

## THE ALICE M. MINOT.

DENMEAD and others v. THE ALICE M. MINOT.

*(District Court, E. D. Virginia. February 1, 1887.)***SALVAGE—FIRE—TOWAGE—AWARD.**

On November 11, 1886, fire was discovered in the hold of a cotton vessel loading at the wharf at West Point, Virginia. A tug went to her, and towed her away from the wharf into deeper water, where she was sunk by her crew, and the fire thus extinguished. The service was not attended with any danger to the tug or her crew. The value of the vessel and cargo in their damaged state was \$72,000. The court awarded \$500 as salvage.

*(Syllabus by the Court.)*

In Admiralty. Libel for salvage.

*James Lyons Proctor*, for salvors.

*W. T. Bagby*, for respondent.

HUGHES, J. On the eleventh day of November, 1886, about 5 p. m., while the American ship *Alice M. Minot* was taking on a cargo of cotton at the wharf at West Point, Virginia, and had received 1,834 bales, worth \$73,360, it was found that her cargo was on fire down in the hold. Considerable smoke came up from the fire, and disclosed its dangerous character. Experience has taught that a smothered fire in a mass of cotton bales stored in the hold of a vessel is rarely extinguishable in any other way than by sinking the ship up to her decks in water. All the appliances in the nature of hose and engines available on the dock and on the vessel at the time were used in an attempt to extinguish the fire, and proved ineffectual. It is not shown satisfactorily that the water was deep enough where the ship lay by the side of the dock to admit of her being scuttled and sunk at that spot; and the person who had command of her, (in the absence of her master, who was in Norfolk,) for reasons satisfactory to himself, deemed it necessary that the ship should be towed off from the dock into water of suitable depth, and sunk there. The steam-tug *Claribel* belonging to the libellant was lying off the dock. The steamer *Baltimore*, with cargo and passengers on board, bound for Baltimore, ready to depart on her regular trip, was also there about to leave. She was not called upon to tow the ship out into the harbor, and went on her way. As soon as the master of the *Claribel* saw that the steamer *Baltimore* was gone or going, he went from the wharf to his tug to bring her to the relief of the ship on fire. When he reached his vessel, he found that the person temporarily in command of the ship had sent word for his tug to come to her relief. Although he was not fully fired up, the master went at once to the ship. He then took hold of the ship, and towed her out into the channel to a place deemed proper by the temporary master of the ship. She was there sunk, having been previously scuttled by those on board of her, including her own crew. The ship was worth about \$24,000 and was saved. The cargo, in dam-

aged condition, has been sold for \$47,684. The evidence does not show that the ship was much damaged. She afterwards took on a cargo, and set sail for Liverpool.

The ship and cargo were raised the next day by the tug and its crew, under a special contract, with which I have nothing to do in considering the question of salvage. I think this was a case of salvage. The master of the tug was under no other than strong moral obligation to go to the relief of the ship. He was under no legal one. His was the only vessel in port at the time he went that was capable of rendering the service needed. He had determined to go to the ship's relief of his own accord. When about to do so, he got word from the ship, calling him to her rescue. The service which he rendered was not attended by any danger to his tug or her crew, and the service had not that important element of merit and value in it which often belongs to salvage service. But the service was absolutely necessary. The sinking of the ship by the side of the wharf covered with vast stores of cotton, towards which the wind was blowing from the ship, was not to be thought of. Nobody thought of it at the time. To have sunk the ship there would have been a criminal act of reckless indifference to the large interests of life and property that would have been put in jeopardy. The court will not listen to the suggestion that the ship could have been scuttled at the side of the dock, or consider whether the water there was deep enough for the purpose; which the evidence tends to show that it was not. Those in charge of the ship properly determined that it was necessary that she should be towed, not only out into the channel, but a prudent distance up the channel. The tug was not bound, except morally, to perform this service. She was about to do it without request, when she was called upon from the ship to do it; and she did it voluntarily. When a ship is saved from impending peril by the voluntary service of those coming to her aid, that is salvage service.

Circumstances of risk, daring, expense, and difficulty render the service of high or low grade; but in all cases where the service is of the character of salvage, the courts award a bounty willingly and not grudgingly. I would not be justified, however, in making the bounty a heavy one in this case. The value saved was about \$72,000; but this is not a case for a proportion or a percentage. I think \$500 would be a liberal allowance for the service rendered in towing the ship into and up the channel to the place of safety where she was scuttled and sunk, and where she was relieved of the peril of the fire which would, but for this service, have consumed herself and her cargo. I will sign a decree for this \$500, and for the amount due for raising the ship indicated by the special contract that was made for that service.

THE ROBERT H. BURNETT.<sup>1</sup>

PENNSYLVANIA R. CO. v. THE ROBERT H. BURNETT.

*(District Court, D. New Jersey. February 15, 1887.)*

## TOWING AND TOWAGE—TUG AND TOW—NEGLIGENCE—SUNKEN ROCK.

A tug is required to have a knowledge of the condition of the bottom and of the depth of water in the river that she is navigating. The master of a tug employed in the Harlem river should certainly be aware of the existence and location of a well-known reef; and if his tow, in consequence of this ignorance, is injured, the tug will be liable.

In Admiralty. Libel *in rem* for negligent towage.

*Biddle & Ward*, for libellant.

*Wm. T. Francisco*, for respondent.

WALES, J. The tug Robert H. Burnett was employed to tow the libellant's barge, laden with 262 tons of coal, from Jersey City to Harlem station. The barge was securely lashed to the port side of the tug, and was the only tow. The weather was fair, the time a little after noon, and the tide about a quarter flood, when, at a point about abreast of or little above One Hundred and Twenty-fifth street, in Harlem river, the barge struck on a rock, at the distance of from 100 to 110 feet from the western shore, and was so badly injured that she had to be beached to prevent her sinking. At low tide the depth of water at the place of the accident was six feet, and at the time the barge struck could not have been over seven. The barge drew seven feet aft, and towed down a little lower. It was generally known, by pilots and water-men who navigated the river, that between One Hundred and Twenty-first and One Hundred and Twenty-sixth streets a rocky reef underlies its surface, irregular in shape and direction, running in and out at a distance of from 75 to 100 feet from the western shore, and that prudent and cautious masters were accustomed to give it a wide berth. A buoy was placed at One Hundred and Twenty-first street to mark the beginning of the reef. At One Hundred and Twenty-fifth street the river is 600 feet across, and has a channel-way of 400 feet in width, with 25 to 30 feet of water. After the accident, the captain of the barge took soundings with a pole at the spot where the barge struck, and had no difficulty in finding the rock in the location described.

The captain of the tug testifies that he had been running on the river for a year or more, but that he had no knowledge of the position of this rock, and had never heard of the reef. This admission of ignorance of notorious facts, about which there can be no question, leaves him without any excuse for going so near to the western shore as he did. The pretense that he sheered in to avoid a tug with two large car-floats in tow, which was coming down the river, but which no other witness saw, does

<sup>1</sup> Reported by Theodore M. Etting, Esq., of the Philadelphia bar.