

TRANSFER NO. 1.

FLOAT NO. 23.

DAVIS v. TRANSFER NO. 1 AND FLOAT NO. 23.

(District Court, S. D. New York. January 5, 1893.)

SALVAGE—BREAKING SHAFT IN HELL GATE—PROBABILITY OF DAMAGE.

Where a tugboat broke her shaft in Hell Gate, and, signaling for assistance, was taken into quiet water by libellant's steamboat, the service lasting about 20 minutes, it was held that in the strong tide of Hell Gate the liability of the tug to go ashore, if unaided, was a certain danger, and that the service rendered was therefore a salvage service, for which \$1,800, upon a value of \$46,000, should be awarded.

In Admiralty. Libel by Charles W. Davis against the steam tug Transfer No. 1 and Float No. 23 to recover salvage for assistance rendered to them by the Mary E. Gordon. Decree for libellant.

George A. Black, for libellant.

Page & Taft, for claimants.

BROWN, District Judge. In the afternoon of April 2, 1892, as the steam tug Transfer No. 1 was going through Hell Gate against the ebb tide, with a loaded car float lashed to her port side, she became disabled by the breaking of her shaft, when a little above the Astoria ferry, while going near the shore in the eddy, which there sets up towards Hallett's point. She signaled for assistance, and the libellant's small freight and passenger steamer Mary E. Gordon, which was a short distance below, and on one of her trips from New York to Mamaroneck, came up at once in response to the signals and threw lines to the tug and the float, and in about 20 minutes guided them into the still water below Flood rock between the two ebb currents, where the tug and float were taken in charge by a sister transfer of the claimants' line.

Though the service was short, it was, I think, of considerable importance. Had there been no danger either of stranding on Flood rock, or on Blackwell's island, or of collision with other approaching vessels, there was little reason for the signals given by the tug for a service which, as must have been known, would be of a salvage character. Further accident and loss were not indeed certain; but as the result could not be foreseen under the peculiar circumstances of that dangerous vicinity, the liability and danger of loss were certain. I am persuaded that in the eddy testified to by the claimants, as well as by the libellant's witnesses, the tug and float must have reached very near, if not quite, to the upper end of the eddy very near Hallett's point, before they were worked out into the stream; and that they could not otherwise, considering the comparatively weak power of the Gordon for towing purposes, and the strong ebb tide, have reached the point they did reach between the currents below Flood rock.

The value of the tug, float, and contents was about \$46,000; but the loss which might be reasonably anticipated from stranding would not in any probability involve nearly so much. The value of the

Mary E. Gordon and her cargo was from \$16,000 to \$19,000. Her service made her late for the tide at Mamaroneck, and delayed her about eight or nine hours in reaching her dock; and the deviation increased her responsibilities by affecting her insurance. The service, however, was not one involving any great danger to herself, though she suffered some damage to her house.

Taking all the circumstances into account, I think that \$1,800 will be a suitable award.

A decree may be entered accordingly, with costs.

THE SIRIUS.

CEDROS ISLAND MIN. & MILL. CO. (LOWE et al., Interveners) v. THE SIRIUS.

(District Court, N. D. California. January 3, 1893.)

No. 10,292.

1. SALVAGE—CONTRACT FOR TOWAGE—DURESS—AMOUNT OF COMPENSATION.

On a libel on contract for salvage services rendered by the steam schooner Tillamook to the steamer Sirius, the evidence showed that the Sirius, having lost her propeller and part of her shaft, was placed under such sail as she had, and, after drifting for three days, was anchored in a bay of an island off the coast of lower California; that she was in a dangerous position, as she could not get an offing with her small sail power, and in case of a southerly gale might go ashore; that the master of the Tillamook, which came to her assistance, proposed either to tow her to San Diego for \$20,000, or to furnish stores and gratuitously take an officer to San Diego to procure assistance; that the original purpose of the master of the Sirius was to send to San Diego for assistance; that he was positive his position was safe, and that he could get to sea before a southerly storm became dangerous; that he decided not to send an officer to San Diego, as he wished to avoid lengthening his voyage; that he claimed that \$20,000 for the towage services was unreasonable and exorbitant, and proposed either a reduction in the charge, or arbitration, or to leave the question to the owners to settle; that his propositions were rejected by the master of the Tillamook, whose vessel, with its small engines, might become disabled or too greatly strained by towing the Sirius, which was much larger; that the negotiations occupied an hour and a half; that the contract for the towage services at \$20,000, contingent on success, was drawn by the purser of the Sirius, and subsequently signed by her master; and that the Tillamook was valued at \$32,000, and the salvaged property at \$143,539. *Held*, that the situation of the master of the Sirius did not force him into the agreement, and the contract was not made under duress; and that the compensation provided for the service, though high, was not so unreasonable in amount as to justify the court in setting the contract aside as wholly inequitable and unjust. *The Wellington*, 48 Fed. Rep. 478, and *The Agnes I. Grace*, 51 Fed. Rep. 958, 2 C. C. A. 581, followed.

2. SAME—APPORTIONMENT.

The award of \$20,000 under the contract was distributed among the salvors by the court as follows: \$13,250 to the charterers of the Tillamook, which was the principal factor in performing the salvage services, and assumed the risk of failure and disaster; \$2,500 to the master of the Tillamook, who promptly procured additional stores for the Sirius, offered to go to San Diego at once for assistance, and undertook the towage service against the protest of two of his passengers; and \$4,250 to the other officers and crew of the vessel, according to their relations to the service performed, their extra work, and their regular wages.