

**THE MANILA RAILROAD CO., PLAINTIFF AND APPELLANT, VS.
MACONDRAY & CO., DEFENDANT AND APPELLANT.***G.R. No. 12475. March 21, 1918*

Ponente: STREET, J.

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This action was instituted by the plaintiff, the Manila Railroad Company, upon February 24, 1916, in the Court of First Instance of the city of Manila to recover of the defendant, Macondray & Co., the sum of P75,000, the alleged value of salvage service rendered on April 6, 1915, by the steamer Hondagua, owned by the plaintiff, to the steamer Seward, which was owned by the defendant. At the hearing judgment was rendered in favor of the plaintiff for the sum of P4,000. From this judgment both parties have appealed, the plaintiff insisting that the amount allowed by the lower court is inadequate, the defendant that it is excessive.

The facts as found by the judge of the trial court are substantially these: On the date mentioned the Seward left Saigon for the Philippine Islands, encountering a moderately high sea. The ship was laden with a cargo of rice, the weight of which, taken in connection with the condition of the sea, caused the vessel to spring a leak, and her master felt compelled to return to Saigon. At this juncture the steamship Hondagua was sighted, whereupon the Seward flew the international code signal "In distress; want immediate assistance." The Hondagua changed her course and approached the Seward the latter in succession displaying the following signals: "I have sprung a leak;" "I wish to be taken in tow;" "Can you spare hawser;" and "The leak is gaining rapidly." In response to signals from the Hondagua the Seward sent her own boat to the Hondagua for a heaving line, by means of which a hawser was passed from the Hondagua to the Seward and the former, with the latter in tow, then proceeded at half speed towards Saigon. Shortly afterwards, the Seward signalled "The leak is gaining rapidly," after which the Hondagua went full speed ahead, until the arrival of both vessels at Cape St. James, at the mouth of the Saigon River, where they anchored. The towing occupied some four or five hours, and covered a distance of twenty five or thirty miles. The Seward's engines were kept working until within an hour of her arrival at Cape St. James, when the water reached the engine room and put out the fires under the main boiler, leaving only the auxiliary boiler in use.

The court further found that the value of the Seward upon her arrival at Cape St. James did not exceed P20,000 and that the value of the cargo was approximately P54,000. The defendant company had no interest in the cargo, other than that of carrier, and the cargo was owned by shippers whose names do not appear of record.

There is of course no question as to the liability of the defendant, as owner of the Seward, for the service rendered by the plaintiff in towing that ship to safety. Nor is there any dispute over the fact that the service rendered was a salvage service and remunerable as such. The tow questions properly presented for decisions are these: (1) Is the plaintiff entitled to recover from the owner of the Seward, in this action, remuneration for saving the cargo as well as for saving the ship? (2) What is the reasonable compensation which should be allowed in this action?

Where a ship and its cargo are saved together, as a result of services carried on with a view to saving both, the

salvage allowance should be apportioned between the ship and cargo in the proportion of their respective values, the same as in a case of general average; and neither is liable for the salvage due from the other. (35 Cyc, 770; see also 24 Am. & Eng. Encyc. Law, 2d ed., p. 1219, The Alaska, 23 Fed., 597, The Colonel Adams, 19 Fed., 795.)

"The salvor must always bear in mind that * * * the interests in ship and in cargo are only severally liable. each for its proportionate share of the salvage remuneration. If one who has salvaged both ship and cargo brings before the court in his salvage action only the ship, or only the cargo, he will get judgment only for such an amount of reward as the court finds to be due in respect of the value of that property which is before the court." (Kennedy on Law of Civil Salvage, p. 186.)

In the case of *The Mary Pleasants* (Swab., 224), where salvage services had been rendered to the vessel herself and to the cargo aboard of her, the salvors proceeded against the ship alone. In the course of his judgment the learned Dr. Lushington said: "But the real difficulty is, that there is no proceeding against the cargo * * *. The difficulty, I say, arises from this circumstance, because when the court considers the services rendered to the ship and cargo, it always estimates the amount of salvage remuneration according to the value of the ship and cargo taken together. It is contrary to all principles of justice, if a cargo has received and been benefited by the services so rendered, that the whole burden of the salvage remuneration should fall on the ship itself."

Not only is the salvage charge a separate and divisible burden as between ship and cargo, but also as between portions of the cargo belonging to different owners. Thus, in an appeal by the claimants of the cargo, it was said by the Supreme Court of the United States:

"It is true that the salvage service was in one sense entire; but it certainly cannot be deemed entire for the purpose of founding a right against all the claimants jointly, so as to make them all jointly responsible for the whole salvage; on the contrary, each claimant is responsible only for the salvage properly due and chargeable on the gross proceeds or sales of his own property pro rata. It would otherwise follow that the property of one claimant might be made chargeable with the payment of the whole salvage, which would be against the clearest principles of law on this subject." (*Straton vs. Jarvis*, 8 Pet. [U. S.], 4; see also *Shields vs. Thomas*, 58 U.S., 3; *Spear vs. Place*, 11 How., 521.)

These authorities show that there is no common liability for the amounts due from the ship or other portions of the cargo when the ship and cargo, or either, are brought into the custody of the court as a result of a proceeding in rem. The rule of liability must be the same where a personal action is instituted against the owners of the one or the other. The personal liability of each must be limited to the proportion of the salvage charge which should be borne by his own property.

If it had been alleged and proved that the ship was unseaworthy when she put to sea or that the necessity for the salvage service was due to the negligence of the master, or of the ship's owner, the latter might have been liable, at least between himself and the shipper, for the entire cost of the service, and this possibly might have changed the character of the ship's liability to the salvor; or, again, if the claim for compensation had been limited to the value of the service, considered on the simple basis of work and labor done, it would have been proper, we think, to assess the entire cost of the service against the shipowner, because the service was rendered at the request of the master. But when the claim is put upon the basis of salvage, the fixing of the compensation goes beyond the limits of a quantum meruit for the work and labor done and involves the assessment of a bounty. The amount to be allowed upon a claim of this character is in part determined upon considerations of equity and public policy; and it is not proper, in our opinion, to make the ship, or the ship's owner, liable for the whole, in the absence of some statutory provision, or other positive rule of law, fixing such liability on the shipowner. It results that, as the owner of the cargo has not been made a party, no recovery can be had in this action in regard to the service

rendered to the cargo.

In fixing the amount of compensation to be awarded for salvage service, it has been declared by the Supreme Court of the United States that the principal circumstances to be taken into consideration are: (1) The labor expended by the salvors in rendering the salvage service; (2) The promptitude, skill, and energy displayed in rendering the service and saving the property; (3) The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed; (4) The risk incurred by the salvors in rescuing the property from the impending peril; (5) The value of the property saved; and (6) The degree of danger from which the property was rescued. (The Blackwall, 10 Wall., 1; 19 L. ed., 870.)

In applying these criteria to the case now before us, the following circumstances, not already noted, are pertinent, namely: the Hondagua was delayed in her voyage about nine hours, during five of which she was engaged in towing the Seward. This delay caused her to enter at Iloilo, the port of her destination, in the early hours of the morning of the day of her arrival instead of the late afternoon of the previous day; but the unloading of her cargo was not thereby retarded. Considered on the basis of charter-party contract under which she was operating, the Hondagua was earning about P300 per day, which was considered reasonable compensation for her use, including the services of officers and crew. The service rendered did not involve any further expenditure of labor on the part of the salvors than such as was commonly incident to working the ship. No unusual display of skill and energy on their part was required; and the condition of the sea was not such as to involve any special risk either to the Hondagua or her crew. Finally, the danger from which the Seward was rescued was real, as the ship when taken in tow was confronted by a serious peril. The value of the vessel when saved was, we think, properly fixed by the trial court at P20,000.

In determining the amount of the award to be allowed in cases of this kind the aim should be to hold out to seafaring men a fair inducement to the performance of salvage services without fixing a scale of compensation so high as to cause vessels in need of such services to hesitate and decline to receive them because of the ruinous cost. That the salvor is entitled, as of bounty, to something more than mere remuneration for his own work and the risk incurred by him, is conceded; but certainly the interests of commerce would not be promoted by the encouragement of exorbitant charges. Towage is not considered a salvage service of high order of merit; and when the risk is inconsiderable and other conditions favorable, the compensation to be allowed should be modest in its amount. Under all the circumstances we think that the sum of P1,000 is adequate for the service rendered in this case. The judgment of the lower court must accordingly be reduced to the sum of one thousand pesos (P1,000), with interest at 6 per cent per annum from February 24, 1916, and for this amount execution will issue. No special finding will be made as to costs of this instance.

With the modification above indicated the judgment is affirmed. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Malcolm, and Avanceña, JJ., concur.

Johnson, and Fisher, JJ., did not take part.

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