

Case No. 5,040.

THE FRANCIS ASHBY.
PACKER V. THE FRANCIS ASHBY.

{3 Adm. Ree. 142.}

Superior Court, S. D. Florida.

April 1, 1843.

SALVAGE—VESSEL WRECKED BY SALVORS.

{Where a vessel, while lying on a mud bank with wrecking vessels alongside and anchored near, is bored with augers and fills with water, and the guilt cannot be fixed, the court will allow only simple compensation for work and labor performed in saving the cargo and materials, except as to salvors affirmatively proven innocent.}

{This was a libel by James Packer, William Kemp, and others against the cargo and materials of the brig Francis Ashby for salvage.}

S. R. Mallory, for libellants.

G. W. McCrae, for respondent.

MARVIN, District Judge. This brig while lying on the mud bank described in the pleadings was bored with augers, and in consequence thereof she filled with water. She was subsequently stripped and abandoned. She was bored in the night Two wrecking vessels with their crews were lying alongside at the time, and several others with crews were anchored at a short distance, and the master, officers and passengers slept on board the brig. After several days' examination of witnesses, no satisfactory evidence is adduced to ascertain or fix the guilt of this transaction upon any particular individual or individuals. But the brig was bored by some person or persons there, and as long as the guilty person remains undetected I am not disposed to reward the libellants for their services beyond a simple compensation for the work and labor performed by them. Not to compensate them at all would be confounding the innocent with the guilty to an extent that I deem unjust To reward them by giving a salvage increased beyond a simple compensation for work and labor would impair the principle of holding the wreckers more or less responsible, according to the circumstances, for the safety of the property upon which their labor is bestowed. Important considerations of policy, too, prevent my decreeing salvage eo nomine. These I have so often expressed that I deem it unnecessary again to repeat them.

With this principle in view I order and decree as follows, to be paid out of the cargo and materials saved: To James Packer, master of the sloop George Eldridge, for himself, owners and crew for piloting the brig as described in the pleadings, \$80.00. For laboring in discharging the brig during the night, himself and crew, 11 in all, \$55.00. For labor during Saturday (Sunday) and Monday in discharging the brig, himself and crew, and for discharging his vessel on Tuesday, \$2.00 to each man, 11 in all, \$88.00. To the owners of "the sloop George Eldridge for her services in bringing the cargo to this port, \$50.00. To William Kemp, master of the schooner Rome, for himself and crew, 15 in all, for labor in

The FRANCIS ASHBY.PACKER v. The FRANCIS ASHBY.

discharging the brig and landing the cargo, 4 days at \$2, each, \$120.00. To the owners of the schooner Rome for her use, \$50. To Saffrey, master of the schooner Sally Ann, for himself and crew, 6 in all, \$48.00. To the owners of the Sally Ann for her use, \$25.00. To Adams, master of the sloop Davinia, for himself and crew, 4 in all, 4 days each, at \$2.00, is \$32.00. To the owners of the sloop Lavinia for her use, \$25.00.

I regret that I cannot, consistently with the view I have taken of this case, compensate Captain Adams, of the Lavinia, more liberally, or by giving him a sum that would be deemed a fair salvage. He is a regular wrecker, and the salvages decreed him constitute his means of living. He is entirely exculpated by the testimony from any participation in the boring of the brig. The costs and expenses of the suit must be paid out of the cargo and materials saved.

[An appeal was taken to the court of appeals for the territory of Florida, where the following order was made, February 24, 1844:]

It is ordered, adjudged and decreed that the decree made in this cause in the court below be in all things affirmed, except as to Captain Adams, master of the sloop Lavinia, and, as to him, that there be allowed and paid to him, for himself, owners and crew, as salvage for his services rendered said cargo and materials, twenty-five per cent, upon the value of the cargo saved by him in said sloop, to be ascertained by the court below, including that already paid him, and

YesWeScan: The FEDERAL CASES

that the costs of this appeal he paid out of the cargo and materials aforesaid, to be taxed and allowed in that court, and let the cause be remanded to the court below to be proceeded with in conformity to his decree.