

G. URRUTIA & CO., PLAINTIFF AND APPELLANT, VS. THE PASIG STEAMER AND LIGHTER COMPANY, DEFENDANT AND APPELLEE.*G.R. No. 5583. March 19, 1910*

Ponente: TORRES, J.

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On May 19, 1909, the firm of G. Urrutia & Co. filed suit in the Court of First Instance of the city of Manila against The Pasig Steamer and Lighter Company, alleging, among other particulars, that it is the owner of the steamer called Nuestra Senora del Pilar, registered in the port of Manila, provided with the proper licenses to navigate and do business in the waters of the Philippines, its cash value being P80,000, the cargo it carried, on the dates referred to in the claim, being P45,000; that the defendant is the owner of the steamer San Juan, registered at the port of Manila; that on or about the 6th of December, 1908, while a storm was raging, the said steamer Nuestra Senora del Pilar was proceeding toward the port of Legaspi, and twenty hours and thirty minutes after departure of the vessel a steamship displaying signal flags was sighted in the direction of Malabrigo, on which account the former ship steered toward the latter and it was seen that it was the San Juan, and the signals were "M. Y." - I am disabled, can not navigate. Will you tow me? "E. L. D." - Secure anchorage.

That thereupon the steamer Nuestra Senora del Pilar, with great risk to the vessel, salvaged the San Juan and took her to a safe port, and that had it not been for the timely, prompt, and efficacious help rendered by the Nuestra Senora del Pilar, the San Juan and her cargo would have been totally lost; that the steamer salvaged had at the date of the salvage an actual and cash value of P100,000,, wherefore the just and adequate remuneration for the salvage service rendered by plaintiff's steamer amounted to the sum of P40,000, the payment of which having been demanded of the defendant since the 15th of January, 1909, the said defendant, without objecting to the amount of the claim for the said service, does not pay the same and has been delaying payment under flimsy pretexts, and therefore the plaintiff prays the court to render judgment in its favor for the sum of P40,000, with legal interest thereon from the 15th of January, 1909, and the costs.

The defendant, being summoned to appear, filed a demurrer to the original complaint, alleging that the facts therein set forth did not constitute a cause of action against the defendant and that there was a defect of plaintiff parties.

On the 30th of June following the plaintiff presented a motion praying that the' aforesaid demurrer be overruled and summons issued to the defendant; the court, by order of July 3, 1909, sustained the demurrer and declared that the plaintiff was entitled to amend the complaint by including therein the officers and crew of its ship as defendant parties, if they did not wish to be made plaintiffs. Against this decision the attorneys for the plaintiff took exception and by a writing of the 8th of the following July stated to the court that, in conformity with article 101 of the Code of Civil Procedure, they chose not to amend their client's complaint by making the captain and officers of the said steamer parties thereto.

In view thereof, the court, by order of the same date, July 8, dismissed the complaint for the reasons it set forth,

with the costs against the plaintiff. To this decision the latter excepted and announced their intention to file a bill of exceptions in the ordinary manner; this when filed was certified, approved, and forwarded to the clerk of this court.

The shipping firm owning the steamer Nuestra Senora del Pilar seeks to obtain compensation from the owners of the steamer San Juan for salvage services rendered by the former to the latter during a storm. The services were successfully rendered, at the request of the officers of the ship salvaged, which was conducted by the Nuestra Senora del Pilar to a safe port, and the compensation is not refused by the owners of the San Juan. The matter at issue, which is the subject of the appeal, is restricted to the question whether the company owning the Nuestra Senora del Pilar is compelled, in order to claim the said compensation, to make the officers and crew of the salvaging ship, Nuestra Senora del Pilar, parties plaintiff or defendant, as was decided affirmatively by the Court of First Instance.

Notwithstanding the fact that the case is not expressly provided for in the legislation in force in these Islands, especially in the Code of Commerce, inasmuch as it is a question of such an important service and of just compensation therefor, wherein the subjects of any nation might be interested to such an extent that the questions arising out of salvage services might become international, under the principles of the common law, it is proper for this court to determine the question pending between the parties in accordance with the laws of the United States and the decisions of the courts of the same.

"Salvage is awarded to encourage promptness, energy, efficiency, and heroic endeavor in saving life and property in peril * * *" (Vol. 24, Am. & Eng. Ency. of Law, p. 1222.)

"The owner of the salvaging vessel has always been considered as entitled to salvage reward for the use of his vessel in rendering salvage services, though he was not present when the salvage service was rendered." (Idem, p. 1195.)

The action and cooperation of the officers and crew of the salvaging vessel was meritorious and worthy of all praise, yet the use and service of the vessel, as an indispensable instrument for the salvage, was of the utmost importance, taking into consideration the danger to which the ship and the crew were exposed; therefore the latter and the owner of the salvaging vessel are unquestionably entitled to the remuneration which they have earned.

It sometimes happens that not all the officers and members of the crew remain in the service of the shipowner, but that, after rendering the salvage services, they depart for other distant countries, and it is difficult to reunite them or to rely upon the acquiescence of the absent ones; it is not right that the shipowner should be prevented by this circumstance from availing himself of his right to claim so just a remuneration before the courts, when he whose obligation it is to pay it refuses to do so extrajudicially or does not heed the efforts of the creditor to obtain compensation, notwithstanding the justice of his claim.

Granting that the officers and members of the crew were entitled to a certain part of the remuneration, if the owner of the salvaging vessel makes claim for proper compensation in the courts, the theory and jurisprudence of the courts of the United States in North America do not compel him to make the said officers and crew parties to the suit, nor do they prescribe the dismissal of the shipowner's action, but they permit him to continue the suit without prejudice to any rights the former may have to a part of the said remuneration which is allotted proportionately in the discretion of the court.

For want of an express law in these Islands governing the matter, and since this court is obliged to decide the present litigation in accordance with the jurisprudence of the courts of the United States, we cite the following pertinent extracts from two decisions of the United States Supreme Court.

Justice Clifford, of the Supreme Court of the United States, who wrote the opinion in the case of *The Blackwall* (10 Wall. (U. S.), 1,12, 13), says:

"Salvors are not deprived of a remedy because another set of salvors neglect or refuse to join in the suit, nor will such neglect or refusal benefit the Hbelants by giving them any claim to a larger compensation, as the non-prosecution by one set of salvors inures, not to the libelants prosecuting the claim, but to the owners of the property saved.

"Cases may also be found where co-salvors who neglected to appear and become parties to the suit until the decree was pronounced were allowed to petition the court for such compensation out of the fund in the registry of the court, and where their claim received a favorable adjudication.

"Objection is also made that the owners of a vessel can not promote a salvage suit unless they participate in the salvage service; or if they may promote such a suit, that they can not participate in the reward decreed for the salvage service except for the risk and damage to which their property was exposed in rendering the salvage service. Such an objection was made in the case of *The Camanche*, before cited, but the court overruled the objection, and that ruling is adopted and applied in this case."

The same Justice Clifford, who delivered the opinion in the case of *The Camanche* (8 Wall. (U. S.), 448, 474, and 476), among other things also says:

"Remuneration for salvage service is awarded to the owners of vessels, not because they are present, or supposed to be present when the service is rendered, but on account of the danger to which the service exposes their property and the risk which they run of loss in suffering their vessels to engage in such perilous undertaking; * * *

"Next proposition of the claimants is that the libelants, even if they may be regarded as salvors, were not the sole salvors, and consequently that the decree of the circuit court ought not to be affirmed, as it would not be a bar to a subsequent suit for the same services if instituted by their employees.

"All persons interested may appear, on the return of the monition, and become parties to the suit, or, by some proper proceeding, have their rights adjudicated; and in many cases, even after the decree upon the merits is pronounced, they may appear at any time before the fund is distributed and claim any interest they may have in the proceeds of the property libeled, if any, in the registry of the court, * * *."

Considering the doctrine established by the decisions quoted, and in view of the fact that the plaintiff firm has chosen not to make the captain, officers, and crew of the steamer *Nuestra Senora del Pilar* parties in its claim, this court decrees that the trial shall continue in all due form, without prejudice to the said officers and crew exercising the rights that pertain to them, whenever they may deem proper.

For the foregoing reasons, and following the procedure observed in the United States, it is in our opinion proper to reverse, and we hereby reverse, the order of dismissal of the 8th of July, together with the previous order sustaining the demurrer, and the judge of first instance, to whom this decision shall be communicated, shall proceed with the present litigation in accordance with law. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Moreland, JJ., concur.

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