in goods from on board the Blaireau, and thereby overloading the Firm ; and 3d. By diminishing the number of her crew ; both of which last circumstances increased the risk, and violated the warranty of the policy. But Jackson, the owner, not only risked his ship, but his freight also ; for if the vessel had been lost, he could not have recovered it of Christie & Young, the freighters. The assent of Christie could not bind his partner. It would have been an act in violation of the partnership. Nor could a parol agreement alter the charter-party, or dissolve the owner from the obligation of his contract. Jackson even ran the risk of the cargo as well as of the vessel and freight, and therefore, ought to have the whole share of salvage, allotted to the owner and freighters. For if Mason, who was the master of the vessel, appointed by Jackson, the owner, had departed from the terms of the charter-party, and thereby hazarded the cargo, and it had been lost, Jackson would have been liable to Christie & Young for the value of the cargo.

A stopping, if not for the purpose of the voyage, is a deviation ; and it cannot be barratry, when the act is for the benefit of the owners. To make it barratry, it must be a fraud upon the owners. Park 83 ; 1 Post. Dict. ; *Knight v. Cambridge*, 1 Str. 581 ; \* *Vallejo v. Wheeler*, Cowp. 143 ; [\*258 *Nutt v. Bourdieu*, 1 T. R. 323 ; *Seaman v. Fonereau*, 2 Str. 1183 ; Park 90, 91, 93 ; *Moss v. Byrom*, 6 T. R. 379 ; Park 299.

In *reply*, it was said, that the maxim is *volenti non fit injuria*. Christie consented to the act which amounted to a deviation, and therefore, could maintain no action against Jackson grounded upon that act. The question is, whether the freighters had not, by their own act, taken the risk of the freight upon themselves. In case of the loss of the vessel and cargo, Jackson might have recovered the freight from Christie & Young, because they

(a) The Chief Justice observed, that although it was admitted by counsel, that the stopping was a deviation, yet that was not to be considered as the opinion of the court ; it being a point upon which they had great doubt ; for if a stopping to relieve a vessel in distress would discharge the underwriters, no master would be justified in using an exertion to save a vessel in the most imminent danger of perishing.

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would have been the cause of the loss. There is a difference between an assent to criminal acts, and a mere mercantile assent. It is not necessary that the assent should be under seal. It was the act of the freighters, and not a parol contract, which would have been the ground of Jackson's defence, in any action which Christie & Young might have brought against him for the cargo, in case of a loss; and which also would have been the ground of his action against them for the freight, in the like event.

The next writ of error was that brought by William Mason, the master of the Firm; in support of which, it was alleged, that his act of embezzlement ought not to prevent a decree in his favor for a share of the salvage. It is not, as has been suggested, to reward him for his crimes, that he asks a decree in his favor. He has rendered most important services, and he claims his *quantum meruit*; a just compensation for his risk and his labor. This court cannot inquire into the fact of his crime. It is sitting here to decide questions upon the law of nations, and has no power to punish him for a crime committed after the service was rendered. He was the master of the ship, and no assistance could have been rendered to the Blaireau, without his permission.

There is no obligation upon salvors to apply to a court of admiralty. If the property saved is in their possession, they have a good right to hold it \*259] against all the \*world but the owner; and he cannot recover it from them, without tendering reasonable salvage. The salvor may convert the thing saved to his own use, and no one can prevent him but the owner, who may tender reasonable salvage, and bring his action of trover. It would not discharge the owner from the obligation of tendering salvage, to say, that the salvor had converted the thing saved to his own use; *a fortiori*, he may take a part for salvage, and it shall be deducted out of his reasonable share. But even if he took a part, with intent to conceal and embezzle it, yet this cannot deprive him of reasonable salvage. The most that can be said is, that after being the sole means of saving the ship and cargo, he did not discover all the property, but intended to appropriate a part to his own use, not amounting to one-half his share of the salvage money.

The service rendered was complete. Whatever I have justly earned upon a *quantum meruit*, is a debt due to me, for which I have a clear legal claim. If I labor for a man, and afterwards commit a crime upon him or his property, this can be no bar to my action for my wages. Suppose, I labor for a man, earn my wages, and then set upon him and beat him, I am not thereby deprived of my wages. Suppose, a wagoner employed to carry 100 barrels of flour; he carries part, and takes one barrel to his own use; can he not recover for what he carried? When it is necessary to resort to chancery, you must go with clean hands; but that is because you have not a clear legal right. The salvor has a clear legal right to retain, until salvage is paid. He does not go into a court of admiralty, as a court of chancery. He claims a legal debt, a certain right.

But Captain Mason's conduct is represented as a crime. However improper his conduct may have been, there is no law which can punish him criminally for it. When a man finds, or saves a thing and converts it to his own use, he is not punishable by the law of nations, nor by any municipal law, unless it be by some positive statute.

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\*But if he has committed a crime, he is as liable to punishment, after having been deprived of his salvage, as he was before. It is to punish him twice for the same offence. You first fine him \$3000, and then turn him over to the courts of common law to be punished. If he has not committed a crime, punishable by law, why do you impose upon him this fine of \$3000? This court is sitting here as a court of admiralty, to decide questions arising upon the law of nations, or upon facts committed on the high seas. But the offence was committed within the body of a county, and therefore, this court cannot (even incidentally) hold jurisdiction of it.

If a man refuses to give up a thing saved, on tender of salvage, the remedy is only trover or detinue; and the plaintiff can recover only the value, after deducting reasonable salvage. If the goods saved are once landed, a court of admiralty has no jurisdiction, and cannot decree salvage.

The principle that subsequent conduct shall make a man a trespasser *ab initio*, does not apply to the case of salvage. It is applicable only to those cases where a man has a particular right to go upon property for his own benefit; not where the entry is for the benefit of the other party.

To these arguments in favor of Mason, it was answered, that the principal objection to the decree, as it relates to him, is the want of jurisdiction, because the embezzlement was on land. But this does not appear to be the case. The facts stated induce a presumption that it was done at sea. But admitting that the embezzlement was on land, the court have jurisdiction of the principal object, salvage; and salvage is a claim of merit. In order to decide it, the court must judge of the demerit, as well as of the merit of the salvor. It is certainly competent for the court to ascertain *quo animo* he took the goods on board at sea. It is admitted, that he could not be indicted for it; or if he could, that this court could not try it. But if he took them, not *animo salvandi*, but *animo furandi*, it is clear, upon principles of law as well as policy, that he is not entitled to salvage. [\*261

Salvage is grounded as well on the trust which the salvors have taken upon themselves, as on their risk and labor. Should they, after saving the thing, wantonly destroy it, or even suffer it to be lost by gross negligence, they would make themselves liable to the owner. Hence, a duty and trust is imposed upon them by the situation in which they have placed themselves; and if, regardless of that duty, and in violation of that trust, and of the principles of moral rectitude, they attempt to plunder, to rob, to embezzle the property, they lose the character of salvors, and approach towards that of robbers and pirates. In such a case, they cease to be meritorious; they forfeit whatever right they might have had, and to award them salvage would be to reward their crimes. They ought not to receive salvage upon that which they did not mean to save for the benefit of the owners, but to appropriate to their own use.

Salvage is given, upon principles of public policy, to encourage enterprise, honesty and humanity; and the same principles of public policy will refuse it, where these are wanting. The interests of society require that the line of distinction should be accurately marked between right and wrong, virtue and vice, merit and demerit. By the Laws of Oleron, if any person shall take any part of the goods from shipwrecked persons, against

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their will, and without their consent, they shall be excommunicated, and suffer the punishment of thieves. 22 Vin. Abr. 537.

In *reply*, it was said by the counsel for Mason, that the goods were taken from the Blaireau into the Firm, *animo salvandi*. It was done openly. They were sent by Mason from the Blaireau, and taken into the Firm by Stevenson, the mate. It seemed to be the expectation of all, that they were saving the whole for themselves. But their being mistaken in this respect, ought not to prejudice their claim to reasonable salvage.

The next point was, whether Jackson, the owner of the Firm, and the master of the apprentices, is not entitled to receive their shares of the salvage; and in behalf \*of the master, it was contended, that he is \*262] entitled to all the earnings of his apprentices. Harg. Co. Litt. 117 a, note 1; *Barber v. Dennis*, 6 Mod. 69; 12 Mod. 415; *Meriton v. Hornsby*, 1 Ves. 48; *Hill v. Allen*, Ibid. 83. In these cases from Vesey, it was adjudged, that the master was entitled, even in equity, to prize-money earned by the apprentice, although it was not earned in his regular business.

In England, every owner of a ship is bound by law to take a certain number of apprentices to the sea. To encourage the master, the law gives him the whole earnings of the apprentices. This was not a voluntary act of the apprentices; they were bound to obey the orders of the master. But this is a question between British subjects, not arising upon the *jus gentium*, but upon the municipal laws of England, which this court, sitting as a court of admiralty, cannot decide. The decree is, that the money shall be paid to the apprentices only, or their proctors or attorneys. But being under age, they cannot appoint a proctor to submit to the jurisdiction of this court, nor an attorney to receive their share of the salvage.

In *answer*, it was said in behalf of the *apprentices*, that the master's right attaches only to those earnings which flow from their ordinary occupation and industry, and not to anything given as a reward for an extraordinary and voluntary service rendered. When an apprentice goes on board a privateer, his business is to make prizes; it then becomes his ordinary occupation, and the master is entitled to his share of prize money.

Suppose, a gentleman riding out in his carriage; his horses take fright, and run away; an apprentice runs out of his master's shop and stops the horses, for which service the gentleman gives him \$100. Can it be contended, that the master has a right to the money? There is no difference between that case and the present. In the case of *The Beaver*, 3 Rob. 239, Sir W. Scott distinguished between the master and his apprentice, and gave a share expressly to the apprentice.

\*In the present case, it was a voluntary act on the part of the ap- \*263] prentices. The master had no right to compel them to risk their lives in this service. It was not within the course of their ordinary business. The cases cited only show that the master is entitled to what the apprentice earns in the regular course of business, whether it be that to which he was bound, or that in which he chooses to engage, in derogation of the rights of his master. But salvage is not a regular business; it is not a matter of contract. A mariner or an apprentice is bound only to do such duty as appertains to the ship, on the voyage. If the master of the apprentices

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is entitled to their share of the salvage, because they are subject to the orders of the captain, by the same rule he would be entitled to the shares of all the seamen, for they are all equally under the command of the captain.

If the master claims a compensation for the risk of the loss of the labor of his apprentices, his share of the salvage for such risk ought to be much less than the shares awarded to the apprentices, which were founded upon their services, and the hazard of their lives.

In *reply*, it was said by the counsel for Jackson, the master of the apprentices, that in the case of *The Beaver*, Sir WILLIAM SCOTT did not decide whether the master was entitled to the share of his apprentice, or not, but left that question to be determined by the laws of his country.

The case of a gratuitous gift is different from that of a right which has accrued, and which can be enforced by law; and therefore, the case stated for illustration does not apply.

If the master has no right to send his seamen to the assistance of a vessel in distress, it can never be in his power to render a service; and he loses all command over those who remain, because they may say, we were only bound to labor with the assistance of the others.

March 6th, 1804. MARSHALL, Ch. J., delivered the opinion of the court.—\*In this case, a preliminary question has been made by the counsel for the plaintiffs, which ought not to be disregarded. As the <sup>[\*264</sup> parties interested, except the owners of the cargo of the Firm, are not Americans, a doubt has been suggested respecting the jurisdiction of the court, and upon a reference to the authorities, the point does not appear to have been ever settled. These doubts seem rather founded on the idea, that upon principles of general policy, this court ought not to take cognisance of a case entirely between foreigners, than from any positive incapacity to do so. On weighing the considerations drawn from public convenience, those in favor of the jurisdiction appear much to overbalance those against it, and it is the opinion of this court, that, whatever doubts may exist in a case where the jurisdiction may be objected to, there ought to be none, where the parties assent to it.

The previous question being disposed of, the court will proceed to consider the several cases which have grown out of the libel filed in the district court.

The first to be decided is that of the master of the Firm, who, by the sentence of the circuit court, was declared to have forfeited his right to salvage, by having embezzled a part of the cargo of the Blaireau. The fact is not contested, but it is contended, that the embezzlement, proved in the cause, does not affect the right of the captain to salvage. The arguments in support of this position shall very briefly be reviewed. It is insisted, that the embezzlement was made, after the vessel was brought into port, and this seems to be considered as a circumstance material to the influence which the embezzlement ought to have in the case. So far as respects the fact, the evidence is, that the articles were brought on board the Firm when the Blaireau was found at sea, and the fraud was detected in the port of Baltimore. When the concealment took place, does not appear, but it would be straining very hard to presume that it took place, after arriving in port. It

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is not, however, perceived, that this need be the subject of very minute \*265] inquiry, since the fact must have occurred before he parted with the possession acquired by the act, on the merit of which his claim for salvage is founded.

It is also stated, that this court has no jurisdiction of the crime committed by the master, and cannot notice it, even incidentally. If it was intended merely to prove that this court could not convict Captain Mason of felony, and punish him for that offence, there certainly could never have been a doubt entertained on the subject; but when it is inferred from thence, that the court can take no notice of the fact, the correctness of the conclusion is not perceived. It is believed to be universally true, that when a claim of any sort is asserted in court, all those circumstances which go to defeat the claim, and to show that the person asserting it has not a right to recover, may and ought to be considered. The real question, therefore, is, whether the claim for salvage is affected by the act of embezzlement; and if it is, the incapacity of this court to proceed criminally against the master, forms no objection to their examining a fact which goes to the very foundation of his right.

The legal right of the salvors is insisted on, and it is said, that in trover for the ship and cargo, by the owners, salvage would be allowed to those who had rendered the service, and then openly converted them to their own use. Yet the jury, trying the action, would determine on the right to salvage, and would inquire into any fact which went to defeat that right. Whatever shape, then, may be given to the question, it still resolves itself into the inquiry, whether the embezzlement of part of the cargo does really intermingle itself with, and infect, the whole transaction, in such a manner as to destroy any claim founded on it.

The counsel for this plaintiff contends, that the merits of Captain Mason, as a salvor, are not impaired by the act charged upon him, because a crime is no offset \*266] against a debt, and the claim for salvage is in nature of a debt. This leads to an inquiry into the principles on which salvage is allowed. If the property of an individual on land be exposed to the greatest peril, and be saved by the voluntary exertions of any persons whatever; if valuable goods be rescued from a house in flames, at the imminent hazard of life by the salvor, no remuneration in the shape of salvage is allowed. The act is highly meritorious, and the service is as great as if rendered at sea. Yet the claim for salvage could not, perhaps, be supported. It is certainly not made. Let precisely the same service, at precisely the same hazard, be rendered at sea, and a very ample reward will be bestowed in the courts of justice.

If we search for the motives producing this apparent prodigality, in rewarding services rendered at sea, we shall find them in a liberal and enlarged policy. The allowance of a very ample compensation for those services (one very much exceeding the mere risk encountered, and labor employed in effecting them), is intended as an inducement to render them, which it is for the public interests, and for the general interests of humanity, to hold forth to those who navigate the ocean. It is perhaps difficult, on any other principle, to account satisfactorily for the very great difference which is made between the retribution allowed for services at sea and on land; neither

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will a fair calculation of the real hazard or labor, be a foundation for such a difference ; nor will the benefit received always account for it.

If a wise and humane policy be among the essential principles which induce a continuance in the allowance of that liberal compensation which is made for saving a vessel at sea, we must at once perceive the ground on which it is refused to the person whose conduct ought to be punished instead of being rewarded. That same policy which is so very influential in producing the very liberal allowances made by way of salvage, requires that those allowances should be withheld from persons, who avail themselves of the opportunity furnished \*them by the possession of the property of [\*267 another, to embezzle that property. While the general interests of [\*267 society require that the most powerful inducements should be held forth to men to save life and property about to perish at sea, they also require that those inducements should likewise be held forth to a fair and upright conduct with regard to the objects thus preserved. This would certainly justify the reduction of the claim to a bare compensation, on the principles of a real *quantum meruit* ; and the losses in the cargo, which may be imputed to the master, would balance that account, if, as is contended by his counsel, the court could not, on principles generally received, consider the act of embezzlement as a total forfeiture of all right to salvage.<sup>1</sup>

But the case of a mariner, who forfeits his rights to wages, by embezzling any part of the cargo, is precisely in point. That case stands on the same principles with this, and is a full authority for this, since it cannot be denied, that the right to salvage is forfeited by the same act that would forfeit the right to wages. In the case of Mr. Stevenson, the fact is not clearly ascertained. If the embezzlement was fixed upon him, he, as well as the master, ought to forfeit his salvage. But it is not fixed. Yet there are circumstances in the case, which, if he stands acquitted of the charge of unfairness, do certainly so implicate him in that of carelessness, as to destroy his pretensions to superior compensation, and reduce his claim to a level with that of a common mariner.

The decree of the circuit court being approved, so far as respects Captain Mason and Mr. Stevenson, the general rate of salvage allowed by that decree is next to be considered. There is certainly no positive rule which governs absolutely the rate of salvage. Yet in fixing it, the common usage of commercial nations, and especially of those whose subjects are interested in the particular case, ought unquestionably to be regarded. In France, it appears that a service like that rendered the owners of the \*Blaireau [\*268 would have been compensated with one-third of the value of the vessel and cargo. In England, the principle of reciprocity, if not adopted, is much respected, and to judge from the tenor of their cases on this subject, it is fairly presumable, that the salvage which would be allowed in an English court, in a case like the present, would not greatly vary from that which appears to be made by the ordinances of France.

This is unquestionably a case of great merit, and a very liberal salvage ought to be allowed. Yet that allowed both by the district and circuit courts, appears to exceed any sum which those principles, which ought to be

<sup>1</sup> See *The Minnie Miller*, 6 Ben. 117 ; *The Louisa*, 2 W. Rob. 26 ; *The John and Thomas*, 1 Hagg. 157 n.

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resorted to as guides in the case, will justify. Among the various adjudications of the courts of admiralty in England, to which country the salvors belong, no one has been found where so large an allowance has been made; and in France, the nation of the owners of the property saved, a positive ordinance is understood to regulate this subject, and to fix the salvage at one-third of the gross value of what has been preserved.

Taking the whole subject into consideration, the court is disposed to reduce the rate of salvage, and to allow about two-fifths instead of three-fifths to the salvors. The vessel and cargo will then be really charged, in consequence of the savings produced by the forfeiture of the master's claim, and the reduction of those of the mate and Mr. Christie, with not more than one-third of the gross value of the property.

In the distribution of this sum, the court does not entirely approve the decree which has been rendered in the circuit court.

The proportion allowed the owners of the Firm and her cargo, is not equal to the risk incurred, nor does it furnish an inducement to the owners of vessels to permit their masters to save those found in distress at sea, in any degree proportioned to the inducements offered to the masters and crew. The same policy ought to extend to all concerned, the same rewards for a service designed to be encouraged, and it is surely no reward to a \*269] man, made his own insurer without his own consent, \*to return him very little more than the premium he had advanced. The common course of decisions, too, has established a very different ratio for the distribution of salvage money, and the court is of opinion, that those decisions are founded on substantial considerations.

The owners of the vessel and cargo, in this case, will be allowed one-third of the whole amount of salvage decreed, which third is to be divided between them in the proportion established in the district court, it being, in our opinion, very clear, that the owner of the vessel continued to risk the freight after, as much as before, the assent of Mr. Christie to the measures necessary for saving the Blaireau. That assent could only be construed, to charge him with the hazards to be encountered by the cargo, and not to vary the contract respecting the freight.

The proportions established by the decree of the circuit court between those who navigated the Firm, and those who navigated the Blaireau, and between the individuals in each ship, are all approved with this exception. The case exhibits no peculiar merits in Mr. Christie, and therefore, his allowance is not to exceed that of a seaman on board that vessel.

On the rights of Toole and the apprentices, this court entirely concurs in opinion with the district and circuit courts. There was certainly no individual who assisted in bringing in the Blaireau, that contributed so much to her preservation as Toole. Every principle of justice, and every feeling of the heart, must arrange itself on the side of his claim. But it is contended, that the contract he had entered into bound him to continue his endeavors to bring the vessel into port, and that the principles of general policy forbid the allowance of salvage to a mariner belonging to the ship which has been preserved.

\*270] \*The claims upon him, on the ground of contract, are urged with a very ill grace indeed. It little becomes those who devoted him to the waves, to set up a title to his further services. The master, who was

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intrusted by the owner with power over the vessel and her crew, had discharged him from all further duty under his contract, so far as any act whatever could discharge him, and it is not for the owner now to revive this abandoned claim. Those principles of policy which withhold from the mariners of a ship their wages, on her being lost, and which deny them salvage for saving their ship, however great the peril may be, cannot apply to a case like this. There is no danger that a single seaman can be induced, or enabled, by the prospect of the reward given to Toole, to prevail on the officers and crew of a vessel to abandon her to the mercy of the waves, for the purpose of entitling the person who remains in her to salvage, if she should be fortunately preserved.

The claim of the master to the salvage allowed his apprentices, is one which the court feels no disposition to support, unless the law of the case be clearly with him. The authorities cited by his counsel do not come up to this case. The right of the master to the earnings of his apprentice, in the way of his business, or of any other business which is substituted for it, is different from a right to his extraordinary earnings, which do not interfere with the profits the master may legitimately derive from his service. Of this latter description is salvage. It is an extra benefit, the reception of which does not deduct from the profits the master is entitled to from his service. But the case cited from Robinson, where salvage was actually decreed to an apprentice, is in point. The counsel does not appear to the court to construe that case correctly, when he says that it does not determine the right as between the master and the apprentice. The fair understanding of the case is, that the money was decreed to the apprentice, and was to be paid for his benefit. Considering the case strictly on principle, that portion of the salvage allowed ought to be paid to the master which would compensate him for having risked the future service of his apprentice; but as this would not amount to a very considerable sum, and as a liberal salvage has \*already been decreed to the master, this further allowance will not be made in this case. [\*271

Upon these principles, the following decree is to be entered: "This cause came on to be heard, on the transcript of the record of the circuit court, and was argued by counsel, on consideration whereof, this court doth reverse the sentence of the circuit court, so far as the same is inconsistent with the principles and opinions hereinafter stated: This court is of opinion, that too large a proportion of the net proceeds of the ship Blaireau and her cargo has been allowed to the salvors, and that \$21,400 is a sufficient retribution for the service performed, which sum is decreed to the claimants (except Captain Mason, whose rights are forfeited by embezzling a part of the cargo), in full of their demands. In distributing the sum thus allowed, this court is of opinion, that the owners of the Firm and her cargo ought to receive one-third of the whole amount thereof, of which one-third, the proportion of the owner of the vessel ought to be to that of the owner of the cargo, as the value of the vessel and freight is to the value of the cargo; that is, as 18 to 4. It is further the opinion of the court, that the remaining two-thirds of the salvage allowed, ought to be divided between those who navigated both the Firm and the Blaireau (excluding Captain Mason), in the proportions directed by the circuit court, with this exception, that the sum

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to be received by Charles Christie is to be the same with that received by a seaman on board the *Blaireau*. In everything not contrary to the principles herein contained, the decree of the circuit court is affirmed, and the cause is remanded to the said circuit court to be further proceeded in, according to the directions given. The parties are to pay their own costs."

\*272] \*OGDEN, administrator of CORNELL, v. BLACKLEDGE, executor of SALTER.

*Constitutional law.—Declaratory act.—Statute of limitations.*

The 9th section of the act of assembly of North Carolina, passed in 1715, which directs that unless the creditors of deceased persons shall make their claim within seven years after the death of the debtor, they shall be barred, was repealed by the act of 1789, c. 23, notwithstanding the act of 1799, which declares the contrary.

A legislature cannot declare what the law was, but what it shall be.<sup>1</sup>

The act of limitation was suspended, as to British creditors, during the war.<sup>2</sup>

Ogden v. Witherspoon, 2 Hayw. 227, affirmed.

THIS was a case certified to this court from the Circuit Court of North Carolina, under the act of congress of 29th April 1802, § 6 (1 U. S. Stat. 159), which provides for the event of an opposition in the opinions of the two judges, who are by law to hold the circuit court. The certificate was in the following form, viz.:

United States of America : North Carolina District.

At a circuit court of the United States, begun and held at Raleigh, for the district of North Carolina, on Wednesday, the 29th of December, in the year of our Lord, one thousand eight hundred and two, and in the 27th year of American independence. Present, the Honorable John Marshall and Henry Potter, Esquires.

Robert Ogden, Administrator *de bonis non*, with the will annexed, of Samuel Cornell, v. Richard Blackledge, Executor of Robert Salter, deceased.

State of the pleadings. This is an action of debt, upon a bond given by the defendant's testator, to the testator of the plaintiff, on the 2d day of March 1775. The defendant, among other pleas, pleads in bar an act of the general assembly of the state of North Carolina, passed in the year 1715, entitled, "an act concerning proving wills and granting letters of administration, and to prevent frauds in the management of \*intestate estates," the 9th section of which was in the following words: "And be it further enacted, that creditors of any persons deceased, shall make their

<sup>1</sup> A declaratory statute cannot have the legal effect of taking away a vested right, or of changing the rule of construction as to a pre-existing law. *Salters v. Tobias*, 3 Paige 338. The legislature has no power to impair the obligation of a contract by a declaratory act. *Reiser v. Saving Fund Association*, 39 Penn. St. 137; *Haley v. Philadelphia*, 68 Id. 45. Where a statute has received a judicial construction, a remedial act will always be construed to extend only to future cases. *Lambertson v. Hogan*,

2 Id. 22. And see *Dale v. Medcalf*, 9 Id. 108; *Gordon v. Inghram*, 1 Grant 152; *Schell v. Michener*, 2 W. N. C. 224, 379.

<sup>2</sup> So, the statute does not run, during a period of civil war, as to matters of controversy between citizens of the opposing belligerents. *Hanger v. Abbott*, 6 Wall. 532; *Levy v. Stewart*, 11 Id. 244; *Stewart v. Kohn*, Id. 493; *United States v. Wiley*, Id. 508; *Brown v. Hiatt*, 15 Id. 177; *Adger v. Alston*, Id. 555; *Batesville Institute v. Kauffman*, 18 Id. 151.