

7 Phil. 200

[G.R. No. 2855. December 19, 1906]

**FLEMING & CO. ET AL., PLAINTIFFS AND APPELLANTS, VS. THE LORCHA
"NUESTRA SRA. DEL CARMEN," DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

This was an action brought by the plaintiffs in the Court of First Instance of the Province of Iloilo against the lorcha, Nucstra J&eilwa del Carmen, to recover salvage for certain assistance rendered to said lorcha on the 17th of August, 1904. The assistance was rendered by the steam launch *Patro*, which belonged to the plaintiffs and was, on that date, in charge of Fred. D. Burdett. The assistance, for which the plaintiffs now attempt to recover, was rendered in response to a request made by one Andres Baeza in the following communication:

"SR. BURDETT.

"MI RESPETABLE SR. BURDETT: Me hallo en una situacion grave, porque la lorcha no tiene timon, y le ruego a Vd. tenga la bondad de que la *Patro* me saque a remolque hasta el otro lado de Gigantes para arreglar la averia.

"El pago del remolque Vd. cuidado de fijar.

"Sin otra, gracias anticipadas le da.

"Su af'mo. S.Q.B.S.M.,

“ANDERS BAEZA.”

In response to said request, Burdett, with the steam launch *Patro*, went at once to the assistance of the *lorcha* *Nuestra Señora del Carmen* and towed the latter to a place of safety.

In the court below the defendant made the following defenses in its answer:

First. That the plaintiff had rendered to the *lorcha* *Nuestra Señora del Carmen* the assistance mentioned in the complaint of the plaintiffs.

Second. That it admits that on a day in August, 1904, it was towed by the steam launch *Patro* a short distance, but that Burdett renounced all payment for such services.

No objection was made in the court below by the defendant to the form or purpose of the action brought by the plaintiff.

After hearing the evidence adduced during the trial, the judge of the Court of First Instance found as a fact that Andres Baeza, master of the *lorcha* *Nuestra Señora del Carmen*, sent a note to Burdett, master of the steam launch *Patro*, stating that the said *lorcha* was in grave danger near the southern part of the Island of Gigantes, which note requested the aid of Burdett, and that in compliance with said request, Burdett, by means of the steam launch *Patro*, towed said *lorcha* *Nuestra Señora del Carmen* to a place of safety.

In consideration of this finding of facts, the lower court rendered a judgment in favor of the plaintiffs and against the defendant for the sum of P200 for such assistance. From this judgment the plaintiff appealed to this court, assigning as errors the following:

First, That the court erred in deciding that the plaintiffs were only entitled to P200 for the services rendered.

Second. That the allowance of only P200 for services as salvage was an abuse of the discretion of the court.

Third. That the court erred in denying the motion for a new trial.

An examination of the record brought to this court fails to disclose any fact or facts sufficient to justify this court in modifying the decision of the lower court; the decision of the lower court is therefore hereby affirmed.

The defendant and appellee in his brief filed in this court presents some objections as to the right of the plaintiffs to interpose the action in the form here presented. These objections not having been presented in the court below, we refuse to consider them here.

The plaintiffs present a motion for a new trial in this court based upon an affidavit presented by the said Fred D. Burdett. The plaintiffs made a similar motion in the Court of First Instance, basing the same upon practically the same grounds, which was there denied. Inasmuch as said motion for a new trial presents no new fact not considered by the lower court, the same is hereby denied.

After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the cause be remanded to the lower court for execution, with costs to the plaintiff. So ordered.

Arellano, C. J., Torres, Mapa, Carson,, Willard, and Tracey, JJ., concur.
