

THE INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS. FRANCISCO MARTINEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 3471. February 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This case and case No. 3472[1] between the same parties were tried at the same time in the court below, and all the evidence received was made applicable to each case. This case, No. 3471, was brought to recover against the defendants, Francisco Martinez, and his guardian, Vicente Ilustre, a judgment for P30,000, with interest from the 2d day of May, 1903, at 8 per cent per annum, and for an order directing the sale of the steamer Germana to satisfy such judgment. Several answers were presented, but the last answer and counterclaim was filed on the 21st of March, 1906, during the trial of the case, and apparently to make the pleading correspond to the facts claimed by the defendants to have been proven.

The other action, No. 3472, was brought to recover the sum of P159,607.81, with interest at the rate of 8 per cent per annum from the presentation of the complaint, and for a judgment directing the sale of certain real property described in the complaint to pay such sum. The last amended answer in that case was presented during the trial, and evidently for the same purpose as in case No. 3471. It is more extensive than the answer in this case, but the defenses in both are substantially the same, and so far as such defenses are concerned, what is said in the opinion in this case will be applicable to the other case, No. 3472.

On the 20th day of January, 1903, the defendant Francisco Martinez borrowed from the plaintiff P30,000, which was then credited to him in an open current account with the plaintiff bank. From time to time during the period above mentioned he borrowed other sums from the bank, which were evidenced by promissory notes, and the proceeds of which notes were passed to his credit in his current account. Against this account he drew his checks from time to time which were paid by the bank. The amount of money which the bank had disbursed in payment of these checks on June 9, 1904, and which appeared there as an overdraft in his account current, was P158,378.27. Martinez owed the bank in addition thereto \$13,000, gold, and \$9,000, Mexican currency, upon other accounts. That the bank actually disbursed all of this money in payment of checks which were in fact drawn upon it by Martinez is clearly proven by the evidence.

It is claimed, however, that for various reasons the bank is not entitled to recover anything for reason of such payment.

The first defense is based upon the allegation that, during the period mentioned, Francisco Martinez was mentally incapacitated to transact business, and was not competent to manage his affairs. It appears that on the 14th day of November, 1903, Charles C. Colin was, by an order of the Court of First Instance of Manila, appointed guardian of Francisco Martinez, on the ground that he was a spend thrift and a prodigal and was mentally and physically incapable and incompetent to manage his estate or to care for himself. Charles C. Colin was made a defendant in

this action as such guardian, but later he resigned his trust and Vicente Ilustre was appointed to succeed him and substituted as a defendant herein. It is not questioned that all of the transactions out of which this indebtedness to the bank grew took place prior to the 19th day of November, 1903, and that the bank had prior to that time paid out all the money which it now seeks to recover with the exception of certain interest thereon. The question arising under this defense is whether, in fact, Martinez was during the spring and summer of 1903 mentally incapable of managing his affairs. The court found that during this time he was an imbecile and incompetent to transact this or any other business, and rendered judgment for the defendants in both cases. The evidence in the case is entirely against this finding of the court below. In fact, there is no substantial evidence to support it. The only evidence presented by the defendants to prove their claim consisted of a statement of the witness Cantero and a statement of the witness Colin. Cantero was called as a witness by the plaintiff for the purpose of identifying a certain document; being upon the stand, the defendants cross-examined him upon the entire case, and he was, in fact, their principal witness, his evidence filling more than fifty pages of the record. His only testimony upon this point was this: "I consider him incapacitated because he signed every document that was presented to him." He afterwards stated, however, that Martinez had a good memory, and would remember the check he signed. Moreover, he said that Martinez read all of the documents presented to him before he signed them. The testimony of Mr. Colm is of no importance in the case because his relations with Martinez commenced with his appointment as guardian and after the debt in question had been incurred. This testimony of Cantero is all the evidence which there is in the case to show that Martinez was incompetent to transact business. Mr. Early, a witness for the defendants, and who acted as the lawyer for Martinez during all the time covered by these transactions, testified that Martinez discussed his affairs as any business man would, in a rather intelligent way, and that he seemed to be rather shrewd in some respects about his business. Mr. Wolfson, a witness for the plaintiff, testified that he went to see Martinez for the purpose of collecting a note for P26,000, which Martinez had signed. Martinez told him that the note was given for a gambling debt, and was worthless, and the most that Mr. Wolfson could get Martinez to do after a long conversation with him was to promise to pay P1,000 in settlement for this P20,000 note, and even then Martinez insisted upon paying the P1,000 in installments. There is considerable evidence in the case relating to the money lost in gambling by Martinez. A witness for the defendant testified that Martinez, when he lost, never paid cash, but always gave his notes; that he never paid these notes in full; that on notes of P1,000 he would pay 10 per cent, but on notes for larger amounts, 5 per cent, and he testified that a friend of his had a note against Martinez for P40,000 which Martinez took up by paying 2 per cent of its face. A man who can play at cards with a professional gambler, lose P40,000, pay no part of that loss in cash, give his note therefor, and afterwards settle the note for P800, can not be said to be wanting in mental capacity. There is nothing whatever in this defense, and we hold that Martinez during the time in question was mentally capable of managing his affairs.

There is an allegation in the answers to the effect that Martinez signed these checks and notes by reason of threats made against him by R. W. Brown, agent of the plaintiff bank, and Ricardo Rogidor. This matter does not seem to be mentioned in the appellee's brief, and this defense finds no support in the evidence.

The most of the brief is devoted to the defense of conspiracy, and it is alleged that on the 1st day of January, 1903, Brown, the manager of the plaintiff bank, Ricardo Regidor, and various employees of these people, entered into a conspiracy to defraud Martinez and to get possession of his property. The court below, in case No. 3472, found that this conspiracy was formed, and that the signature of Martinez to those various checks and documents was obtained by fraud in pursuance of such conspiracy, and its judgment for the defendants in both cases is based in part upon this ground. Upon this question of conspiracy certain facts are undisputed. Among these are the following:

Prior to the 20th day of January, 1903, when Martinez opened his account with the bank, he had been gambling at cards for several months. He testified at the trial that prior to the date last named he had lost in this way more than

P300,000. The witnesses for the defendants testified that when Martinez lost he never paid cash, but always gave his note, and there were notes of this character outstanding against Martinez on the 20th of January, 1903, to an amount, according to one witness, exceeding 200,000. With this gambling and with the execution of these notes, neither Brown, the agent of the bank, nor Regidor, nor any other person connected with them, had anything whatever to do. There is no evidence that any of these alleged conspirators knew anything about Martinez prior to the 20th day of January, 1903. Whether these obligations against Martinez were valid does not clearly appear in the case, but from the testimony of Isidro Martinez it is probable that most, if not all, of the notes were binding upon Martinez. The testimony was that the games played were burro and monte. It has been held by this court that burro is not a prohibited game, and that a note given for money lost thereat can be collected. (Reyes vs. Martinez, 5 Phil. Rep., 402; Lichauco vs. Martinez, 6 Phil. Rep., 594.) The defendant in those cases is the defendant Martinez in this case. An examination of them illustrates the kind of gambling in which Martinez indulged, and the facts in the Lichauco case confirm the evidence given in this case to the effect that Martinez never paid the face value of his notes, for, in that case, by a payment "of P300, he secured a credit on his note of P6,000

Another fact about which there is no dispute is that neither Brown nor Regidor, nor anyone connected with them, had anything to do with the opening by Martinez in the plaintiff bank of his account-current. The defendants' own witnesses prove that Isidro Martinez, one of the gamblers who held notes to quite a large amount against Martinez, took the latter to the bank and introduced him to Brown, the manager. The result was that a few days after this interview and on the 20th of January, 1903, Martinez, having submitted a list of his securities, was given a credit of P30,000 in the bank. Isidro Martinez, who does not appear to be a relative of the defendant, testified that for his services in securing this credit Martinez paid him P3,000 and that he also paid one Montelibano for similar services P600. It was also "proven by the defendants' witnesses that this account with the bank was opened for the purpose of securing cash with which to pay these outstanding obligations of the defendant Martinez. It is thus seen that, if any conspiracy was ever formed, as claimed by the defendants, it was done after Martinez had incurred the obligations for the payment of which he needed money and after he had opened his account with the bank for that purpose.

It is claimed that Brown and Regidor were the principal conspirators. Regidor died prior to the trial of this action and Brown was absent from the Islands. The principal evidence presented to show the conspiracy was the testimony of Cantero, above referred to, and a large number of documents, most of them prepared under the direction of Regidor, and letters written to Regidor by various persons interested in the affairs of Martinez. This evidence¹, so far as it related to acts done by Regidor or statements made to him or statements made by him, was incompetent as against the bank, without prior proof that a conspiracy existed between him and Brown as the representative of the bank. Section 208, paragraph 6, of the Code of Civil Procedure provides that evidence may be given upon trial of the following facts:

"6. After proof of the conspiracy, the act or declaration of a conspirator relating to the conspiracy."

This evidence was received at the trial below upon the promise of the defendants to prove later the conspiracy. To our minds no such proof was ever presented. No evidence was received which would tend to show that Brown entered into any conspiracy with Regidor or anyone else to defraud Martinez. In order to establish this conspiracy it was necessary to prove some act of Brown indicating its existence. Cantero, the principal witness for the defendants, on cross-examination stated that he had never talked with Brown about any of these matters, and that he did not know of his own knowledge that Brown ever received five cents from them. He did testify that he gave a copy of Exhibit 12 to Brown; that this document was written by him at the direction of Regidor. From the document itself, it appears that it was a statement relating to the loan of P30,000, the basis of this action, and the facts therein contained are substantially as afterwards proven at the trial. He also stated that Brown and Regidor

were engaged in the purchase of notes of other persons; that Exhibits 17 to 23 were prepared with the knowledge and consent of Brown (these papers are copies of the last page of the document of the 12th of February, 1904, referred to in the decision in case No. 3472) ; that Exhibit 54 is in the handwriting of Brown (this is a note written by Brown to Regidor telling him that Lorenzo del Rosario had protested a note of Martinez for 20,000) ; that Exhibit 57, which was signed by Brown, was prepared by Regidor (this is a petition to the registry of property concerning the inscription of documents relating to Martinez's property); that he, Cantero, delivered to Brown Exhibit 58, which is a note from Regidor to Brown, stating that Martinez would present that day for collection three checks for P1,000 each, executed in favor of Regidor, and saying that there was no objection to paying these; that Exhibit 76 was prepared by Regidor for the use of Brown (this is a statement of the transactions relating to the two steamers, and was admitted by the plaintiff at the trial to be correct, and the evidence so shows).

Cantero also testified that Brown would not pay any checks of Martinez unless they bore the rubrica of Regidor; that he, Cantero, drew checks against his own account in the bank when he had no money therein, and that such checks were always paid; that by an arrangement between Brown and Regidor, letters written by the former to the latter were directed to Cantero, and letters by the latter to the former were signed by the letter "C.;" that during a certain period Regidor sent a conveyance to Brown's house which brought Brown to Regidor's office, and that they were in communication with each other almost every day.

There is nothing in any one of these acts which in our opinion shows that Brown had entered into a conspiracy to defraud Martinez of his property; they do show that the relations between Brown and Regidor were very intimate j that Regidor was interested in the relations between Martinez and the bank, and that he prepared documents for execution by Martinez, in favor of the bank, but there is no evidence to show that these intimate relations were due entirely to the affairs of Martinez. There is no evidence to show that Brown and Regidor were not interested in other affairs with which Martinez had nothing to do. These daily conferences between the two may have had reference to other transactions than those of Martinez.

It is apparent that none of this evidence indicates in the slightest manner that Brown ever received any money by reason of any of the transactions between Regidor and Martinez.

The only other evidence in the case is the testimony of two of the gamblers who attempted to collect checks given to them by Martinez.

Isidro Martinez testified that he presented a check for P1,000, drawn by Francisco Martinez on the plaintiff bank, and that Brown refused to pay it, saying that the papers had not yet been arranged, and that he should see Regidor, who had charge of them. He saw Regidor, who told him that the check grew out of gambling transactions, and that he must pay Regidor 25 per cent thereon. Martinez agreed to this, and they both went to the bank; Martinez received P1,000, and paid Regidor P250 in the presence of Brown. The same thing happened in connection with another check for P3,000, Martinez leaving with Regidor, in the presence of Brown, P750; and Ramirez testified that the same thing happened in connection with a check which he had for P2,000, Regidor demanded 33 per cent of this, which Ramirez at first refused to pay, but finally went to the bank with Regidor, received the P2,000, and left P666 with Regidor in the presence of Brown; Papa had a check for P4,000, which the bank refused to pay; he saw Brown and offered him P500 if Brown would order it paid. Brown told him to return the next day; instead of that he placed the check in the hands of a lawyer for collection. In regard to these transactions, it may be said in the first place that they do not show that Martinez was in any way defrauded, and do show that the persons who lost the money were Ramirez and Isidro Martinez. In the second place, it does not appear that Brown received any part of this money.

We have stated in substance all of the competent evidence in the case to show Brown's relations with Regidor in connection with the defendant Martinez, and the case must be decided upon that evidence. Upon it we hold that the conspiracy alleged in the answer is not made out.

The very serious question as to whether, if there had been a conspiracy between Brown and Regidor, the bank would suffer thereby, we have not considered. The bank actually having parted with its money to Martinez on checks, which in fact were drawn by him, whether or not it would be debarred from maintaining an action against Martinez for the amount of such checks, because Brown and Regidor had entered into a conspiracy to get the money fraudulently from Martinez after the bank had paid it to him, is a question which we do not discuss nor decide.

The defendants alleged in their answer and the court below found that the P30,000 for the recovery of which this suit was brought had been paid. The evidence does not support this finding. Martinez having given the bank a note for P30,000 on the 21st day of June, 1903, made his check on the bank for that amount. Some time between the 21st of June, 1903, and the 31st of December, 1903, the bank surrendered to Martinez the note for P30,000 in consideration of the check aforesaid, and on the last-named day charged the check to Martinez's current account. The testimony of the witnesses for the bank is clear and direct that this did not constitute a payment of the debt which was secured by the document set out in the complaint, but only changed the form of that debt. It was originally represented by a promissory note. At the time the action was brought it appeared in the account-current as an overdraft. The debt itself not having been paid, the fact that the form in which it appeared was changed did not release the security.

It appears that on the 31st day of December, 1903, the amount of money with which the bank had actually parted, by reason of this promissory note for P30,000, was not P30,000, but was P28,599.13, and when the check for P30,000 was on the last-named day charged to [Martinez, this difference of P1,401.87 instead of being paid to Martinez was credited to him in the same account-current and on the same day. The result is, therefore, that the amount for which the steamer Germana is held is P28,099.13, with interest from the 31st day of December, 1903." No part of this has ever been paid, for it appears that although the bank has been in possession of the steamer since the execution of the document of May 2, 1903, yet it has paid out for repairs thereon P10,048, the receipts therefrom having been only P3,152.52.

It appears that this debt of P30,000 is also included in case No. 3472, as shown by an examination of the document set out in that case. The plaintiff, of course, is not entitled to recover this sum twice, and provision is made in the judgment in case No. 3472 to avoid that result. We think that it appears from all the evidence that by agreement of the parties the lien of the bank upon one-half of the Don Francisco was surrendered and it was given a lien upon the Hermana in its entirety.

The judgment of the court below is reversed, and the case is remanded, with direction to that court to render judgment in favor of the plaintiff and against the defendants, Francisco Martinez, and Vicente Ilustre, as the guardian of the defendant Francisco Martinez, for the sum of P28,599.13 with interest thereon at 8 per cent per annum from the 1st day of January, 1904, and the costs, and directing that the steamship Germana, if said judgment is not paid, be sold in accordance with law, to pay and satisfy the amount of such judgment. No costs will be allowed to either party in this court. So ordered.

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

[1] Page 252, post.

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