

Case No. 4,299a. EDWARDS ET AL. V. THIRTY-FIVE BOXES OF GOLD DUST, SAVED
FROM WRECK OF THE UNION.

{19 Betts, D. C. MS. 79.}

District Court, S. D. New York.

Sept. 22, 1851.

SALVAGE—COSTS—AMOUNT OF STIPULATION—AVERAGE.

- {1. Libelants seeking salvage compensation who have filed a single libel, treating the salvaged property belonging to numerous persons as an entirety, and have given a stipulation in the sum of \$250, to secure costs, conformably to standing rule 44, will not be required to furnish increased security under rule 55, where it does not appear that the sum stipulated is insufficient to cover the costs of contesting libelants' demand in the manner in which the suit is instituted.}
- {2. It is only incumbent on libelants to establish that the subject matter, consisting of boxes and bags of gold dust, is subject to their claim, and a sale of so much as may be necessary to

EDWARDS et al. v. THIRTY-FIVE BOXES OF GOLD DUST, SAVED FROM WRECK
OF THE UNION.

raise the amount will be ordered, and not an average on the different parcels.]

[3. Libelants are not responsible for the expense incurred in effecting an average between the respective owners.]

[4. Nor are they answerable to the claimants for sums deposited on bonding the attached property, as rule 68 changes the former practice by securing the return of costs to successful claimants.]

In admiralty. The libelants [Lawrence R. Edwards and 37 others] have caused the above [35] boxes of gold dust to be attached on a libel filed demanding a salvage compensation for services rendered in rescuing it from a wrecked ship and preserving it on land until re-shipped to the consignees in the United States. On filing their libel they gave stipulation in the sum of \$250 conformably to standing rule 44 of this court, to secure the costs created by their suit. The Union Mutual Insurance Company, the Sun Mutual Insurance Company, the Mercantile Mutual Insurance Company and various individuals in their private right, have intervened and bonded about one half in number of the boxes arrested, and on such bonding paid into court to meet the fees of the marshal and clerk, \$3000, pursuant to rule 68.

The libel alleges that the libellants and others about 250 persons in all, were passengers on board the steam ship Union, which sailed on the first of July 1851 from San Francisco for Panama, having on board as part of the cargo 36 boxes and 3 leather bags of gold dust. That on the voyage, on the morning of the 5th of July, the steamer ran ashore on the coast of Lower California, striking with great violence on an outer bank or bar about 200 yards from the shore, and was then and there wrecked amongst the breakers, and was abandoned by the master and crew, who were placed in great peril and were with great difficulty enabled to escape from the wreck and save their lives, leaving on board a great portion of their baggage and clothing and the ship's stores, which were totally lost.

The other particulars alleged by the libel, need not be stated further than that the libellants aver, they by their exertions and at great personal risk and danger, after making their escape from the vessel went back to her and succeeded in saving and bringing on shore the boxes &c. of gold dust now proceeded against, and for which service and others concomitant to them, they claim a salvage compensation. No answers have yet been put in by any of the claimants. But a motion is made in their behalf on an affidavit, that the suit will involve heavy expenses, and that \$3000 costs have already been claimed against them, and other costs must necessarily accrue, for which the stipulation of \$250 affords no adequate indemnity, that the libellants be required to file such additional security as may be sufficient to cover the costs to be created by the litigation.

Geo. F. Betts, for motion, on behalf of claimants.

W. A. Butler and Mr. Marbury, for libellants, opposed.

BETTS, District Judge. It is provided by rule 55, of this court, that in all cases of stipulations in civil and admiralty cases, any party having an interest in the subject matter may

YesWeScan: The FEDERAL CASES

move the court on special cause shown, for greater or better security, and the only question is whether there is a case made here, which calls for the exercise of the discretion of the court to require the libellants to give security which may be equal to the costs to be created by the litigation. For I assume that the demand of the libellants is to be contested by the claimants, although no answer of plea has been yet filed.

I think the motion ought not to prevail. The libellants bring a single action, treating the property saved as an entirety, and they cannot be subject to the expense of litigating between the various Owners the distributive proportion each of them shall contribute towards the salvage compensation. All that it is incumbent on the libellants to establish is, that the cargo arrested by them is subject to a salvage claim, and their recompense will be secured them by sale of so much as may be necessary to raise the amount and will not be by any average on the different parcels of the cargo. That average must be claimed and decreed between the respective owners, and the libellants cannot justly be responsible for the expenses incurred in effecting it.

There is no evidence before the court showing that the stipulation of \$250 is not sufficient to cover the costs of contesting the demand in the manner in which the suit is instituted. It is a mistake to suppose the libellants are answerable over to the claimants for the sums deposited by them in court on bonding the property attached. Under the old practice in admiralty, the claimant paid the costs of the officers of court on taking his property under bond or stipulation from their custody, and in case of his success on the final hearing had to rely upon the responsibility of the actors for repayment of such advance. The 68th rule of this court was intended to correct that mischief, and instead of drawing the costs from claimants absolutely on surrender of the arrested property to them, to place it so that the costs will be secured to the libellant and officers if the claimants are subjected to payment of them, and if exonerated from such payment so that the claimant may be secured their return without the hazard of recourse to the libellant. All the claimant can lose will be possibly the interest on the

EDWARDS et al. v. THIRTY-FIVE BOXES OF GOLD DUST, SAVED FROM WRECK
OF THE UNION.

advance whilst the cause is in litigation. But he is no way entitled to put the libellant under a stipulation to refund or secure such costs, because if the decision casts costs on the libellant, he must satisfy the officers of court and the claimant withdraws his deposit, and is made liable to no charge therefor, and in no contingency are they paid over to the libellant.

The case made by the libel, and contradicted before the court, shows at least a prima facie and colorable right in the libellant to a salvage compensation. An investigation on full hearing may show many of the statements to be exaggerated and inflated and the result may be that very small, or even no compensation is awarded them. Still unless the claimants have tendered a reasonable reward for services actually rendered, or the proceedings by the libelants are extortionate or oppressive, it is not the habit of admiralty courts to withhold costs when services beneficial to the claimant have been performed, or attempted to be performed, although no salvage compensation is awarded, and it is not unusual to grant costs in such instances. They are never imposed upon the salvors unless they have been guilty of gross misconduct. 2 W. Rob. Adm. 270; *The Shannon* (before Dr. Lushington, Dec, 1847) 6 N. Y. Leg. Obs. 143; *Clarke v. The Dodge Healy* [Case No. 2,849]; 2 Dods. 115; 2 W. Rob. Adm. 306; Pritch. Dig. 472; *Drysdale v. The Ranger* [Case No. 4,097]; *One Hundred and Ninety-Four Shawls* [Case No. 10,521].

The motion to increase stipulation for costs is accordingly denied.