

FRANCISCO TERAN, PLAINTIFF AND APPELLEE, VS. PHILIP SELDNER, DEFENDANT AND APPELLANT.

G.R. No. 4371. April 01, 1908

Ponente: MAPA, J.

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MAPA, J.:

The plaintiff was employed by the defendant as auctioneer in order to sell at public auction a quantity of merchandise valued at about P20,000 belonging to the latter, under the express condition that he was to charge a commission of 4 per cent on the merchandise sold. To encourage the bidding, and in order that no sale should be made for less than the price fixed by the defendant for each class of merchandise, he appointed an agent under the real or fictitious name of Francisco, to take part as a bidder from the very commencement of the auction.

The sale was continued for three or four days, after which it was suspended by order of the defendant, because the prices obtained thereat were not satisfactory to him. The value of the merchandise disposed of at the auction was P2,750 for goods sold to the public and P2,000 for those sold to the above-mentioned agent.

The plaintiff claims his commission of 4 per cent, amounting to P190.92, on the total of the above-named amounts, plus the sum of P16.50 for cost of advertising the sale in the newspapers, and P609.08 as indemnity, on account of the sale having been suspended.

The defendant agrees to the payment of the commission corresponding to P2,750, the value of the goods sold to the public, amounting to 110, which sum he deposited in court with his answer to the complaint, but denies that the plaintiff is entitled to recover on the other demands.

The court considered that the complaint was in accordance with the law, in so far as the amounts claimed by the plaintiff as commission and the charges for advertising the sale were concerned, and sentenced the defendant to pay the total sum of P200.50, with legal interest thereon and costs. From said judgment the defendant has appealed.

One of the errors assigned by the latter in his brief consists, as he states, "in that the court below considered it as a fact that the defendant had agreed to pay the plaintiff a commission on property and goods that mere not sold." This is in no manner true. The court below has not stated such a conclusion in the judgment. It is precisely to the contrary. The court below has not imposed the commission except on the goods that it considered sold, considering, of course, as part of such goods those that were adjudicated to Francisco, the agent of the defendant.

In reality this is the real point of the discussion. There is no question as to the facts stated above; but the defendant maintains that the goods adjudicated to Francisco, the agent, at the sale, can not be held as sold, and that therefore, they are not subject to commission, because they were not delivered to the buyer. The reason why the contrary was held by the court below is tersely stated in that portion of the judgment which reads as follows:

"The merchandise having been once offered for sale, and there having been a bid from the defendant, or under his direction, the amount offered is the price for which the same should be considered as sold, and even though

the goods are not delivered, the plaintiff is entitled to recover his commission thereon because the sale has been made the same as if the goods had been actually delivered."

We concur with this conclusion of the court below. The goods were offered for sale at auction; bids were received, and sales were effected. Hence, there was a sale which determines the right of the plaintiff to collect his commission, inasmuch as it, the sale, was the only fact that was stipulated as a condition for the earning of the commission in question. The fact that the agent of the defendant was the successful bidder, or buyer, does not in the least affect the right of the plaintiff, inasmuch as no agreement was made to exempt from commission the goods bought by the said agent. The work that it was the duty of the plaintiff to perform was fully accomplished upon the sale of said goods being made in favor of the highest bidder, whoever he might have been. This was all that the plaintiff was obliged to do in compliance with the agreement entered into with the defendant.

As to the P16.50, the cost of the announcement of the sale published in the newspapers, the appellant states in his brief that it is not worth while discussing it. There is really no solid ground for objecting to such payment. The conclusion of the court below on this point is correct, and should therefore be sustained.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

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

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