

Case No. 7,935. THE KRISTREL. BETHEL V. THE KRISTREL.  
[4 Adm. Rec. 175.]

District Court, S. D. Florida.

Sept. 15, 1848.

SALVAGE—INJURY BEYOND REPAIR.

[1. The cargo should not be charged with the salvage of the vessel when it appears that she is injured beyond the possibility of temporary repairs, and her master prays that she be sold to pay the salvage.]

[2. The total amount of salvage should vary with the peril from which the property was saved.]

[Cited in Baker v. Cargo and Materials of The Slobodna, 35 Fed. 542.]

{This was a libel for salvage by James A. Bethel and others against the ship Kristrel and cargo, Turner, master.}

S. R. Mallory, for libellants.

Wm. R. Nackley, for respondent.

MARVIN, District Judge. It appearing to the court from the proofs and allegations of the parties that the British ship Kristrel, Turner, master, while on a voyage from New Orleans to Liverpool, on the night of the

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ninth of August last, ran ashore upon Carrysfort reef, where she remained until the 34th of August, when she was got off by the aid of the libellants, 140 in all, having 13 vessels, regularly licensed as wreckers on this coast; that they lightened the ship by the removal of about 1,400 bales of cotton, and then hove her off by her anchor, and brought her and her cargo to this port, in a leaky and damaged condition; and it appearing to the court from the proofs and allegations of the parties that the said ship and cargo were in great danger of total loss, and that they have been saved by the labors and exertions of the salvors: It is therefore ordered, adjudged, and decreed that the libellants are entitled to the one third of the "value of the said ship and cargo in compensation for their services in saving the same, and their costs and expenses of suit, and that there be allowed to the master of said ship ten days from the date thereof to advance and pay the salvage on the said cargo and in default of payment within the time aforesaid, or within such further time as may be given upon cause shown, that then the marshal and clerk" proceed to set off and divide that part of the cargo remaining unsold (a portion having been sold as damaged), and assign to the libellants the one third thereof, quantity and quality relatively considered, in full for their salvage, and that the marshal then proceed to advertize and sell at public auction the portion thus set off as salvage, and bring the proceeds into court to be distributed among the salvors according to their respective rights and interests, and then he also proceed to advertize and sell at public auction so much of the residue of said cargo as may be necessary to pay the costs and expenses of this suit, the wharfage, storage, and bills for labor, and deliver the remainder of said cargo to the master of said ship for and on account of whom it may concern. And it appearing to the court from the report of surveyors, duly made and signed by them, and by their oral examinations under oath in open court, that the said ship Kristrel is in a very damaged condition, her keel being chafed and worn off to the garboard streak her entire length, her garboard streaks much chafed and in two places entirely cut through, leaving four of her timbers bare, her bottom planks much chafed, her seams opened, the ship herself, from the fore to past the middle chains, much strained and hogged, the fastenings started, and she being otherwise so much injured and in so leaky a condition that in the opinion of the surveyors she is unworthy of repairs, and they concurring in the opinion that she cannot be even temporarily repaired in this port, so as to be got to New York or some other port where she could be repaired, on account of the difficulty of keeping her free while being hove down in this port for the purpose of such repairs; and it appearing to the court, that the voyage of the said ship under these circumstances must be broken up, and that it consequently would be unjust to the different parties interested in the ship and cargo to order a sale of a portion of the cargo to pay the salvage on the ship, and the master of said ship praying a sale of said ship to pay the salvage thereon, and such sale appearing under the circumstances to be most for the benefit of all concerned: It is therefore ordered, ad-

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judged, and decreed that the marshal proceed to advertize and sell at public auction the said ship Kristrel, her tackle, apparel and furniture, and bring the proceeds of said sale into the registry of the court, and that the clerk pay to the salvors, the one third of the proceeds of said sale for their salvage; and that out of the residue of said money, he pay the ship's proper proportion of the costs and expenses of this suit, and pay to the master of said ship the remainder of said proceeds for and on account of whom it may concern; and that the clerk also pay to the salvors the one third of the proceeds of the damaged cargo, sold under a previous order of this court, and that he divide the salvage among the different salvors according to their respective interests therein as agreed upon among themselves; and that all other questions be reserved.