

COFFIN v. THE BRIG AKBAR.

District Court, E. D. New York. December 29, 1880.

1. SALVAGE—YELLOW FEVER—AMOUNT OF AWARD.

The crew of the brig Akbar, bound from Havana for New York with a cargo of sugar, when five days out, were, with the exception of the mate, who was ailing, and one seaman, taken down with yellow fever. *Held*, where the brig was boarded by the master and mate of the schooner Munson, then short the chief mate and one seaman, in answer to a signal of distress, and command was assumed by the mate, who brought her safe to New York, and where neither the master nor the mate nor the Munson sustained any injury therefrom, that the Akbar and cargo should pay the sum of \$3,600 for the services rendered.

2. SAME—SAME—DISTRIBUTION OF AWARD.

Held, further, that of this sum \$2,500 should be awarded to the mate: \$500 to the owners of the Munson; \$350 to the master; and the remaining \$250 should be divided among the crew—certain seamen who went in the boat to the Akbar with the master and mate receiving a double share.

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3. SAME—CREW—EXTRA LABOR.

Held, further, that the extra labor cast upon one of the crew of the Akbar by the sickness of the rest did not give him a right to claim salvage.—[ED.]

W. R. Beebe and W. R. Darling, for Coffin.

A. J. Heath, for the brig.

Hand & Bonney and E. S. Hubbe, for claimants of the cargo.

BENEDICT, D. J. This is an action brought by the owners and crew of the brig L. F. Munson to recover for a salvage service rendered to the brig Akbar. The facts are as follows: In July last the brig Akbar was in the port of Havana, loading with sugar for New York. At that time Havana was infected with yellow fever, and many vessels had lost part of their crews while lying there. Among others the captain of the

Akbar was taken with the fever, and on the sixth of July he died of that disease in the cabin of the brig. Four days after, the loading having been completed, the brig sailed for New York in command of Moody, her former chief mate. Her crew at sailing consisted of Moody, now master; Freeman, formerly second mate, now chief mate; the cook, and five seamen. On the twelfth day of July, when two days out, Moody, the captain, was taken with yellow fever, and also one of the seaman. On the 13th another seaman was taken with the fever, and on the 14th still another. On the 15th one of the seamen died of the fever, and another was taken sick. Freeman, the mate, was also ailing, but able to keep about.

At this time there was but one well man, Peter Green, on board the vessel, and two of the sick were at the point of death. In this emergency, Freeman set a signal of distress to call the attention of a schooner that hove in sight. The schooner run down to within a quarter of a mile of the brig, and then bore away without speaking, surmising, no doubt, that the brig had disease on board, from the fact that she exhibited no loss of spars or other injury. Shortly afterwards the signal was seen by the brig L. F. Munson, and she at once bore down to her. When within hailing distance the captain of the Munson learned from the Akbar that there was 458 yellow fever on board, and not well men enough to man a boat. The Munson was then short-handed, the chief mate having deserted in Cardenas, and George W. Donald, second mate, was acting as chief mate, and the crew was one man short; but her master, Captain Thomas A. Coffin, determined to render assistance to the brig, and applied to Donald, his second mate, a young man of 18 years of age, who knew something about navigation, to know if he would be willing to attempt to get the brig into New York; and, when Donald expressed a willingness to make the attempt, he ordered him to join the brig for that

purpose. Coffin and Donald then boarded the brig together. When on board, Coffin went into the cabin to ascertain the condition of the captain, whom he found very sick, indeed but able to make known that he wanted assistance and a navigator. He was informed that Donald would attempt to get the vessel to New York, and then Coffin, after having, with the assistance of one of his men, called out of the boat for that purpose, swayed up the brig sails, hanging loose at the time, and, having left medicine for the sick, returned to his vessel and proceeded on his voyage to New York, where he arrived in safety and without loss of time.

Donald was then left on board the Akbar with but a single well man to assist in working the vessel, all the others being more or less affected with yellow fever, and two at the point of death. Freeman, the acting mate, took to his bunk sick shortly after Donald came on board. The condition of Moody, the captain, grew worse; he became delirious, and on the 18th he died in Donald's arms, having been nursed and attended by Donald and the steward to the best of their ability. Donald prepared the body of the captain for burial, and, with the assistance of the steward and the well seaman, committed the remains to the sea. On the next day it came on to blow, and the brig stood off shore for 24 hours. On the 20th the sea was still heavy, and on this day a seaman died of yellow fever in the forecabin. The steward and well seaman became fearful, and Donald was compelled, without any assistance, to get the remains of the man out of the forecabin and into the sea. From this time forward the remaining 459 seamen began to recover, and soon were able to assist, to some extent, in working the vessel. On the 21st two sails were carried away. On the 23d a pilot was spoke, and on July 23d the brig was towed into the lower bay by a tug. Donald was thus in charge of the brig some eight days. During one day he had but one man with him able to stand up. During three days he had but

two men. He was deprived of sleep during most of the time, standing as lookout when not at the wheel.

The facts, as all concede, show a very meritorious service rendered to the Akbar, and the only question in dispute is in regard to the amount of salvage proper to be awarded for such a service. In determining this amount I have given heed to the following considerations:

The property of the owners of the Munson was put at risk. If Captain Coffin had caught the fever, and had died, their vessel would have been without any officer whatever. As it was, their vessel performed the rest of the voyage with but a single navigator on board, and without either mate or second mate, and with one man short in the crew. Captain Coffin was under no legal obligation to board or speak the Akbar. He might have turned away as the schooner did. By going on board the Akbar and ministering to the wants of her captain he assumed the risk of taking the disease; and by permitting his second mate to join the Akbar he added largely to his own responsibility as master of the Munson.

Donald, the second mate, displayed great courage in assenting to the suggestion that he take command of the Akbar. When on board he showed ability and judgment in the management of the brig. It is true that he had once had the yellow fever. But it is known that the disease may, under some circumstances, be taken a second time, and it cannot be doubted that he acted under the belief that he assumed a great risk of taking the fever. He also assumed a risk of being lost with the brig. By good fortune he met with no severe weather, but it might have been otherwise, and he was in no situation to encounter a storm, or any other emergency. The peril assumed in taking charge of a vessel situated as the

Akbar was, is peculiar: well calculated to deter any one from rendering voluntary assistance, and entitled to special reward. It is for the interest of commerce that this be so, and the more, in a case like this, because vessels from the West Indies are often infected, and it is important that inducement to board them be held out to those who may meet them when in such distress.

On the other band, the Munson lost no time and sustained no detriment whatever by the departure of Donald. Donald did not take the fever, and suffered no bodily harm by the labor and anxiety he endured. In point of fact no risk of taking the fever was actually run, for, as the event proved, the Akbar was not infected; but the service was rendered under a state of facts that justified all in believing that she was infected, and that there was great risk of taking the fever from her. In view of these considerations and of the facts proved, I consider that the sum of \$3,600 should be paid by the Akbar and her cargo for the service rendered. Of this sum I award \$2,500 to Donald; \$500 to the owners of the Munson; \$350 to Captain Coffin, the master of the Munson; and direct that the remainder of \$250 be divided among the crew of the Munson, the two seamen who went in the boat to the Akbar to receive each a double share. A claim to share in the salvage has been put forth in behalf of Peter Green, the one well seaman on the Akbar, who assisted Donald from the time he took charge. This claim is without foundation. Peter Green was one of the crew of the distressed vessel, and did no more than he was bound by his contract to do under such circumstances.

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