

1923
Feb. 24.

BRITISH COLUMBIA ADMIRALTY DISTRICT

LARSEN PLAINTIFF;

AGAINST

THE GAS BOAT

Shipping—Salvage services—Conditions necessary before ship becomes derelict or abandoned.

On the 12th December, 1922, at 11.35 a.m., the owner of the *G.B.* coming down the Fraser River had engine trouble and decided to anchor the *G.B.* and go ashore for assistance. Though apparently the anchor cable was long enough, in some unexplained way the *G.B.* got adrift and when the owner returned, at about 4 p.m., she was not to be found. At 2.30 p.m. the *C.* finding the *G.B.* adrift towed her to Vancouver. The weather was fine with a light breeze and no sea to speak of. The *G.B.* was drifting slowly and was impeded by the trailing anchor.

Held that it could not reasonably be assumed that the *G.B.* would have been carried across the gulf in the dark and be seriously damaged or lost, and that the element of danger was too remote and speculative to permit of the services rendered the *G.B.* being regarded and compensated for as salvage services.

2 That, on the facts, the *G.B.* could not reasonably be regarded as an apparent derelict.

ACTION by the owners of the steam tug *Clive* for alleged salvage services rendered to the *Gas Boat*.

February 14, 1923.

Case now tried before the Honourable Mr. Justice Martin at Vancouver.

Hume B. Robinson for plaintiff;

A. J. B. Mellish for the ship.

The facts of the case are stated in the reasons for judgment.

MARTIN, L.J.A. now (24th February, 1923) delivered judgment.

This is an action for alleged salvage services rendered to a gas boat (30 feet in length, unnamed) which the plaintiff's steam tug *Clive* picked up in passing in to Vancouver on 12th December last about 2.30 in the afternoon when some three miles off Point Grey, in the Gulf of Georgia, and towed to Coughlan's Wharf, False Creek, Vancouver, arriving there about an hour and a quarter thereafter; the weather was fine with a light breeze and no sea to speak of. The tug on her approach to Point Grey from the Fraser River had sighted the gas boat drifting

about aimlessly and so ranged up alongside and finding no one on board, and with some water in her and an anchor attached to a manila rope trailing over her stem, boarded her without difficulty, pulled up the anchor and towed her to port as aforesaid. It appears that earlier in the day the owner of the gas boat, George Thomson, in company with John Barkley, in coming down the Fraser River had trouble with her engine and when off Sturgeon Point, near the wireless station at Point Grey, decided to anchor her at 11.35 a.m. and go ashore for assistance, but though apparently a proper length (20 feet) of cable was paid out, in some unexplained way the boat got adrift, and when later in the afternoon shortly after 4 o'clock Thomson reached the place he had anchored her, she was not there to be found.

On behalf of the *Clive* evidence was given to the effect that with the ebb tide setting out of English Bay it was probable that the *Gas Boat* would have been carried across the Gulf sixteen or seventeen miles away in the direction of Porlier Pass, and that as it grew dusk at about 4 o'clock, she would probably not be picked up that evening or night and so would be beached and damaged, if not destroyed, on some of the islands across there. And it was further submitted that in the circumstances she should be regarded as an apparent derelict within the meaning of the decision of the Supreme Court of the United States in *The Island City* (1), the passage relied upon, I presume, being this:—

The crew had left her thus apparently abandoned. The Westernport was, therefore, justified in taking possession of her, and taking her to a place of safety in the port of Hyannis, and to have a liberal salvage compensation, even if it should turn out that the barque had not been derelict.

But the court goes on to say:

To constitute a case of derelict, the abandonment must have been final, without hope of recovery, or intention to return. If the crew have left the ship temporarily, with intention to return after obtaining assistance, it is no abandonment, nor will the libellant be entitled to the salvage as of a derelict.

I find it difficult, with all possible respect, to fully appreciate the effect of these apparently contradictory passages; but it is not necessary in this case to attempt to do so, because the circumstances here are of a very different

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(1) [1861] 66 U.S. 121.

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nature from those perilous ones in which the *Island City* unhappily found herself, dismasted and rudderless, and left, though temporarily, on her stream anchor only, to ride out a storm.

In the light of all the circumstances of this case I am unable to take the view that the *Gas Boat* could reasonably be regarded as an apparent derelict; on the contrary, she had obviously drifted away from her moorings not far off and at the slow rate of progress she had made in her drift, impeded by the trailing anchor, I am unable to take the view that there was a reasonable apprehension of her being carried across the gulf in the dark; the element of danger is too remote and speculative to permit the service to be regarded as salvage from any point of view and it comes then to a question of remuneration for towage services. These were of a simple kind and took not more than an hour and a half, yet the boat is admittedly worth \$850 and the plaintiff lost further time in pumping her out at the wharf and in finding her owner, which was rendered unexpectedly difficult because she had no name painted on her.

No precise evidence of the value of this service was given, but the defendant offered \$10 which in my opinion is clearly inadequate, not to say niggardly. I think if he had offered \$25 this action would not have been brought, and as that would be a fair sum to allow, speaking from my long experience in these matters, judgment will be entered for that amount.

Judgment accordingly.
