

Case No. 4,292.
[3 Ben. 114.]¹

THE EDWARD LEE.

District Court, E. D. New York.

Dec., 1868.

SALVAGE—ASSIGNMENT OF SALVOR'S CLAIM—RELEASE—ORDER TO REPAY
SALVAGE INTO COURT—DISTRIBUTION.

1. Where a bark picked up, at sea, a derelict schooner, and, putting a crew on board of her, sent her to New York, where she was libelled for salvage, in the name of the master and owners of the bark, for the benefit of all concerned, and the amount of salvage decreed was, in pursuance of an order of court, paid over to the libellant's proctor, and by him to the owners, no order of distribution of the salvage having been entered, and, subsequently, one of the crew petitioned the court that the owners repay into court his share of the salvage, and the owners set up an assignment of the seaman's claim to them, which, it appeared, was executed in a foreign port, at the request of the master, and in ignorance of the facts as to the salvage suit; and also set up a release of the claim, executed by the seaman, after the return of the bark to New York, which was also executed in ignorance of the facts: *Held*, that the payment of the money out of court, without an order of distribution, was an oversight, as well on the part of the court, as of the proctor.
2. The assignment and the release could not avail to deprive the sailor of his share in the salvage, and that a sufficient amount to pay him that share must be repaid by the owners into court.

In admiralty. This case came before the court, upon the petition of Nicholas Thompson one of the crew of the bark "Ada Carter," praying that the agents of that vessel, who were also part owners, might be compelled to repay into the registry of the court, for the benefit of the petitioner, a proper portion of a certain salvage award, which was made by this court, in favor of the master, owners, and crew of the "Ada Carter,"

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but in which said part owners refused to allow the petitioner to participate.

The petition was opposed, upon the ground that the petitioner had parted with all his interest in the salvage award.

It appeared, by the evidence, that the bark "Ada Carter," while at sea, picked up a derelict, put on board thereof a mate and two seamen, and sent her to the port of New York, where she arrived in safety, and was libelled in this court for salvage, the libel being filed in behalf of the owners and master, for themselves and all others interested.

Pending this proceeding, the owners wrote to the master, at Cuba, announcing the safe arrival of the derelict in New York, and that they had demanded \$8,000 salvage, and hoped to realize \$4,000, and suggesting the procurement, from the seamen, of an assignment of their interest. A written assignment of all the interests of master, mate, and crew, to one of the owners, for \$25 each, was thereupon prepared, and signed by the master, mate, and then by the crew, no money being then paid, but the master going through the form of handing \$25 to each seaman, and taking it back at the same moment, with the promise to give it to him in clothes, or at the end of the voyage.

The bark and crew arrived back in New York, in May, and about the 20th of May, the crew, including the petitioner, were paid off by the master, in the stream, each receiving his balance of his wages, and \$25 besides.

The petitioner then signed a receipt, in full for all demands arising out of services, salvage claims, assaults, batteries, &c, &c, objecting, however, at the time, that he was entitled to more for the salvage. At the time of this payment, although the sailors did not know the fact, the wreck had been condemned in the salvage suit, and the amount of salvage to be paid had been agreed on, between the libellants and claimants in that suit, in pursuance of which agreement, within four or five days, the sum of \$4,150, in addition to the costs, was drawn out of the registry, by the proctor for the salvors, and the same sum, less expenses, paid over by him to the agents of the vessel.

The petitioner, subsequently learning of the salvage award, demanded of them a proportionate share, and being refused, applied to the court for relief, upon petition, and proved the foregoing facts.

O. B. Wilcox, for petitioner.

E. C. Benedict, for owners.

BENEDICT, District Judge. Although there may, perhaps, be cases where an assignment, obtained from a seaman, by the master, for the benefit of an owner, of the seaman's share of a salvage claim, can be upheld, this is no such case.

This owner, when he sought to procure the assignment from the petitioner, for \$25, expected, as his letter shows, that the salvage award would be \$4,000, and he had made a claim for \$8,000, but neither he nor the master gave to the seaman any hint that the claim would amount to any such sum, when they procured the assignment, in Cuba. The

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execution of the assignment was induced by the master himself, and also the mate, falsely pretending to assign their rights also, for the same sum, and the transaction, as conducted, was a sham, intended so to be treated by all, except the seamen. The master treated it as a sham, for he has since received \$400 for his share of the salvage. The mate treated it as a sham, for he has since received \$200 for his share of the salvage. The owners treated it as a sham, for they divided the rest of the money among them. Houghton, the assignee, has treated it as a sham, for he does not pretend, and has never pretended, to be entitled to the interest which the assignment purports to convey to him. This petitioner may also treat it as a sham.

It was made in ignorance of facts, which, if made known, would have prevented its execution, and these facts were then within the knowledge of the parties engaging in its procurement, and it was a contrivance far from creditable, either to the owner, who suggested it, or the master, who consented to carry it into execution. Such a transaction will never, in this court, be permitted to stand for a moment between a seaman and a sum awarded to him for meritorious salvage services. It is for the interest of commerce that seamen, of all others, reap the benefit of that provision of the maritime law, which gives salvage rewards to encourage efforts in behalf of vessels in distress, and any assignment which has the effect to deposit the reward in the pockets of the owners, in order to be sustained in a court of admiralty, of which all sailors are the wards, must bear unmistakable marks of good faith and fair dealing.

Nor is the case helped by the fact that, after the arrival of the bark in New York, the petitioner was paid the \$25 by the master, while in the stream, and then signed a receipt in full of all demands, including any demand for salvage. At this time, the money had not been paid over to the owners, although they undoubtedly knew how much it was, by agreement, to be. The petitioner, then, had no claim against them to release. His claim was in suit against the derelict, and the libellants proctor was his proctor, as the owners knew. The receipt neither released the owners from any thing, nor did it purport to authorize them to receive from the proctor the petitioner's share of the award, when it should be made.

The receipt, and the payment, can have no effect to work a transfer of the interest to the owners, for the sailor was not then informed

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of the fact that the derelict had been sold, and the award agreed on at \$4,150, nor was his proctor consulted.

The right of the petitioner to participate in this award, as one of the original salvors, then remains unimpaired, and as the owners, who received the money from his proctor with full knowledge of all the facts, refused to allow him to participate, they must be compelled to repay into the registry of the court, within 48 hours from the service of the order of this court, the sum of \$350, for the benefit of the petitioner.

It should be added, that it was an oversight, on part of the proctor for the salvors to draw the whole award from the registry, without having previously, for his own protection, applied for, and obtained, an order of distribution, fixing the portion payable to each salvor; and it was also an oversight, on the part of the court, to permit the money to be drawn, before such distribution had been made.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]