

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FORTUNATO MEÑEZ, DEFENDANT AND APPELLANT.

G.R. No, 4561. October 09, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

Smith, Bell & Co., at their branch at Iloilo, had five sewing machines which they attempted to sell to the defendant. In response to their request to buy, he replied that he was unable to do so but that he would take the machines and sell them on commission. The witness who made the contract testified :

"The agreement was that, if he is unable to sell the sewing machines during the month, he is going to return them; if not, pay the value of the sewing machines we gave him at the list-price, P20 each."

We think that this evidence shows that the defendant never bought the machines; that while they were in his possession they were the property of Smith, Bell & Co., and that he was bound to return them or their value. The fact that a price was fixed upon the machines does not indicate that the parties intended to change the nature of the contract. It rather indicated an intention of fixing the damages which Smith, Bell & Co. would suffer in case the defendant failed to fulfill the contract. It is similar in this respect to a great many contracts which have been before us relating to the sale of jewels on commission by brokers. We have uniformly held in such cases that the property remained the property of the person who delivered the jewels and that, if the broker failed to return the jewels or the price, he was guilty of estafa.

The defendant's story that he bought the machines, gave an obligation therefor, and that the receipt which the Government witnesses testified he signed in the office when he received an order for the delivery of the machines was not signed by him there but was delivered by him to the carriers who brought the machines to his office, can not be believed. The testimony of the Government to the effect that he received in the office an order for the machines and himself went to the warehouse and took them out, is to our minds a true version of what actually took place.

The second assignment of error can not be sustained. The defendant himself testified that he had sold one machine and had received the price therefor.

The judgment of the court below is affirmed, with the costs of this instance against the appellant So ordered.

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

Mapa, J., did not sit in this case.

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