

**HONORIO M. BARRIOS, PLAINTIFF AND APPELLANT, VS. CALOS A. GO THONG & COMPANY, DEFENDANT AND APPELLEE.***G.R. No. 17192. March 30, 1963*

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-17192/>**BARRERA, J.:**

>From the decision of the Court of First Instance of Manila (in Civil Case No. 37219) dismissing with costs his case against defendant Carlos A. Go Thong & Co., plaintiff Honorio M. Barrios, interposed the present appeal. The facts of the case, as found by the trial court, are briefly stated in its decision, to wit:

"The plaintiff Honorio M. Barrios was, on May 1 and 2, 1958, captain and/or roaster of the MV Henry I' of the William Lines Incorporated, of Cebu City, plying between and to and from Cebu City and other southern cities and ports, among which are. Dumaguete City, f Zamboanga City, and Davao City, At about 8:00 o'clock on the evening of May 1, 1958, plaintiff in his capacity as such, captain and/or master of the aforesaid MV Henry I, received or otherwise intercepted an S.O.S. distress signal by blinkers from the MV Alfredo, owned and/or operated by the defendant Carlos A. Go Thong & Company. Acting on and/or answering the S.O.S. call, the plaintiff Honorio M. Barrios, also In his capacity as captain and/or master of the MV Henry I, which was then sailing or navigating from Durnaguete City, altered the course of said vessel, and steered and headed towards the beckoning MV Don Alfredo, which plaintiff found to be in trouble,, due to engine failtuf1 and the loss of her propeller, for which reason, it was drifting slowly southward from Negros Island towards Borneo in the open China Sea, at the mercy of a moderate easterly wind. At about 8:25 p.m, on the same day, May 1, 1958, the MV Henry, under the command of the plaintiff, succeeded in getting near the MV Don Alfredo—in fact as near as about seven meters from the latter ship—and with the consent and knowledge of the captain and/or master of the MV Don Alfredo, the plaintiff caused the latter vessel to be tied to, or well-secured and connected with tow lines from the MV Henry I; and in that manner, position and situation, the latter had the MV Don Alfredo in tow and proceeded towards the direction of Dumaguete City, as evidenced by a written, certificate to this effect executed and accomplished by the Master, the Chief Engineer, the Chief Officer, and the Second Engineer of the MV Don Alfredo, who were then on board the latter ship at the time of the occurrence, stated above (Exh. A). At about 5:10 o'clock the following morning.

May 2, 1958, or after almost nine hours during the night, with the MV Don Alfredo still in tow by the MV Henry I, and while both vessels were approaching the vicinity of Apo Island off Zamboanga town, Negros Oriental, the MV Lux, a sister ship of the MV Don Alfredo, was sighted heading towards the direction of the aforesaid two vessels, reaching then fifteen minutes later, or at about 5:25 o'clock on that same morning. Thereupon, at the request and instance of the captain and/or master of the MV Don Alfredo, the plaintiff caused the tow lines to be released, thereby also releasing the MV Don Alfredo.

"These are the main facts of .the present case as to which plaintiff and defendant quite, agree with each other. As was manifested in its memorandum presented in. this case on August 22, 1958, defendant thru counsel said that there is? indeed, .between the parties, no dispute as, to the factual circumstances;, but counsel adds that whsre plaintiff concludes that they establish an impending sea peril from which salvage of a ship worth more than P100.000.00, plus life and cargo was done, the defendant insists that the facts made out no such case, but

that what merely happened was only mere towage for which plaintiff, cannot claim any compensation or remuneration independently of the shipping company that owned the vessel commanded by him."

On the basis of these facts, the trial court (on April 5, 1960) dismissed the case, stating:

"Plaintiff bases his claim upon the provisions of the Salvage Law, Act No. 2616, \* \* \*.

"In accordance with the Salvage Law, a ship which is lost or abandoned at sea is considered a derelict and, therefore, proper subject of salvage. A ship in a desperate condition, where persons on board are incapable, by reason of their mental and physical condition, of doing anything for their own safety, is a quasi-derelict and may, likewise, be the proper subject of salvage. Was the MV Don Alfredo, on May 1, 1958, when her engine failed and, for that reason, was left drifting without power on the high seas, a derelict or a quasi-derelict? In other words, was it a ship that was lost or abandoned, or in a desperate condition, which could not be saved by reason of incapacity or incapacity of its crew or the persons on board thereof? From the appearances and from the evidence extant in the records, there can be no doubt, for it seems clear enough, that the MV Don Alfredo was not a lost ship, nor was it abandoned. Can it be said that the said ship was in a desperate condition, simply because of S.O.S. signals were sent from it?

"From the testimony of the captain of the MV Don Alfredo, the engine failed and the ship already lost power as early as 8:00 o'clock on the morning of May 1, 1958; although it was helpless, in the sense that it could not move, it did not drift too far from the place where it was, at the time it had an engine failure. The weather, was fair—in fact, as described by witnesses, the weather was clear and good. The waves were small, too slight—there were only ripples on the sea, and the sea was quite smooth. And, during the night, while towing was going on, there was a moonlight. Inasmuch as the MV Don Alfredo was drifting towards the open sea there was no danger of floundering. As testified to by one of the witnesses, it would take days or even weeks before the ship could as much as approach an island. And, even then, upon the least indication, the anchor could always be weighed down, in order to prevent the ship from striking against the rocks.

"There was no danger of the vessel capsizing, in view of the fairness of the sea, and the condition of the weather, as described above. As a matter of fact, although the MV Don Alfredo had a motor launch, and two lifeboats, there was no attempt, much less, was there occasion or necessity, to lower anyone or all of them, in order to evacuate the persons on board; nor did the conditions then obtaining require an order to jettison the cargo.

"But, it is insisted for the plaintiff that an S.O.S. or a distress signal was sent from aboard the MV Don Alfredo, which was enough to establish the fact that it was exposed to imminent peril at sea. It is admitted by the defendant that such S.O.S. signal was, in fact, sent by blinkers. However, defendant's evidence shows that Captain Loresto of the MV Don Alfredo, did not authorize the radio operator of the aforesaid ship to send an S.O.S. or distress signal, for the ship was never in distress, nor was it exposed to a great imminent peril of the sea. What the aforesaid Captain told the radio operator to transmit was a general call; for, at any rate, a message had been sent to defendant's office at Cebu City, which the latter had acknowledged, by sending back a reply stating that help was on the way. However, as explained by the said radio operator, in spite of his efforts to send a general call by radio, he did not receive any response. For this reason, the Captain instructed him to send the general call by blinkers from the deck of the ship but the call by blinkers, which follows the dots and dashes method of sending messages, could not be easily understood by deck officers who ordinarily are not radio operators. Hence, the only way by which the attention of general officers on deck could be called, was to send an S.O.S. signal which can be understood by all and sundry.

"Be it as it may, the evidence further shows that when the two ships were already within hearing distance (barely seven meters) of each other, there was a sustained conversation between Masters and complement of the two vessels, by means of loud speakers and the radio; and, the plaintiff must have learned of the exact nature and extent of the disability from which the MV Don Alfredo had suffered—that is, that the only trouble that the said vessel had developed was an engine failure, due to the loss of its propellers.

"It can thus be said that the MV Don Alfredo was not in a perilous condition wherein the members of its crew would be incapable of doing anything to save passengers and cargo, and, for this reason, it cannot be duly considered as a quasi-derelict; hence, it was not the proper subject of salvage, and the Salvage Law, Act No. 2616, is not applicable.

"Plaintiff, likewise, predicates his action upon the provision of Article 2142 of the New Civil Code, which reads as follows:

'Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract in the end that no one shall be unjustly enriched or benefited at the expense of another.

This does not finally clear application, to the case at bar, for the reason that it is not the William Lines, Inc., owners of the MV Henry I which is claiming for damages or remuneration, because it has waived all such claims, but the plaintiff herein is the Captain of the salvaging ship, who has not shown that, in his voluntary act done towards and which benefited the MV Don Alfredo, he had been unduly prejudiced by his employers, the said William Lines Incorporated.

"What about equity? Does not equity permit plaintiff to recover for his services rendered and sacrifices made? In this jurisdiction, equity may only be taken into account when the circumstances warrant its application, and in the absence of any provision of law governing the matter under litigation. That is not so in the present case.

"In view of the foregoing, judgment is hereby rendered dismissing the case with costs against the plaintiff; and inasmuch as the plaintiff has not been found to have brought the case maliciously, the counterclaim of the defendant is, likewise, dismissed, without pronouncement as to costs.

"So Ordered."

The main issue to be resolved in this appeal is; whether under the facts of the case, the service rendered by plaintiff to defendant constituted "salvage" or "towage", and if so, whether plaintiff may recover from defendant compensation for such service.

The pertinent provision of the Salvage Law (Act No. 2616), provides:

"Section 1. When in case of shipwreck, the vessel or its cargo shall be beyond the control of the crew, or shall have been abandoned by them, and picked up and conveyed to a safe place by other persons, the latter shall be entitled to a reward for the salvage.

"Those who, not being included in the above paragraph, assist in saving a vessel or its cargo from shipwreck, shall be entitled to a like reward."

According to this provision, those who assist in saving a vessel or its cargo from shipwreck, shall be entitled to a reward (salvage). "Salvage" has been defined as "the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss, as in case of shipwreck, derelict, or recapture." (Blackwall vs. Saucelito Tug Company, 10 Wall. 1, 12, cited in Erlanger & Galinger vs. Swedish East Asiatic Co., Ltd., 84 Phil. 178.) In the Erlanger & Galinger case, it was held that three elements are necessary to a valid salvage claim, namely, (1) a marine peril, (2) service voluntarily rendered when not required as an existing duty or from a special contract, and (3) success in whole or in part, or that the service rendered contributed to such success. [1]

Was there a marine peril, in the instant case, to justify a valid salvage claim by plaintiff against defendant? Like the trial court, we do not think there was. It appears that although the defendant's vessel in question was, on the night of May 1, 1958, in a helpless condition due to engine failure, it did not drift too far from the place where it was. As found by the court, the weather was fair, clear, and good. The waves were small and too slight, so

much so, that there were only ripples on the sea, which was quite smooth. During the towing of the vessel on the same night, there was moonlight. Although said vessel was drifting towards the open sea, there was no danger of its foundering or being stranded, as it was far from any island or rocks. In case of danger of stranding, its anchor could be released, to prevent such occurrence. There was no danger that defendant's vessel would sink in view of the smoothness of the sea and the, fairness of the weather. That there was absence of danger is shown by the fact that said vessel or its crew did not even find it necessary to lower its launch and two motor boats, in order to evacuate its passengers aboard. Neither, did they find occasion to jettison the vessel's cargo as a safety measure. Neither the passengers nor the cargo were in danger of perishing. All that the vessel's crew members could not do was to move the vessel on its own power. That did not make the vessel a quasi-derelict, considering that even before the appellant extended the help to the distress ship, a sister vessel was known to be on its way to succor it.

If plaintiff's service to defendant does not constitute "salvage" within the purview of the Salvage Law, can it be considered as a quasi-contract of "towage" created in the spirit of the new Civil Code? The answer seems to incline in the affirmative; for in consenting to plaintiff's offer to tow the vessel, defendant (through, the captain of its vessel MV Don Alfredo) thereby impliedly entered into a juridical relation of "towage" with the owner of the vessel MV Henry I, captained by plaintiff, the William Lines, Incorporated.

"Tug which put line aboard liberty ship which was not in danger or peril but which had reduced its engine speed because of hot grounds, and assisted ship over bar arid, thereafter, dropped towline and stood by while ship proceeded to dock under own power, was entitled, in absence of written agreement as to amount to be paid for services, to payment for towage services, and not for salvage services." (Sauce, et al. vs. United States, et al., 107 F. Supp. 489.)

If the contract thus created, in this case, is one for towage, then only the owner of the towing vessel, to the exclusion of the crew of the said vessel, may be entitled to remuneration.

"It often becomes material too, for courts to draw a distinct line between salvage and towage; for the reason that a reward ought sometimes to be given to the crew of the salvage vessel and to other participants in salvage services, and such reward should not be given if the services were held to be merely towage." (The Eebecca Shepherd; 148 F. 731.)

"The master and members of the crew of a tug were not entitled to, participate in payment by liberty ship for services rendered by tug which were towage services arid not salvage services." (Sause,. et al. vs. United States, et al., supra.)

"The distinction between salvage and towage is of importance to the crew of the salvaging ship, for the following reasons: If the contract for towage is in fact towage, then the crew does not have any interest or rights in the remuneration pursuant to the contract. But if the owners of the respective vessels are of a salvage nature, the crew of the salvaging ship is entitled to salvage, and can look to the salvaged vessel for its share." ( I Norris, The Law of Seamen, See. 222.)

And, as the vessel-owner, William Lines, Incorporated, had expressly waived its claim for compensation for the towage service rendered to defendant, it is clear that plaintiff, whose right if at all depends upon and not separate from the interest of his .employer, is not entitled to payment for such towage service.

Neither may plaintiff invoke equity in support of his claim for compensation against defendant. There being an express provision of law (Art. 2142, Civil Code) applicable to the relationship' created in this case, that is, that of a quasi-contract of towage where the crew ia not entitled to compensation separate from that of the vessel, there is no occasion to resort to equitable considerations.

Wherefore, finding no reversible error in the decision of the court a quo appealed from, the' same is hereby

affirmed in all respects, with costs against the plaintiff-appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regain, and Makalintal, JJ., concur.

---

[1] Citing the case of *The Mayflower vs. The Sabine*, 101 U.S. 584.

**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.