*John Stratton, Appellant, *v.* Leonard Jarvis and C. H. H. Brown, Appellees.

Salvage.—Appeal.

A libel was filed in the district court of Maryland, for a salvage service performed by the libellant, the master and owner of the sloop Liberty, and by his crew, in saving certain goods and merchandises on board of the brig Spark, while aground on the bar at Thomas's Point in the Chesapeake Bay; the goods were owned by a number of persons, in several and distinct rights; and a general claim and answer was interposed in behalf of all of them, by Jarvis & Brown (the owners of a part of them) without naming who, in particular, the owners were, or distinguishing their separate proprietary interests.

This proceeding was doubtless irregular in both respects; Jarvis & Brown had no authority, merely as co-shippers, to interpose any claim for other shippers with whom they had no privity of interest or consignment: and several claims should have been interposed by the several owners, or by other persons authorized to act for them in the premises; each intervening in his own name for his proprietary interest, and specifying it. If any owner should not appear to claim any particular parcel of the property, the habit of courts of admiralty is, to retain such property, or its proceeds, after deducting the salvage, until a claim is made, or a year and a day have elapsed from the time of the institution of the proceedings. And when separate claims are interposed, although the libel is joint against the whole property, each claim is treated as a distinct and independent proceeding, in the nature of a several suit, upon which there may be a several independent hearing, decree and appeal. This is very familiar in practice, in prize causes and seizures *in rem* for forfeitures; and is equally applicable to all other proceedings *in rem*, whenever there are distinct and independent claimants.

The district court decreed a salvage of one-fifth of the gross proceeds of the sales of the goods and merchandises, and directed the same to be sold accordingly; the salvage thus decreed was afterwards ascertained, upon the sales, to be in the aggregate, $2782.38; but no formal apportionment thereof was made. From this decree, an appeal was interposed, in behalf of all the owners of the goods and merchandises, to the circuit court; but no appeal was interposed by the libellant; the consequence is, that the decree of the district court is conclusive upon him as to the amount of salvage in his favor; he cannot, in the appellate court, claim anything beyond that amount; since he has not, by any appeal on his part, controverted its sufficiency.

Although no apportionment of the salvage among the various claimants was formally directed to be made, by any interlocutory order of the district court, an apportionment appears to have been in fact made, under its authority; a schedule is found in the record, containing the names of all the owners and claimants, the gross sales of their property, and the amount of salvage apportioned upon each of them respectively; by this schedule, the highest *salvage [*5
chargeable on any distinct claimant is $906.17, and the lowest $47.60, the latter sum being below the amount for which an appeal, by the act of 3d of March, 1803, ch. 93, is allowed from a decree of the district court in admiralty and maritime causes.

In the appeal here, as in that from the district court, the case of each claimant having a separate interest, must be treated as a separate appeal, *pro interesse suo*, from the decree, so far as it regards that interest; and the salvage chargeable on him constitutes the whole matter in dispute between him and the libellants; with the fate of the other claims, however disposed of, he has and can have nothing to do. It is true, that the salvage service was in one sense entire; but it certainly cannot be deemed entire for the purpose of founding a right against all the claimants jointly, so as to make them all jointly responsible for the whole salvage; on the contrary, each claimant is responsible only for the salvage properly due and chargeable on the gross proceeds or sales of his own property, *pro rata*; it would otherwise follow, that the property of one claimant might be made chargeable with the payment of the whole salvage; which would be against the clearest principles of law on this subject. The district and circuit courts manifestly acted upon this view of the matter; and their decrees would be utterly unintelligible upon any other; their decrees, respectively, in giving a certain proportion of the gross sales must necessarily apportion that amount *pro rata* upon the whole proceeds, according to the distinct interests of each claimant. This court has no jurisdiction to entertain the present appeal, in regard to any of the claimants, and the cause must for this reason be dismissed; the district court, as a court of original jurisdiction, has general jurisdiction of all causes of admiralty and maritime jurisdiction; without reference to the sum or value of the matter in

controversy; but the appellate jurisdiction of this court and of the circuit courts, depend upon the sum or value of the matter in dispute between the parties, having independent interests.[1]

APPEAL from the Circuit Court of Maryland. In the district court of the United States for the district of Maryland, a libel was filed by the appellant, for salvage, against several packages of merchandise of the invoice value of $13,641.95, the property of fifteen consignees, alleged to have been saved from the brig Spark, in the Chesapeake Bay; the vessel having been on a voyage from New York to Baltimore, and having struck on Thomas's Point, in the bay, on the 11th of March 1831. The libellant was master of the sloop Liberty, a small vessel which took from the Spark the merchandise stated to have been saved; he having been employed for
*6] the purpose, in *Annapolis, by the master of the Spark, who, after she was on shore, went there to obtain vessels in which to discharge the carge.

The libel alleged, that the contract under which the Liberty was employed for a stipulated compensation, was rescinded by the owners of the Spark, who had repaired to her from Baltimore, after hearing of her misfortune; they declaring they would not be responsible for the payment of the sum stipulated, but that they "abandoned the goods;" and the claim for hire having thus been converted into a case of salvage. The answer of the appellees, the owners of the merchandise, denied the claim of the libellant to salvage, and relied upon the agreement for a stipulated compensation as fixed upon by the master of the Spark, the amount of which was offered to be paid to the libellant, and was by him refused. The answer also denied, that the cargo of the Spark was in danger of loss; and that services of a meritorious character, upon which a claim for salvage would rest, had been performed by the libellant.

The district court allowed, as a salvage, twenty per cent., which, on appeal by the appellees, the circuit court reduced to five per cent., on the gross proceeds of the goods; from which decree of the circuit court the libellant appealed.

In the circuit court the following agreement was entered into:

"List of owners.—Patterson & Duncan; J. B. Danford; Chamberlin & Caldwell; William B. Keys & Co.; Baltzell & Davidson; Mummey & Meredith; John Armstrong & Son; William M. Ellicott & Co.; Sackett & Shannon; Baltzell & Dalrymple; Peabody, Riggs & Co.; Bancroft & Peck; Lawrence & Anderson; S. & J. B. Ford; Jarvis & Brown.

"List of consignees.—Joseph Taylor & Son; John T. Barr; B. & Davidson; M. & Meredith; C. F. Pochon & Co.; Ellicott & Co.; S. & Shannon; B. & D.; N. F. Williams; P. R. & Co.; B. & Peck; E. Eichelberger & Co.; Talbot Jones & Co.; H. & W. Crawford; J. & B.; Morrison & Egerton.

"It is agreed, that separate appeals be filed in this case for each of the owners' as specified in the foregoing list, and that the cause be consid-
*7] ered and treated as if such separate appeals were filed, and that none of the appellants shall have any privileges *or advantages which

[1] Spear *v.* Place, 11 How. 522; S. P. Rich *v.* Lambert, 12 Id. 347; Clifton *v.* Sheldon, 23 Id. 481.

would not appertain to them, if such appeal were a separate one. (Signed by the proctors of the respondents and appellants.)

Nov. 18, 1831."

The salvage was apportioned among the owners of the property saved as follows :

Owners.	Consignees.	Amount of goods, saved.	Amount of salvage.
Patterson & Duncan	Joseph Taylor & Son	$493 12	$98 62
J. B. Danforth	Same	357 82	71 56
Chamberlin & Caldwell	Same	400 00	80 00
Wm. B. Keys & Co.	John T. Barr	1471 65	294 33
Baltzell & Davidson	B. & Davidson	757 42	151 48
Mummey & Meredith	M. & M.	361 60	72 32
John Armstrong & Son	C. F. Pochon & Co.	238 00	47 60
Wm. M. Ellicott & Co.	Wm. M. E. & Co.	862 36	172 47
Sackett & Shannon	S. & S.	501 60	100 32
Baltzell & Dalrymple	B. & D.	2000 00	400 00
Peabody, Riggs & Co.	P., R. & Co.	409 50	81 00
Bancroft & Peck	B. & P.	360 19	72 04
Lawrence & Anderson	Erskine Eichelberger & Co.	424 85	84 97
S. & J. B. Ford	H. & W. Crawford	473 00	94 60
Jarvis & Brown	J. & B.	4530 84	906 17
		$13,641 95	$2728 38

The case was argued by *Wirt*, for the appellant ; and by *Mayer*, for the appellees.

As the court gave no opinion on any other point but that of jurisdiction, the arguments upon the merits, and on other questions presented by the counsel, are omitted.

Mayer, for the appellees, contended, that the supreme court had not jurisdiction in the case, as the sum in controversy was not sufficient to authorize an appeal from the circuit court to this court. The property saved consisted of merchandise in separate parcels, belonging to different consignees ; but one parcel exceeded $2000 in value.

By the agreement of the counsel, the appeals were to be separate ; and the case rests upon the principles decided by this court in the case of *The Warren*, 6 Pet. 143. The interests of the owners of the merchandise were not consolidated. The consolidation, by the general decree, is unimportant.

*As to the single parcel of goods exceeding $2000 in value, the inquiry is not, what was the value of the goods, but what amount of [*8
salvage should be allowed. The claim of the libellant is not presented to this court beyond the salvage on all the goods saved, as given by the district court ; and that amounted to but $800. Although the case may stand before this court *de novo*, yet this relates only to the matter in the district court, from the decree of which court the libellant did not appeal.

Wirt, in reply, contended, that in case of salvage, it never had been decided, that the separate interests and rights of the owners of the property saved would be looked into. The saving is an aggregate conjoint act ; and the amount of the whole goods saved, all of which are subjected to salvage,

should regulate the jurisdiction. In any other view, a large cargo might be so split up into different ownerships, as even to take away the jurisdiction of the district court. The decree of the district and circuit courts was for a gross sum, to be paid out of the total amount of the cargo; thus both courts took jurisdiction over the whole property saved, as an amount in gross, which was far beyond the sum required to give jurisdiction. The agreement in the circuit court has no action on the appeal from that court; nor does the case of *The Warren* apply, as there, the amount claimed by each of the parties was fixed by the decree of the court below.

Story, Justice, delivered the opinion of the court.—This is the case of a libel for a salvage service performed by the libellant, the master and owner of the sloop Liberty, and by his crew, in saving certain goods and merchandises on board of the brig Spark, while aground on the bar at Thomas's Point in the Chesapeake Bay. The goods were owned by a number of persons, in several and distinct rights; and a general claim and answer was interposed in behalf of all of them by Jarvis & Brown (the owners of a part of them), without naming who in particular the owners were, or distinguishing their separate proprietary interests. This proceeding was doubtless irregular in both respects. Jarvis & Brown had no authority, merely as co-shippers, to interpose any claim for other shippers with *whom *9] they had no privity of interest or consignment; and several claims should have been interposed by the several owners, or by other persons authorized to act for them in the premises, each intervening, in his own name, for his proprietary interest, and specifying it. If any owner should not appear to claim any particular parcel of the property, the habit of courts of admiralty is, to retain such property, or its proceeds, after deducting the salvage, until a claim if made, or a year and a day have elapsed from the time of the institution of the proceedings. And when separate claims are interposed, although the libel is joint against the whole property, each claim is treated as a distinct and independent proceeding, in the nature of a several suit, upon which there may be a several independent hearing, decree and appeal. This is very familiar in practice, in prize causes, and seizures *in rem* for forfeitures; and it is equally applicable to all other proceedings *in rem*, whenever there are distinct and independent claimants. The irregularity (such as it is) in the present case, is however of no importance, as the parties, by their agreement of record, have agreed that separate appeals should be filed from the decree of the district court for each of the owners, as specified in a list subjoined thereto, and that the cause should be considered and treated as if such separate appeals were filed, and that none of the appellants should have any privileges or advantages, which would not appertain to them if such appeal were a separate one. This agreement, in legal effect, creates the very severance, which the original claim and answer ought to have propounded in due form.

At the trial, in the district court, upon the allegations and proofs in the cause, there was no controversy as to the salvage service; and the case was reduced to the mere consideration of the amount to be awarded as salvage. The district court decreed a salvage of one-fifth of the gross proceeds of the sales of the goods and merchandises, and directed the same to be sold accordingly. The salvage thus decreed was afterwards ascertained, upon the sales

to be in the aggregate $2728.38 ; but no formal apportionment thereof was made. From this decree, an appeal was interposed in behalf of all the owners of the goods and merchandises, to the circuit court ; but no appeal was interposed by the libellant. *The consequence is, that the decree of the district court is conclusive upon him, to the amount of salvage in his favor. He cannot, in the appellate court, claim anything beyond that amount, since he has not, by any appeal on his part, controverted its sufficiency. Although no apportionment of the salvage among the various claimants was formally directed to be made, by an interlocutory order of the district court, an apportionment appears to have been in fact made under its authority. A schedule is found in the record, containing the names of all the owners and claimants, the gross sales of their property, and the amount of salvage apportioned upon each of them respectively. By this schedule, the highest salvage chargeable on any district claimant is $906.17 and the lowest $47.60, the latter sum being below the amount for which an appeal, by the act of the 3d of March 1803, ch. 93, is allowed from a decree of the district court in admiralty and maritime causes. Upon an appeal, the circuit court reversed the decree of the district court, and awarded one-twentieth part (instead of one-fifth) of the gross sales as salvage ; and from this latter decree, the libellant has appealed to this court. [*10

The first question is, whether this court has jurisdiction to entertain the appeal, the aggregate amount of the whole salvage exceeding the sum of $2000 ; but that which is due or payable by any distinct claimant being very far short of that sum. The argument in favor of the jurisdiction is, that the salvage service is entire, and the decree is for a specified proportion or aliquot part of the whole of the gross sales ; and therefore, it is chargeable upon the proceeds as an entirety, and not upon the separate parcels thereof, according to the interests of the separate owners. We are of a different opinion. In the appeal here, as in that from the district court, the case of each claimant having a separate interest must be treated as a separate appeal, *pro interesse suo*, from the decree, so far as it regards that interest ; and the salvage chargeable on him constitutes the whole matter in dispute between him and the libellant : with the fate of the other claims, however disposed of, he has and can have nothing to do. It is true, that the salvage service was in one sense entire ; but it certainly *cannot be deemed entire, for the purpose of founding a right against all the claimants jointly, so as to make them all jointly responsible for the whole salvage. On the contrary, each claimant is responsible only for the salvage properly due and chargeable on the gross proceeds or sales of his own property *pro rata*. It would otherwise follow, that the property of one claimant might be made chargeable with the payment of the whole salvage, which would be against the clearest principles of law on this subject. The district and circuit courts manifestly acted upon this view of the matter ; and their decrees would be utterly unintelligible upon any other. Their decrees, respectively, in giving a certain proportion of the gross sales, must necessarily apportion that amount, *pro rata*, upon the whole proceeds, according to the distinct interests of each claimant. We are, therefore, of opinion, that we have no jurisdiction to entertain the present appeal in regard to any of the claimants ; and the cause must for this reason be dismissed. The district court, as a court of original jurisdiction, has general [*11

jurisdiction of all causes of admiralty and maritime jurisdiction, without reference to the sum or value of the matter in controversy. But the appellate jurisdiction of the court and of the circuit courts depends upon the sum or value of the matter in dispute between the parties, having independent interests.

Appeal dismissed.

*12] *Bank of the Metropolis, Plaintiff in error, *v.* William Jones.

Competency of witnesses.—Authority of bank-officers.

In the case of the Bank of the United States *v.* Dunn, 6 Pet. 51, this court decided, that a subsequent indorser was not competent to prove facts which would tend to discharge the prior indorser from the responsibility of his indorsement; by the same rule, the maker of the note is equally incompetent to prove facts which tend to discharge the indorser.

The officers of a bank have no authority, as agents of the bank, to bind it, by assurances which would release the parties to a note from their obligations.

The principles of the case of the Bank of the United States *v.* Dunn, 6 Pet. 51, affirmed.

Error to the Circuit Court of the district of Columbia, and county of Washington.

This was an action on a promissory note, made by Betty H. Blake, executrix of J. H. Blake, for the sum of $5200, on the 27th of March 1822, in favor of the defendant, and by him indorsed to plaintiffs. The defendant pleaded *non assumpsit*, and the statute of limitation. On the trial of the cause before the circuit court, the following bill of exceptions was signed:

"Be it remembered, that on the trial of the above cause, the plaintiff, in order to sustain the issue, gave in evidence the following promissory note, on which the action was brought:

$5200. "Washington City, March 27th, 1822.

Sixty days after date, I promise to pay to Dr. William Jones, or order, five thousand two hundred dollars, for value received, negotiable at the Bank of the Metropolis. Betty H. Blake,

Executrix of J. H. Blake."

"16th May 1825.—I do hereby admit that a part of the above note is due, and that I am bound to pay whatever balance thereof is due, as far as I was originally bound as indorser. William Jones."

Indorsed—William Jones.

"And the defendant admitted the indorsement thereon, as well as the memorandum on the face thereof, to be in his *handwriting; and
*13] the plaintiff further proved, that said note was regularly protested for non-payment, and notice thereof duly given to the defendant, and the defendant waived, before the jury, the defence upon the statute of limitation.

"Whereupon, the defendant, to prove the issue on his part, under the plea of *non assumpsit*, produced Mrs. Betty H. Blake, the maker of said note, to whom a release was executed by defendant, exonerating her from any responsibility for the costs in this suit, to the form of which release no objection was made. The plaintiff objected to the competency of Mrs. Betty H. Blake to testify to any matters impeaching the original validity of the