

**THE ATLANTIC, GULF & PACIFIC COMPANY OF MANILA AND
SIMMIE & GKILK, PLAINTIFFS AND APPELLANTS VS. UCHIDA
KISEN KAISHA AND MITSUI BUSSAN KAISHA, DEFENDANTS AND
APPELLANTS. VICENTE...***G. R. No. 15871. November 07, 1921*

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-15871/>**JOHNSON, J.:**

This action was commenced by the plaintiffs in the Court of First Instance of the city of Manila to recover from the defendants the sum of P300,000 as compensation for the salvage of the steamship Kyodo Maru and part of her cargo, in Manila Bay, in the months of October and November, 1918. Judgment was rendered in favor of the plaintiffs and against the defendants Uchida Kisen Kaisha and Mitsui Bussan Kaisha in solidum for the sum of P140,000 and for costs. The action was dismissed as regards the defendant Vicente Madrigal, the owner of the cargo. From that judgment the plaintiffs and the defendants Uchida Kisen Kaisha and Mitsui Bussan Kaisha appealed to this court.

It appears from the record that on the 21st day of October, 1918, while the steamship Kyodo Maru was discharging a cargo of coal, the property of the defendant Vicente Madrigal, in the harbor of Manila, inside the breakwater, one of the lighters alongside said vessel sank. In swinging with the tide, the Kyodo Maru came violently in contact with this submerged lighter, the result being that her hull was perforated.

The said steamer began to sink during the morning of October 22d and touched the bottom of the harbor at 10 o'clock of the same morning. She continued to sink deeper into the mud until, on October 23d, the forward half of the vessel was entirely submerged, while the stern half was still afloat.

The depth of the water in that part of the harbor where the vessel was moored at the time of the accident is about 21 feet at low tide. The depth of the vessel from deck to keel is about 35 feet. The value of the vessel at the time of the accident was about P1,300,000, Philippine currency.

On the afternoon of October 23d, the plaintiffs, at the request of the captain and agents of the ship, took possession of the sinking vessel as salvors and commenced salvage operation at once. At that time they had submitted two propositions to the captain and agents of the ship as to compensation for the salvage services to be performed: one for P150,000 in case of success and reimbursement of expenses in case of failure, and another for P300,000 "no cure no pay." The plaintiffs were informed that the propositions would be transmitted to the owners of the vessel in Japan for acceptance or rejection, but they were requested to continue work in the meantime, upon the understanding that if no special contract should be made they would be compensated as salvors.

The vessel was floated on October 30th and the salvage operations ended the following day. On the afternoon of October 30th the plaintiffs were informed in writing that the head office of the steamship company in Japan had, by cable, rejected both of the above-mentioned propositions, and that it was proposed to settle with them on the

basis of the reasonable value of their services as salvors. Plaintiffs then made demand for payment of P150,000. Defendants (not including Madrigal) offered to pay P75,000. Plaintiffs then made a counter offer of P125,000. This was rejected, and plaintiffs then brought the present action for the recovery of a salvage award of P300,000; but, in their trial brief, they reduced this demand to P'297,443.40.

During the pendency of the negotiations regarding the value of the salvage services, it was agreed that the vessel should be freed from any lien which the plaintiffs might have upon her as salvors, in consideration of the agreement of the defendant Mitsui Bussan Kaisha to respond in solidum with the owner of the vessel, the defendant Uchida Kisen Kaisha, for whatever might be found due the salvors upon final judgment.

There is no dispute with regard to the foregoing facts. The only dispute in this case is (1) with regard to the amount of compensation to be awarded to the plaintiffs for the salvage of the ship in question, and (2) whether or not the defendant-appellee Vicente Madrigal, as owner of the cargo, is liable for any contribution to such compensation.

I. While the plaintiffs originally claimed P300,000 as compensation, which they reduced to P297,443.40 in their trial brief in the court below, they have further reduced the same to P275,000 in their brief on appeal to this court; whereas the defendants-appellants still maintain their original contention that the plaintiffs are not entitled to more than P75,000. This question of compensation involves two elements: (a) The actual expenses incurred in the salvage operation, and (b) the reward for services rendered by the plaintiffs as salvors.

A. Attached to the plaintiffs' complaint is a statement (Exhibit A) of the expenses alleged to have been incurred by them, aggregating the sum of P63,074.45. The defendants-appellants, in their brief, vigorously challenge the reasonableness of these charges, alleging that they "are palpably, grossly and sinfully exaggerated," and contend that if the plaintiffs "are allowed P40,000 to recover their out-of-pocket expenses and the reasonable value of the use of their equipment, they would certainly not be the losers."

Among the items in Exhibit A which are impugned by the defendants-appellants are the following:

(1)

Rental of pump lighter.....

P11,520.00

(2)

Rental of derrick No. 2.....

9,600.00

(3)

Rental of the launch Columbia.....

4,800.00

(4)

Ferry service.....

7,410.00

(5)

Rental of pumps.....

3,000.00

(6)

Use of hose.....

10,612.50

(7)

Charges for labor and supervision, consisting of;

(a)

Preliminary labor in connection

with preparing equipment, ma-

chine, shop work, and overhaul-

ing equipment upon its return..

P1,390.00

(b)

Labor at ship.....

3,352.00

(c) Supervision

2,500.00

7,242.00

We shall not undertake to analyze the evidence relative to each of the foregoing items with a view to arriving at an accurate estimate of the total expenses incurred by the plaintiffs. Such a task would be impossible of accomplishment inasmuch as plaintiffs themselves have "just figured it out roughly," and the defendants' expert witness, Swann, by whom they endeavored to show that the plaintiffs' charges were grossly exaggerated, also admits that his estimates have only been "figured out roughly." Suffice it to say that after a perusal of the luminous briefs of the eminent counsel for both parties, in relation with the evidence adduced during the trial of the cause, we are persuaded that most of the charges for expenses made by the plaintiffs are really exorbitant. Considering all of the facts and circumstances of this case, and specially the inflated war prices of materials at the time the salvage in question was performed, we are of the opinion that the sum of P50,000 would be a very

reasonable allowance to the plaintiffs for their cash outlay and the rental value of their equipment.

B. With regard to the reward for salvage services, defendants-appellants maintain that the sum of P35,000 would be a liberal net award to the salvors.

Section 10 of Act No. 2616 prescribes the rule for determining the reward for salvage as follows:

"In a case coming under the last preceding section, as well as in the absence of an agreement, the reward for salvage or assistance shall be fixed by the Court of First Instance of the province where the things salvaged are found, taking into account principally the expenditures made to recover or save the vessel or the cargo or both, the zeal demonstrated, the time employed, the services rendered, the excessive expenses occasioned, the number of persons who aided, the danger to which they and their vessels were exposed, as well as that which menaced the things recovered or salvaged, and the value of such things after deducting the expenses."

Counsel for defendants-appellants, however, assail the validity of said Act (No. 2616) "upon the ground that salvage is a matter which pertains, both as regards the substantive law and procedure, to the admiralty jurisdiction of the courts, and that, therefore, it is not within the scope of the law-making authority of the Philippine Legislature." In support of that contention counsel call attention to the fact that section 56 of Act No. 136 provides that the Courts of First Instance shall have original jurisdiction "in all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the demand;" and that both the Philippine Bill and the Jones Law provide "that the admiralty jurisdiction of the Supreme Court and Courts of First Instance shall not be changed except by act of Congress." Counsel maintain that the phrase "admiralty and maritime jurisdiction," used in said Act No. 136, and the same phrase used in the Organic Law, are identical in meaning and that both apply not only to the mere power to hear and decide, but to the maritime law as a body.

In the case of *Heath vs. The Steamer San Nicolas* (7 Phil., 532), this court held that "the phrase 'admiralty and maritime jurisdiction' found in Act No. 136, section 56, paragraph 4, did not put in force in these Islands the law, practice, and procedure in force in admiralty courts in the United States." In the case of *G. Urrutia & Co. vs. Pasig Steamer & Lighter Co.* (22 Phil., 330, decided March 22, 1912, four years prior to the passage of Act No. 2616), this court said: "There being no express legislation exactly applicable to cases of salvage, nor legal principles thereto relating established by the courts, pursuant to the second paragraph of article 6 of the Civil Code, we must fall back upon the customs of the place, and, in the 'absence thereof, general principles of law.'"

In the case of *the United States vs. Bull* (15 Phil., 7), this court held that "an Act of the legislative authority of the Philippine Government which has not been expressly disapproved by Congress is valid unless its subject-matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the organic law." It is not even suggested that the Act in question (No. 2616) has been expressly disapproved by Congress, and our attention has not been called to any Act of Congress, applicable to the Philippine Islands, relating to the subject-matter of said Act No.-2616, nor are we aware of the existence of any such Act. The only question, then, is whether the provision in our organic law (the Philippine Bill and the Jones Law) "that the admiralty jurisdiction of the Supreme Court and Courts of First Instance shall not be changed except by act of Congress," should be construed as forbidding the Philippine Legislature from enacting such a law as Act No. 2616, relating to salvage—a matter pertaining to admiralty. The answer to that question depends upon whether or not Act No. 2616 did in any way change the admiralty jurisdiction of the Supreme Court and the Courts of First Instance, as provided by Act No. 136.

Even granting, without deciding, the contention of defendants-appellants that the phrase "admiralty jurisdiction" used in our organic law applies not only to the power to hear and decide but to the maritime law as a body, still we are unable to say that Act No. 2616 has effected any change in the admiralty jurisdiction of this court and the

Courts of First Instance. Counsel cite the cases of *The Jelling* (253 Fed. Rep., 381), *The Felix* (62 Fed. Rep., 620), and *The L. W. Perry* (71 Fed. Rep., 745), in an effort to show that the rules prescribed by section 11 of Act No. 2616 are different from the American maritime law. Again granting that they are different, yet, as decided by this court in the *San Nicolas* case, *supra*, the phrase "admiralty and maritime jurisdiction" found in Act No. 136 did not put in force in these Islands the law, practice, and procedure in force in the admiralty courts in the United States. The American maritime law not being necessarily in force in these Islands, it is clear that Act No. 2616 of the Philippine Legislature could not and did not affect the same.

Therefore, following our decision in the *Bull* case, *supra*, we are of the opinion and so decide that Act No. 2616 is valid until expressly disapproved by Congress.

Applying now the rules prescribed by section 10 of said Act No. 2616, above quoted, in determining the reward for the salvage in question, the following facts should be taken into account: (1) That the salvage operations in question were performed in Manila Bay, inside the breakwater, where the depth of the water was only about 21 feet at low tide; (2) that those operations lasted eight days—from noon of October 23d to October 31st—although the salvors appear to have rendered services until the 8th of November; (3) that the vessel salvaged and its cargo were never in danger of total loss, although it is admitted that if the vessel had sunk and listed, the expenses of recovering the same would have been considerable; (4) that the salvage operation was comparatively simple, consisting merely of using pumps to prevent the vessel from sinking any further, while the salvors were building a cofferdam around the submerged forehatch preparatory to pumping her out; (5) that there was no danger to the lives and property of the salvors in view of the proximity to the shore of the place where the work was performed; (6) that the value of the equipment used, including the launches employed to maintain the ferry service, was about P300,000; (7) that the plaintiffs' outlay, together with the reasonable rental value of their equipment, was, as we have heretofore estimated, the sum of P50,000; (8) that the *Kyodo Maru* was, at the time she was salvaged, valued at P1,300,000; (9) that the captain of said vessel was in a hurry to get her out because he had to meet a new charter in Japan; and (10) that the plaintiffs accomplished the salvage with energy and promptitude, to the entire satisfaction of the captain and agents of the vessel.

Considering all of the foregoing facts in relation with the award heretofore made by this court in the salvage cases of *Erlanger & Galinger vs. Swedish East Asiatic Co., Ltd.* (34 Phil., 178), *Manila Railroad Co. vs. Macondray & Co.* (37 Phil., 850), and *G. Urrutia & Co. vs. Pasig Steamer & Lighter Co.* (22 Phil., 330), we are persuaded that the sum of P50,000 would be an equitably liberal net compensation to the plaintiffs as salvors of the *Kyodo Maru*. This, together with the sum of P50,000 which we have found should be allowed them for their expenses and the reasonable rental value of their equipment, makes a total award to the plaintiffs of the sum of P100,000. We are persuaded that this amount is a sufficient compensation for the outlay and effort of the salvors in the present case, and that the same is liberal enough to constitute an inducement to others to render like services in similar emergencies in the future.

II. The next question for determination is the liability, if any, of the defendant Vicente Madrigal as owner of the cargo, to contribute to the salvage award above-mentioned.

At the time the plaintiffs commenced their work as salvors there were 2,005 tons of coal on the vessel, the property of the said defendant. In order to raise the vessel it was necessary for the salvors to take part of said coal from her. The coal so taken and brought ashore by the plaintiffs amounted to 573 tons. The value of that coal in Manila at that time was P45 a ton.

The lower court absolved this defendant from liability upon the ground (a) that "it does not appear that the cargo was in serious danger of injury or loss," and (b) that although the plaintiffs may perhaps be entitled to

compensation for the unloading and landing of the 573 tons, the record contains no data from which the amount of such compensation can be determined. Defendants-appellants take exception to that conclusion of the lower court and contend that the salvage award should be apportioned between them, as owners of the vessel, and defendant-appellee, as owner of the cargo; that the value of the whole amount of coal on board the vessel at the time of the salvage was P92,525, which is approximately 6 1/2 per cent of the value of the vessel; and that that proportion should be awarded against the defendant-appellee. Defendant-appellee, on the other hand, contends that: "All the service rendered to the cargo, the property of this defendant, if any was in fact so rendered, was not rendered with an intent to benefit the cargo, but to assist the salvors in their principal work, the raising of the ship. They would not have removed a ton of this coal had its removal not facilitated the salving of the ship and such removal did not operate in any way to benefit the cargo, nor save it from any risk or damage. The only benefit may be one to the owner of the coal in an amount equivalent to the stevedoring charges he would have had to pay to remove from the ship the 573 tons taken from her by these plaintiffs. As there is no evidence as to the value of this, and as this defendant has offered to pay and is still willing to pay the plaintiff that amount, it need not be further discussed here."

While we agree with the defendant-appellee that, as the record shows, the removal of the 573 tons of coal from the vessel was merely incidental to, and necessitated by, the raising of said vessel, we cannot agree with him that "such removal did not operate in any way to benefit the cargo, nor save it from any risk or damage." Had the vessel completely, sunk and listed, extreme difficulty would no doubt have been encountered in removing the coal in question from her hold, thus occasioning considerable expense and loss to this defendant. It is also undeniable that part of the plaintiffs' expenses which we have allowed against defendants-appellants were incurred in carrying such coal to the shore. It is but just, then, that defendant-appellee should share a proportionate amount of the award.

Considering, however, that the removal of said coal from the sinking vessel was merely incidental to salving her; and considering that only 573 tons of such cargo were actually taken by the plaintiffs from the ship, it being no longer necessary to touch the rest for the purpose of raising her, we are of the opinion that full justice would be done to all the parties concerned by taking the value of the said 573 tons of coal in relation with the value of the ship, and thus apportion the salvage award between their respective owners. The said 573 tons of coal, at P45 a ton, are worth P25,785, which is approximately 2 per cent of the value of the ship (which is estimated at P1,300,000). Hence the defendant-appellee should be made to pay 2 per cent of the award of P100,000, or the sum of P2,000.

Wherefore, the judgment appealed from is hereby modified, and it is hereby ordered and decreed that the plaintiffs have and recover the sum of P98,000, Philippine currency, from the defendants Uchida Kisen Kaisha and Mitsui Bussan Kaisha, jointly and severally, and the sum of P2,000, Philippine currency, from the defendant Vicente Madrigal, without any finding as to costs in this instance. So ordered.

Araullo, Street, Avancena., and Villamor, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.