

CANDIDO CENTENERA, PLAINTIFF AND APPELLANT, VS. JUAN GARCIA PALICIO, DEFENDANT AND APPELLEE.

G.R. No. 8750. February 12, 1915

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff and appellant in this case prays for the specific performance of a contract for the sale of the land described in his complaint. Defendant and appellee, after entering a general denial of the allegations of the complaint, alleges by way of special defense that the instrument evidencing the contract relied upon by the plaintiff does not contain the true terms and conditions of the agreement entered into between them.

Centenera, the plaintiff and appellant, was the defendant in foreclosure proceedings instituted by Garcia, the defendant and appellee in this action, upon a mortgage of certain real estate in the Province of Ambos Camarines. Judgment of foreclosure was rendered in favor of Garcia, but notwithstanding the fact that an appeal from that judgment was duly perfected, the mortgaged property was sold under execution to Garcia, the mortgage creditor, for the sum of P18,000, leaving an unsatisfied balance due him of P6,000. Thereafter, on October 18, 1911, the parties executed a written agreement whereby they sought to compromise and settle the various matters in dispute between them. The more important clauses of this instrument are as follows:

"1. Juan Garcia Palicio, through a civil action, No. 1123 of the Court of First Instance of Ambos Camarines, foreclosed a certain mortgage executed by Candido Centenera and Rita Garchitorena in certain public instruments of April 27, 1907, September 24, 1907, and August 1, 1908, the last of which was legalized by the notary of Manila, Enrique Barrera, and specifically mentioned the two preceding instruments. In the civil suit aforesaid judgment was rendered whereby the defendants were sentenced to pay P24,538, together with interest thereon at the rate of 10 per cent per annum from January 11, 1911. The defendants appealed from the said judgment to the Philippine Supreme Court and the said case is now on appeal. Notwithstanding the appeal the judgment was executed and by virtue thereof the mortgaged property was sold at public auction and awarded in the following manner to Juan Garcia, the judgment debtor and highest bidder.

"2. Juan Garcia y Palicio requested and obtained from the Court of First Instance of Camarines a writ of attachment against other property of the defendants to cover the payment of the balance of the amount awarded in the judgment, which could not be paid out of the proceeds of the mortgaged property, and the said attachment was levied and now lies against the following property: * * *

"3. Candido Centenera and Rita Garchitorena, in turn, instituted in Manila a civil suit against Juan Garcia, which bears No. 7527 on the docket of the Court of First Instance of the said city and is now in the process of trial.

"4. The parties litigant in both cases, desiring to terminate the suits pending between them, have arrived at an understanding for the settlement of their differences and, with this end in view, have stipulated and have obligated themselves to comply with and to respect the following clauses:

"(c) Juan Garcia Palicio hereby grants to Candido Centenera and Rita Garchitorena, or to either of them, the

right to recover or reacquire, within the period of four years, the property adjudicated to him in the execution of the judgment in the civil case No. 1123 of the Court of First Instance of Camarines, and awarded to him by this agreement as set forth in paragraphs 1 and 2 hereof, provided that they pay the sum of P18,000 and, in addition thereto, all the expenses, salaries and wages of employees that may be incurred for the clearing and planting of both the Island of Japonan and the other estates, and likewise the cost of the buildings that may be newly erected thereon or of the improvements that may be made in the said properties, and besides interest at 10 per cent per annum on the money invested in such expenses, salaries and wages, buildings and improvements. For the settlement of this interest, Juan Garcia shall keep an account of the expenditures of money made for the purposes indicated, which account shall be liquidated annually and the balance, together with the accumulated interest, shall be charged as the first item in the account for the following year, and so on successively until the termination of the period of four years; provided, however, that all the products of the said properties shall pertain to the said Garcia until the moment when he exercises the right of redemption. At or before the termination of the four years, if the right of redemption should have been exercised, a general liquidation shall be made of expenditures for expenses, salaries and wages, buildings and improvements, and whatever amount is thereby shown to be due shall be paid by the redemption, together with the principal of P18,000, and the redemptioner shall not be entitled to make any objection whatsoever to the result disclosed by the said liquidation. Centenera is authorized to examine the work and construction carried out and effected on the said properties and the accounts of expenses therefor, at any time within the period for the redemption, and to make and communicate to Garcia such observations as he may deem proper, which, however, shall not be understood to be binding upon Garcia, but shall be acted upon by the latter in such manner as his good judgment may dictate.

"(d) Candido Centenera and Rita Garchitorena, or either of them, may avail themselves of their right of redemption partially, that is, in respect to any of the property described in this instrument, at any time before the lapse of the period of four years, by paying the price corresponding to the property redeemed, as fixed in paragraphs 1 and 2 hereof, and the expenses incurred for the improvements made on the said property or properties redeemed, in accordance with the liquidation to be made pursuant to the preceding paragraph; but the redemptioner shall then contract the obligation to repurchase the remaining properties on the conditions hereinbefore established, before the expiration of the period of four years, and should he not fulfill this obligation the redemption shall be null and void and of no force or effect and the property shall revert to Garcia, and the redemptioner shall lose the amount paid therefor and shall waive all right to bring any claim he might or could I have to the said properties.

"5. The parties to this contract agree that Candido Centenera may, at his option, substitute for it the one hereinafter specified, to wit:

"(a) Garcia shall transfer to Candido Centenera the ownership and possession of all the property mentioned in paragraphs 1 and 2 of this instrument, for the price of P18,000 Philippine currency, payable within the same period of four years fixed herein for the redemption, secured by a mortgage on the property transferred and with the personal and joint security of Narciso Alegre; provided, however, that the liability of Narciso Alegre, as surety, shall be limited to the sum of P8,000, and that both securities shall, besides, be liable for the payment of interest at 10 per cent per annum on the principal due. In case that Centenera should exercise this right of substitution of one contract for another, both parties bind themselves to execute the necessary instrument or instruments for the due recording of the property transferred and of the securities and conditions under which the transfer is made, whereupon the stipulations contained in paragraphs 1, 2, 3, and 4 of this instrument shall be of no force or effect whatsoever.

"The interest stipulated shall be paid annually and with in the first five days of the month of December."

It will be seen that under the express terms of this instrument Centenera had an alternative option to repurchase the land in question upon the terms and under the conditions set forth in clauses 4 and 5. In substance, clause 4

gave Centenera the right at any time within four years from the date of the contract to repurchase the land for the sum of P18,000 cash, and in addition, the amount expended in improvements placed upon the land by Garcia between the date of the contract and the date of purchase; while clause 5 gave him the alternative right at his option to purchase the land on credit at any time within four years from the date of the contract on much more favorable terms, that is to say, for the sum of P18,000 payable at the end of the four year term, and without the necessity for reimbursing Garcia for any improvements he might have made upon the land prior to the purchase.

Centenera now seeks to exercise the right to repurchase under the relatively favorable terms and conditions set forth in clause 5. It appears that between the date of the contract (October 18, 1911) and the day upon which Centenera first sought to exercise the option conferred upon him under clause 5 of the contract (June 27, 1912), Garcia had placed extensive improvements upon the land which the trial judge was of opinion involved an expenditure of not less than P27,196.03. Garcia insists that under the agreement actually entered into between the parties, the right to repurchase, without making reimbursement for expenditures made in improvements, that is to say upon the terms and conditions set forth in clause 5, was expressly limited to a period of one month from the date of the contract, so that the option to repurchase under those terms and conditions had expired more than six months before Centenera claimed the right to exercise it. He alleges, in support of his contention, that by fraud or mistake the limiting words "within the period of one month from this date" were omitted from the opening paragraph of clause 5 as it appears in the instrument evidencing the agreement.

A great mass of conflicting, contradictory, and wholly irreconcilable evidence was adduced at the trial in an effort to sustain the respective contentions of the parties in this regard. But we agree with the trial judge that a review of the whole record leaves no room for reasonable doubt that the understanding between the parties, at the time when the instrument evidencing the contract was executed, was that the option to exercise the right secured to Centenera in clause 5 of the contract was limited to a period of one month from the date of the execution of the contract; and we are of opinion that the evidence conclusively discloses that, either by fraud or mistake, the words "within the period of one month from this date" were omitted from the opening paragraph of this clause as it appears in that instrument.

We are satisfied, however, from the conduct of the parties at the time, and soon after the date of the execution of the instrument, that both parties were under the mistaken impression at that time that these words or their equivalent were actually inserted in the final draft of the contract executed by them; and we are of opinion and so hold, that a clear preponderance of the evidence discloses that, not by fraud, but by a mere scrivener's mistake these words were omitted by the typewriter who prepared the final draft of the proposed agreement for the signatures of the parties.

Several rough drafts of this proposed agreement were drawn up and carefully canvassed and discussed by the parties and their attorneys, and the rewriting of the instrument for the last time seems to have been made necessary for the purpose, merely, of correcting some technical errors in the description of the property included in the agreement. Due, doubtless, to the carelessness of both parties in comparing the terms of the final draft of the instrument with those of the rough draft from which it was taken, the omission passed unnoticed at the time when their signatures were attached thereto, although it could not fail to have been discovered had either one or both of the parties scrutinized it with due care. Garcia testified that relying on the honesty, skill and accuracy of the copyist he did not read this final draft through and through before adding his signature, contenting himself with a hasty examination of the first few paragraphs in order to satisfy himself as to the identity of the document which he was about to execute. On the whole record we are inclined to accept and do accept his testimony in this regard as the true explanation of his failure to discover and correct the mistake at the time of the execution of the instrument.

We have arrived at our conclusions from an examination of all the evidence touching the execution of the contract read together with the evidence as to the conduct of the parties to the contract with relation thereto at the time of, and soon after the date of its execution, aided by an examination of the terms of the written contract itself which tends irresistibly to sustain the contentions of Garcia as to the terms and conditions of the agreement between the parties as he understood them.

We agree with counsel for Garcia that no reasonable explanation for the introduction into the contract of the alternative option contained in clause 5 has been suggested, if it was not to be coupled with the time limitation which he asserts was in fact agreed upon; and it is difficult if not impossible to understand the conduct of Centenera after the instrument was executed upon any other theory than that he was under the impression that a time limit of thirty days had in fact been placed upon the exercise of the option conferred upon him under this clause. Had he known or believed that he could exercise the option at any time within four years we do not believe that we would find in the record the evidence which it contains as to his efforts to exercise the option within thirty days from the date of the contract, and of his anxiety to satisfy himself that a delay of a few days beyond that term would not deprive him of his rights under this clause. Nor is it reasonable to suppose that if there had been no agreement as to a time limit, the record would contain the evidence which we find in it of his doubt as to his rights under this clause, long afterwards, when he was fully advised that the time limit was not expressly set forth in the written instrument evidencing the contract.

We must not be understood as holding that the parties could not have executed a contract in the terms and on the conditions set out in the written instrument, absurd and illogical as they seem to be, had they desired so to do. Nor are we to be understood as holding that the courts would in any case be justified in making a new contract for the parties which they themselves did not in fact enter into, solely because it appears that the terms of the instrument evidencing the contract are unreasonable or because they do not conform to our views as to what the contract ought to have been. We merely hold that the improbability that the agreement would have been entered into in the form in (which it is set forth in the written instrument, confirms our belief, based upon the evidence of record, that the time limitation of one month upon the exercise of the right secured to Centenera in the fifth clause, was omitted from the final draft of the instrument evidencing the contract by a mistake of the copyist; and that when this instrument was executed, both parties were under the mistaken impression that it contained such a time limit, in accordance with the agreement already entered into as to the terms and conditions which should be set forth in the document evidencing that agreement.

Counsel for plaintiff contend, however, that even admitting the truth of the facts alleged by the defendant, defendant nevertheless is not entitled to relief because of his admitted negligence in failing to ascertain the true import of the instrument before it was executed.

In support of this contention counsel rely upon the following citation from Page on Contracts, Vol. I, sec. 76, and the cases cited in support of the doctrine, wherein, after discussing the cases in which relief has been granted on the ground of mistake by the complaining party as to the contents of a written contract, the author says: "On the other hand, if he can read or is otherwise guilty of negligence in not informing himself as to the contents of the written contract, and signs or accepts it with full opportunity of informing himself as to its contents, he cannot avoid liability on the ground that he was mistaken as to its contents, in the absence of fraud or misrepresentation. The application of this rule is clearest where the party who signs, the instrument is able to read, has an opportunity to read the instrument and merely neglects to read."

There can be little doubt of the soundness of the rule thus stated when invoked in support of the denial of relief in cases of unilateral mistakes; that is to say, where one of the parties understands the agreement to be in precise accord with the writing evidencing it and enters into the agreement on that understanding, the mistake being

wholly on the part of the other party who has failed or neglected to acquaint himself with the true meaning and legal import of the language used in the writing evidencing the agreement. In many of the cases cited in support of the rule the contracts were executed on printed forms, such as railway passenger tickets, insurance policies and the like, which had been carefully prepared by one of the parties with the aid of expert counsel and which set forth precisely the terms and conditions of the contract as understood and agreed upon by one of the parties. In such cases it has been said that:

"There can be no rectification if the mistake be not mutual or common to all parties to the instrument, or if one of the parties knew of the mistake at the time he executed the deed. Where one party only has been under a mistake, and the other, without fraud, knew what the character of the deed was, and intended that it should be, the court cannot interfere, for otherwise it would be forcing on the latter a contract he never entered into, or depriving him of a benefit he had bona fide acquired by an executed deed. Rectification can only be had where both parties have executed an instrument under a common mistake and have done what neither of them intended. (Kerr on Fraud, 2d ed., p. 498; Boylan vs. Hot Springs etc., R. Co., 132 U. S., 146; Green vs. Stone, 64 N. J. Eq., 387; Owen vs. City of Tulsa, 27 Okla., 264; Hearne vs. Marine Insurance Co., 20 Wall., 488.)"

But the right to relief and even to reformation is quite generally recognized in the books, notwithstanding the fact that the mistake may have been the result of the negligence of one or both parties, in cases where the mistake was mutual, and both parties are clearly shown to have come to an actual oral agreement before they attempted to reduce it to writing. Mr. Page, quoted by counsel for appellant in support of his contentions, says:

"Reformation is given * * * when the mistake is mutual * * *. By mutual mistake is meant that the parties must have come to an actual oral agreement before they have attempted to reduce it to writing, which attempt fails by reason of mistake, and reformation enforces the original contract. The rule that mistake in expression must be mutual means therefore that to obtain reformation the parties must show that there was a valid contract between them, which contract is not correctly set forth in the writing to be reformed. In granting reformation, therefore, equity is not making a new contract for the parties, but is establishing and perpetuating the real contract between the parties which, under the technical rules of law, could not be enforced but for such reformation." (Page on Contracts, vol. 2, sec. 1238.)

It is contended, however, upon the authority of the cases of *Standard Mfg. Co. vs. Slot* (121 Wis., 14; 105 A. S. R., 1016); *McNinch vs. Northwest Thrasher Co.* (23 Okla., 386; 138 A. S. R., 803); and *Upton vs. Tribilcock* (91 U. S., 45; 23 L. ed., 203), and others, that even where there has been a mutual mistake, relief should be denied where the complaining party has been guilty of negligence in failing to read the contract, or to make proper inquiries as to the meaning and significance of its terms and conditions, in all cases where there is no fiduciary relation between the parties. Upon the authority of these cases it is said that the complaining party should not be allowed to excuse himself for his mistake on the ground that he acted in haste or without due consideration, or that he relied upon the representations of the other contracting party. The doctrine relied upon is thus stated in the first of the cases cited in its support (*Standard Mfg. Co. vs. Slot*, supra):

"The policy of the law is fixed to the effect that he who will not reasonably guard his own interests when he has reasonable opportunity to do so, and there is no circumstance reasonably calculated to deter him from improving such opportunity, must take the consequences. Courts do not exist for the purpose of protecting persons who fail in that regard. Where there is such inattention upon the one side and fraud upon the other, and but for the former feature the latter would not be effective, and loss occurs to the inexcusably negligent one, he is remediless; not because the wrongdoer can plead his own wrongdoing as an excuse for not making reparation, but, first, because the consequences are attributable to inexcusable inattention of the injured party; and second, because the court will not protect those who, with full opportunity to do so, will not protect themselves."

We think however that while some such general statements of the doctrine as this are to be found in the books, it will be found, on examination, that the doctrine has rarely if ever been applied, in well ordered cases, so as to defeat relief or rectification where it appeared that the alleged mistake was a mutual one, the evidence clearly and decisively sustaining the contentions of the complaining party, and it not appearing that the rights of the other party to the contract had been prejudiced by the mistake.

In the cases of *Standard Mfg. Co. vs. Slot*, supra, and *Upton vs. Tribilcock*, supra, the contentions of the complaining parties were to the effect that there had been fraudulent misrepresentations, as to the legal effect of the instruments under consideration, which it was alleged had been successful because of the admitted negligence of the complaining parties in failing to acquaint themselves with the contents of the documents. In neither case did the court regard the allegations of fraudulent misrepresentations as established by the evidence, and even had these allegations been proven, the result would not have been to establish the existence of a mutual mistake. So in the other case relied upon by counsel, *McNinch vs. Northwest Thrasher Co.* (23 Okla., 386), the court expressly held that: "If it was a mistake, it was certainly not mutual," referring to the ground upon which the prayer for rectification was based.

The doctrine in such cases, supported by numerous citations of authority, seems to be more accurately set forth by Pomeroy in his work on Equity Jurisprudence, volume 2, section 856, as follows:

"As a second requisite, it has sometimes been said in very general terms that a mistake resulting from the complaining party's own negligence will never be relieved. This proposition is not sustained by the authorities. It would be more accurate to say that where the mistake is wholly caused by the want of that care and diligence in the transaction which should be used by every person of reasonable prudence, and the absence of which would be a violation of legal duty, a court of equity will not interpose its relief; but even with this more guarded mode of statement, each instance of negligence must depend to a great extent upon its own circumstances. * * * The conclusion from the best authorities seems to be, that the neglect must amount to the violation of a positive legal duty. * * * Even a clearly established negligence may not of itself be a sufficient ground for refusing relief, if it appears that the other party has not been prejudiced thereby."

Moreover, we are of opinion that the rule denying relief on the ground of negligence, even when stated in its stricter form, is by no means of universal application in cases of mistake as to the contents of a written contract. While courts have frequently and properly declared that great caution is necessary in granting the reformation of a writing to make it express the actual agreement upon which the minds of the parties met, since the rectification of a written instrument upon other than clear, unequivocal and decisive evidence may well result in the creation of a contract which the parties themselves at no time agreed upon, nevertheless it is manifest that where the evidence of a mutual mistake is clear and decisive, the refusal to rectify on the sole ground of the negligence of the complaining party may well work the gravest injustice and defeat the intention of both parties in entering into the agreement. Where there has been a mutual mistake, and one party has been as guilty of negligence as the other, a refusal to reform a contract made under such circumstances would have the effect of penalizing one party for negligent conduct, and at the same time! permitting the other party not merely to escape the consequences of his negligence, but in most cases to profit thereby. There are many authorities to the effect that a written contract will be corrected in equity, although a mistake was patent on the face of the document, so that a careful reading of the instrument could hardly fail to disclose the error. (*Albany C. S. I. vs. Burdick*, 87 N. Y., 46; *Story vs. Gammell*, 68 Neb., 709 (94 N. W., 982); *Andrews vs. Gillespie*, 47 N. Y., 487; *San Antonio vs. McLane*, 96 Tex., 48 (70 S. W., 201); *Kelley vs. Ward*, 94 Tex., 289 (60 S. W., 311) ; *Loyd vs. Phillips*, 123 Wis. 627 (101 N. W., 1092); *Taylor vs. Glen Falls I. Co.*, 44 Fla., 273 (32 South., 887); *Kilmer vs. Smith*, 77 N. Y., 226 (33 Am. Rep., 613); *Snyder vs. Ives*, 42 Iowa, 162.)

In the case of *Story vs. Gammell* (68 Neb., 709), in which the writing in question was signed by the parties "in

good faith and without fraud and in ignorance by all the parties of the mistake, and in the belief that they expressed the real agreement between them," the court said. in discussing the contention that reformation was barred by the rule that a party will not be relieved of the consequences of his own negligence:

"We think, however, that this principle is not applicable to circumstances like those set forth in the petition. but rather to those cases in which the party not charged with the negligence was not misled as to the contents of the contract, and was innocent of fraud, so that to deprive him of his rights under the agreement would be, in effect, to punish him, not for any fault of his own, but because of the inattention or incompetence of the party with whom he had dealt. (Woodbridge vs. DeWitt, 51 Neb., 98.)

"The principle announced in Ward vs. Spelts & Klosterman (39 Neb., 809), that negligence in signing a contract without reading it will not deprive the injured party of redress if the person with whom he contracted was guilty of fraud in procuring, the signature, and the rights of innocent persons have not intervened, is equally applicable to cases of mutual mistake. In either case one is not permitted to enforce an obligation which he knew, at the time, that the party making it did not intend to enter into; or, in other words, is not allowed to use the writing as evidence of consent to a contract which he knows was in fact never given. It is equally as fraudulent to attempt to enforce a writing executed by mutual mistake in such manner as not to express the real agreement between the parties as it is to procure such a writing by deceit or circumvention."

So in the case of Silbar vs. Ryder (63 Wis., 106), wherein a lease, which by reason of the ignorance and mistake of the scrivener failed to conform to the oral agreement made by the parties, was reformed, notwithstanding the fact that the complaining party did not read the contract, the court said:

"The court below found that neither the plaintiff nor defendant understood the terms or effect of the instrument, but executed it supposing it to contain the verbal agreement which they had made about repairs. There is abundant testimony to sustain that finding. The parties are ignorant, especially the plaintiff, who can only read the English language imperfectly. He had confidence in Ryder, and supposed, when he executed the lease, that it properly expressed the verbal agreement which had been made about repairs. This is very plain from the testimony. He did not find out to the contrary until shortly before this action was commenced to reform the lease. 'Indeed, in most of the cases to be found in the books, where relief has been sought against written instruments on the ground of fraud or mistake, the complaining parties were chargeable with the same kind of negligence which exists in this case, to wit, the omission to read or understand the contents of instruments executed or accepted (Albany City, Sav. Inst. vs. Burdick, 87 N. Y., 40-46.)"

So in the case of Los Angeles & Redondo Railroad Co. vs. New Liverpool Salt Co; (150 Cal., 21), the decisions in that jurisdiction are reviewed and it was held that in case of mutual mistake the mere failure of a party to read an instrument with sufficient attention to perceive an error or a defect in its contents will not prevent its reformation at the instance of such party.

In Coleman vs. Coleman (153 Iowa, 543), a contract of lease failed to express the oral agreement of the parties through a mistake of the scrivener which passed unobserved by all the contracting parties, and the court said:

"If the contract as written fails to express the agreement on which the minds of the parties met, it is not theirs, and the true agreement has not been executed, and in such a case equity will grant relief without regard to the cause of the failure to 'express the contract as actually made whether it be from fraud, mistake in the use of language, or any other thing which prevented the expression of the intentions of the parties."

In Dougherty vs. Dougherty (204 Mo., 228), in granting reformation of a mutual mistake which had its origin in an oversight on the part of the scrivener, the court quoted approvingly from a former case as follows:

"Where it clearly appears that the scrivener acted by direction of both parties, he stands as agent of both parties to that extent, and satisfactory proof of his mistake is proof of the mutual mistake of the parties themselves."

As to the degree of proof necessary to sustain a reformation of a written contract, we think that the doctrine, supported by numerous citations of authority, is fairly stated by Mr. Page in his work on Contracts, volume 2, section 1254, as follows:

"The amount of evidence necessary to entitle the party seeking reformation to the relief sought is variously stated. It is always more than a mere preponderance. The evidence must be much clearer than a mere preponderance necessarily is to permit reformation. The usual form of statement is that the evidence must be clear and convincing, though it is said also that it must be clear and satisfactory, 'satisfactory,' 'full, clear, and decisive,' 'clear and precise' 'clear, precise, and indubitable, 'clear, cogent, 'strong and convincing, 'clear, positive, and convincing, 'clear, convincing, and satisfactory, most clear and convincnig, 'clear and most satisfactory, 'the clearest and most satisfactory' evidence, the clearest, strongest, and most irrefragable evidence, evidence as strong as if the mistake were admitted, or evidence which leaves 'no rational doubt.' "

In the case at bar, the evidence is so strong and convincing as to leave no room for rational doubt that the time limitation of one month upon the right to exercise the option contained in clause 5 of the contract was agreed upon by both Centenera and Palicio, and that its omission from the written instrument evidencing the contract was the result either of fraud or mutual mistake. Of course if the omission was caused by the fraud of the plaintiff, there could be no question as to the rights of the parties in this action, and plaintiff would not be sustained in this attempt to enforce a contract the execution of which he had fraudulently procured. As we have said however, the clear and decisive preponderance of the evidence sustains a finding that the omission resulted not from fraud, but rather that it resulted from a blunder on the part of the scrivener, and we base our decision upon that finding as to its origin.

We conclude that the trial judge properly denied specific performance of the clause of the written instrument as prayed for by the plaintiff.

The judgment appealed from should therefore be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Moreland, and Araullo, JJ., concur.
Johnson, J., dissents.

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