

MURPHY AND OTHERS *v.* SCHOONER MARY S.  
HONTVET.

*District Court, D. New Hampshire.*

December 21, 1880.

1. SALVAGE—VALUE OF VESSEL—METHOD OF  
COMPUTATION.

In Admiralty.

*Mr. Hatch*, for Murphy and other libellants.

*Mr. Batchelder*, for Gilson and Campbell.

*Mr. Page* and *Frank Goodwin*, for claimants.

CLARK, D. J. The schooner Mary S. Hontvet, of about 72 tons burden, early in the morning of August 21, 1880, starting on a fishing voyage from Portsmouth harbor to the Western banks, got upon the rocks at "Pull-and-be-damned point" in the river. Her owners, upon being informed of her position, went, some of them, to her assistance. While they were attempting to relieve her with the steam-tug Bateman, she slid off the rocks into deep water and began to sink. She had on board 100 hogsheads of salt. The owners then went for another tug and attempted to tow the vessel to Newcastle, but could not do so, and she sank in the river with only her mast-heads out of water.

In the afternoon of the same day she began to float, and to drift with the tide towards the ocean. The owners were aware of this, but made no effort, with the Bateman or otherwise, to hold her, or to bring her to shore. Late in the afternoon of the same day Murphy, one of the libellants, having in charge a small schooner, called the Little Kate, which Mr. Tredick, one of the claimants, owned, proposed to Mr. Tredick to go with him in quest of the Hontvet. This Mr. Tredick declined to do. Murphy, however, taking with him Mr. White, another libellant, went to search after

the abandoned vessel with the Little Kate. They found her about half way between "Whale's-back" and the shoals, some three and a half miles at sea. She was on her side, rolling in the seaway, with her masts rising and falling, and the sea making a breach over her. There was a thick fog, with the wind to the south-east, some "chop," but not a heavy sea. After sailing round the Hontvet two or three times to find a place 921 to "make fast" to her, Murphy and White succeeded in attaching a line to her mast-head, and then anchored the Little Kate to hold her. They placed a light on the rigging of the Little Kate and commenced to halloo for assistance. Somewhere about midnight the four other libellants, Gillis, Jameson, Byrns, and Russell, came to the wreck in two dories, directed by persons on board a vessel in the vicinity who had heard the outcries of Murphy and White on board the Little Kate.

Gillis was the commander of the schooner Nichols, then in Portsmouth, and it was agreed between Murphy and White and these four men that they should go in and "come out" with the Nichols and help save the Hontvet, and share alike in the salvage. After they had gone sometime, Gilson and Campbell came to the wreck, and Murphy, anxious for the appearance of the Nichols, procured them to go into the harbor, and, to use his expression, "hurry her up." They did so, and came back and reported that the Nichols was aground, but would come out as soon as she floated with the tide. The Nichols afterwards came out as agreed, and they commenced to save the Hontvet. Upon consultation it was thought best to strip her, and that was done. About daylight James Davidson went to the wreck, and he assisted in stripping the wreck and in towing in the rigging and masts into the harbor. Early in the morning of the twenty-second of August the steam-tugs Ann and Bateman came to the wreck, but no assistance was asked of them, and none was offered or declined,—the Nichols not having

then arrived out. She came out later. On the afternoon of Sunday, the twenty-second of August, one of the owners of the Hontvet having previously passed by her, on his way to the shoals, without offering any assistance or giving any directions or advice, the steam-tug Sampson came to the wreck, and Murphy hired her commander to take the masts of the Hontvet out of her, that she might "right" herself and be towed more easily and safely. Not being able to pull them out the Sampson broke them off, and afterwards, at the request of Murphy, assisted in towing the Hontvet to Newcastle and putting her in safety 922 on the shore,—the Nichols and Little Kate and Davidson assisting to tow in the masts and rigging, but being unable of themselves to tow the vessel without the aid of the Sampson. Murphy engaged the Sampson at a stipulated price.

So far as the libellants Murphy, White, Gillis, Jameson, Byrns, and Russell are concerned, this is very clearly a case of salvage service, and is so admitted by the counsel for the claimants. The main question is, what shall be allowed for the service? and this depends largely upon the value of the property saved. Upon this point the testimony in the case leads to no precise or very satisfactory result. Mr. Littlefield, who was called to look at the vessel soon after she was brought in, says in his opinion she was worth, as she then was, \$1,500. He is a ship-builder, and competent to testify; but his judgment is not conclusive, and, tested by other methods of ascertaining her value, cannot be received as precisely accurate. Mr. Stimpson, another ship-builder, and who worked on the vessel when she was built, says she was an "A 1" vessel, 72 tons burden; that she cost when new \$6,500, and that in four years she would deteriorate 30 percent., making her value at the time she went ashore some \$4,610. But there was evidence that the cost of building vessels had diminished since this vessel was built,

and that there should be a deduction on that account. Precisely how much the cost of building vessels has lessened does not appear, but Mr. Littlefield says he thinks this vessel could not be built for \$4,000 or \$5,000. This would show a shrinkage of from 25 to 30 per cent. Deducting 25 per cent. on this account from \$4,600 would leave the value of the vessel when she went on to the rocks \$3,450. Add to this sum the value of the masts, sails, and rigging, and the value would approximate the value put upon the vessel by the owners when insured, to-wit, \$5,000.

Taking the value of the vessel when she started on her voyage as \$3,450, by this method of estimating, and deducting \$344.29, cost of repairing vessel's hull after she had been on the rocks, and been brought into Newcastle, and we have the value of the vessel, \$3,105.71. From this sum is still another 923 deduction which should be made, for the shrinkage of the value of any vessel of much size which has been ashore on the rocks. How much this should be in this case does not appear; not very large, however, as the repairs needed were not large, and the apparent damages small—say \$300. This leaves the value of the vessel, when rescued and brought on shore, \$2,805.71. Between this valuation and the estimate of Mr. Littlefield (\$1,500) there is a difference of \$1,305.71. One is nearly twice as large as the other, and they can hardly be reconciled. If the one is too large, it is equally certain the other is too small.

There is still another method of approximating the value of the hull when saved. The owners insured the vessel for \$5,000, and that was the value they placed upon her for insurance when wrecked. Mr. Tredick says "she was in good condition." He was willing to pay the premium for that amount of insurance. But it is now said that valuation was too high. Admit that it was so, and deduct 10 per cent. for such over valuation, (\$500,) that leaves her value, with rigging,

at \$4,500; deduct \$1,500 for the rigging, which is its cost when new, as appears from the testimony of Mr. Tredick, and you have the hull \$3,000 when the vessel sailed. She was injured on the rocks to the amount of \$344.29, as shown by bill of repairs. This leaves her value at \$2,655.71. Deduct, again, \$300 for injury to her reputation and market value, and you have \$2,355.71, the value of the hull as saved. This sum is not very far from midway of the others. If we add the three results, viz.:

\$2,805 17  
1,500 00  
2,355 71  
\$6,660 88

Divide by three and we have an average of \$2,220.44. This is probably not very far from correct, and I have concluded to call the value of the vessel when saved \$2,200. The value of the other articles saved I find to be \$550, making a total of \$2,750.

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I find that the vessel had been abandoned by the owners, and was at the mercy and control of the wind and waves when found by Murphy and White; but I do not find that the salvage service was very dangerous to the salvors. I allow out of the sum of \$2,750 one-quarter part—\$687.50—as salvage. Out of this sum I allow James Davidson \$25 as salvor, and Frank Gilson \$15, leaving a balance of \$647.50 for the libellants. I have allowed the salvors a little more in this case than perhaps I should have done had the owners made more effort or shown more anxiety to have saved their vessel than they did. Tredick was the agent of the owners and manager of the Hontvet, yet he allowed her to drift to sea without attempting to stop her; he refused to go with Murphy to find and rescue her, and did not see her again till she was landed on the shore at Newcastle. Anderson, another owner, made his dory fast to her mast-head as she floated, and allowed her

to tow him to the vicinity of Kitt's rock, and then he declined her further company and returned. Rider, another owner, on his way to the shoals next day, saw the vessel, and the men on board or about her, trying to save her, but lent no assistance.

I do not find that Murphy or his assistants were guilty of any malfeasance, or of doing any damage, for which their salvage service should be forfeited or diminished. It might have been possible that the Bateman could have towed the Hontvet into harbor with her masts in her, but it must have been an undertaking of considerable risk and much difficulty. It would, in my judgment, have been more prudent to have taken the masts out, even with the Bateman to tow her in. If the Batemen had offered, or had told Murphy that he could tow the vessel in as she was, instead of a *quasi* threat that he would dispossess him of the vessel which the owners had abandoned and which he had found at sea, there might have been some ground for the suggestion that he unnecessarily damaged the vessel, but I think there is very little now.

Decree for libellants, with costs.

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