

<sup>47</sup>  
Case No. 9,444.

MERCHANTS' INS. CO. v. SELLER.  
[1 Hunt, Mer. Mag. 521.]

District Court, D. Massachusetts. 1839.

SALVAGE—FRAUDULENT COMPACT WITH  
OFFICERS.

[Money received from salvors by the officers of a wrecked vessel while the salvaged property was in their care, though given in charity, may be recovered by the owners and insurers, the receipt of such gift being incompatible with their duties.]

[This was a libel in personam by the Merchants' Insurance Company of Boston and others against Asa Seller.]

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Libel in behalf of the owners and insurers of the ship Bombay and cargo, against Asa Seller, the first mate of that ship, to recover a sum of money alleged to have been paid to him by the salvors of the vessel, which got on shore, and was carried into Key West in February, 1838. The libel charged that \$1,000 was so paid to the captain, \$300 to the first mate, and \$200 to the second mate; that it was paid in pursuance of a corrupt understanding between the salvors and officers, and with a view to influence the testimony of the latter, and to inflame the salvage, &c. The captain paid the amount received by him, when demanded by the agent of the insurers. The second mate, being out of the country, was not served with process, and the suit proceeded against the first mate alone. He filed an answer, admitting the receipt of the money, but denying any fraud or agreement between him and the salvors, and alleging that the money was given him from motives of compassion, and in consideration of his unfortunate condition.

THE COURT gave judgment for the libelants, for the sum received by that officer, three hundred dollars and costs. The reception of the alleged sums of money from the salvors, by the officers of the wrecked ship, under the circumstances in which the property committed to their charge was placed, was holden by THE COURT to be altogether in excusable. The transaction was pronounced to be of novel and exceptional character; that, with the aspect of charity and benignant consideration, it placed the officers of the ship in a position in reference to the claims of salvage, then in controversy, incompatible with their dutiful relations to the ship and cargo, and to owners and underwriters.

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