

it was not over a point on the brig's port bow, and was the green light, and not the red light.

If it had appeared in this case, or been proved in any case, that the green light, by reason of faintness after long burning, or the partial obscuration of the glass, or from the effect of the dawn, showed red at first, I should give that explanation to the respondent's testimony in this case; and, in that event, should have held the schooner liable for such a defect in her light. Though a claim of such a different appearance in the green light has sometimes been made, I do not know of any case in which it has been established or recognized as a fact. Nor have I overlooked several conjectures which would admit of the brig's actually seeing the red light of the schooner, and afterwards her green light; but every such conjecture is incompatible with the two facts on the part of the schooner which I consider established, namely, that the brig's red light was seen all the time on the schooner's starboard bow, and, as it approached, did not draw nearer her stem. Compelled to choose, therefore, between the narrative of the respondent and that of the libellant, I feel constrained to uphold the latter, and award a decree in favor of the libellant, with costs, and a reference to compute the damages.

THE BRABO.

McCOLLEY *et al.* v. THE BRABO.

(District Court, S. D. Alabama. December 10, 1887.)

1. SALVAGE—SERVICES BY PASSENGERS.

The steam-ship Brabo, while on a voyage, went on the rocks. Some of the crew were sick, and libellants, who were passengers, although they could have left the vessel, voluntarily, rendered sundry services, in the way of paying out cables, fastening and raising anchors, and the like. On the rise of the tide the steamer came off the rocks by means of her own engines. Held, that libellants were not entitled to salvage.

2. SAME—SERVICES BY PASSENGERS—QUANTUM MERUIT.

The passengers, as well as the crew, of a vessel, being under an obligation, as long as they voluntarily remain on board, to do what they can to save the vessel, are not entitled to any compensation in the nature of *quantum meruit*, the only compensation they can claim being for salvage for extraordinary services.

3. SAME.

To authorize compensation in the nature of *quantum meruit* there must be some proof of the reasonable value of the services rendered.

4. SAME.

When such services, at the time they are rendered, are intended as a gratuity, they cannot subsequently be made the basis of a claim for compensation.

In Admiralty. Libel for salvage.

In November, 1837, while the steam-ship Brabo was on a voyage from Central America to Mobile, Alabama, she went on the rocks near Cape Antonio light, Island of Cuba. A large number of the crew were disa-

bled by fever, and libelants, Thomas McColley and others, who were passengers on the vessel, rendered sundry services, in the way of paying out cables, fastening and raising anchors, and the like, although they had opportunities for leaving her. On the rise of the tide the steamer came off by means of her own engines, after lightening by throwing her coal overboard:

R. Inge Smith and W. C. Gaynor, for libelants.

Austill & Ervin and W. D. McKinstry, for claimant.

TOULMIN, J., (*after stating the facts as above.*) The crew of a vessel rescued or assisted cannot claim salvage for any assistance they may have rendered in preserving the vessel, in the absence of special circumstances; as, for instance, where the ship has been finally abandoned by the master, and the crew recapture or take possession of her, and navigate her into a port of safety. If the vessel get upon a rock, the seamen must stay by and assist in saving her, and that without having any claim for salvage, unless they have been previously discharged. Nor can passengers on board of the vessel rescued, as a general rule, any more than the crew, claim salvage for any assistance they may give in preserving the vessel. They will not be entitled to salvage in the event of their voluntarily remaining on board and doing anything to save the ship. They are entitled to salvage only when they perform extraordinary services, such, for instance, as where the ship is abandoned by the master, and the crew, or a part of the crew, and the passengers assist in bringing the vessel into a port of safety. The passengers will be entitled to share with the crew in any salvage remuneration if they have joined with the crew in rendering the services for which salvage is awarded. My opinion is that the libelants in this case are not entitled to any salvage compensation—*First*, because, on their own evidence, they fail to show that they performed such extraordinary service as gives them a right to salvage; and, *secondly*, because, considering the whole evidence, it fails to satisfy me that the property was benefited by their exertions. Salvage being the compensation allowed to persons by whose assistance a ship or cargo is saved from imminent peril, if the property is not benefited by the exertions of the salvors, they can claim no compensation as salvage.

And passengers are not entitled to any compensation in the nature of a *quantum meruit* any more than the crew of the vessel is. Their relation to the ship is such that there is no such thing as a claim for meritorious services recognized by the law. They are under an obligation, as long as they voluntarily remain on board, to do what they can to save the vessel, and the only compensation they are entitled to claim is that for salvage for extraordinary services performed, such as I have already alluded to. The case in 1 Brown, Adm. 68, (*The Sailor's Bride*), cited in argument, was where there was a claim by the owner of a steam-tug against a vessel which was aground. The master of the tug, being informed that she was desirous of being hauled off, attempted to draw her from the place where she was aground. The attempt was fruitless. The court held that no compensation as salvage could be awarded, but that