

MOREHOUSE ET AL. V. THE JEFFERSON.

[1 Pet. Adm. 46.]¹

District Court, S. D. New York.

1803.

SALVAGE—MASTER AND CREW TAKEN
OFF—GREAT PERIL AND EXERTION—AMOUNT
AWARDED.

1. The schooner William fell in with the Jefferson at sea, in great distress, and took her master and crew from on board her. She was then abandoned. On the following day some of the crew of the William went on board of her, and, after great peril and exertion, brought her into New York. The district court allowed one-half of the net proceeds as salvage.
- [2. Cited in The Waterloo, Case No. 17,257, to the point that one-half of the net proceeds is the ultimatum of salvage to be allowed in cases of derelict.]

To the Honourable John Sloss Hobart, Judge of the District Court of the United States for the New York District: Humbly complaining, shew unto your honour, in this honourable court, Andrew Morehouse, James Ford, Elihu Carrington, and Rienhold Willenbrant, at present in the city of New York, in the New York district, mariners, for themselves jointly, and separately, and also for Nathaniel L. Griswold and George Griswold of the same place, merchants, Noah Pratt, Jesse Lyon, and Peter Jones, severally and respectively, according to their rights, interest, and claims as hereinafter and hereby particularly set forth and made manifest, and as the same shall be judged right and decreed in and by this honourable court. That the said Nathaniel L. Griswold and George Griswold were at all the times hereafter mentioned the true sole and lawful owners of the American schooner called the William, which said schooner sailed from the island of Tobago, in the West Indies, on or about the nineteenth day of October, in the year of our Lord

1803, bound to the city and port of New York, in the New York district, with a cargo of merchandize, the said schooner's crew consisting of the said Noah Pratt, who was master, your libellant Andrew Morehouse, who was mate, and the other libellants, James Ford, Elihu Carrington, and Rienhold Willenbrant, together with the said Jesse Lyon, who were seamen, and the said Peter Jones, who was cook of the said schooner William, for the said voyage. And these libellants further shew, and give the court here to understand and be informed, that on or about the fifteenth day of November in the year last aforesaid, while the said schooner William was on her said voyage from Tobago to this port of New York, and navigating as aforesaid, and in latitude by observation thirty-six degrees and fifty-five minutes north, at or about four of the clock in the afternoon, the said schooner William en the high seas fell in with a certain brigantine or vessel called the Jefferson of Newbury Port, commanded by one James Adams, which said brigantine, as the libellants were then informed, and believed to be true, was last from St. Bartholomews, and was bound to the port of New York, in the New York district, with a considerable cargo on board. And your libellants further shew and declare, that shortly after the said schooner William fell in with the said brigantine Jefferson, the said James Adams came on board of the said schooner William, and informed that the said brigantine some time previously, and on or about the ninth day of the said month of November, at night, and while it was very dark and disagreeable weather, had been run foul of by a Spanish or French ship of war, and that the said brigantine had thereby lost a great part of her sails, rigging and spars, and was very materially injured, wrecked and broken in the hull, all which these libellants afterwards discovered, and therefore aver to be true. And the said James Adams, then also declared, that he and the residue of the

crew of the said brigantine were determined, for the preservation of their lives, to leave and abandon her, and desired a passage on board the said schooner William to New York, which was consented to on the part of the captain of the said schooner. And these libellants further shew, and give the court here to be informed and understand, that, in order to get a further supply of provisions and water on board the said schooner, so chat the crews of both the vessels might have a supply on their passage to New York, your libellant Andrew Morehouse, together with two others of the seamen belonging to the said schooner William, went on board of the said brigantine, to endeavour to get such supply from her, especially of water; but, in attempting to get water out of the brigantine into the boat, the cask was unavoidably stove, which frustrated their intention in that respect. And your libellants further shew, and for truth declare, that at or about five of the clock in the afternoon of the same fourteenth day of November, being the fifteenth of that month by sea reckoning, the said James Adams, the master, and all of the crew of the said brigantine abandoned her and her cargo, and came on board the said schooner William, then on the high seas, bringing with them only the brigantine's boat, in which they came, with their chests of clothes and bedding, and a small quantity of provisions. And the said captain and crew of the said brigantine Jefferson 739 then declared, they would not return to her, nor make any further attempt to navigate her into port. And these libellants further shew, and give the court to be informed, that, after the captain and crew of the said brigantine had so abandoned her, as aforesaid, and came on board the said schooner William, on the high seas, it was thought most advisable by the captain and crew of the said schooner, for them to endeavor to keep in sight of or near the said brigantine, during the night then ensuing, in order to see her situation in the morning;

and, if opportunity offered, to attempt to save her and her cargo, or at least to endeavor to get a cask of water from her, and put on board the schooner William, as a further supply for the people then on board her, during the residue of the voyage; and, though this was attempted, they lost sight of the said brigantine during the night, and did not see her again until at or about the hour of eleven of the clock in the forenoon of the next day, when they saw her at as great a distance as she could be discovered, and considerably to windward, when the said schooner William was steered for, and about five of the clock, post meridian, came up with the said brigantine Jefferson, it being, by sea reckoning, the sixteenth day of November, and in latitude, by observation, about thirty-six degrees and fifty-five minutes north; but the sea being then rough, and the vessel rolling very much, it was deemed impracticable to get any water out of the said brigantine that night; it was, nevertheless, agreed upon, after consultation between the captain, mate, and crew of the said schooner William, that the mate and three seamen of the schooner should go on board of the said brigantine, if practicable, and examine her situation, and thereupon to judge of the expediency and propriety of taking possession of, and endeavouring to navigate her into port; whereupon, your libellants went on board the said brigantine, and, after the best examination they could make of her situation, they returned to the schooner; whereupon it was agreed between the captain and the rest of the crew of the schooner, and your libellants, that your libellants should go on board and take possession of the said brigantine, and use their best endeavours to navigate her into port And that the said schooner should endeavour to keep company with the brigantine, and render her what assistance they could towards getting her into port; in consequence of which agreement, your libellants, the said Andrew Morehouse, James

Ford, Elihu Carrington, and Rienhold Willenbrant, with the approbation of the captain, and the rest of the crew of the said schooner, went on board of, and took possession of, the said brigantine, taking with them their clothes, beds, bedding, and such other necessaries as they wanted, and could be spared from the said schooner William. And your libellants further shew, and give the court here to be informed, that they then took possession of the said brigantine, twenty-four hours or upwards after she had been abandoned by her former captain and crew, as before set forth; whereupon, after having so taken possession of the said brigantine, your libellant, Andrew Morehouse, took the command of her, and, with the assistance of the other libellants, made what sail they could upon the said brigantine, and with great difficulty, and imminent danger, navigated her into this port of New York, in the New York district, where they arrived on the second day of this present month of December, where the said brigantine, and all the cargo she had on board when these libellants took possession of her, as aforesaid, now are; the particulars whereof are not known to these libellants with certainty, but they were informed by the said James Adams, the former master of the said brigantine, before they took possession of her, as aforesaid, that the cargo consisted of eighty-three hogsheads of sugar, and two hogsheads of coffee; and these libellants know, from inspection, that a great proportion of the said brigantine's cargo consists of sugar, but they have not yet discovered any coffee on board as part of the cargo, the said cargo not having been yet landed. And these libellants further shew, and for truth declare, that said brigantine and schooner kept company, or in sight of each other, with great difficulty, until about five of the clock of the afternoon, of the seventeenth day of November last, when they lost sight of each other in a violent gale of wind, and never came in sight of each other again until they

respectively arrived in this port of New York: and these libellants further shew, and give the court here to understand, that the said Noah Pratt, the captain, and the residue of the crew of the said schooner, did all in their power to keep company with the said brigantine, and to render her and these said libellants assistance, until the said vessels were parted in a gale of wind, as aforesaid; when, having entirely lost sight of the said brigantine, and there being no reasonable prospect of again falling in with her at sea, the said schooner made the best of her way to the port of New York, being the port of her destination, where she arrived on the twenty-fourth day of November last. Wherefore, these libellants pray due process of law, against the said brigantine, called the Jefferson, her tackle, apparel and furniture, and all and singular the cargo so taken possession of and brought into port, and saved as aforesaid, and against all and every the owners and owner thereof, or any part thereof; and that they be duly cited to appear and answer the premises, and to perform such order and decree touching the premises as it shall seem meet to this honourable court to make; and that the said brigantine, her tackle, apparel, and furniture, together with all and singular her cargo so saved and brought into port, may be sold in pursuance of a decree or order of this honourable court; and that the proceeds of such sale or sales, or such part or portion 740 thereof as shall seem just and equitable, may, by virtue of an order and decree of this court, be adjudged and paid over to your libellants, or to them and such other person and persons as by means of the premises shall be deemed and adjudged entitled to salvage or compensation out of the same; and that your libellants, and others interested in the said property, as salvors thereof, may have such further or other relief in the premises as law and justice may require, and as to this honourable court shall seem meet And your libellants

will ever pray. Riggs, Proctor. A. Hamilton, Advocate.
New York, Dec. 7, 1803.

The answer and claim of Gilbert Robinson, of the city of New York, merchant, for himself and James Brown, his co-partner, together composing the firm of Gilbert Robinson & Co., consignees of eighty hogsheads of Muscovado sugars, shipped on board the brigantine or vessel called the Jefferson, for and in behalf of George Cruden and Company, of the island of St. Lucia, merchants, the owners of the said sugar, and for and in behalf of the underwriters and all others interested therein, to the libel of Andrew Morehouse, James Ford, Elihu Carrington, and Rienhold Willenbrant, for themselves, jointly and separately, and also for Nathaniel L. Griswold, and George Griswold, Noah Pratt, Jesse Lyon, and Peter Jones, against the said brigantine Jefferson, her tackle, apparel, furniture, and cargo. The claimant, by protestation, saving to himself and all others for whom he claims all right of exception as well to the truth as to the sufficiency of the said libel, for answer thereunto, or unto so much thereof as it is necessary for him to answer, alleges and declares that the said brigantine, called the Jefferson, being at the said Island of St. Lucia, and bound on a voyage from thence to the port of New York, the said house of George Cruden and Co., did there ship and lade on board the same eighty hogsheads of Muscovado sugars, marked and numbered as follows, to wit, B. I. No. 1 to 80, for which a certain James Adams, the then master of the brigantine, did then and there, in the usual form, sign and deliver regular bills of lading, binding himself to deliver the same at New York to this respondent and his co-partner, by the description of Messrs. Gilbert Robertson & Co., merchants there. That the said George Cruden & Co. did shortly afterwards forward to this respondent and his co-partner, under the firm aforesaid, two of the said bills of lading subscribed by the said James

Adams; and, by invoice and letter of advice bearing date respectively on the tenth and eleventh of October last past, did assign the same to this respondent and his said copartner, under the firm aforesaid, to be sold for the account and risk of the said George Cruden and Company, as by the said bills of lading, invoice, and letter in the possession of this respondent, ready to be produced to this honourable court, may appear. And this respondent, further answering, saith that he hath been informed and believes that the said brigantine, having on board the said eighty hogsheads of sugar, did set sail and proceed on the said voyage, and, in the prosecution thereof, did fall in with the said schooner, called the William, and that she was navigated and brought to the said port of New York by the libellants, but under what circumstances of risk or danger this respondent is ignorant And this respondent submits himself in the premises to the judgment of this honourable court, and humbly prays that the said eighty hogsheads of sugar may be discharged from arrest under the process of this honourable court and may be restored to the possession of this respondent and his said co-partner, for the use of the owners thereof, and that this respondent may be hence dismissed with his reasonable costs and charges in this behalf sustained. Gilbert Robinson. T. L. Ogden, Proctor for Claimants.

Sworn in open court this twenty-seventh day of Dec, 1803. Edward Dunscomb, Clerk.

Decree: The court having taken time to advise as to its decree, and as to the proportion and distribution of salvage in this case, doth now order and decree, that the said cargo of the said brigantine Jefferson, and every part thereof, mentioned in the libel filed in this cause, be and the same is hereby condemned, pursuant to the prayer of the said libel, and that the same be sold by the marshal of the district, at public auction in the city of New York, to the highest bidder, or

for the best price that can be got for the same, after giving at least four days' notice thereof in a newspaper, entitled the Daily Advertiser, and one other of the public newspapers printed in the said city; and that the said marshal have the monies arising from the said sale, together with the writ at the next district court of the United States, to be held for the district of New York after such sale, and that he then pay the same to the clerk of this court. And it is further ordered, sentenced, and decreed by the court, that one moiety or equal half part of the net amount of sales of the said cargo (after deducting the duties on the cargo and the costs and charges which have accrued or may accrue in this cause, by reason of the libel, claim and petition filed in this cause) be paid to the libellants in this cause, or to them and the said Nathaniel L. Griswold, George Griswold, Noah Pratt, Jesse Lyon, and Peter Jones, or their proctor, by way of salvage; and that the same be distributed in manner following, that is to say, one equal half part of the said moiety or salvage to be paid to the said Nathaniel L. Griswold and George Griswold, the owners of the schooner William and part of her cargo; and to the said Noah Pratt, the master of the said schooner, and owner of the other part of her cargo, according to their respective interests therein; and that the other half of the said moiety or salvage be divided into two equal parts, the other one-half of which to be divided equally between the said Noah Pratt, the master of the said schooner William, and the said 741 libellant, Andrew Morehouse, who acted as master of the said brig, and navigated her into the port of New York; and the other half to be divided into five equal parts, or shares, one of which to be paid to the said libellant James Ford, one to the said libellant Elihu Carrington, and one to the said libellant Rienhold Willenbrant, who were seamen on board the said brig at the time of her said arrival at the port of New York, but were formerly part of the crew of

the said schooner William; and one other of the said shares to be paid to the said Jesse Lyon, a seaman on board the said schooner William, and the other said share to the said Peter Jones, cook, on board the said schooner William, or their proctor. And it is further ordered, sentenced, and decreed by the court, that the other moiety of the nett amount of the said sales be retained by the clerk of this court until the further order of the court respecting the same.

¹ [Reported by Richard Peters, Jr., Esq.]

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