

der in the first degree and was convicted in the High Court of second degree murder on October 13, 1952.

He further points out that the victim of petitioner's arson, Moolang, was in prison serving the murder sentence imposed upon him when petitioner destroyed his home and its contents by setting fire to it April 27, 1967.

[20] Whether old custom permitted a murder victim's family to retaliate by murder, by arson, or by larceny as petitioner alleges, is now immaterial because custom has been abrogated by the statutory punishment for murder. The punishment imposed upon Moolang by the Trust Territory government for killing petitioner's father replaced the private right of revenge asserted by petitioner. The old custom is no longer the law. Only the statutes are now applicable in this situation.

SUPPLEMENTAL ORDER

It is ordered that the foregoing opinion be made a supplement to the Opinion and Order denying petitioner's application for writ of habeas corpus for the purpose of effectuating his discharge from the lawful sentence imposed upon him for the crime of arson.

DAVID R. QUITUGUA, Plaintiff

v.

ROTA SHIPPING and BUSINESS CORPORATION, Defendant

Civil Action No. 250

Trial Division of the High Court

Mariana Islands District

July 16, 1969

Action to recover balance due for services rendered. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where plaintiff cashed check sent by defendant, which check was intended to cover all the

services rendered, there was an accord and satisfaction which barred plaintiff from further recovery.

Accord and Satisfaction-Generally

The acceptance and use of a remittance by check, purporting to be "in full" or employing words of a similar import, or accompanied by a letter to that effect, amount to an accord and satisfaction of the larger claims of the creditor, assuming that the claim was unliquidated or disputed, so that an express agreement to accept, and the actual acceptance of, the smaller amount in full satisfaction would have been binding.

CLIFTON, *Temporary Judge*

FINDINGS OF FACT

The court finds as follows:-

1. That the motor vessel *China Seas*, owned by the plaintiff rendered services to the M/V *Marianas*, owned by the defendant, on or about November 17, 1967, at the request of the defendant, and that said services were reasonably worth the sum of Three Hundred Dollars.

2. That it is not true that the services above mentioned were due to or caused or contributed to by reason of the failure of the captain of the *China Seas* to wait for and have the M/V *China Seas* accompany the M/V *Marianas* from Guam to Rota and that there was no breach of an arrangement between the captains of said vessels to have the said vessels accompany each other from Guam to Rota.

3. That an accord and satisfaction was reached by the plaintiff and the defendant by reason of the payment to the plaintiff by the defendant of the sum of \$300.00 and the acceptance of said sum by the defendant in full payment for the services rendered to the M/V *Marianas* by the M/V *China Seas* on or about November 17, 1967.

OPINION

This is an action for \$7,700.00, the alleged balance due for "towage services rendered by plaintiff when he towed,

through his vessel *The China Seas*, the M/V *Marianas* owned by the defendant, November 17, 1967."

The testimony shows that both vessels, bound for Rota, left Guam which was about 45 miles from Rota and that the captains of the vessels had agreed that as the vessels were leaving Guam at about the same time but from different harbors their respective vessels should meet outside the harbor at Agana, Guam and proceed together to Rota. The *China Seas* got to Agana first and after waiting a short while for the *Marianas* proceeded towards Rota. The *Marianas* captain, upon arriving near Agana, waited some four hours for the rendezvous, and then proceeded towards Rota.

Unhappily, the motor on the *Marianas* "conked out", that is, quit working. The Captain waited until 7:30 in the morning, at which time the Trust Territory offices on Rota opened, and a radio call was put through by Benjamin Manglona, a passenger on the *Marianas* and also the president of the defendant, Rota Shipping Company, to the District Administrator's representative at Rota, requesting that an engineer and a tank of oxygen be sent out to the vessel. The representative, Prudencia Manglona over the radio asked the defendant on the *China Seas* to aid the *Marianas* but the defendant replied that his boat was loaded, but that he would go to the aid of the *Marianas* as soon as the *China Seas* could be unloaded. The District Administrator's representative put some fifteen administration employees to unloading the *China Seas* when it arrived so that it, with the tank of oxygen and two engineers aboard, soon proceeded to the *Marianas*, which was then some 17 miles from Rota. The *China Seas* had to travel about 28 miles before the two boats came together. The engineers and oxygen were transferred via a rope to the *Marianas* and the repairs commenced. This took about an hour or two and then both boats were able to go on

their own power into the port at Rota. The whole operation from the time the *China Seas* left Rota until it got back to Rota after aiding the *Marianas* took some six hours. The seas were not very choppy and there was nothing very hazardous about the operation, though the *Marianas* might have been in serious trouble if the weather changed.

Although the plaintiff described the services of the *China Seas* as "towing" and the boats were for a while held together in a towing position, and to some little extent the part of what happened could be called "towing", the purpose of the connection of the two vessels by rope was not to propel the *Marianas* to Rota, but was so that the *China Seas* could "stand by" until the repairs were completed and the *Marianas* would be able to proceed without assistance. The testimony of the Captain of the *China Seas* in fact was as follows:-

"I told him to tie the rope to his boat to tow during the time the engineer is working on the engine so I don't have to keep drifting out so far."

The court has found that the services rendered by the *China Seas* was reasonably worth \$300.00. This finding was reached after a consideration of the factors testified to in the deposition of Captain Katindoy, as being the factors to be taken into consideration in fixing a charge for aiding a vessel in distress, the testimony of the plaintiff, the testimony of the captains of the *China Seas* and of the *Marianas*, and of Benjamin Manglona.

The court has rejected the defense that the breakdown of the vessel was caused or aided by the failure of the captain of plaintiff's vessel to abide by the arrangements of the two captains that the boats should meet outside of Guam and proceed to Rota together. Upon the *China Seas* reaching the rendezvous point the captain was not required to do more than look and wait a reasonable length of time for the other boat before proceeding, and also it would be

mere speculation to conclude that the breakdown of the *Marianas* would not have occurred if the vessels had met and proceeded together.

However, the defendant has shown that there was an accord and satisfaction which of itself bars recovery by the plaintiff. The testimony shows that after receiving a letter from the plaintiff dated December 20, 1967, followed up by another letter dated January requesting "full settlement" of a fee of \$8,000.00 for the services rendered by the *China Seas*, the president of the defendant sent a letter and check in the sum of \$300.00 "for services rendered by M/V *China Seas*." The check was cashed by the plaintiff on the advice of his attorney. This amounts to an accord and satisfaction under the rule stated in 34 A.L.R. 1035 and restated in 75 A.L.R. 905, and supported by a large number of cases, that "By the great weight of authority the acceptance and use of a remittance by check, purporting to be 'in full' or *employing words of similar import*, or accompanied by a letter to that effect, amount to an accord and satisfaction of the larger claim of the creditor, assuming that the claim was unliquidated or disputed, so that an express agreement to accept, and the actual acceptance of, the smaller amount in full satisfaction would have been binding." (Emphasis the court's.) Although the letter and check did not use the words "in full" the only conclusion that can be reached from a reading of the letter was that the check was intended to cover all of the services rendered by the *China Seas*. The amounts due, if any, for these services were certainly unliquidated, and there is no basis for putting on the circumstances the construction attempted by the plaintiff, that the \$300.00 was a payment on an obligation of the defendant for \$8,000.00.

Judgment must be for the defendant for all of the reasons above stated.