

C. S. ROBINSON ET AL., PLAINTIFFS AND APPELLEES, VS. THE SHIP "ALTA", ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 3488. August 10, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

On the 26th day of September, 1905, the sailing vessel Alta was wrecked and stranded upon the coast of Cavite Province. The captain of the ship removed the cargo and after working ten or twelve days in attempts to float the ship made a contract, in writing, with the plaintiffs, which is as follows ;

"MANILA, November 1, 1905.

"MR. CHARLES S. ROBINSON, Manila.

"Dear Sir : Referring to your offer of 31st ultimo, re the raising of the ship Alta-viz, to put her into Cavite and in such condition that it will admit of her being sailed to Hongkong or other port, subject to being passed by Lloyds' surveyor-for the sum. of fifteen thousand pesos (P15,000), Philippine currency, I accept the same and shall esteem it a favor if you will commence the work with the least possible delay. Should you not be successful, it is distinctly understood that no money whatever is to be paid for any work done or appliances used.

"Yours, faithfully, (Sgd.) "W. THONAGEL.

"P. S. It is understood that by 'other port' is meant Singapore.

(Sgd.) "W. T."

The plaintiffs went to work immediately upon the vessel, raised it, and towed it to Cavite on the 10th day of December, 1905. It was at once decided to put her into the dry dock or slip there for the purpose of examining her hull and ascertaining the extent of the damages. This could not be done until the 18th day of January, owing to other demands upon the dock company. On that day she was put upon the slip, was examined, and again taken off. The exact day on which she came off from the slip does not appear, but it probably was the 19th day of January. On the 20th day of January plaintiffs removed all of their machinery, tackle, and utensils from the ship and did no more work upon her.

The plaintiffs, on the 30th day of December, 1905, were paid by the defendants the sum of 3,000 pesos on account of the contract. They brought this action against the ship and her master on the 27th day of February, 1906, claiming to recover the reasonable worth and value of the services performed by them, which they fixed at 15,000 pesos.. Judgment was rendered in the court below in their favor for 9,790 pesos and costs. From this judgment the defendants have appealed.

1. As said by the appellees, the plaintiffs, in their brief, the most important point in the case relates to the contract which the parties made. It is claimed by the plaintiffs that they are not bound by the terms of that contract and that they can recover for the services performed what they were reasonably worth, considering

them as salvage services. Their contention, as stated in the brief, is as follows:

"A claim for salvage is barred only where there is a binding contract to pay for the work performed, whether successful or not; that is, where compensation is to be paid at all events, whether the property is lost or saved."

The contract in this case, being contingent upon success, their claim is that they are not bound by it.

In effect they claim that where a contract, contingent upon success, is fairly made between the master of a ship and the salvors, with full knowledge on the part of all the parties as to the condition of the vessel, and the contract is performed by the salvors, they, if it turns out that the work is more expensive than they thought it would be at the time they made the contract, can repudiate it and recover what they would have been entitled to recover had no contract been made, and that, on the other hand, the owners of the ship, if it turns out that the work was less expensive than they thought it would be at the time the contract was made, can repudiate it and are bound to pay only what such services are reasonably worth. This claim can not be sustained.

In the case of *The Elfrida* (172 U. S., 186) the court said:

"But a single question is presented by the record in this case: Was the contract with the libellants of such a character, or made under such circumstances, as required the court to relieve *The Elfrida*, against the payment of the stipulated compensation?

"We are all of opinion that this question must be answered in the negative. Salvage services are either (1) voluntary, wherein the compensation is dependent upon success; (2) rendered under a contract for a per diem or per horam wage, payable at all events; or (3) under a contract for a compensation payable only in case of success.

"The first and most ancient class comprises cases of pure salvage. The second is the most common upon the Great Lakes. The third includes the one under consideration. Obviously where the stipulated compensation is dependent upon success, and particularly of success within a limited time, it may be very much larger than a mere quantum meruit. Indeed, such contracts will not be set aside unless corruptly entered into, or made under fraudulent representations, a clear mistake or suppression of important facts, in immediate danger to the ship, or under other circumstances amounting to compulsion, or when their enforcement would be contrary to equity and good conscience."

The court, after a review of all the authorities upon the subject, held that the contract was binding, reversing the judgment of the court below.

It is true that in that case the persons seeking to repudiate the contract were the owners of the ship, while in this case they are the salvors. It is, however, a direct and controlling authority to the point that contracts will be enforced under certain circumstances although they are conditional upon success.

There are, moreover, numerous cases in which it has been held that the salvors are bound by contracts which they have made. In the case of *The Silver Spray* (1 Brown's Admiralty, 349, s. c. 22 Fed. Cases, 141) the libellants had made a contract to raise certain boilers from the bottom of the St. Clair River, near Port Huron, and put them ashore for 100 dollars. It appeared that it cost them 1,825 dollars to do the work, and they brought this proceeding in admiralty to recover that sum. The court said:

"On the part of the respondent it is contended that the compensation must be limited to the contract price, and, on the part of the libellants the court is asked to disregard the contract and award them a sum as salvage somewhat commensurate to their expenditures. As the matter turned out, it was no doubt a hard bargain for the libellants. But I do not understand that a court of admiralty will set aside a contract for that cause alone, where it is free from all fraud, deception, mistake, or circumstances of controlling necessity. McArthur had ample time for consideration, and there is no pretense of any fraud or deception on the part of Moore or his agent

Reilly, or that McArthur did not know all about the situation, and the difficulties in the way of getting the boilers out, and there was no controlling necessity of duty or otherwise to undertake the job.

"The contract appears to have been entered into openly and fairly in all respects, and there is no principle or authority upon which the court can disregard it, or make a new contract for the parties. It must, therefore, be enforced as it stands. [See 2 Pars. Shipp & Adm., 307, notes 2-5; The True Blue, 2 W. Rob. Adm., 176, 180 (a case very much like the present except that in that case the expense was largely increased by a storm having come on, and yet the contract was enforced although the disparity was great); also The Henry, 2 Eng. Law & Eq., 564; The Phantom, L. R. 1 Adm. & Ecc, 59; The Salacia 2 Hagg. Adm., 262; The A. D. Patchin (supra); The Whitaker (supra), a case very much like the present; Bearnse vs. 340 Pigs of Copper (Case No. 1193).]

"McArthur was under no obligation to continue the work after he saw it must be a losing operation. His compensation was dependent upon success and he was at liberty to abandon the work at any time. Parties, after having entered into a deliberate and explicit agreement, must not be encouraged to make large expenditures beyond the contract price at the expense of the owners, by the courts, loosely or without the most cogent reasons, disregarding contracts thus entered into, and free from all circumstances of fraud, deception, mistake, or oppression existing at the time the contract was made. Parties must understand that contracts fairly entered into will be strictly enforced in admiralty, as well as elsewhere."

In the case of *Bondies vs. Sherwood* (22 How., U. S., 214) the court said at page 215:

"In this agreement, the libellants covenant to proceed with the necessary boats, apparatus, etc., and to raise the steamboat at their own cost in fourteen days after their arrival at the place where it lay, provided they were not hindered by high water; when raised, the boat to be taken to Galveston. Bondies covenants to convey the boat to them, on their payment to him of 4,000 dollars,, and also to subrogate them to all his claims against the cargo. But, in the meantime, until the covenants of libellants were performed, the legal possession of the boat and cargo was to be and remain in Bondies.

"The libel alleges that this agreement was mutually given up and abandoned.' But this averment is not sustained by the evidence. On the contrary, it appears that the libellants proceeded under their contract to raise the vessel, but did not succeed till some time in July. The boat and merchandise being much injured in the operation and by the delay, it turned out that the costs and expenses would exceed the whole value of the boat and cargo when recovered. The bargain was therefore an unprofitable one, and the libellants concluded to repudiate it, and filed this libel for salvage.

"Without adverting to the numerous other facts developed in the history of this case, but which can not affect its merits, it is very plain that, assuming the services rendered by these mechanics to be in the nature of salvage services, and that a court of admiralty had jurisdiction to enforce the contract both against the owner and the boat as a maritime contract, yet the libellants, by their own showing, can not recover under the contract. And it is equally clear that they can not repudiate their contract, and libel the vessel for salvage. (See *The Mulgrave*, 2 Hagg. Adm., 269, and *Abbot on Shipping*, 706.)"

In the case of *The Waverley* (Law Reps., 3. Adm. & Ecc. Cases, 369), a contract was made by which the salvors agreed to take the disabled steamer, *The Waverley*, into Lisbon for 400 pounds sterling. It turned out that the work was much more difficult than had been thought and the salvors undertook to repudiate the contract and recover what the services were worth as salvage services. The decision of the court, as stated in the syllabus, was as follows:

"Where an agreement fixing the amount of the remuneration to be paid for salvage services has been deliberately entered into, at the time of the commencement of the danger, between perfectly competent parties, the court will not allow the agreement to be set aside merely because the execution of it has turned out more difficult than was anticipated at the time of making the contract." (*Dominy vs. Anchors, Sails, etc.*, 1 Benedict, 77, s. c. Fed. Case No. 3077; *Bounty vs. Kerrin*, Fed Case No. 1697 a; *The Whitaker*, Fed. Case No. 17525;

Harley vs. 467 Bars of Railroad Iron, 1 Sawyer 1, s. c, 11 Fed: Cases, 525.)

This contract must therefore be sustained unless it can be set aside for some one of the reasons stated in the authorities above cited.

It is claimed by the plaintiffs that Captain Thonagel deliberately made statements to Captain Robinson at the time of the contract, which statements Captain Thonagel knew to be false.

The only evidence on the part of the plaintiffs to sustain this claim which we have found is in the testimony of Robinson. He said that—

"The captain gave me to understand that; there was a crack in her from 30 to 40 feet long; then I made the contract with him, and I told him if that is the case we will have her out of there quickly, but when I went to work at her I found it was 200 feet long from stem to stern and a very large hole in the stern fully 12 feet long and 2 feet wide."

He said also that "she turned out to be forty: times as much damaged as they reported to me."

Thonagel testified that he made no representations to Robinson as to extent of her injuries; that he did not know that the crack spoken of by Robinson was more than 30 or 40 feet long, and did not find it out until the vessel was in the slip.

In the case of Harley vs. 467 Bars of Railroad Iron, above cited, the court said:

"It is claimed by the salvors that their agreement was made under a misrepresentation of the facts, and that the service was more arduous and expensive than they had, a right to anticipate. But it does not appear that any willful misrepresentation was made to them as to the position of the vessel. The precise depth of water in which she lay, and especially her position on the bottom in water 25 or 30 feet deep, were necessarily matters of conjecture, and the libellants, before entering into their contract, might have visited the wreck, ascertained its position, and estimated the chances and probable expense of the service."

It appears that Captain Robinson visited the wrecked vessel twice before he made his contract. The burden of proof is on the plaintiff to show that the contract was entered into by reason of fraudulent representations on the part of the defendant. We do not think that this has been established.

2. That part of the contract which required the plaintiffs to bring the ship to Cavite they performed, but that part of it which required them to put her in condition to be sailed to Hongkong they never performed. Notwithstanding the declaration of the plaintiff Robinson to the contrary, it is very apparent, that the ship was at no time prior to the 20th day of January in a condition to be even towed to Hongkong or Singapore. It is claimed, however, by the plaintiffs, and it was so found by the court, that the defendants prevented the plaintiffs from fulfilling that part of their contract and that they are, therefore, entitled to recover in this action.

That the plaintiffs removed all of their machinery and utensils from the ship on or about the 20th day of January and never did anything more thereon thereafter is undisputed. The question is whether they did this voluntarily or were ordered to do it by Captain Thonagel. The plaintiff Robinson at first testified that about this time the captain wrote him a letter, telling him to remove his pumps and boilers and all other machinery from the vessel. When on cross-examination he was shown the letter to which he referred, and from which it appeared that the only request therein was a request that Robinson return a certain pump—belonging to the quartermaster, he then testified that Captain Thonagel told him verbally to remove his machinery. Thonagel denies that he ever gave any such orders and testifies that he was constantly insisting that Robinson proceed with his contract. Practically all of the evidence in the case upon this subject is the evidence of these two witnesses, and it is in direct conflict. After a careful examination of it, we are satisfied that the plaintiffs have not established, by a preponderance of the

evidence, that any such orders were given by Thonagel and that, on the contrary, the evidence preponderates against their contention. The finding of the court below, therefore, to the effect that the defendant prevented the plaintiffs from fulfilling their contract, can not be sustained.

There is considerable testimony in the case relating to a difficulty between the first officer of the ship and the plaintiff Robinson. Evidence that while the ship was ashore on the Cavite coast, the first officer, when drunk, discharged a revolver at the plaintiff Robinson was stricken out, but it seems to be assumed by the parties that such was the fact. When Captain Thonagel heard of this, and while the ship was still upon the Cavite coast, he took the first officer off and placed him in the Sailors' Home. Later, and while the ship was lying in Cavite harbor waiting to go into the dock, Thonagel employed him temporarily for ten days to do some work upon the sails of the ship, and on the 26th day of February, after the plaintiffs abandoned the ship, he was employed permanently again as first officer. During this ten days Robinson was on the ship several times and was not interfered with in any way by the first officer. This temporary employment did not, under the circumstances, justify the plaintiffs in abandoning their contract.

The delay from the 10th day of December to the 18th day of January furnished no justification for the abandonment of the contract. That this was consented to by the plaintiffs very clearly appears from the evidence of Robinson himself.

3. The view which we have taken of the evidence leads necessarily to a reversal of the judgment of the court below. Judging by the contract which was afterwards made between the owners of the ship and a dock company of Hongkong, it would have cost the plaintiffs 22,000 pesos to do what they had agreed in the contract to do for 15,000 pesos. The case may be a hard one for the plaintiffs but we can not affirm this judgment without holding that when parties have voluntarily entered into a contract they can disregard it if it turns out to be unprofitable to them, and can recover as if no contract had been made.

4. The defendants in the court below made objection by demurrer to the procedure followed in this case an objection founded, apparently, upon the case of *Heath vs. The San Nicolas*, 7 Phil. Rep., 532—but nothing is said in the brief in this court, either in, the assignment of errors or elsewhere, concerning this point.

They also in the court below presented a counterclaim asking the recovery of 12,000 pesos against the plaintiffs. There is no assignment of error in their brief touching this point and no discussion of it therein. The only reference thereto is in the last two lines of their brief where they ask that the plaintiff be ordered to pay the expenses which they incurred. Under these circumstances, this point can not be considered.

The judgment of the court below is reversed and judgement is ordered in favor of the defendants and against the plaintiffs, absolving the defendants from the complaint, with the costs of the first instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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