

from an unusual and serious danger, I find nothing in section 829 that will limit the marshal's expenditure to \$2.50 a day.

As the facts of this case do not very fully appear, I shall send the bill back to be retaxed by the clerk in accordance with the view above expressed, and give any party interested liberty to show the actual amount of expense incurred by the marshal in keeping, and also in preserving, the property from danger. As several processes against the same property were in the marshal's hands at the same time, I suppose the marshal's disbursements will be divided among the various libelants, and therefore all the libelants must have notice of the retaxation of the costs.

BENEDICT, J. The testimony in regard to the disputed items in the marshal's bill is vague. As I understand it he has sought to charge \$5 per day for expenses incurred in keeping the property seized, upon the ground that he paid one watchman \$2.50 for watching the property in the day-time and another watchman \$2.50 for watching the same property, at the same place, in the night-time. The statute will not permit this, and the clerk's allowance of more than \$2.50 per day is therefore overruled. The rejection by the clerk of the charges incurred to prevent the collector of customs from taking the property from the marshal by force must, upon the testimony as it stands, be affirmed. It may be, however, that all the facts have not been brought out in the affidavits submitted to the clerk; and as it appears that the marshal has, in fact and in good faith, paid the amount charged in his bill for expenses, leave is given him, if he desires, to present additional testimony, and to have the bill retaxed before the clerk upon such additional testimony in regard to the items now disallowed.

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### THE MARY GIBBS.

#### SWAN and others v. STANDARD SUGAR REFINERY.

(District Court, D. Massachusetts. December 4, 1884.)

#### GENERAL AVERAGE—SPARS, RIGGING, ETC., CUT AWAY TO SAVE VESSEL—LIABILITY OF OWNERS OF CARGO.

The owners of a cargo are liable to contribute in general average for masts, spars, rigging, etc., cut away for the purpose of saving the vessel and cargo; the value of the material, in adjusting the loss, to be estimated as if it had been recovered from the sea and stowed in safety on board the vessel.

#### In Admiralty.

This was a libel in admiralty to recover a general average contribution by the owners of the brig Mary Gibbs against the respondent,

as owner of the cargo. The libelant claimed that while said brig was on a voyage from Sagua la Grande to Boston, with a cargo of sugar for the respondent, she was, on March 28, 1883, struck by a gale which carried overboard her jib-boom, part of the mainmast, foretop-mast, with all the spars, blocks, rigging, and sails attached, which, falling along-side the vessel, were held by the running and standing rigging, and began to beat heavily against the bottom and sides of the vessel, threatening to make a hole in the hull, and sink brig and cargo. The master thereupon, to save vessel and cargo, cut away these spars and rigging, and sails attached, and set them adrift, so that they were totally lost. The owners now claim to recover the value of these spars, sails, rigging, etc., so cut adrift, in general average. The respondent denied that cutting adrift such floating and wrecked spars and material was a general average sacrifice; and, if it was such a general average sacrifice, the respondent claimed they should be allowed for in general average only, at their value in their condition and position at the moment they were cut adrift.

*F. C. Dodge & Sons*, for libelants.

*C. T. Russell* and *C. T. Russell, Jr.*, for respondent.

NELSON, J. The Standard Sugar Refinery, as owners of the cargo of sugar on board the brig *Mary Gibbs*, is liable to contribute in general average for the material composing the wreck cut away for the purpose of saving the vessel and cargo; the value of the material, in adjusting the loss, to be estimated as if it had been recovered from the sea and stowed in safety on board the vessel.

Interlocutory decree for libelant.