

GEORGE C. SELLNER, PLAINTIFF AND APPELLEE, VS. JOSE GONZALEZ, DEFENDANT AND APPELLANT.

G.R. No. 8415. December 18, 1913

Ponente: CARSON, J.

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CARSON, J.:

Accepting, as we do, the facts as found by the trial judge who saw and heard the witnesses testify, we think the judgment entered by him must be affirmed.

There can be no possible question as to the right of plaintiff to recover the commission of 2 per cent as allowed by the trial court. The only real question involved in this appeal is as to the right of plaintiff to recover the excess of P3,000 over the minimum price fixed in defendant's original offer to plaintiff. Upon this point there might be some difficulty in affirming the judgment of the court below were it not for the fact that the conduct of the defendant, in his effort to avoid paying the plaintiff any compensation whatever for his services, leaves no room for doubt that he accepted the services of the plaintiff in sending him a purchaser for his property without previously repudiating the letter from the plaintiff, wherein plaintiff set forth the conditions upon which he furnished the purchaser for the property. Having accepted the services without first repudiating the express terms and conditions upon which these services were rendered, he must be held to have accepted the services under an implied contract to pay therefor the amount stipulated by the plaintiff when they were rendered.

The judgment entered in the court below should be and is hereby affirmed, with the costs of this instance against the appellant.

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

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