

**RAFAEL AZADA Y LARA, PLAINTIFF AND APPELLANT, VS.
FRANCISCO MARTINEZ Y GARCIA ET AL., DEFENDANTS AND
APPELLEES.***G.R. No. 4179. March 21, 1910*

Ponente: TORRES, J.

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On July 26, 1906, the plaintiff entered suit against the defendants, that is, against Francisco Martinez y Garcia and his judicially appointed guardian. It was alleged in the complaint that the said Martinez Garcia bound himself by a public instrument of the date of April 16, 1903, to pay to Jose Escalante y Espinosa, within six months from that date, the sum of 7,000 pesos, Mexican currency, which he therein declared and acknowledged that he owed to the latter because of a like amount received in cash. A copy of the said instrument, marked with the letter A, accompanied the complaint as a part thereof. On the same date, April 16, the aforesaid claim of 7,000 pesos was negotiated by the creditor Escalante, who transferred it to the plaintiff Azada y Lara in payment of an equal sum, and transmitted to him all the rights and actions he had against Martinez, substituting the latter in his place and conferring upon him the necessary powers for the collection of the said debt. On the same date, the debtor Martinez was duly notified of the transfer, and he acknowledged the same by affixing his signature thereto. A copy of the instrument of transfer and notification accompanies the record, under the letter B, and is made part of the complaint. Notwithstanding that the term of the obligation had long since expired, and in spite of the various private and friendly negotiations had with the debtor and his guardian Vicente Ilustre, they had not paid the said claim up to the date of the complaint, nor any part thereof, and therefore, it is alleged, they are indebted to the plaintiff for the entire sum; wherefore the latter asks that, after the proper proceedings, judgment be rendered against defendants, directing them to pay to the plaintiff the sum of 7,000 pesos, Mexican currency, or the equivalent in Philippine currency, with legal interest from the date of the complaint, and costs.

The defendants having been summoned to appear, and the demurrer interposed to the complaint having been denied and exception filed by the guardian of the defendant Martinez, on September 5, 1906, the defendants in answer stated that with the exception of the contents of the first paragraph of the complaint they denied generally and specifically each and all of the allegations made in the rest of the complaint, and, as a special defense, they set forth that the sum of 7,000 pesos claimed by the plaintiff, on the ground of the false transfer made in his favor by Jose Escalante, was an imaginary sum which the latter had won from Francisco Martinez y Garcia illegally and fraudulently in a game of monte, on which account they pray that they be acquitted of the complaint, with the costs against the plaintiff.

By a writing of the 12th of September of the same year, the plaintiff denied the facts alleged as a special defense by the defendant in his answer and asked for a judgment for the amount claimed, with legal interest, and the costs.

The case having come to trial and oral evidence having been adduced by both parties, to the record of which were afterwards united the documents exhibited, the court, on the 19th of June, 1907, rendered judgment, acquitting the

defendants of the complaint, with the costs against the plaintiff, who, on being informed thereof, filed an exception to the judgment and announced his intention to present the appropriate bill of exceptions. Moreover, he made a motion, in writing, for a new trial, on the ground that the facts did not justify the judgment of the court, which, he alleged, was contrary to law and the weight of the evidence. This motion was denied and exception thereto was taken by the appellant, who duly filed the bill of exceptions, which was approved, certified to, and forwarded to the office of the clerk of this court.

Claim is made in this litigation for the payment of a certain sum which the defendant Francisco Martinez had lost in a gambling game known as monte. Article 1798 of the Civil Code prescribes 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."

Games of chance, luck, or hazard being prohibited by substantive law, it is evident that the same could not permit such a game to support an action to enforce a claim for what was won, inasmuch as such games produce no civil obligation and, consequently, no action whatever may be brought before the courts of justice which would receive the favor and protection of the law.

The circumstance of the document, Exhibit A, having been executed before a notary on April 16, 1903, by the defendant Martinez in favor of Jose Escalante, who, as proven at the trial, had won from the maker of the instrument the sum of 7,000 pesos, Mexican currency, as therein set forth, in a game of monte, and the circumstance of the apparent transfer of this sum by the so-called creditor Escalante to the plaintiff Rafael Azada y Lara by means of an instrument of the same date - a transfer duly made known to the debtor Martinez - do not change the effects of the prohibition established in the above-quoted article, nor is it possible to perceive how, by the execution of the said instruments of debt and of transfer of the debt contracted in a game of chance like that of monte, one may lawfully elude the prohibitive provision of the law, inasmuch as, if there exists no obligation to pay what was won in an illicit game like that of monte, and if the law does not permit an action before the courts for its recovery, it likewise will not be permissible to demand the payment of such a debt merely because of its acknowledgment in a public instrument and its transfer to a third party by another instrument, which documents do not legalize the debt in face of the absolute prohibition of the law.

For the foregoing reasons, and in view of the fact that the judgment appealed from is found to be in accordance with law and the evidence contained in the 'records, it is proper in our opinion to affirm and we do hereby affirm the same, with the costs against the appellant. So ordered.

Johnson, Carson, and Moreland, JJ., concur.

Arellano, C. J., and Mapa, J., dissent.

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