

JOSE GOMEZ MARINO, PLAINTIFF AND APPELLANT, VS. E. LINTON, W. H. LAMBERT, J. NORTHCOTT, AND C. E. HAYGOOD, DEFENDANTS AND APPELLEES. J. MENCARINI, DEFENDANT AND APPELLANT.

G.R. No. 20744. January 28, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

The question involved is one of fact which largely depends on the credibility of the witnesses. The trial court who saw and heard them testify found for the defendants Linton, Lambert, Northcott, and Haygood upon all the issues, giving his reasons therefor in a well-written opinion, in which he carefully analyzed all the facts.

The appellees admit the signing of the contract known in the record as Exhibit 1, in and by which they agreed to purchase certain land at an agreed price of P222,000. They claim that before the signing of the contract, the plaintiff took them out over the land, which he proposed to sell, and showed them the corners and its exterior boundaries. After the contract was signed, and upon making further examination of the record title, it was found that a large portion of the most valuable part of the tract was not included in the land, which the plaintiff could or proposed to convey. They also claim that he proposed to sell all of the lands lying within the exterior boundaries of the land, which he showed to them; and that in truth and in fact many small tracts within the exterior boundaries had previously been sold to other and different parties, and to which the plaintiff could not make title.

Upon the disputed facts and the main question involved, the evidence of the appellees is clear and convincing, and shows conclusively that they were misled and deceived by the plaintiff as to the actual boundaries of the land, and, as to the important fact, that plaintiff could not make a good title to all of the land within the boundaries.

A clear case for the defense has been made out under article 1265 of the Civil Code and the authorities there cited, which provides:

"Consent given by reason of error, violence, intimidation, or deceit shall be void."

In the instant case, the evidence is conclusive that there was both error and deceit.

The judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

Judgment affirmed.

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