

JOSE MA. Y. DE ALDECOA, PLAINTIFF AND APPELLEE, VS. JOSE FORTIS ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 8313. March 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff in this action seeks to have a sale of certain property set aside on the ground of the alleged invalidity of the sale; to have the property resold; and further, to recover damages alleged to have resulted from the former sale.

We are of opinion, however, that the complaint should be dismissed, because, first, it appears that the property is not intact, and that it would be wholly impracticable to make the resale as prayed by the plaintiff in the event that the former sale were annulled; second, because the plaintiff is not shown to have been damaged by the sale, nor does it appear that the property was, in fact, worth more than it brought at the former sale; and, third, because plaintiff seeks to retain his share of the purchase price paid at the former sale, and at the same time to have that sale annulled, and to participate in the distribution of any moneys which would be received on a resale.

We conclude therefore that the judgment entered in the lower court, annulling the sale but without allowing damages, should be reversed, and the complaint dismissed without day and without costs in this instance. So ordered.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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