

**JOSE FERNANDEZ, O. N. HOLMSEN, AND M. A. MACLEOD, PLAINTIFFS
AND APPELLANTS, VS. THOMPSON & CO., W. F. STEVENSON
& CO., KER & CO., CAPTAIN GUY, CAPTAIN SWAN, JOHN
DOE, RICHARD R...**

G.R. No. 13229. September 26, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

On September 13, 1914, the British steamer Bengloe, owned by W. Thompson & Co., while en route from Manila to European ports, stranded on the Mayone shoal in the Sulu Sea some twentyfive miles from Brook's Point on the Island of Palawan. On the same day, the first and third officers of the vessel, with four seamen, were sent in search of assistance. No word having been received from these men, on September 22, 1914, another party, consisting of the second officer and some members of the crew, was dispatched on a similar mission. On October 1, the captain and the remainder of the crew left the vessel and four days later arrived at Puerto Princesa, Palawan. While at that place, the captain sent the following telegram to the agents of the vessel at Manila:

"Bengloe abandoned last Thursday eighteen days on Corral Reef no assistance whatever to hand ship dangerous position settling down forward and listed heavily to Port Cargo in aft holds possible to salve. Crew all safe. Proceeding Manila per Panglima due fifteenth advise Leith. (Sgd.) Guy, Master."

At this time, Jose Fernandez, O. N. Holmsen, and M. A. Macleod, now plaintiffs, were residents of Palawan. On learning of the abandonment of the Bengloe by her crew, these gentlemen formed a partnership, with a capital of P1,500, for the purpose of salvaging the vessel and cargo. They hired the launch Florence of between thirty and forty tons capacity from the provincial authorities of Puerto Princesa, and with a number of laborers proceeded to the wreck to ascertain its condition, where they arrived on October 7. They immediately took possession of the vessel and removed 14,937 kilos of copra and certain furniture and effects, of the approximate value of P2,500. Holmes and Fernandez proceeded with the launch to Brook's Point, leaving Macleod and two laborers on board the Bengloe. When the launch arrived at Brook's Point, the copra and other effects were stored in the Government warehouse. The copra being perishable was later sold by an order of court and the proceeds amounting to P2,051.63 deposited with the clerk of court. The other articles were left in the custody of the provincial treasurer of Palawan. Holmsen and Fernandez began negotiations with various owners of vessels in Manila, including the Neil Macleod and one of the Pujalte boats. Neither of these boats, however, was ever chartered or placed at the disposition of the plaintiffs.

In the meantime, the London Salvage Association acting in the interest of the underwriters of the ship and cargo, and with the consent of the ship's agents, engaged Ker & Co. to take charge of the salvage operations. The latter firm in its turn employed William Swan, an engineer and marine surveyor, to conduct the work. Swan left Manila on the Coastuard Cutter Polillo on October 6 for the scene of the wreck. On the way there, the Polillo intercepted the Panglima, which had the captain and members of the crew of the Bengloe on board, and took them back to the

wreck. Swan, the captain of the Bengloe, and their assistants arrived at the wreck on October 9, that is, two days after the arrival of Fernandez, Holmsen, and Macleod, and after the copra and other effects had been removed. Macleod and the two laborers found on board were shown scant hospitality by the second party, and were pointedly given to understand that their presence was not desired. Against his vigorous protest, Macleod was finally forced to leave the vessel by the captain of the Polillo and a lieutenant of the Constabulary sent to the wreck with constabulary soldiers to protect it from plunder. When the other plaintiffs Holmsen and Fernandez, returned on the launch, they were prevented from taking any further part in the salvage operations.

Fernandez, Holmsen, and Macleod began action in the Court of First Instance of the city of Manila to recover from the owners of the Bengloe and other parties the sum of P179,780, claimed to be due as compensation for the salvage of merchandise and effects of the value of P2,500 from the steamship Bengloe and as damages because of having been forcibly deprived of the possession of the steamship and thereby prevented from prosecuting salvage operations. After trial of the case, the lower court found the facts practically as above stated. Judgment was rendered for the plaintiffs and against the defendants for the sum of P1,200, with interest thereon at the rate of 6 per cent per annum from November 24, 1914, with costs. The amount of this judgment was to be paid over to the plaintiffs by the clerk of the court out of the funds deposited with him in the present case.

The defendants originally claimed the sole and exclusive possession of the wreck on the ground that they had not abandoned it but only left to seek assistance. The trial court, however, found that the appearances justified the conclusion that the Bengloe was abandoned by the defendants on October 7, 1914, and that the plaintiffs commenced the salvage operations in entire good faith. This finding of fact, excluding for the time being plaintiffs' contention that a larger award should be given, cannot be successfully disputed on appeal, although appellees to emphasize their thought do make use of such expressive words as "vendetta with the legitimate salvors," "raids such as this," "their conduct in plundering a stranded ship," "partly looted," "spoliation," and "entered upon a purely speculative adventure."

The trial court further found that the equipment of the plaintiffs was utterly inadequate for the task they endeavored to undertake, and that they had no right to insist upon retaining possession of the wreck as against the representative of the owners and underwriters, who had superior equipment and ample financial resources. It is around this last finding that most of the controversy now centers.

The facts, regarding which there can be little or no dispute, and plaintiffs' three assignments of error, present for resolution the following interrogatories: Had the plaintiffs adequate equipment to effect the salvage of the ship and cargo? Had plaintiffs the right to insist upon retaining possession of the Bengloe and her cargo for the purpose of salvage as against the salvors employed by the owners and underwriters? Was P1,200 adequate compensation for the property saved by the plaintiff?

The only equipment actually in the possession of the plaintiffs for salvaging the Bengloe and her cargo was a small launch and some baskets and sacks. This was the best salvage equipment available at Puerto Princesa on the Island of Palawan. That such equipment was inadequate for the salvage of a vessel valued at P100,000, laden with sugar, copra, and bunker coal of a value of P352,500, perilously situated, seems undeniable. But plaintiffs also made futile efforts, presumably in good faith, to acquire adequate salvage equipment. We thus have presented this unique situation: Well-intentioned men with inadequate equipment are first on the scene of a wreck, and while in technical possession, are driven off and operations begun by a second salvage party under an expert superintendent and with adequate equipment. The claim of plaintiffs for P170,000 as damages must then rest upon what they might have done had they been left in undisturbed possession of the vessel. No evidence was submitted, and in fact no satisfactory evidence could have been presented, to show that the vessel could have been saved and the cargo salvaged with the small launch at plaintiffs' disposal. Nor can we do more than speculate as to the value of

plaintiffs' services if they had been permitted to help and the two parties had worked together. The services rendered by the plaintiffs contributed immediately to the preservation of a small amount of property on the stranded vessel, but as an actual fact, their further exertions, however meritorious they were intended to be were not successful in any degree and cannot be compensated in damages.

Appellants rely on the following proposition:

"Parties taking possession of an abandoned vessel or cargo have a right to retain it until the salvage is completed, and no other person has the right to interfere with them, provided they are able to effect the salvage, and are conducting the business with fidelity and vigor. But if their own means are inadequate they are bound to accept additional assistance, if offered. Those beginning a salvage service, and in the successful prosecution of it, are entitled to be regarded as the meritorious salvors of whatever is preserved, when wrongfully interrupted in the work by others who complete the salvage." (35 Cyc, 744.)

Appellees in reply point out the very important qualification of the rule, namely, "provided they are able to effect the salvage and are conducting the business with fidelity and vigor." Thus, in a Federal case, it was decided that the first set of salvors had no right to exclude the second set from saving the merchandise in the vessel, the first set not having at the time the means to save it. (The Concordia [1855], 6 Fed. Cases, 3092).

We must answer the first two questions in the negative with the result that the second and third assignments of error are resolved against appellants. There remains to be decided whether P1,200 is adequate salvage compensation for the property saved by the plaintiffs.

The object of the award and the circumstances determining the amount of compensation in salvage claims have been authoritatively set out in a decision of the United States Supreme Court in the following language:

"Nothing remains to be considered but the question whether the amount awarded in the court below to the libelants was correct. Steam vessels are always considered as entitled to a liberal reward, not only because the service is usually rendered by a costly instrumentality, but because the service is in general rendered with greater promptitude and is of a more effectual character. Courts of admiralty usually consider the following circumstances as the main ingredients in determining the amount of the reward to be decreed for a salvage service: (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 rendering the service, and the danger to which such property was exposed. (4) The risk incurred by the salvors in securing the property from the impending peril. (5) The value of the property saved. (6) The degree of danger from which the property was rescued.

"Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a quantum meruit or as a remuneration pro opere et labore, but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property. (Wms. & Bruce, Adm. Prac, 116; 2 Pars. Ship., 292.)

"Public policy encourages the hardy and adventurous mariner to engage in these laborious and sometimes dangerous enterprises, and with a view to withdraw from him every temptation to embezzlement and dishonesty, the law allows him, in case he is successful, a liberal compensation. Cromwell vs. The Island City, 1 Cliff., 228." (The Blackwall vs. Sancelito Tug Company [1870], 10 Wall., 1. See further G. Urrutia & Co. vs. Pasig Steamer and Lighter Co. [1912], 22 Phil., 330; Erlanger & Galinger vs. Swedish East Asiatic Co., Ltd. [1916], 34 Phil. Rep., 178; and Manila Railroad Co. vs. Macondray & Co. [1918], 37 Phil. Rep., 850.)

The amount of property saved was valued at approximately P2,500. Plaintiffs incurred expenditures in the sum of

P972.95 in the salvage of the copra and other effects and in making arrangements for the salvage of the remainder of the cargo. The quantum for salvage allowed by the trial court of P1,200 was therefore approximately one-half of the value of this property and gave plaintiffs, in addition to their expenses, only a little more than P200 as a bounty.

Compensation for salvage services necessarily depends on the circumstances of the particular case. In this instance, we are inclined to agree with appellants that a reasonable, and at the same time liberal award, for their services as meritorious salvors, would be P2,000.

Judgment is modified so that plaintiffs shall have and recover from the defendants, the sum of P2,000, with interest thereon at 6 per cent per annum from November 24, 1914, until paid, with the costs of both instances against defendants. So ordered.

Arellano, C. J., Johnson, Araullo, and Avanceña, JJ., concur.

CONCURRING OPINION

STREET, J., concurring:

I concur; and in order that the decision may not be interpreted as declaring a rule of compensation more favorable to salvors than is generally sanctioned by the decided cases, I will observe that this case is obviously determined on its own facts, and the circumstance that the plaintiffs were mistreated and practically ejected from the Bengloe by the defendants has caused the court to be more liberal as to the amount of compensation allowed than it otherwise probably would have been.

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