

BRITISH COLUMBIA ADMIRALTY DISTRICT

1952
June 25 &
26
July 2

BETWEEN:

PACIFIC SALVAGE LTD.PLAINTIFF;

AND

CANADIAN PACIFIC RAILWAY)
CO., WESTMINSTER PAPER CO.) DEFENDANTS.
LTD., and AMERICAN VISCOSE)
CORPN.)

Shipping—Salvage—Subsidy not considered in making an award for salvage—Amount of award.

Held: That an award for salvage should be liberal and consideration should be given to every relevant factor such as the danger involved in performing the service, the value of the property salvaged and the availability of other vessels, but not to a subsidy paid by the Dominion Government to one vessel employed in performing such service.

ACTION for salvage.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

John L. Farris, Q.C. and Donald Pool for plaintiff.

J. A. Wright and J. G. Alley for defendant Canadian Pacific Railway.

Alfred Bull, Q.C. and C. C. I. Merritt for other defendants.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH, D.J.A. now (July 2, 1952) delivered the following judgment:

In this action the plaintiff asks the Court to award salvage remuneration for services rendered to the ss. *Nootka* and her cargo on March 15, 1950, and subsequent days, in the following circumstances:

The plaintiff company is the owner of two vessels specially equipped for salvage operations. They are the *Salvage King* stationed at Victoria, and the *Salvage Queen* at Vancouver. With respect to the former the plaintiff receives a subsidy at the present time of \$25,000 a year from the Dominion Government. These vessels are kept available day and night in readiness to go to the assistance

of any ship in distress. For this purpose they are, generally speaking, fully equipped to carry out any kind of salvage operation. The evidence shows that the *Salvage Queen* is valued at \$97,000 on the books of the company, and has a replacement value of \$200,000. She costs for maintenance \$3,000 per month lying alongside her dock awaiting a call. It will be convenient to mention here that the salved value of the cargo is agreed at \$200,000, and that on the evidence I place the salved value of the *Nootka* at \$15,000, making a total salved value of \$215,000.

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On the aforesaid date the ss. *Nootka* (owned by Canadian Pacific Railway Company) was on a voyage from Port Alice, B.C. to Vancouver, B.C., loaded with a full cargo of some 1,700 tons of processed wood pulp (owned by the other two defendants), and about 8 p.m. was proceeding in a southeasterly direction through Johnstone Strait, at that point about 1 mile wide. The weather was bad: there was blowing a S.E. gale with wind velocity of 40 miles per hour and with heavy rain squalls which much impaired the visibility but, in these narrow waters, with no sea. What happened then is described in the ship's log thus:

WEDNESDAY, March 15th, 1950.

8.16 p.m.—Steering E. & S. ship stranded on southern tip of Walkem Islands. Engines stopped immediately. Engine room time 8.17 p.m. Bilge pumps started immediately. Fish oil pump from fore peak at 9 p.m.

Soundings were taken around the ship and we were found to be resting on a rocky ledge with least depth of water 2 fathoms at break of forecastle head starboard side and 2½ fathoms opposite foremast. From that point the water deepened to 25 fathoms at the stern.

On the port side least depth found was 3 fathoms at forecastle head, 4 fathoms opposite foremast and then deepening to 25 fathoms at stern. Capt. Gillison, Vancouver, was notified by telephone. Tank soundings were taken and four feet of water was found in fore peak with no change in other tanks. A call was sent out to any tow boats in the vicinity to which the *Skeena Beaver* and *Sekani* answered. Tank soundings at 9 p.m. showed the fore peak rising and water coming in slowly in No. 1 D.B. (double bottom) fuel oil tank.

Tank soundings at 10 p.m. showed the fore peak tank at sea level. No 1 D.B. rising slowly and No. 2 hold 1 foot 6 inches.

At 10.18 p.m. ship's head swung quickly to port. Believing the ship to be afloat, as the tide was rising, the engines were put half astern, then full astern and stopped. Engine room times were half astern 10.19½, full astern 10.20 and stopped at 10.22½. Ship was still held fast on reef with her head N.N.W. 10.30 p.m. lifeboats swung out. Soundings were again taken on the starboard side where at low water a depth of 30 feet

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was found at stem, 19 feet abreast No. 1 hatch, 15 feet at foremast, 17 feet at No. 2 hatch, 19 feet at forward end of bridge deck, 36 feet at after end of bridge deck and then deepening rapidly.

On the port side 21 feet at forecastle head, 24 feet at foremast, 24 feet at forward end of bridge deck then deepening rapidly.

At 10.45 p.m. *Skeena Beaver* arrived and tied up alongside.

Smith, D.J.A. THURSDAY, March 16th, 1950.

At 1.15 a.m. *Sekani* arrived. At 3.40 a.m. had *Sekani* placed on port quarter to hold ship steady as she started to swing in current.

8.45 a.m. *Salvage Queen* alongside with salvage crew and pumps.

10.10 a.m. Barge *V.T. 28* put alongside, port side, and discharging of pulp from No. 2 hatch commenced.

10.30 a.m. commenced discharging pulp from No. 1 hatch.

Noon—Quit for lunch.

12.30 p.m.—Resumed discharging pulp from Nos. 1 and 2.

5 p.m.—Quit for dinner.

6 p.m.—Resumed discharging at No. 2.

7 p.m.—Longshore gang resumed discharging No. 1.

11 to 11.30 p.m.—Crew quit No. 2 for night lunch.

Midnight—Longshore gang quit No. 1 for night lunch.

FRIDAY, March 17th.

1 a.m.—Longshore gang resumed discharging No. 1.

2 a.m.—Stopped discharging both hatches.

2.01 a.m.—Full astern. Ship backed off reef, with assistance of tug *Sekani* on port quarter.

2.03—Stopped engines, ship afloat.

2.05—Half astern; 2.06 Half ahead; 3.33 Ripple Pt. abeam;

3.49—Edith Point abeam; 3.54 a.m. stop; 4.22 a.m. anchored in Mayne Passage; Port Anchor, 18 fathoms water, 45 fathoms cable.

6 a.m.—Longshoremen finished covering pulp with tarpaulins and left for Rock Bay on *Skeena Beaver*.

6.15 a.m.—*Sekani* departed.

6.30 a.m.—Tug *La Force* left with barge *V.T. 29*.

FRIDAY, March 17th, 1950.

2.08 p.m. Departed Mayne Passage.

(Details omitted here as not material)

SATURDAY, March 18th, 1950.

6.35 a.m. Arrived Vancouver.

I have set out the foregoing log entries in full, because they describe the events that happened succinctly and accurately, and also because they seem to me to be the correct and seamanlike way to enter up the log-book on occasions such as these.

The entries (and the evidence supports them) indicate a routine salvage service with no special difficulties or complications. The gale moderated next morning and blew itself out during the day. It did not affect the salvage operations. These proceeded smoothly due largely to the co-operation of all concerned; and in particular of Capt. Robson, Master of the *Nootka*; Capt. Clarke, Chief Surveyor at Vancouver of the Board of Marine Underwriters of San Francisco; Captain Gillison, Marine Superintendent at Vancouver of the Canadian Pacific Railway Company; and Mr. George H. Unwin, Salvage Superintendent of the plaintiff company. Of these four gentlemen Capt. Clarke and Capt. Gillison at Vancouver were the controlling minds. Their word was final. On board, at the scene of operations, Mr. Unwin and the Master of the vessel worked in the closest harmony.

The first vessel to arrive was the *Skeena Beaver* at 10.45 p.m. This tug-boat acted as a messenger and general run-about throughout the operations. She has nothing to do with the plaintiff company and makes no claim in these proceedings. The *Sekani* (valued at \$90,000) arrived at 1.15 a.m. on Thursday. She was on charter to the plaintiff company. She performed one single duty, viz., to keep the *Nootka* steady across the Strait on her NW heading. The whole purpose of this was to prevent further damage to the forward bottom plating of the *Nootka* by such plating crunching on the rocks were the *Nootka's* stern allowed to swing freely in the current. The *Sekani* performed this duty under direction of Capt. Robson, who shifted her from one quarter to the other as the current changed. Her job was therefore one of a less exacting nature—simply pushing with her nose against the side of the *Nootka* with a force just sufficient to keep the *Nootka* steady. She commenced this duty at 3.40 a.m. on Thursday and continued it until 2.01 a.m. on Friday when the *Nootka* got free. This is the “assistance” referred to in the log.

The next vessel to arrive was the *Salvage Queen* at 8.45 a.m. on Thursday. Her service consisted of supplying pumps and of standing-by. Her crew assisted in the discharge of the cargo (500 tons in all were unloaded into Barge *V.T. 28*). Longshoremen arrived at 4.15 p.m. on Thursday, as arranged by Mr. Unwin and the Master.

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They had previously arranged for the use of Barge *V.T. 28* towed thither by the tug *La Force*. At Mayne Passage Unwin (who was also a master-diver) examined the ship's bottom. He found her seaworthy to proceed to Vancouver. This she did under her own steam accompanied by the *Salvage Queen* whose pumps and pump crews were kept on board until her arrival at Vancouver on the morning of the 18th, and until she docked at Pacific Drydock, North Vancouver, two days later.

I think all witnesses gave their evidence with frankness. But the testimony of Capt. Robson particularly appealed to me. I judged him to be an able ship-master who gave his account of the happenings with forthright accuracy. Nor had I any difficulty in accepting the evidence of Mr. Unwin, save as to this: I have a note in my bench-book of his saying that if the *Sekani* had not been there the *Nootka* and cargo would have become a total loss. I am not able to accept this. I think in this event the *Skeena Beaver* would have been available to steady the *Nootka* and there is nothing to show her incapable of so doing. Failing this, other tugs would have been sent thither by Clarke and Gillison. And even failing these tugs being forthcoming, I am satisfied on the evidence that (within any reasonable time) there might have been some further damage to hull and cargo, but nothing more. This is the view of the Master, and I see no reason to question its validity. One must remember, as Mr. Bull pointed out, that all this happened in the narrow sea highway between Vancouver Island and the mainland.

In these circumstances I have to determine the appropriate award. In *The M.V. Florence No. 2* (1), I referred to the factors which go to the making of a salvage award, and I need not repeat them here. The award should be liberal. Salvors should be encouraged: particularly those with a special type of vessel such as we have here. (See *The Glengyle*, infra). Reference was made by counsel to Sutton on the Assessing of Salvage Awards (1949). Defendants submit that under the system elaborated

therein, in the light of the author's careful analyses of recent cases, the award would not exceed at the utmost 6 per cent of the salved value. This would seem to be so.

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The nearest comparable case referred to was *The Glengyle* (1), and in the Lords. In that case two specially equipped salvage vessels, owned by separate companies and kept ready at Gibraltar, went to the assistance of a passenger vessel the *Glengyle* which had been in collision and whose passengers and crew had been transferred to the colliding vessel. The salvors made fast one on each side of the *Glengyle*, admittedly in a sinking condition. They succeeded in beaching her, at considerable danger to themselves and their crews, for had the *Glengyle* sunk on the way, there was "not a certainty but a great probability" that salving vessels and their crews would have been lost too. They were awarded £19,000 which was 25 per cent of the salved value. They each received one-half of this award. But there the circumstances were very different from those here. There, there was danger: here there was none. There the service was performed by two very specially equipped salvage vessels, with none others available that would have been of the slightest use; here there was on such vessel and a tug, with other vessels and tugs, which could have done the job just as efficiently, readily available. There the service was on a "no cure, no pay" basis; here had the service utterly failed the plaintiff would still have received all expenses and some margin of profit as well.

Comparing that service with this, and taking into consideration every relevant factor (but not the subsidy) it may be said that there is no justification here for an award greater than 10 per cent of the salved value, viz., \$21,500. Nevertheless, I think a more adequate award would be the good round sum of \$27,500. In this regard I have particularly in mind the rather large items paid by the plaintiff and set out in its statement of claim, as a guide; and also the fact that while, no doubt, the higher cost of everything today is reflected in plaintiff's favour by the higher salved value,

(1) (1898) P. 97. (1898) A.C. 519.

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yet I am not sure that this would afford complete compensation in the present case. And I think it was conceded that the costs generally of such operations in Western Canada today differ widely from those prevailing on the Continent of Europe half a century ago.

Smith D.J.A. The plaintiff will therefore have judgment for \$27,500 and costs.

Judgment accordingly.