

THE ANNIE HENDERSON.

District Court, D. Connecticut. February 23, 1883.

1. SALVAGE—REWARD FOR.

The reward given for salvage is based upon the danger to life and property incurred by the salvors, the value of the property saved, and the skill, labor, and duration of the services.

2. SAME—AMOUNT OF SALVAGE WHEN VESSEL IS DERELICT.

The present state of the law does not allow a too-close discrimination, in regard to the amount of salvage, between property which has become derelict, and that which is not: the true principle is adequate reward, according to the circumstances.

In Admiralty.

Samuel Park and Augustus Brandegee, for libelants.

John C. Dodge & Sons, for claimants.

SHIPMAN, J. This is a libel against the schooner Annie L. Henderson and her cargo for salvage.

On Sunday evening, September 10, 1882, the three-masted schooner Annie L. Henderson, owned by the claimants, on her voyage from Apalachicola to Boston with a full cargo of yellow-pine boards, struck on the Great rip, about 10 or 11 miles east of Sancotty head, Nantucket. She filled with water and lay on the bottom, unmanageable. About 275,000 feet of boards were under deck and about 100,000 feet were on deck. By order of the captain a part of the deck-load was thrown overboard. About half past 5 o'clock on the morning of September 11th, the captain, being of opinion that a storm was coming on, that the vessel would go to pieces, and that it was dangerous to life to remain on board, ordered the sails furled, and with all his crew, eight in number, left the vessel in a boat, and landed on Nantucket about

8 o'clock on the same morning, and reached the town of Nantucket about 11 o'clock A. M. The crew immediately went on board the steam-boat which left Nantucket about 12 o'clock, and went to Boston. The captain and crew took from the vessel their clothing, the signal lanterns, the log, the marine instruments; charts, and chronometers.

By the assistance of Mr. Macy, the underwriters' agent at Nantucket, the captain procured a schooner and about 15 men to go to and rescue, if possible, the wreck, when the weather would permit. On Monday, the 11th, there was a good strong breeze, and it rained very hard part of the day. On Tuesday morning, the 12th, it blew heavily from the north-east, and it was unsafe to leave the harbor. On Tuesday afternoon a watchman, who had been flatbed with a glass in the Nantucket town-clock tower to descry the Vessel, reported that she was adrift and drifting to sea. The wind was too heavy to permit the chartered schooner to leave till 12 O'clock, at night. During Tuesday night the Henderson drifted out of Bight of Nantucket. On Wednesday morning the weather moderated and soon went into a calm. The chartered vessel made an ineffectual attempt about 7 o'clock to get out of the harbor. That afternoon the captain learned that the fishing smack of the libelants had started early in the morning for the Henderson, and as the resetting expedition had had an eight or ten hours start, he abandoned the idea of going in quest of his vessel, and on Thursday noon he went to Boston, thinking that if she had been picked up he could there receive prompt information of her recovery. On Thursday the weather was rough and the wind from the south made a heavy sea, so that it would have been difficult for a vessel from Nantucket to have reached the Henderson if she had not been found by the Osprey.

On Tuesday morning, September 12th, the fishing schooner Osprey, owned by the persons named in the

libel, was lying inside of the fishing rip at Nantucket shoals. She was fishing for cod and had been away from Noank, Connecticut, about a week, and had some 1,300 or 1,400 fish on board. About 7 or 8 o'clock in the morning the wind commenced to rise from the north-east and the smack was obliged to start for a harbor. Inside the Great rip she found drifting lumber, and about 11 o'clock saw, among the shoals, a schooner about one and one-half miles away, drifting to the south-west, and towards the South shoals, and went near enough to see that her crew had left her. There was a heavy sea, and it was blowing too hard for the

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Osprey to board her. The Osprey got to land under the south side of the island about 4 p. M. on Tuesday. Wallace Brown was captain; Robert Machet was mate; Robert F. West, James Shirley, Robert Brown, and Moses Chapman were the crew of the smack. About 2 o'clock P. M. on this Tuesday, William James Burgess, of Nantucket, one of the libelants, having heard that a vessel was in distress off the island and the captain was in town, went to the town-clock tower with his glass and discovered the Henderson drifting off the south shore, and, at the same time, saw the smack Osprey. He immediately organized a party, consisting of Frederic Marvin, Francis A. Mitchell and James Ramsdell, who furnished his whale-boat, and all went in a wagon or other conveyance to the south shore. John P. Tabor followed on the railroad. When the weather became quiet, they launched the boat from the beach and reached the Osprey about 5 o'clock. They left Nantucket in haste, because they wanted to get ahead of any expedition which anybody else might organize.

The next (Wednesday) morning, between 4 and 5 o'clock, the Osprey, with her own crew and the five Nantucket men, and towing the whale-boat, started for

the Henderson, and sailed till 10 o'clock A. M., when the wind entirely went down. Capt. Brown, Machel, and the Nantucket men took the whale-boat and rowed 18 or 20 miles, till 3 o'clock, when they reached the vessel and found that the mate and four or five men from, the schooner Sullivan Sawin were on board and were stripping the drifting schooner and had cut off the mizzen sail. The mate told Capt. Brown that he must see the Sawin's captain, and if he (the Sawin's captain) said keep on, they would; if not, they would leave. The seven libelants then rowed about six miles, to the Sullivan Sawin, saw her captain, who gave directions that his mate and crew should leave the Henderson, whereupon the libelants returned to the schooner and obtained possession. They found that she was listed to the starboard and was down by the head, the chain-plates were broken, the mainmast was only held by the topmast back-stay, and was swinging to and fro, the halyard and sheets were afoul of the lumber, her starboard rail was a foot out of water, her deck was under water. They secured the mainmast, set up the rigging, disentangled the lumber, got out two hawsers, and lighted oakum dipped in a barrel of oil which was on board, so that the Osprey could find them. About 10 o'clock at night the Osprey came up, and the rescuing party got something to eat for the first 553 time since morning. Five men staid on board the Henderson, Capt. Brown being in command, and the remainder, Robert West being in command, managed the Osprey. She towed the Henderson all night, with an increasing E. S. E. breeze. At 5 o'clock A. M. on Thursday there was a strong breeze, which increased till 11 o'clock A. M., when there was a high wind. At this time the vessels were S. S. E. of Block island. The hawsers parted off Block island about 11 o'clock. The Osprey made fast to the Henderson again at Montauk. They continued together seven or eight miles, till they parted again in the Race about 6 o'clock.

The vessels reached New London about half-past 8 o'clock on Thursday evening. Soon after they arrived there was a very heavy thunder-storm.

The small boat which the Osprey sent on Thursday morning to the Henderson, to provision her was upset, the provisions were lost, and her crew had nothing to eat until they reached New London. The Henderson was full of water; the only dry place on her was aft; her masts swayed to and fro; and she steered very hard. When the wind was strongest she carried foresail and jib. The wind was south-east until 3 o'clock P. M. on Thursday, when it changed to south. The most difficult part of the voyage was in the Race. Without the aid of another vessel the Henderson could not have been brought to port. The Osprey could not have done it without the aid of the Nantucket men.

The testimony was substantially Concurrent that it was better to go to New London than to New Bedford or Nantucket. The point in dispute was whether it would not have been better seamanship to go to Newport rather than to New London, which is confessedly the more distant port from the point where the Henderson was found. The Osprey did not start for New London, but kept away from the land, so that if the wind shifted she might be in readiness to go to the Vineyard or to New Bedford or to New London. When she made Block island, Capt. Brown thought of going to Newport, but at that time, certainly, New London was the safest harbor to make. I am of opinion that the captain exercised good judgment in the course which he pursued from the beginning of the voyage.

The Henderson was 3 years old, rated A 1, cost \$27,354, and, before the accident, was worth \$23,000. To repair and provide her with furniture and an equipment cost \$7,137.11. In her disabled condition, when she reached New London, she was worth \$16,000. Her cargo was worth \$5,000. The Osprey was worth \$1500. The 554 danger from which the

Henderson was rescued was very serious. It is impossible to tell whither, she would have drifted,—whether to sea, as is the theory of the claimants, or to Martha's Vineyard or Muskeget channel, as is the opinion of the libelants. But, when she was found, she was in the hands of those who were stripping her. She would then have been turned adrift, without sails or rigging, and, if found by a passing vessel, would have been unable to help herself in the violent weather of Thursday and the following days. Her ultimate fate would have been very problematical.

The services of, the salvors were prompt, energetic, untiring, laborious, and skillful. They started between 4 and 5 o'clock in the morning. The captain started about 7 o'clock, and could not get out on account of a calm. When the wind died away the salvors rowed 18 or 20 miles for 5 hours, and found the vessel in the hands of wreckers, then rowed 12 miles more, without food, and got peaceable possession, From that night till the next night the men on board the Henderson were without food, and the men on both vessels were without sleep. They were at constant and hard work for two entire days, and on Thursday in a work of danger. The cargo of the Henderson was so buoyant that she could not sink, but in the violent weather of Thursday the chances which her crew took of the vessel's tripping, and of being themselves sent overboard, are not to be overlooked. The contrast between their promptness and energy and the captain's somewhat leisurely, movements, is apparent. The libelants worked under the spur of the hope of unusual reward, while the captain felt no such goad. Their promptness saved the vessel and cargo from great danger.

The vessel was by the captain's order abandoned by her crew, with no expectation of return. The master engaged a vessel and crew to go after the wreck, and

had more than a mere intention of saving his vessel. He took steps to return himself, and to endeavor to save her. I do not think it material to find whether she was not technically a derelict, because, in the present state of the law in regard to the amount of salvage it seems, to me that the question is not one of substantial importance. *Post v. Jones*, 19 How. 150; *The Florence*, 20 Eng. Law & Eq. 607. The vessel, at least, came near to being a derelict, and was quasi, derelict.

Under all the circumstances of the case, I think that the libelants are entitled to the sum of \$4,950, and their costs. The salvage is to be divided in the following manner:

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| To the owners of the vessel, | \$1,000 |
| | 00 |
| To Capt. Wallace Brown, | 600 00 |
| To Robert F. West | 500 00 |
| To Robert Matchet, the mate | 400 00 |
| To each one of the other three smacksmen, | 900 00 |
| \$300, amounting to | |
| To James Ramsdell, the owner of the whale- | 350 00 |
| boat, | |
| To each one of four other Nantucket men, | 1,200 |
| \$300, amounting to | 00 |
| | \$4,950 |
| | 00 |

I should have allowed to the Nantucket men more than to the smacksmen, on account of their extra expenses at New London, and in returning home, but I cannot avoid the idea that there was a flavor of unfairness in their hurrying away from Nantucket, without communicating with the captain, who, they had good reason to suppose, was organizing an expedition for the relief of his vessel; On the other hand, the captain would not probably have found his Vessel. He would not, in all probability, have got away in his chartered vessel from Nantucket, either in the day-time on Wednesday or on Thursday.

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