

**CRISANTO LICHAUCO, PLAINTIFF AND APPELLEE, VS.
CHO-CHUN-CHAC, DEFENDANT AND APPELLANT.***G.R. No. 4877. March 31, 1911*

Ponente: CARSON, J.

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Without attempting to review in detail the involved and somewhat unusual course of the long drawn out litigation which culminated in this appeal, and without discussing the contentions of the parties as to various alleged errors in procedure which in our opinion in no wise affect the merits of the real issue involved in this appeal, we think that upon the pleadings and the evidence the judgment of the court below must be sustained in so far as it allows to the plaintiff the sum of P1,824.16, the difference between the actual cost price and the contract price of the launch constructed at the expense of the defendant under the terms of the final judgment of the Supreme Court dated November 18, 1900 [1]; but that the judgment of the court below must be reversed in so far as it allows to the plaintiff the sum of P11,900, the difference between the contract price and the estimated cost of constructing two other launches, the construction of which at the cost of the defendant was authorized by the above-mentioned judgment of the Supreme Court but not actually executed in accordance with the terms of that judgment; and further, we are of opinion that the judgment of the court below must be reversed in so far as it denies the right of the plaintiff to recover in this action the sum of P4,895, with interest from the 6th day of March, 1907, the date of the filing of the complaint, that being the amount advanced by the plaintiff over and above the contract price of the single launch actually constructed in conformity with the original contract, and which would have been credited to the plaintiff in the settlement of his indebtedness had all the launches been constructed under the contract.

In support of our conclusions it is sufficient, we think, to indicate: First, That the defendant can not be heard at this time to deny the binding effect upon him of the final judgment rendered against him in 1900, which he has never sought to have set aside, and for the performance of which he was bound by his own action in appearing to "sustain the right of the defendant as the legitimate son and heir of the latter." Second, That the evidence satisfactorily establishes that the launch actually constructed under the terms of the judgment was in fact constructed for the plaintiff "at the expense of the defendant" at a cost which exceeded the original contract price by the sum of P1,824.16, Third, That the judgment of the Supreme Court dated November 18, 1900, on which plaintiff relies in this action, secured to him the right to have specific performance of the original contract, or to have the contract executed at the expense of the defendant and recoup any loss which he might incur resulting from the necessary expenditure therein of a greater amount than the contract price. But this judgment made no express provision for the recovery by him of damages unless the contract was actually executed at the expense of the defendant; and the plaintiff having elected to sue for specific performance and secured judgment therefor can not be permitted arbitrarily to abandon the contract for the specific enforcement of which judgment was granted, and convert the judgment for specific performance into a judgment for damages the only measure of which is the difference between the contract price and the estimated, not the actual cost of executing the contract at the time when he elects to have that estimate made. We may add that the evidence of record satisfies us that plaintiff did,

in fact, abandon the unexecuted portion of the contract long prior to the institution of this action. Fourth, That the complaint in this action clearly arid specifically prays for they recovery of the above-mentioned sum of P4,895 which was advanced by the plaintiff on account of the unexecuted portion of the contract, and the evidence satisfactorily establishing the justice of the claim and the amount of the advance as alleged we know of no reason why he should not have had judgment therefor in this action, without being put to the expense and delay involved in the institution of a separate action therefor as seems to have been required by the court below. The justice of this particular claim not having been substantially denied at the trial in the court below, and disallowing as we do the greater part of the judgment in favor of the plaintiff in the court below, we are¹ of opinion that the modified judgment to be entered by thin court should dispose as far as may be of this as well as of all the other issues involved in these proceedings, and thus, perhaps, bring an end to litigation which so long has vexed the courts and the interested parties.

Twenty days hereafter let judgment be entered in favor of the plaintiff for the sum of P6,719.16, with legal interest thereon from the 6th day of March, 1907, affirming so much of the judgment below as is in conformity herewith, and reversing so much thereof as is not, without costs to either party in either instance. Ten days thereafter let the record be returned to the court below for execution of the above judgment, and for such further proceedings as may be necessary and proper to. make it effective.

Arellano, C. J., Mapa and Trent, JJ., concur.

MORELAND, J., concurring in part:

I do not agree with so much of the decision as finds against the defendant for the sum of P4,895. With the rest I concur.

[1] Not published.

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