

8 Phil. 275

[G. R. No. 3640. August 01, 1907]

**CHARLES S. ROBINSON, PLAINTIFF AND APPELLEE, VS. CHARLES F. GARRY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TRACEY, J.:

John T. Macleod, being indebted to the plaintiff in the amount of P1,100, assigned to him an overdue promissory note of the defendant on which there remained a balance of P565.31, for which the present suit was brought.

Besides defenses which failed and are not pressed on this appeal, the defendant, by an amended answer, pleaded that under article 1535 of the Civil Code he should be allowed to satisfy the note by payment to the assignee of the amount given for it on the assignment, contending further that nothing having actually been advanced, but only a credit allowed, no payment of money was required of him. To this somewhat curious contention it is sufficient answer that article 1535 of the Civil Code applies only to a claim in litigation (*credito litigoso*), the meaning of which is not a claim open to litigation, but one which is actually litigated; that is to say, disputed or contested, which happens only after an answer interposed in a suit. The terms of this article are plain and they are well commented upon by Manresa in his treatise thereon. The judgment of the Court of First Instance of the city of Manila is affirmed, with costs of this instance. So ordered.

Arellano, C.J., Torres, Johnson, and Willard, JJ., concur.

