

[ G.R. No. 10019. March 29, 1916 ]

**THOMAS A. WALLACE, PLAINTIFF AND APPELLANT, VS. PUJALTE & CO. AND MIGUEL PUJALTE, DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**MORELAND, J.:**

This is an action of replevin begun by the owner to recover possession of a schooner called the *Kodiak* which had been deserted by its captain and crew by reason of its having been capsized by a gale and which had been found, taken possession of and towed into port by the defendants Miguel Pujalte and Miguel Ossorio who, at the time the action was begun, were engaged in completing the salvage of the vessel. The defendants Miguel Pujalte and Miguel Ossorio set up their rights on the vessel as salvors and contend that they were entitled to the possession of the vessel until the salvage operations were completed and that, if possession were taken from them before that time, they were entitled to the same compensation as they would have been if the plaintiff had allowed them to complete the work.

There is little dispute about the important facts of the case. It appears that on the 4th day of August, 1913, the schooner *Kodiak* was lost off the coast of Mindoro, having been blown on her side by heavy winds. She was deserted by the officers and crew. In this condition she was floating at the mercy of the elements for three or four days. On or about the 7th of August, the report of her loss reached the Collector of Customs of the Philippine Islands who immediately issued a circular letter to the masters of all steamers and vessels plying in Philippine waters, declaring the *Kodiak* a derelict and a danger to navigation. As soon as the circular letter was received by defendants Miguel Pujalte and Miguel Ossorio they chartered the coast guard cutter *Mindoro* and proceeded to search for the lost schooner. On the 8th day of August they left the port of Manila carrying on board Captain Jose Munoz and some men, who were to take charge of, and direct, the salvage operations. Two days later the *Kodiak* was located, floating abandoned on her side, with all her sails unfurled and under

water. Immediately a boat, with Captain Jose Munoz and his men, was lowered from the coast guard cutter and, in the midst of a heavy sea and strong wind, they succeeded in making fast a rope to the stern of the *Kodiak*. They towed her into the port of Pola, reaching that port a day or two later, they being obliged to proceed very slowly not only on account of the heavy sea but also by reason of the fact that the *Kodiak* was full of water. Once in Pola Bay men were left in charge of the vessel while Captain Jose Munoz went back to Manila on the *Mindoro*, and reported to his employers. They immediately chartered the steamer *Lakandula* to carry workmen and to tow a lighter called the *Paquita* with salvage materials and implements to Pola Bay. They also dispatched the steamer *Maria Luisa Y.* to assist in the salvage work.

On the 12th day of August 1913 plaintiff's agent delivered to Miguel Pujalte the following letter:

"We have been informed that the schooner *Kodiak* has been towed into the port of Pola, Mindoro, by the cutter *Mindoro* belonging to the Government which was chartered for that purpose by you. The *Kodiak* belongs to Captain Thomas A. Wallace, of Binaluan (Palawan) and we are the persons to whom the vessel and cargo were consigned. On behalf of the owner of the *Kodiak* we offer to pay you for the services rendered in salving the vessel up to the present time, and we offer to take possession of the *Kodiak* where it now is on the beach of Mindoro. As representatives of the owner we shall refuse to pay any expense which you may incur from now on.

"Please furnish us with the amount of compensation to which you believe you are entitled.

"In case you ask more than we regard as reasonable we will pay you the amount decided upon by a board of arbitration to be selected by the officers of the Maritime Association; and if this is not agreeable to you we will pay you whatever a court of justice will adjudge.

"If you require it we will give a bond to carry the above offer into effect."

The appellant contends that *Lakandula* sailed from Manila for Pola on the 13th of August, basing that claim on the testimony of Captain Munoz, one of the witnesses for the

defendants, to the effect that "we arrived here (Manila) on the 12th and on the 13th we left with the *Lakandula* towing the lighter *Paquita*." The defendants contend that all the arrangements for the salvage of the *Kodiak* had been made before the receipt of the letter written by plaintiff's agent and that the larger part of the expenses for the salvage of the *Kodiak* had already been incurred at that time; that they therefore proceeded with the salvage and were about to finish their work successfully when the complaint was filed in this case and the possession of the schooner given to the owner by virtue of an order of the Court of First Instance of the 1st day of September 1913. They also claim that the defendants were at all times ready to finish the work of salvage which they had begun and would have done so but for the intervention of the order of the Court of First Instance referred to.

On the evidence the trial court ordered the vessel delivered to the plaintiff, but as a condition of such delivery the plaintiff was required to pay the defendants Miguel Pujalte and Miguel Ossorio the sum of ₱5,500 "on or before the first day of April, 1914, and in case payment thereof is not made as stated the defendants shall have judgment for the possession of the vessel for the purpose of disposing of it to satisfy their lien for salvage upon it." From this judgment the plaintiff appealed.

There is no doubt about the fact that the *Kodiak* capsized off the coast of Mindoro during a storm and that she was deserted by her officers and crew and left floating on her side with sails unfurled and under water. Nor is there question about the fact that the Bureau of Navigation of the Philippine Islands declared the vessel a derelict and dangerous to navigation and notified the public of the fact that she was floating as a derelict somewhere off the coast of Mindoro. There is no dispute over the expenditures which were incurred by Pujalte and Ossorio in their attempt to save the vessel. They allege in their answer that at the time the answer was filed they had spent ₱4,452.35 which, together with certain bills outstanding but not paid until after answer was filed, amounted to ₱4,970.49. The contention of the appellant is that the defendants were not acting in good faith in making these expenditures; that they padded the expenses and made them unnecessarily heavy hoping thereby to destroy a competitor, the owner of the *Kodiak*; that a considerable portion of the expenses were incurred after the owner delivered the letter of August 12 notifying the defendants that he would pay the expenses incurred up to the time the notice was served together with the compensation to which they were entitled, and that they would pay nothing from that time forward either as expenses or as compensation; that the services rendered were incompetently performed; and that the amount alleged as compensation and expenses and found by the court below is excessive.

There is a preliminary question relative to the parties defendant. Pujalte & Co. filed an answer saying that it had nothing to do with the salvage operations and had taken no part therein, and that it had no interest whatever in the litigation. Miguel Pujalte filed an answer setting out the facts and asking that the defendants be allowed proper compensation and the expenses incurred in the salvage operations. He also alleged that in the salvage of the *Kodiak* he acted jointly with one Miguel Ossorio who was interested equally with himself and asked that he be made a party defendant. While there appears in the bill of exceptions no order making Miguel Ossorio a party and there is in the record no answer filed by him, it is evident that he was considered a party defendant, inasmuch as the court all through the decision speaks of Miguel Pujalte and Miguel Ossorio as the defendants and renders a judgment in their favor jointly. While, as we have stated, it does not appear in the record before us that a written order was made and entered making Ossorio a party defendant we must assume that at least a verbal order to that effect was made and that the answer of Miguel Pujalte served also as the answer of Miguel Ossorio. This assumption is necessary in view of the attitude of the trial court which throughout the case treats Ossorio as a party defendant equally with Pujalte.

It would appear to us that the trial court was correct in finding that the vessel in question was a derelict. It had capsized and was lying on its side, its mast and sails submerged and with every indication that it might founder at any moment; it had been deserted by its officers and crew with no intention on their part to return; it was a menace to navigation and in that condition furnished a proper subject for seizure by any person who desired to save it or remove it from the routes of maritime traffic. It was taken possession of by the defendants under somewhat perilous circumstances and removed to a place of safety against a heavy sea. After its arrival at a place of safety but before it had been righted and floated the plaintiff's agent served upon Pujalte & Co. the letter quoted above.

Whatever might be said with regard to the effect of this letter on the relations between the parties if it stood alone in the record it is unnecessary to say. It is not a *demand* for the possession of the *Kodiak* in the sense in which that word is generally used. It is merely an *offer* to do certain things. We do not care to determine the precise effect of this offer from a legal point of view since it appears that the circumstances under which it was presented prevent it from producing any effect in the case. Miguel Pujalte testified that Martinez, who presented the offer to him, required an answer thereto at once or at most within 10 minutes. Pujalte informed him that it was impossible for him to make a statement to him at that time of the expenses which had been incurred as many of the bills had not been paid; and that it would be impossible to furnish him the information which the letter required

within the time specified by Martinez. Pujalte stated to him that he would acknowledge receipt of the letter but he could not furnish the information which Martinez demanded within the time specified. This testimony is not denied by Martinez although he was a witness for the plaintiff and testified in the case. Whatever effect the notice in question might have produced was nullified by the attitude of the plaintiff's agent who signed and served the notice they requiring that the defendants comply on the spot with the provisions thereof, particularly those relating to furnishing a statement of the expenses and the value of the services which had been rendered up to the time of the service of the notice. To fulfill this requirement was at the time clearly impossible and the defendants cannot be held responsible for their not doing so. It is clear that the attitude of Martinez was in effect a declaration either that if the defendants did not immediately comply with the terms thereof the offer would be withdrawn or that the delivery thereof to Pujalte was on condition that he comply with Martinez's verbal request. At the very least the attitude of Martinez was such as to leave us in doubt as to just what happened.

As to the claim that the expenses incurred by the defendants in salving the *Kodiak* were excessive and made intentionally so by the defendants is not sustained by the record in a manner which requires or would justify us in disturbing the judgment of the trial court in that respect. While there is some evidence tending to show that some of the expenses were unnecessary there is other evidence to the contrary and we are satisfied that under all the circumstances of the case the judgment of the trial court is supported by a preponderance of the evidence. That the services were incompetently rendered is also a disputed question in the case; and while there is evidence from which such an inference could be drawn we do not believe that the trial court could be said to be in error in drawing the opposite conclusion. It appears from all the facts and circumstances of the case that the defendants acted in good faith; that they kept the expenses within reasonable bound; that they acted with dispatch and performed their work, generally speaking, in a workmanlike manner.

As to the amount of compensation we cannot say that it is excessive. The ship was in a bad way and would very probably have been lost but for the prompt action by the defendants or the equally prompt action of some other salvor. Taking into consideration the expenses which the salvors incurred which amounted to nearly ₱5,000 we do not believe that the allowance of the amount of ₱5,500 is excessive as, according to the statement of the plaintiff, the ship was worth ₱10,000, while other witnesses placed the value from ₱11,000 to ₱12,000.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

*Torres, Trent, and Araullo, JJ., concur.*  
*Johnson, J., concurs in the result.*

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