

G.URRUTIA & COMPANY, PLAINTIFF AND APPELLANT, VS. THE PASIG STEAMER AND LIGHTER CO., DEFENDANT AND APPELLEE.*G.R. No. 7294. March 22, 1912*

Ponente: TORRES, J.

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This appeal was taken, through a bill of exceptions, by the representative of G. Urrutia & Co., from a judgment rendered in this case by the Honorable A. S. Crossfield, judge.

Under date of May 19, 1909, counsel for G. Urrutia and Company filed a written complaint against The Pasig Steamer and Lighter Co., wherein it was alleged that the plaintiff company was the owner of the steamer Nuestra Senora del Pilar, inscribed in the marine registry of the port of Manila; that the said vessel was provided with the proper license to navigate and trade in the waters of the Philippines, was worth P80,000 in cash, and, on the dates mentioned in the complaint, was carrying a cargo valued at P45,000; that the defendant company was the owner of the steamer San Juan, inscribed in the marine registry of the port of Manila; that on or about December 6, 1908, while a storm was raging, the steamer Nuestra Senora del Pilar, belonging to the plaintiff, was navigating in the direction of the port of Legaspi and, after twenty hours and thirty minutes, descried, toward Mal-Abrigo, a steamship which had signal flags hoisted, wherefore the Nuestra Senora del Pilar directed its course towards the said vessel, which proved to be the San Juan displaying the signals M Y and L D, which mean: "Am unable to navigate. Will you tow me to a safe anchorage?" that on that occasion, the steamer Nuestra Senora del Pilar, with great risk to itself, rendered salvage service to the San Juan by taking it to a safe port, and that, had it not been for the opportune, prompt and efficacious aid lent by the Nuestra Senora del Pilar, the San Juan and its cargo would certainly have been totally lost; that the salvaged steamer, together with its cargo, was worth on the dates of the salvage and the complaint P100,000, at a true cash valuation; that the just and adequate remuneration for the salvage service rendered by the Nuestra Senora del Pilar to the San Juan sum of P40,000; and that, notwithstanding that the plaintiff company had demanded of the defendant concern the payment of the said sum for the salvage service referred to, and since the 15th of January, the defendant, without objecting to the amount of the plaintiff's claim, had not paid the same and had been delaying the payment thereof under futile pretexts: wherefore, the plaintiff prayed that judgment be rendered in its behalf, to enable it to collect from the defendant the sum of P40,000, with legal interest thereon from January 15, and the costs.

The defendant demurred to the foregoing complaint, and after the demurrer was overruled on appeal to this supreme court, the defendant in its answer, among other allegations, set forth: that it admitted that the plaintiff company was, at the time of the presentation of the complaint, the owner of the steamer Nuestra Senora del Pilar, entered in the marine registry of this city and licensed to navigate in the waters of the Philippines, and admitted the allegations of paragraph 4, relative to the defendant's being the owner of the San Juan, of the registry of the port of Manila, but expressly denied all the other allegations contained in paragraph 3 of the complaint, which had reference to the steamer Nuestra Senora del Pilar and to its cargo, and denied each and all of the allegations contained in paragraphs 5 to 10, inclusive, of the said complaint. The defendant, therefore, asked that, after due

trial, it be absolved from the complaint and the plaintiff be sentenced to pay the costs.

The case came to trial, and both parties presented the matter in controversy under depositions taken by common accord. On April 12, 1911, the trial court rendered judgment sentencing the defendant company, The Pasig Steamer and Lighter Company, to pay to the plaintiff company, G. Urrutia & Co. the sum of P1,650, together with interest thereon at the rate of 6 per cent from the date of the presentation of the complaint, May 19, 1909, and to bear the costs of the trial. To this judgment the plaintiff took exception and by a written motion asked for the annulment of the judgment and the holding of a new trial, on the grounds that the said judgment was not supported by the evidence, that the conclusions deduced from the facts were openly and manifestly contrary to the proofs, and that the judgment was contrary to law. This motion was overruled by an order of April 29, 1911, and exception thereto was taken by the plaintiff who duly presented the proper bill of exceptions which was certified and forwarded to the clerk of this court, accompanied by a transcript of all the evidence. This action is to recover compensation or remuneration for salvage services rendered by the steamer Nuestra Senora del Pilar to the San Juan, on an occasion when the latter was in imminent danger from a cyclone then blowing and threatening it; a cable had become entangled in the propeller of the latter vessel thus making it impossible for it to move in obedience to its machinery and exposing it to the mercy of the storm that was raging, of the waves and of the currents between certain islands.

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.

When so important a service is rendered as that of salving a vessel with its crew and the cargo it carries, from a positive danger to which it is exposed, strict justice demands that whoever effects so meritorious a service should receive adequate remuneration therefor, not only on account of the act performed in behalf of the shipowner and the crew, but also because of the danger run by the vessel which made the salvage, due to the circumstances that existed at the time such service was rendered. In a lease of work or services, says article 1544 of the Civil Code, one of the parties binds himself to execute a work or to render a service to the other for a specified price. In accordance with the provisions of this article, the service rendered in the natural course of events and at an ordinary time must be remunerated, unless the service be rendered gratuitously at the express will of the server. So that, when the steamer Nuestra Senora del Pilar responded to the call for help, made by means of signals displayed by the captain of the steamer San Juan, in the midst of a violent storm, which signals conveyed the information that the latter vessel was unable to navigate for the reason indicated and inquired whether the steamer signaled would tow it to a safe anchorage, it is only just that the steamer San Juan, after having been saved from the danger and conducted within the bay, called a shipyard, of the Island of Mindoro, should pay, in recompense for such valuable and extraordinary service, due and proper remuneration to the owner of the salving vessel, Nuestra Senora del Pilar, once it was satisfactorily proved that the San Juan could not be guided by its rudder, or navigated by the use of its engine, on account of a cable having become wrapped and entangled in its propeller, so that, as a consequence of the said storm, the steamer rolled heavily and was exposed to certain wreck or stranding upon the coasts of the adjacent islands.

The second officer of the San Juan, in his sworn testimony, stated that this steamer, but for the aid received, would have been exposed to real danger, and that, had it continued adrift, it might have been stranded, as it was impossible to lower a boat for the purpose of freeing the propeller from the cable entangled in it, owing to the bad weather and the heavy seas; an attempt was made to do so, but no one dared to go down to perform this operation.

The principle has been established by the courts of the United States that when a vessel has been disabled by the breaking of its shaft at sea and hoists signals asking for aid, and another vessel goes to its relief and takes it in

tow, such service rendered is one of salvage, and not merely of towage.

The towage of a vessel in peril to some place of security, when it is unable by itself to reach the same, is a service of salvage.

The towage of a vessel which has lost the use of its engine by accident, though it is complete in its hull and masts, is a service of salvage, and it is not necessary that the said loss be inevitable since, in view of the peril, the vessel could not be salvaged in any other way: for it is sufficient that at the moment the service was rendered there was a probable, threatening danger and a reasonable fear that it might strike.

Hence it is not here a question of a simple service of towage in ordinary and normal weather, but of an extraordinary act of salvage performed in behalf of the steamer San Juan in exceptional circumstances and while a cyclone was raging over the part of the sea where the salvaged vessel then was, which, in the midst of such peril, was unable to govern its movements through its engine on account of the in-serviceability of its propeller.

Compensation in such cases as that which occurred to the San Juan, deserves to be considered as a reward for the service rendered by the Nuestra Senora del Pilar in the midst of a peril to which the rescued as well as the salvaging steamer was exposed, and it is proper that such reward should be made, not only because of the salvage of the vessel and of the goods it carried and the rescue of its crew, but also in order that it may serve as an incentive to render prompt and efficient aid in such cases when requested by those who in the midst of such unfortunate circumstances are urgently in need thereof. It should also be borne in mind that the Nuestra Senora del Pilar is a merchant vessel and as such should with more reason be favored for the service which it rendered to the San Juan, which perhaps otherwise might have been lost with all its cargo and crew.

The obligation to remunerate the service before referred to having been shown to be lawful and just, it only remains to fix the amount thereof. Taking account, then, of the value of the vessel salvaged and of its cargo and the circumstances of the occasion, time and place when and where the service of salvage was performed, it appears just and equitable to fix the value thereof at P5,000, considering that while the amount specified in the judgment appealed from is exceedingly low, on the other hand, that demanded by the appellant is, in the judgment of this court, excessive.

For the foregoing reasons, it is our opinion that the judgment appealed from should be affirmed; provided, however, that the defendant, The Pasig Steamer and Lighter Co., shall pay to the plaintiff, G. Urrutia & Co., the sum of P5,000, with interest thereon at the rate of six per cent per annum from May 19, 1909, when the complaint was filed, until its complete payment, and shall also pay the costs of the case.

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

Moreland, J., concurs in the result.

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