

S. G. LARSON, PLAINTIFF AND APPELLEE, VS. H. BRODEK, DEFENDANT AND APPELLANT.

G. R. No. 3572. August 17, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

On the 23d of August, 1904, the parties in this cause executed a contract whereby the plaintiff rented from the defendant the steam launch Henry, for a monthly rent of P450, with the right to apply P250 to repairs and an option to purchase the launch for P5,000.

After the execution of this contract the defendant perceived that, as drawn, it apparently authorized the reduction of P250, for repairs, from the rent of each month. Upon his attention being called to this item, the plaintiff conceded that it was not in accordance with the agreement, and the parties proceeded to the office of a notary public, where a second contract was executed correcting this error. In the typewriting in which the corrected contract was taken down by the notary, under the personal instruction of the defendant and in his presence, this was the only change of terms. In that instrument, however, as put in evidence, the words "five thousand (P5,000), Philippine currency," as the purchase price, were changed with, a pen by erasing the word "Philippine" and writing over it the words "United States," in effect thus doubling the amount, the change being noted in the margin over the initials of the notary. The fight in this long action was waged over this change, the defendant and the notary contending that before the execution of the instrument it had been called to the attention of the plaintiff and authorized by him on the 23d of August, the same date as that of the first contract; he, on the contrary, maintaining that it had never been suggested and did not exist in the instrument at the time of its signature on August 24, but was a subsequent forgery.

It is consistent with his story, but not with that of his adversary, that within the stipulated time he gave notice of his acceptance of the option and in reliance thereupon contracted for leasing the launch to the Army quarter-master for a term of nine months, an undertaking involving the possibility of heavy loss were he not able to assure continuous possession.

It is unnecessary to narrate all the facts in this case, which were reviewed in a complete and conclusive manner by the trial judge, with whose estimate of them and conclusion upon them we concur. Much of the long record is taken up with testimony as to the value of the launch at different periods. The issue being not the value of the property but the price stipulated, which was to be determined by direct evidence as to the time and the manner of the alteration of the words in the contract, the mere value of the launch bore no immediate relation to it and was immaterial. As might have been expected, the evidence of the parties and their experts was so conflicting as to leave the value in doubt and add nothing to the probability of either side having made an imprudent bargain. It should not have been received.

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

Arellano C.J., Torres and Johnson, JJ., concur.

Willard, J., concurs in the result.

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