

[G.R. No. 2353. October 28, 1905]

ZOILO GARCIA VASQUEZ, PLAINTIFF AND APPELLEE, VS. P. B. FLORENCE, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

The second paragraph of the complaint is as follows: "That on the 9th day of September, 1900, in the town of Legaspi, Philippine Islands, the defendant, by a promissory note, now due and payable, agreed to pay to the plaintiff the sum of 1,420 pesos, Mexican currency, some time in the said month of September, 1900." The complaint is dated May 7, 1904.

The defendant in his answer states in the first paragraph as follows: "The defendant admits the allegation contained in paragraphs 1 and 2 of the complaint." In paragraph 2 of his answer, however, he gives a history of the transaction and alleges as a defense that he borrowed the money in question from the plaintiff because the latter offered to loan it to him to gamble with at his, the plaintiff's house. In view of his answer, the plaintiff presented a motion for a judgment on the pleadings for the reason that the defendant had admitted the main allegation of the complaint, and the court entered judgment accordingly, with interest. The defendant excepted to the judgment. The case was duly submitted to this court.

The allegation of the defendant, that the money was loaned to him for the purpose of gambling at the house of the plaintiff not being sufficient to defeat plaintiff's action, since only such money as is lost at gambling, and not paid, can not be recovered by the creditor under article 1798 of the Civil Code, it seems that the court below

applied section 107 of the Code of Civil Procedure and entered judgment on the pleadings.

The court below says in its judgment, "the court finds that the interest upon this amount for three years and eight months is 312 pesos and 40 cents, Mexican currency, making a total of 1,732 pesos and 40 cents, Mexican currency, which is equivalent to 1,533 pesos and 10 cents, Philippine currency."

Judgment was entered against the defendant and in favor of the plaintiff for this sum of money.

The judgment of the court below being in conformity with the law, we hereby affirm the same in all respects. After the expiration of ten days let judgment be entered in accordance herewith. So ordered.

Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.
