

(1903) 09 MAD CK 0002

In the Madras High Court

Case No : Original Civil and Maritime Suit No. 1 of 1903

The Clan Line Steamers (Limited)

APPELLANT

Vs

The Balces

RESPONDENT

Date of Decision : 08-09-1903

Acts Referred:

Citation : (1903) 09 MAD CK 0002

Hon'ble Judges : Moore, J

Bench : Single Bench

Advocate : Chamier, King and Josselyn, Attorneys, for the Appellant; Napier and James Short, Attorney, for the Respondent

Judgement

Moore, J.—On the night of 5th July 1902 the barque "Balces" which was anchored in the Port of Porto Novo broke loose from anchorage

and drifted out to sea. The boat was, it appears, under repair at the time and there were sleeping in her on the night on which she drifted out seven

men, five of whom admittedly were caulkers who were employed in repairing the boat, while the other two are stated to have been watchmen,

who also, it is alleged on behalf of the Defendant, were lascars or sailors. The steamer "Clan Lamont" belonging to the Plaintiffs steamed out of the

Port of Cuddalore at 9 o'clock on the morning of the 6th of July. From the log, it appears that this steamer sighted the barque "Balces" at 10 A.M.

without any sails set, drifting and with distress flags flying." The steamer bore down to her, sent out a boat and found that she had parted her cable

at Porto Novo and had been drifting all night. At 11-30, the steamship "Clan Lamont" took the "Balces" in tow and proceeded at half speed

towards Cuddalore. Her steering gear was out of order and useless and there were no sails on board the ship. The boat was therefore, it is stated

in the log, ""practically derelict"" and was drifting towards the south-west monsoon in the Bay of Bengal and must have foundered. At 2 P.M. the

tow rope parted owing to the "Balces" ""not steering and the rope being across her bow."" The steamship "Clan Lamont" stopped and at 2-50

another rope was got fast to the "Balces" and the "Clan Lamont" then proceeded towards Cuddalore where she arrived at about 4-30. The

steamer "Clan Lamont" handed over the barque "Balces" to the Port Officer, left Cuddalore harbour at about 7-30 and steamed towards

Vizagapatam. The Plaintiffs allege that the "Balces" was, to the best of their information and belief, worth about Rs. 15,000 at the time that these

occurrences took place, and claim a sum of Rs. 5,000 as salvage on account of the services rendered by them to the "Balces." The Defendant

traverses the allegations made in the plaint in various particulars and submits that Rs. 500 is a fair and reasonable sum for him to pay on account of

any services that were rendered by the "Clan Lamont" to the "Balces," He has not been examined himself here and no witnesses have been called

on his behalf. The Captain, Chief Engineer and others on board the "Clan Lamont" were examined by commission in Glasgow on the 18th and

19th June last, "but no one appeared on that occasion on behalf of the Defendant and they were consequently not cross-examined. The only

question that really has to be considered in this case is as to the amount that should be paid to the Plaintiffs as salvage on account of the services

which they undoubtedly rendered to the "Balees" on the 6th of July 1902, There has been some discussion at the hearing of this case as to whether

it can be held that the "Balees," was what is called a "derelict," that is to say, as defined in Wharton's "Law Lexicon," "a vessel forsaken at sea."

It is urged on behalf of the Defendant that, as there were seven men on board, two of whom were sailors, it cannot be held that the boat was a

"derelict." The point does not appear to be one of much importance, for as pointed out in the judgment in *The Janet* Court L.R., [1897], P.D., 59

by Sir Francis Jenne, the fact that the subject of a salvage is a derelict does not now, and it is doubtful if it ever really did, carry with it a right to

remuneration consisting of a half, a third, or any specific proportion of the value of the property salvaged. ""There is no magic in the word "derelict,"

but the term imports a certain state of things containing elements which tend, on the general principles of salvage, to raise the amount of the salvage

award and, in fact, the amount of award depends not on the question as to whether the barque can have been held to be a "derelict" or not but on

the value of the services which were performed by the salvor to the property salvaged." The principles in which salvage compensation should be

applied have thus been laid down by Lord Stowell in *The Clifton* 3 Hagg., 120 and these rules, which are as follows, have been followed in all

subsequent cases: "Now salvage is not always a mere compensation for work and labour. The interests of commerce, the benefit and security of

navigation, the lives of the seamen, render it proper to estimate a salvage reward upon a more enlarged and liberal scale. The ingredients of a

salvage service are, first, enterprise in the salvors risking their own lives to save their fellow-creatures and to rescue the property of their fellow-

creatures; secondly, the degree of danger and distress from which the property is rescued-whether it were in imminent peril or almost certainly lost;

thirdly, the degree of labour and skill which the salvors incurred and displayed and the time occupied. Lastly, the value." I now proceed to apply

these principles to the present case. I do not think that it can be said that the salvors risked their lives in saving the barque "Balees." Secondly, as

regards the degree of danger and distress from which the barque was rescued, it is not easy to pronounce with absolute certainty. It is shown that

when the "Clan Lamont" came up to the "Balces" she had drifted to a point at a distance of 14 miles from Cuddalore. The southwest monsoon had

burst at the time, but so far as the evidence goes there was no storm prevailing on the 6th July, nor was there anything that can be called a heavy

monsoon prevalent at the time. The absence of any mention of a storm in the Log book is sufficient proof that no storm prevailed, and the other

entries in the Log book satisfy me that although the monsoon had burst, yet that there was no heavy monsoon weather during that day. The

"Balces" had no proper steering gear on board. The rudder was on board, but the wheel, it is admitted, without which the rudder could not be

worked, was on shore for repair when the boat drifted from anchor. There was one sail in the barque, but it was not set and, according to the

evidence that is given, the only two men on the boat who could be said to be sailors could not have been able without assistance to set the sail. It

must, therefore, be assumed that if the "Clan Lamont" had not rescued the "Balees" the barque would have drifted to the north-east and in all

probability would have foundered and been lost. It is however shown that a boat and some catamarans were sent out by the owner of the barque

from Cuddalore on the morning of the 6th, and if there had been no heavy monsoon weather or strong wind, it is possible that they might have

been able to get out to the "Balees" and rescue the crew, and also, although that, it must be admitted is most doubtful, bring the barque to shore.

The case is, therefore, not very dissimilar from that of the "Chilka" dealt with in *Raffin v. The Chilka* ILR 7 Bom. 196, where, owing to her

machinery having broken down, the "Chilka", when she was 96 miles off the Arabian coast, was drifting towards a dangerous part of the coast and

in all probability would have been wrecked and all lives lost if she had not been rescued by the steamship "Henry Bolekow." In that case it was

held that the services rendered by the rescuing ship were not merely towing services but salvage and that the salvors were entitled to compensation

on the principles which I have already quoted from the judgment in the "Clifton" case. I therefore hold that the danger from which the "Balces" was

rescued was very great and that it was in imminent peril and would almost certainly have been lost, if it had not been for the opportune arrival of

the "Clan Lamont." The third point is the labour and skill which the salvors displayed and the time occupied. The time occupied was, as has

already been shown, from 10 A.M. till 6 P.M. The skill displayed must have been considerable. From the evidence of the captain of the "Clan

Lamont" it is clear that, owing to the fact that the "Balces" had no steering gear which could be worked, it was found very difficult to tow the boat

into harbour, and in doing so the captain and the men on the "Clan Lamont" had to expend considerable labour and show considerable skill.

2. The last point for consideration is the value of the boat saved and as to this there cannot be much dispute in the present case. The Plaintiff values

it at Rs. 15,000. The Defendant says in his written statement that it (the boat) was not worth more than Rs. 10,000, and it is shown that, when the

boat was sold under the orders of this Court by Messrs. Simson and Co. of Cocanada in June 1903, it realised a sum of Rs. 6,500. In these

circumstances, I think, and I cannot be very far wrong if I find that the value of the "Balces" at the time of these occurrences was about Rs.

10,000. It appears that the "Clan Lamont" was, in consequence of the delay at Cuddalore, about a day late in arriving at Vizagapatam, and we

must, therefore, take it that the loss of time was a day. The captain states that the value of the coal consumed in salving the barque was about

₹1/250 and estimates the value of the hawsers and ropes used in towing and the "damage done to boat and gear" at another ₹1/250; and the general

expenses of the ship and crew, apart from coal, at about ₹1/260 or thereabouts. The captain also states that this does not take into account the

damage done to the steamship "Clan Lamont" and her engines. I think that it must be admitted that this is a very exaggerated estimate. I cannot

credit the statement that the coal consumed in consequence of the delay at Cuddalore was worth anything like ₹1/250, nor that the cost of the

ropes, etc., and the damage caused in towing the boat could have amounted to another ₹1/250, or that the general expenses of the crew, apart

from coal, were ₹1/260, or more, and further I cannot hold that there is evidence which satisfies me that damage was caused either to the steamship

"Clan Lamont" or to her engines by the undue strain put upon her in towing the boat. Considering the relative dimensions of the boats, it is

scarcely possible that there could have been any such strain. I think it must be admitted that these valuations are excessive. As already stated the

Defendant offered Rs. 500. At the close of the argument Mr. Napier on his behalf stated that the Defendant was willing to give Rs. 1,000. I find

the first and second issues in the affirmative and on a careful consideration of all the evidence that has been given and the arguments of Counsel on

both sides, I decide on the third issue that an award of Rs. 2,000 will be reasonable compensation for the salvage services rendered.

3. I accordingly pass a decree for that amount with costs including the costs of the commission. The balance in Court to the credit of the suit to be

paid to the owner of the Defendant barque "Balces," Muhamad Saib Maracoir.