

HIJOS DE I. DE LA RAMA, PLAINTIFFS AND APPELLEES, VS. JOSE ROBLES AND FELIX ROBLES, DEFENDANTS AND APPELLANTS.*G.R. No. 3520. October 03, 1907*

Ponente: TORRES, J.

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On the 18th of April, 1905, the attorney who represented the firm of Hijos de I. de la Rama filed a complaint in the Court of First Instance of Occidental Negros praying that judgment be entered in favor of his clients, sentencing Jose Robles to pay the sum of 4,970.28 pesos together with interest thereon at the rate of 10 per cent per annum from the 1st of December, 1903, as well as the sum of 500 pesos as costs and litigation expenses, and that in case the said payments were not made within twenty days after judgment, a public sale of the mortgaged property be ordered by the court; that Felix Robles be also ordered to pay the sum of 2,673.97 pesos with legal interest thereon from April 1, 1904, and 2,640.41 pesos with legal interest from the 16th of February, 1904, together with costs, and any other relief which the court might deem just and equitable.

To this end the plaintiff alleged that as security for the said debt of 4,970.28 pesos Jose Robles had given a voluntary mortgage upon the hereditary portion belonging to him in the hacienda "Castellana Grande," together with all its effects and appurtenances, free from all incumbrances, and a debt of 1,500 pesos owing by his brother, Felix Robles, and a one-half interest in a building lot situated on Calle Progreso, Iloilo, adjoining the grounds and warehouse of Warner, Barnes & Co., binding himself to further pay 500 pesos to cover costs and expenses in case the creditors had to have recourse to judicial proceedings in order to recover the debt; and that the two amounts owed by Felix Robles were set forth in two promissory notes signed in favor of the plaintiffs on February 15 and April 15, 1904, both of which were protested in due course for lack of payment on the dates when they became respectively due.

In answer to the complaint the attorney representing Felix Robles moved that the same be dismissed as against the latter, and that Hijos de I. de la Rama be sentenced to refund the sum of 2,200 pesos with interest at 6 per cent from the time of payment, denying the debt claimed and alleging that the plaintiffs had no right of action to demand payment, for the reason that the said indebtedness arose out of a game of chance called monte, and, as a counterclaim, demanded the refund of the said 2,200 pesos paid to the plaintiffs as an illegal debt because, with the exception of the intercourse at the gambling table, the defendant never had any transaction with Hijos de I. de la Rama.

In a separate reply the attorney representing Jose Robles asked that the complaint against the latter be dismissed upon the statement that the mortgage deed was null and void in view of the fact that the plaintiffs had no right of action to recover the debt set forth in said deed, for the reason that it arose from the forbidden game of monte, and because it depended on the good faith of the debtor whether he would or would not fulfill his word; and that, as he had never had any dealings with the plaintiffs except at the gambling table, he demanded as a counterclaim the refund of the sum of 2,500 pesos which he had paid them, and stated that the mortgage deed referred to in the complaint was null and void.

This case having been duly tried, judgment was entered by the court on the 5th of September, 1905, sentencing Jose Robles to pay the sum of "4,970.28 pesos, Mexican currency, equivalent to P4,359.89, Philippine currency," with interest thereon at the rate of 10 per cent per annum from December 1, 1903, until the full payment of the debt should be accomplished, and 500 pesos, Mexican currency, equivalent to P438.59, Philippine currency, as costs and expenses of the proceedings; Felix Robles was likewise sentenced to pay the sum of "3,114.38 pesos, Mexican currency, equivalent to P2,731.91, Philippine currency," with legal interest thereon at the rate of 6 per cent per annum from the 16th of April, 1904, until the time when full payment should be made, and one-half of the amount of costs. Against said judgment exception was taken by the attorney for the defendants and motion was made for a new trial, which however, was denied, and thereupon the representative of the defendants appealed to this court, although it does not appear that the denial of the new trial was duly excepted to.

As it will have appeared, a claim is made for the payment to the respective plaintiffs of amounts respectively due, according to the authentic documents executed by the brothers Jose and Felix Robles, who refuse to pay them on the ground that said debts arose from the forbidden game of monte.

The two partial amounts owing by the defendant Felix Robles are set forth in two promissory notes which he acknowledged in court when they were placed before him as the documents that he had executed as dated, in favor of the plaintiffs, and therefore, the authenticity of the said two promissory notes is unquestionable. Article 1225 of the Civil Code reads:

"A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument."

The debt of Jose Robles is set forth in a public instrument signed by a notary, and is secured by the mortgage of such interest as the debtor might have in a certain property owned in common, and also by a debt owing by his brother Felix. Article 1218 of the said code provides:

"Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

It does not appear that the said deed was ever impugned as false. For such reason it stands as evidence and constitutes the best proof of the certainty of the indebtedness which gave rise to the execution thereof on the date when it was made.

Nevertheless, in spite of the nature of the documents proving the amounts due to the plaintiffs, the defendants disregard the demand and refuse to pay them, alleging that the said indebtedness arose from the game of monte, and that, therefore, the plaintiffs having won the same in a forbidden game have no right of action to claim the payment thereof. In support of the right alleged by them the defendants cite the provisions of article 1798 of the Civil Code, which reads:

"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."

With reference to the notarial instrument wherein the debt and the mortgage are set forth, the representative of Jose Robles claims that the same should be declared null and void for the reason that the obligation is an unlawful one and because the contract therein appearing as having been entered into is null.

Counsel for both defendants base the inefficacy of the three above-cited documents of indebtedness on the fact that it has been fully proven in these proceedings that the debts set forth therein consisted of amounts lost in the game of monte, and that, therefore, no legal action can be taken to enforce the payment thereof.

The judge of the court below, taking into consideration the result of the evidence adduced at the trial, rendered his decision in the following terms:

"The plea that the said debts arise from the game of monte can not be considered by this court for the following reasons:

"First, because it has not been proven that said debts arose from gambling, since none of the witnesses offered by the defendants excepting themselves, have been able to affirm that the two promissory notes signed by Felix Robles, and the public instrument admitting the debt, executed by Jose Robles, were given as vouchers for debts arising from gambling; secondly, because said debts were contracted by the defendants themselves toward a commercial firm—that is, toward a legal entity—which, by reason of its character, it is not possible to believe that, like a single individual, the firm gambled at monte; thirdly, because the defendants have themselves stated in the documents subscribed by them, that the debts claimed represent values received by them from the firm of Hijos de I. de la Rama, and, this being the case, this court can not consider the testimony given by defendants for the reason that it is not lawful for anyone to contradict his own acts, above all if it is for the purpose of deceiving himself or to deceive others; and fourthly, because the evidence offered by the defendants has been sufficiently overcome by the counterevidence of the plaintiffs."

The rules of evidence which should be considered by the courts in determining the preponderance of evidence in a suit are established by section 273 of the Code of Civil Procedure, which reads:

"In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of the witnesses, though the preponderance is not necessarily with the greatest number."

Before determining whether the provisions contained in the foregoing section have or have not been duly complied with in the judgment appealed from, it must be noted that after the motion for a new trial was denied no exception appears to have been taken by the counsel for the defendants to the order of the court denying the motion, as expressly required by section 497 of the Code of Civil Procedure, as amended by section 1 of Act No. 1596, paragraph 2 of which reads as follows:

"If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment as justice and equity may require. But, if the Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble additional costs upon the excepting party, and may order them to be paid by the counsel prosecuting the bill of exceptions, if in its opinion justice so requires."

Section 2 of said act, which also amends section 146 of the aforesaid Code of Procedure, provides in the second part of its second paragraph as follows:

"The overruling or granting of a motion for a new trial shall not be a ground of exception, but shall be deemed to have been an act of discretion on the part of the judge, within the meaning of the second sentence of section one hundred and forty-one. If, however, the motion for a new trial was made on the ground that the evidence was insufficient to justify the decision, an exception may be taken to the order overruling such motion, and such exception may be reviewed by the Supreme Court as in other cases."

This court, abiding strictly by the foregoing provisions of law, and in view of the fact that the appeal to this court,

so briefly expressed by counsel for the defense, must be understood as having been filed against the final judgment, can not review the evidence as provided by the two foregoing sections of Act No. 1596, because no exception was taken to the overruling of the motion for a new trial.

Nevertheless, even if said order had been excepted to and this court were authorized to review the evidence in this case, upon compliance with the requirements of the second part of section 497, as amended by the said act, namely, that in order that the evidence may be reviewed due consideration must be given to the fact that the judge saw the witnesses when they testified, and, considering the conclusions arrived at by the trial judge, no legal reasons are offered which may serve as ground to consider that the evidence of the defendants was insufficient to justify and maintain the judgment entered in this cause.

Against the validity and efficacy of obligations contained in authentic documents, the plea that the debts therein stated arose from winnings at a game can not prevail when such pleas do not appear to have been duly justified. The statement that Esteban de la Rama, one of the members of the plaintiff company, is a gambler, and that on certain occasions he gambled with the defendants, who suffered losses, is not sufficient; it is necessary to fully prove that the sums owing to the said firm, according to the documents above referred to, were those Esteban de la Rama had won from them in a game of monte, and that in the drawing up and execution of the deed and the promissory notes a simulation had taken place. These points, which are of the greatest importance, do not appear as having been proven at the trial, and this fact is stated by the judge when considering the result and weight of the evidence adduced; therefore, for the same reasons, it is not possible to sustain the claim of the defendants, who demand as a counterclaim the refund of a certain sum said to have been unduly paid by them to the plaintiffs.

For the reasons above set forth, it is our opinion that the judgment appealed from should be affirmed, there being no reason in law for the nullification of the mortgage deed nor for the return of the money demanded in the counterclaim, and, with the costs against the appellants, it is so ordered.

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

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