

**HENRY BRODEK, PLAINTIFF AND APPELLANT, VS. S. G. LARSON,
DEFENDANT AND APPELLEE.***G. R. No. 3573. August 24, 1907*

Ponente: TRACEY, J.

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This action was brought to recover damages for the detention by the defendant of the launch Henry beyond a term of three months for which it had been rented to him by the plaintiff; the main issue, as to whether the defendant had justified his possession by showing that he had exercised an option for the purchase of the launch reserved in his contract with the plaintiff, turning on a written alteration in the contract of the amount of the purchase price stipulated for, was decided in favor of this defendant in another action by a judgment which we have affirmed^[1] (5 Off. Gaz., 503). That judgment determines that damages are to be assessed in favor of the defendant on his counterclaim, and not in favor of the plaintiff.

The lease of the launch by the plaintiff was for a term of three months for 450 pesos per month, with the option to purchase for 5,000 pesos. Notwithstanding the exercise of this option by the defendant, he was, on the 24th day of December, 1904, deprived of the possession of the launch by means of an injunction issued at the instance of the plaintiff. The launch being at that time under contract with the United States quartermaster for a term from September 25, 1904, to June 30, 1905, the defendant was obliged to replace it, and, in lieu of it, furnish the quartermaster with the launch Colon, whose earnings were proved to have been worth 1,000 pesos per month.

The trial judge allowed the defendant 9,500 pesos, being at the rate of 50 pesos per day from the date of the seizure to the expiration of the contract with the United States quartermaster. Unfortunately this contract is not before us and from the evidence in this case we are unable to satisfactorily determine various items that under its provisions might affect the amount of damages. Although one witness stated in a general way that the launch was to be furnished together with its crew, but without fuel, oil, or incidentals, the testimony on that point is not clear enough to serve as the foundation of a final award of damages.

The judgment of the Court of First Instance is affirmed, both as to the cause of action set forth in the complaint of the plaintiff and as to the counterclaim of the defendant, except that it is reversed as to the amount of damages to be awarded to the defendant, which are to be determined on a new trial, for which purpose the cause is remanded to the Court of First Instance. No costs will be allowed to either party. So ordered.

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

^[1]Page 383, *supra*.

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