

United States v. Holmes, U. S. Circuit Court, 1842

The *William Brown* left Liverpool on March 13, 1841 for Philadelphia. She had 17 crew and 65 passengers, mostly Scotch and Irish emigrants on board. At about 10:00 p.m. on the night of the 19th of April, some 250 miles southeast of Cape Race, Newfoundland, the ship struck an iceberg and began to fill so rapidly that it was evident that she must go down soon. Both the long boat and the jolly boat were swung clear and lowered into the water. The captain, second-mate and seven other members of the crew plus one passenger clambered into the jolly boat and 41 persons rushed willy-nilly into the long boat (32 passengers and all 9 of the remaining crew). Within an hour and half of being struck, the ship went down. Thirty passengers in all, many of them children, were on board when the ship sank.

On the following morning the captain ordered the mate to take charge of the long boat before the two life boats parted company. The long boat was in fairly good condition but she had not been in the water since Liverpool and as soon as she was launched she began to leak. And she continued to leak throughout that first night and was now leaking still. The passengers, with the help of various buckets and tins, were able by bailing to reduce the water and keep the long boat afloat. The plug which was about an inch and half in diameter came out more than once. Add to this the fact that the long boat was very crowded and the weight of passengers and crew brought the gunwale to 5 and 1/2 inches of the water. Also to make matters worse it began to rain and continued to rain throughout the day and night of that first full day at sea. When the sun went down, the wind picked up and waves splashed over the long boats bow. Water was coming down from above, from over the side and from below and at about ten o'clock at night the situation became desperate. The boat was quite full of water and the mate, who himself was bailing frantically, cried out, "This . . . won't do. Help me, God. Men, go to work. The crew, as if understanding what the mate was ordering them to do, did not respond. Several passengers cried out, The boat is sinking. The plugs out. God have mercy on our souls. And the mate exclaimed again: Men, you must go to work, or we shall all perish."

The crew then went to work. The mate ordered the crew not to part man and wife, and not to throw any women overboard. No lots were cast, nor had there been any discussion among all of those on board about what to do in such an emergency. There was no vote taken or consultation. The first to go was Riley whom Holmes, a mere sailor, but a man well respected by the passengers and crew, asked to "Stand up." He was then thrown overboard. When they came to Charles Conlin, he cried out, "Holmes, dear, sure you wont put me out?" "Yes, Charley," said Holmes, "you must go, too." One man asked for five minutes to say his prayers and was allowed, at the interposition of the cook, to say them before he, too, was thrown overboard. Frank Askin offered Holmes five sovereigns to spare his life until the next morning, when "if God don't send us some help, we'll draw lots, and if the lot falls on me, I'll go over like a man." But Holmes only said, "I don't want your money, Frank," and put him overboard. Askin struggled violently while he was being put out, but the boat did not capsize. When the crew had done their work, 16 passengers (14 men and two women) were thrown out, although the sacrifice of the two women may have been an act of devotion and affection for their brother, Frank Askin. When Holmes seized Askin, the two sisters pleaded for his life and said if he were thrown out, they wished to die, too and after he was gone, one of the sisters said "and I care not now to live longer."

The boat had provisions for six or seven days for those remaining on board: 75 pounds of bread, 6 gallons of water, 8 or 10 pounds of meat, and a small bag of oatmeal. The mate had a chart, compass, and quadrant. On Wednesday morning, the morning that followed that fateful night, Holmes was the first to spot a vessel. He told the passengers to lie down and be very still. If they make out so many of us on board, they will steer off another way and pretend they have not seen us. He fastened a woman's shawl to a boathook and began waving it wildly. They were spotted and the *Crescent* picked up everyone in the long boat who had survived the night.

The *Crescent* was bound for Le Havre and when the ship arrived, public sentiment had already hardened against the crew and they were arrested but almost immediately released when the British and American consulates assured the authorities that the crew had done nothing wrong. Eventually many of the surviving passengers and crew made it back to Philadelphia, their home port (the *William Brown* was out of Philadelphia, its original destination, remember, when it set sail from Liverpool).

News travels fast and the story of the crew's exploits preceded them. *The Public Ledger of Philadelphia* demanded that the mate and sailors of the *William Brown* who threw the passengers overboard to save themselves, should be put upon trial for murder. And the editorials in other papers were no less vehement. *The New York Advertiser* complained that "we have emigrant ships sailing every week, and if it is held as law that might is right and that the crew are justified under extremities in throwing overboard whom and as many as they think right, without casting lots, or making other choice than their will, it had better be declared so."

Several passengers who survived that fateful Tuesday night filed a complaint against the crew with Philadelphia's District Attorney. Holmes, who was the only crew member then in the city, was arrested and charged with the murder of Frank Askin, the man who had offered Holmes five sovereigns to spare his life. Before trial the charge was reduced to voluntary manslaughter, after the grand jury refused to indict Holmes for murder. Holmes was indicted under the Act of 1790 which ordained that "if any seaman, etc . . . shall commit manslaughter upon the high seas, on conviction, shall be imprisoned not exceeding three years and fined not exceeding one thousand dollars." Holmes was taken under the wing of the *Female Seaman's Friend Society* and the *Society* helped him secure David Paul Brown, the best criminal lawyer in Philadelphia at the time.

At trial the prosecution argued that full and distinct notice of the danger should have been given to all on board and that lots should have been cast, before the sacrifice of any for the safety of the rest would become justifiable. Brown, in defense of Holmes, argued that in situations of necessity, conventional law ceases to operate and gives way instead to natural law, i. e. the law of self-preservation and Brown argued the law of self-preservation is no different and is just as compelling as the law of self-defense. Brown appealed directly to the jury: "You sit here, the sworn twelve, . . . reposing amidst the comfort and delights of sacred homes . . . to decide upon the impulses and motives of the prisoner at bar, launched upon the bosom of the perilous ocean surrounded by a thousand deaths in their most hideous forms, with but one plank between him and destruction."

Holmes was convicted and sentenced to six months in jail and given a \$20 fine. A Presidential pardon relieved him of the fine but he served his entire sentence. Upon his release, he returned to the sea, as had the rest of the crew, none of whom were ever tried for their part in the whole affair. Even the long boat was repaired and sent out as a lifeboat on another voyage.