

Case No. 3,089. CONCKLIN ET AL. V. THE HARMONY.

{1 Pet. Adm. 34, note.}¹

District Court, D. New York.

1797.

SALVAGE—COMPENSATION.

The brigantine Harmony found on shore on the Bahama bank, deserted and abandoned,—with very great labor, difficulty and danger, she was brought into N. York by the libellants. One moiety of the net proceeds of vessel and cargo allowed as salvage.

{Cited in The Waterloo, Case No. 17,257; The Henry Ewbank, Id. 6,376; The Massasoit, Id. 9,260; Evans v. The Charles, Id. 4,556; Sewell v. Nine Bales of Cotton, Id. 12,683.}

In admiralty.

Libel: “To the Honourable Robert Troup, Esquire, Judge of the District Court of New York.—The Libel of Richard Conklin, Owner of a Moiety of the Sloop Betsey, and Master of the said Sloop, Strong Conklin, Owner of the other Moiety, and Mate of the said Sloop, Enoch Conklin and Nathan Smith, Mariners on Board the said Sloop, against the Brigantine Harmony, her Tackle, Apparel, Furniture and Cargo. The said libellants give this honourable court to understand and be informed that, proceeding on a certain voyage from New Providence for the port of New York, with a quantity of merchandize loaded on board the said sloop called the Betsey, viz. a large quantity of pine-apples and yams, of the value of five thousand dollars, or thereabouts, on the twentieth day of May last, in the Bahama straits, they discovered the said brigantine, called the Harmony, lying on a rank heel, with her sails flying, and main boom in the water, in great apparent distress, at the distance of about eleven leagues from the northwest point of Bahama island, on a certain bank of sand interspersed with rocks, which runs along the western and northern coasts of the said island. That these libellants thereupon made sail to the said brigantine, and, finding the same abandoned by the crew, were induced to go on board of the same. That, on examining the said brigantine, all her hatches, except the main hatch, being open, they found she contained a cargo consisting of sugar and molasses; but that the same had not, as far as these libellants examined, been then considerably damaged: that there were no papers on board by which they could learn the names of the proprietors of the vessel; that they found six feet and a half of water in the hold of the said brigantine. And these libellants further shew that determining to effect, if possible, the preservation of the said brigantine and her cargo, they immediately cast anchor at a small distance from the said brigantine, notwithstanding two rocks appeared above water, within two hundred yards of their station, and continued at anchor alongside, or near the said brigantine, all that night and the three succeeding days; during which time these libellants, by great exertions of labour, and with severe fatigue, were continually employed in throwing the said cargo of the said sloop the Betsey into the sea, and carrying and removing

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a part of the said cargo of the brigantine into the said sloop, and in pumping the said brigantine; by means whereof the said brigantine, on the twenty-third day of May, became buoyant in her fore part, and these libellants, by throwing out her anchor astern, and heaving with great and unremitting exertions on her cable, were enabled to bring round the head of the said brigantine; and, having cast out her sheet anchor, at the whole length of the cable, threw from the aft part of the said brigantine a part of her cargo into the sea, whereby the said brigantine became afloat; and these libellants further show that, on the evening of the said twenty-third of May, and the morning of the twenty-fourth, the weather being squally and tempestuous, these libellants returned to and continued in the said sloop near and about the said brigantine in the most imminent danger, the wind blowing from different quarters and sometimes upon the said bank. But these libellants, being resolved to risk their lives for the safety of the said brigantine, returned to the same and made sail upon her on the twenty-fourth day of May, the said vessel having then six feet and a half of water in her hold, and that part of her cargo which remained on board being very much shifted into the side, and causing the said brigantine to heel and labour very much in sailing. That, a strong current setting upon the bank, these libellants were again compelled to anchor with the said brigantine and sloop on the same day; and, continuing so at anchor, on the next day a certain sloop, called the General Green, commanded by Captain Stein, bound from the Havanna to Providence in Rhode Island, fell in with these libellants, and, in consideration of

twenty-three boxes of sugar, being part of the cargo of the said brigantine, which were then and there delivered to him by these libellants, in full satisfaction for assistance, was induced to cast anchor alongside of the said brigantine, and with the crew of his vessel to assist these libellants in stowing and trimming the cargo of the said brigantine, and pumping out the water therefrom. And these libellants further shew that two of the mariners on board of the said sloop, bound from the Havanna to Providence in Rhode Island, with the permission of the said Captain Stein, and in consideration of the sum of two hundred dollars, paid to them by this libellant, Richard Conklin, undertook to assist in navigating the said brigantine to the port of New York; that, these libellants, Enoch Concklin, and Strong Concklin, with the said two mariners, on the twenty-sixth of May last, took charge of the said brigantine, and weighed anchor, and arrived at New York, on the seventh day of this present month of June, together with a considerable part of her cargo, on which day also the said sloop called the Betsey also arrived at the port of New York, with the residue of the said brigantine's cargo so saved from loss and destruction by these libellants as aforesaid. And these libellants further shew that, on their arrival at this port, this libellant, the said Richard Conklin, duly entered the said brigantine and sloop with their lading at the custom-house of this district of New York, and have since, together with Isaac Moses, of the city of New York, auctioneer, and Nicholas Low, as their securities, become bound to the United States for payment of the duties thereupon, and are now proceeding to land the same, delivering it as landed into the possession of the said Isaac Moses, as a counter-security for the engagements so entered into by him, as surety for your libellants for the said duties; and to the end that he may keep and dispose of the same, tinder the direction of this honourable court. And your libellants do further shew, that a considerable part of the said cargo on board the said brigantine being damaged and perishable, it is the interest of those whom it may concern, that the same should be immediately sold. Wherefore, these libellants pray the aid and advice of this honourable court in the premises, with the customary process thereof; and that the said brigantine and the cargo thereof, so saved and brought into this port, may be sold by a decree of this honourable court, and that this honourable court will adjudge and decree to these libellants the whole or so much thereof, after deducting all charges, and in such proportion to these libellants, as this honourable court shall think proper. M'Kinnin, Proctor for Libellants."

Decree: THE COURT, having taken time to advise in this cause until this day, doth now order, sentence and decree, and it is hereby ordered, sentenced and decreed by the court, that out of the sum of fifty-six thousand five hundred and twenty-three dollars and thirty-eight cents, arising from the sale of the said brigantine Harmony and her cargo, and brought into court, the clerk pay the costs of the libellants, and those of the several claimants in this cause to be taxed, and also the costs accruing upon the petition

of Thomas Sheafe to this court for a remission of foreign duties charged upon the said brigantine and cargo, and also the fees and costs of the several officers of this court to be likewise taxed; and it is further ordered, sentenced and decreed by the court, that the clerk also pay to the collector of the district of the city of New York, out of the sum so as aforesaid brought into court, the sum of seven thousand seven hundred and sixty-four dollars and one cent, being the amount of duties secured to be paid to the United States upon the said brigantine and her cargo. And, as a compensation for the saving of the said brigantine and her cargo, it is further ordered, sentenced and decreed by the court, that the clerk pay one moiety of the residue of the sum so as aforesaid brought into court, in manner following, that is to say, to the libellants Richard Conklin and Strong Conklin, as owners of the sloop Betsey, one third part of the said moiety; and that the clerk, after dividing the remaining two third parts of the said moiety into thirteen equal shares, pay four shares and a half to the said libellant Richard Conklin, four of the said shares being in consideration of his quality of master of the sloop Betsey, and the half of a share in consideration of the services rendered by his negro boy Charles in saving the brigantine and her cargo; and that the clerk pay three other shares to the said libellant Strong Concklin, as mate of the said sloop Betsey, and three other shares to the libellant Enoch Concklin, as a mariner on board of the said sloop Betsey, and who acted as master of the said brigantine after she was got off the Bahama bank, and navigated her into the port of New York; and that the clerk pay the two remaining shares and a half to the libellant Nathan Smith as a mariner on board of the said sloop Betsey. And it is further ordered, sentenced and decreed by the court, that the other moiety of the residue of the sum so as aforesaid brought into court, be retained by the clerk to be paid under a future order of the court to the several claimants in this cause, according to their respective interests in the said brigantine and cargo, or either of them.

¹ [Reported by Richard Peters, Jr., Esq.]