

Case No. 4,372.

THE ELLA WARLEY.

{Blatchf. Pr. Cas. 213.}¹

District Court, S. D. New York.

Sept., 1862.

PRIZE—SALE OF VESSEL IN PERISHING CONDITION.

{A sale of the prize will be ordered when it appears that her condition is such as to expose her to great injury, if not immediate total loss, and when the claimant's proofs and objections only lead to the belief that she may be protected or wholly saved by a more vigilant care, and particularly by pumping her watchfully, which would require expenditures not within the authority or means of the marshal or prize commissioners.}

{In admiralty. The Ella Warley and cargo were libeled as prize, and an interlocutory decree rendered, ordering that the captured property, consisting of arms and munitions of war, be transferred to the government on deposit of the appraised value. Case No. 4,370. The authority of the court to make this order was sustained in Case No. 4,371, and the cause is now heard on motion by the district attorney for the sale of the vessel on the ground that she is in a perishing condition, and liable to a total loss if not cared for constantly.}

BETTS, District Judge. The motion by the United States district attorney to sell the vessel, because she is in a perishing condition, must, on the evidence before the court, be granted, for that shows her condition to be one eminently exposing her to great injury, if not to immediate total loss. The claimant's proofs and objections only lead to a belief that she may be protected, if not wholly saved, by a more vigilant care bestowed upon her by her keepers, and particularly by pumping her watchfully, and: perhaps by other acts of precaution. These must necessarily require expenditures, and the marshal or the prize commissioners, as legal custodians of the prize, pending her keeping in court, are supplied with no means or authority to cause such expenditures to be made. Justice to both parties claiming the vessel demands that a sale of her be ordered. If the claimants were to intervene and offer bail for her value, the objection to her sale would rest upon sounder grounds but all proffers of such extraneous aid to her preservation by either party leaves the case open for an application, by one claiming a legal right in her, to require a sale of the perishable thing, and have its proceeds-put in safety. This is consonant to the ordinary practice in admiralty in suits in rem. Sale ordered accordingly.

NOTE. At a hearing on the merits, the vessel and cargo were condemned by the district court (Case No. 4,373) which decree was affirmed by the circuit court (Case No. 4,374).]

¹ [Reported by Samuel Blatchford, Esq.]