

JOAQUIN MA. HERRER, PLAINTIFF AND APPELLEE, VS. ARSENIO CRUZ HERRERA, DEFENDANT AND APPELLANT.

G.R. No. 2965. January 02, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

This action was brought to recover the price of two oil paintings, claimed to have been executed by the plaintiff under the order of the defendant and accepted by him. It is evident from the testimony that there was a misunderstanding between the parties as to the character of the order and as to the final effect of the exhibition of the paintings as the property of the plaintiff, and also of their delivery to him at his house. By virtue of the rule in the De la Rama case^[1] we are not at liberty to enter into an examination of these questions of fact upon which the trial court has made express findings, and which are conclusive upon appeal.

The point of law is raised by the defendant that under article 1544 of the Civil Code the contract was not perfect because the price of the work was not fixed. Upon a like contention this court has already passed adversely in the case of Perez vs. Pomar (2 Phil. Rep., 682), a holding which is sustained by the decision of the supreme court of Spain of the 18th of October, 1899.

Accordingly there is no ground justifying the reversal of this judgment, which is affirmed with the costs of both instances. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

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

[1] 201 U. S., 303.

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