

## Case No. 12,961.

## SMALL ET AL. V. THE MESSENGER.

[2 Pet. Adm. 284.]<sup>1</sup>

District Court, D. Pennsylvania.

1807.

SALVAGE—GOODS TAKEN FROM  
WRECK—COMPENSATION.

1. Goods taken from a wreck, libelled for salvage, and one-third of the gross amount decreed by the court.

[Cited in *Williams v. The Adolphe*, Case No. 17,712.]

2. Cited in *Browning v. Baker*, Case No. 2,041, to the point that slaves may receive compensation as salvors.]

The libellant [William Small], master of the brig Catherine of Norfolk, on the 5th of September last, in lat. 37 deg. N. and long. 68 deg. W. fell in with the wreck of the schooner Messenger of Baltimore, White, master, having lost both her masts, sails and rigging; the captain, mate, and eight hands remaining alive, seven of her crew having perished. After a vain endeavour to put the schooner in a condition to proceed on her intended voyage from Baltimore to Vera Cruz; the libellant and crew took out of the wreck and saved from destruction, sundry articles in the libel mentioned. The hardships of the officers and crew of the Messenger are described, and it is said in a deposition, not admitted as legal proof of all the facts, that the captain of the schooner, the mate, and one hand, were taken on board the brig, and the rest of the surviving crew were admitted into the ship Unicorn, bound to Bremen, which ship saved, and carried on her voyage, a more considerable quantity of the cargo of the schooner. The articles saved by the brig Catharine were carried to Madeira, and brought from thence to Philadelphia, occupying the room of about fifty barrels freight, valued at one hundred and twenty dollars, the cargo of the brig being displaced to receive the goods so saved. These facts are agreed by

John Craig, one of the owners of the vessel and cargo of the schooner Messenger—and that the schooner was abandoned and left at sea.

{Before PETERS, District Judge.}

BY THE COURT. There is no claim by the owners of the cargo of the brig Catharine, nor does there appear any very peculiar merit in this case, to distinguish it from the common cases of saving goods out of vessels (under like circumstances) in the labour or difficulty of saving: but it is, among others, a striking instance of the impediment to saving goods out of a perishing vessel, interposed by the cargo of the vessel employed in the salvage. Much more of the Messenger's cargo would have been saved, if it could have been 367 admitted into the brig Catharine. This is not a circumstance favourable to the arguments advanced for rewarding owners of the cargo of the saving ship; when, in general, a vessel in ballast is most capable of, and commodious for, receiving goods out of perishing vessels; and it relieves me from some difficulty as there is no claim, on this account, by the owners of the cargo.

Under all the circumstances, I think it right to allow as salvage, one-third of the gross amount of sales, clear of all costs and charges. This is to be divided between the owners of the ship and the officers and crew of the brig Catharine, in like manner as was directed in the case of Taylor and others against the brig Cato, heretofore decreed in this court.

Therefore, I adjudge, order and decree as follows, to wit: The gross amount of sales, as appears by the marshal's return, is two thousand eight hundred and sixty-four dollars, and thirty-nine cents. Of this sum I adjudge, order and decree, that the libellant, on behalf of himself and all others concerned, have and recover in full satisfaction, for and as salvage, the one-third part, or nine hundred and fifty-four dollars, and seventy-nine cents, to be apportioned as follows:

Messrs. Olivera, Fomandey & Co. of Norfolk, owners of the brig Catharine, shall receive and \$477 take one-half of the said sum of nine hundred and 39 fifty-four dollars, and seventy-nine cents, or

The remaining half of the said sum of nine hundred and fifty-four dollars, and seventy-nine cents, shall be divided amongst the officers and crew of the said brig Catharine, as follows, to wit:

The same shall be divided into twenty parts or shares, whereof,

William Small, the master, shall have eight shares, or \$190 96

Samuel Wilson, the mate, shall have four shares, or 95 48

James Parker and Robert Sennett, white men, and negroes William, Joe, Europe, Lewis, Jerry and Peter, slaves, all seamen, shall each have one share, or twenty-three dollars, and eighty-seven cents 190 96

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The negroes William, Joe, Europe, Lewis, Jerry and Peter, being slaves, are nevertheless to receive their proportion of salvage, as mariners on board the brig Catharine, for their own separate use. And all costs, duties and charges are to be deducted from and paid out of the remaining two-thirds of the gross amount of sales, and the balance to remain in court, subject to further order and decree.

<sup>1</sup> [Reported by Richard Peters, Jr., Esq.]

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