

**EL VARADERO DE MANILA, PLAINTIFF AND APPELLANT, VS.
INSULAR LUMBER COMPANY, DEFENDANT AND APPELLEE.***G.R. No. L- 21911. September 15, 1924*

Ponente: MALCOLM, J.

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El Varadero de Manila completed satisfactorily certain repairs on the lighter Tatlo, the property of the Insular Lumber Company. The work was performed pursuant to no express agreement, but with the implicit understanding that the price would be as low as, or lower than, could be secured from any other company.

The Insular Lumber Company being of the opinion that the bill as presented by El Varadero de Manila was grossly exorbitant and a proposed compromise having failed of realization, the matter was taken to court, with the result that in the Court of First Instance of Manila, El Varadero de Manila, the plaintiff, secured judgment against the Insular Lumber Company, the defendant, in the amount of P5,310.70, with legal interest from the presentation of the complaint, and costs. Still dissatisfied, the plaintiff has appealed to this court and here has asked us to increase the amount of the judgment to P12,412.62.

To arrive at as correct a judgment as is possible, it will first be necessary to set down a number of figures and thereafter to seize upon a few salient facts as having influence.

The itemized bill presented by the plaintiff, the amount which it still claims, totals P12,412.62. At one time during the course of the negotiations, the plaintiff was willing to accept P10,241.37. (Exhibit I.) The witnesses for the plaintiff naturally took the view that the bill was correct. But the trial judge was of the opinion that it was excessive.

The defendant, on the other hand, says that a reasonable figure for the work would be P5,310.70. Witnesses were offered to substantiate this contention. Their testimony so impressed the trial judge that he adopted their statements as his own. During the course of the abortive negotiations, however, the defendant expressed a willingness to pay the plaintiff P8,070.12. (Exhibit G.)

Now to emphasize three points which will materially assist us in rendering judgment. The first point relates to the offer of compromise which naturally, under the general rules of evidence, must be excluded, except that as the amounts named in the offers to accept certain sums in settlement appear to have been arrived at as a fair estimate of value, they are relevant. (*City of Springfield vs. Schmook* [1878], 68 Mo., 394; *Daniels vs. Town of Woonsocket* [1874], 11 R. I., 4; *Teasley vs. Bradley* [1900], 110 Ga., 497.) Here, there was no denial of liability and the only question discussed was the amount to be paid which the plaintiff insisted should not be less than P10,241.37, and which the defendant insisted should not be more than P8,070.12. The second point of interest relates to the testimony of Mariano Yengko, inspector of vessels, admittedly a disinterested witness, who in one synopsis of a fair value of the repairs, arrived at P5,134.20, but which, on cross-examination, he raised to between seven and eight thousand pesos. And the third point is that the tacit understanding between the parties was that the cost of the repairs should be approximately the same as what other companies would charge. The

defendant admits that El Varadero de Navotas would have done the work for about P8,000.

Basing our findings, therefore, on the foregoing considerations, we are of the opinion that the reasonable value of the repairs performed by El Varadero de Manila on the Tatlo owned by the Insular Lumber Company, was something less than P8,000. We fix the sum definitely at P7,700.

Judgment is modified, and in lieu of the judgment rendered in the lower court, another shall issue in favor of the plaintiff and against the defendant for the recovery of P7,700, with legal interest to begin to run from the date when this judgment shall become final and to continue until payment, without express finding as to costs in either instance. So ordered.

Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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