

5 Phil. 402

[G.R. No. 1724. December 11, 1905]

**ALEJANDRO REYES, PLAINTIFF AND APPELLANT, VS. FRANCISCO MARTINEZ,
DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

This is an appeal from a judgment rendered by the Court of First Instance of the city of Manila in an action brought in that court by Alejandro Reyes against Francisco Martinez upon a promissory note in language and figures as follows:

“Por 1,200 pesos. Pagare en virtud del presente a los treinta dias de la fecha y a la orden del Senor Alejandro Reyes la cantidad de mil doscientos (1,200) pesos valor recibido del mismo en efectivo para operaciones de comercio. Manila, 1.º de Agosto de 1903. Firmado. Francisco Martinez.”

The decision of the inferior court was in favor of the defendant, and was based upon the theory that said promissory note had been executed and delivered in payment of the sum of 1,200 pesos, which sum had been lost by the defendant to the plaintiff in a game known as “burro;” that “burro” was a game of chance, and prohibited under the laws in force in these Islands.

The appellant assigns four errors committed by the trial court:

“1. That the court erred in admitting proof against and outside of the contents of the document recognized by the party that authorized it, not having alleged fraud, deceit, or violence in

its execution;

“2. That the said court erred in declaring that the plaintiff won of the defendant the sum of 1,200 pesos in a game called ‘burro;’

“3, That the court erred in declaring that the game known as ‘burro’ is a game of luck or chance, and that a debt is not enforceable, created by virtue of said game;

“4.
That the court erred in declaring that the payment of a sum of money gained in a game of luck or chance is not enforceable when the debtor has expressed his willingness to pay.”

We do not deem it necessary to examine into any of the alleged errors except the third, for the reason that if the game of “*burro*” is not a game of chance, and therefore not prohibited, an action, will lie upon a promissory note executed and delivered in payment of money lost in such game.

The only defense presented by the defendant in the trial of the cause in the court below was that said promissory note had been executed and delivered in payment of a sum of money lost in a game of chance, called “*burro*,” and that said game was among the prohibited games under the law. Article 1798 of the Civil Code provides that “*the law does not permit any action to claim what is won in a game of chance, luck, or hazard; but the person who loses can not recover what he may have voluntarily paid, unless there should have been fraud, or should he be a minor, or incapacitated to administer his property.*” No proof was introduced in the trial of the cause to show that any fraud had been practiced, or that the defendant was a minor, or was incapacitated to administer his property.

A game of chance, luck, or hazard is defined under the Spanish law as a game where “*cada uno de aquellos cuyo resultado no dependa de la habilidad o destreza de los jugadores, nino exclusivamente del acaso o*

la suerte; como el del monte o el de los dados.”

According to the declaration of the defendant the game called “burro” is “un juego de descarte en el que los jugadores pueden cambiar por otros los naipes que se los reparten por primera vez; y habiendo descarte inal puede ser un juego de azar.” *Furthermore, the defendant, in his declaration added “que el jugador de ‘burro’ es libre de jugar o no y de que en el influye la habilidad.”* It is therefore, evident that the game is not one of chance, luck, or hazard, because *it does not depend exclusively upon chance* but upon the skill of the player.

The game of “burro” is a common game among the Filipinos, and is generally regarded as a mere parlor game, and is not a game of chance, luck, or hazard, and is therefore not prohibited by law. Therefore a person who executes and delivers a promissory note for money lost in the game of “burro” is liable on such contract, unless fraud had been practiced, or unless such person is a minor or incapacitated to administer his property.

The judgment of the inferior court is hereby reversed, and it is the judgment of this court that the plaintiff recover of the defendant the sum of 1,200 pesos, with the costs of both instances. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded to the court of its origin for execution thereof. So ordered.

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

Arellano, C. J., concurs in the result.