

7 Phil. 185

[G.R. No. 3050. December 11, 1906]

**LUIS SANTOS, PLAINTIFF AND APPELLEE, VS. SILVESTRE DILAG, DEFENDANT
AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

On or about the 5th day of October, 1904, the defendant executed a notarial document in which he stated that he had borrowed of the plaintiff 6,000 pesos, which he promised to pay within forty days from the date of said document, and to secure the payment thereof mortgaged a certain fishery then belonging to him. When sued upon this agreement, he alleged that he had never borrowed anything from the plaintiff but that the amount stated in the instrument was money won by the plaintiff from the defendant at the game of *monte*. The court below held that the evidence did not sustain this claim of the defendant and entered judgment against him. He moved for a new trial on the ground of the insufficiency of the evidence, and has brought the case here by bill of exceptions.

The only question presented is one of fact. In support of the claim of the plaintiff that the 6,000 pesos represented a loan, there was the evidence of the plaintiff himself and of Jose" Escalante and Felipe Zamora, persons who, according to the defendant, participated in the game with him and the plaintiff. These witnesses denied any such participation. There was also the testimony of Fabian de Castro, who stated that he loaned the plaintiff 2,500 pesos to loan to the defendant and that he witnessed the delivery of the 2,500 pesos by the plaintiff to the defendant. In support of the defendant's contention there is his own testimony and the testimony of Margarita Dilag, Macario Santa Ana, Pedro Oapiral, and Ambrosia Santiago. The testimony of the witnesses for the defendant in regard to the gambling is directly contradicted by the testimony of the witnesses for the plaintiff. Under such circumstances we can not reverse the decision of the trial court. In order to enable us to do so, it must appear that the evidence is plainly and manifestly against that decision. (De

la Rama vs. De la Rama, 201 Tj. S., 303.) That does not appear in this case.

At the trial Jose Escalante, a witness for the plaintiff, testified that he never engaged in any kind of gambling. In order to impeach the credibility of this witness, the defendant offered in evidence the record of another case formerly pending in the Court of First Instance of Manila, in which it appeared that Escalante had been engaged in a game of *monte*. It seems that this evidence was rejected by the court below, and that ruling is assigned as error by the appellant. A reading of all the testimony of Escalante makes it plain that he misunderstood the question that was asked him and did not intend to say that he never gambled in any way, for on the next page of his evidence he states that lie was accustomed to attend horse races and bet upon the events. Even if this record had been admitted it could not in any way have changed the result, and the error in rejecting it, if there was any, was error without prejudice.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Tracey, J., concurs in the result.