

RAMON PAPA, PLAINTIFF AND APPELLEE, VS. FRANCISCO MARTINEZ, DEFENDANT AND APPELLANT.*G.R. No. 4706. January 27, 1909*

Ponente: WILLARD, J.

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The plaintiff brought this action in the court below to recover a balance of 11,000 pesos alleged to be due him by virtue of a notarial document executed by the defendant on the 6th day of December, 1902, by the terms of which the defendant stated that he had received in cash from the plaintiff, as a loan, 15,000 pesos, which he promised to pay to the plaintiff on the 6th day of April, 1903. It was admitted in the complaint that 4,000 pesos had been paid upon this obligation. The complaint contained a copy of the obligation. Its execution was not denied under oath by the defendant but he alleged that it was given, not for a loan of money, but for amounts which he had lost to the plaintiff and others at the game of monte. Judgment was entered in the court below in favor of the plaintiff for 11,000 pesos and the defendant has appealed;

At the opening of the trial in the court below the plaintiff presented no evidence. The defendant thereupon moved to dismiss the case for failure of proof. This motion was denied by the court below for the reason that the obligation sued upon having been copied into the complaint and the defendant not having denied its execution under oath, he had admitted it (sec. 103, Code of Civil Procedure), and no evidence was therefore necessary to show that he owed the amount claimed. This view of the law was entirely correct. The burden of proving payment, or any similar defense, was upon the defendant. (*Behn, Meyer & Co. vs. Rosatzin*, 5 Phil. Rep., 660; *Merchant vs. International Bank*, 9 Phil. Rep., 554.)

Upon the merits of the controversy, the evidence in the case strongly preponderates in favor of the plaintiff. He had in his favor, in the first place, the obligation itself, which was a solemn statement before a notary public by the defendant himself to the effect that the money was paid to him in cash as a loan. There was also the testimony of the plaintiff, who stated that he had never played monte with the defendant and that the money was furnished by him to the defendant as a loan, which was sought by one Aviles, a broker, acting for the defendant. Aviles testified that, at the request of the defendant, he negotiated with the plaintiff for this loan, was present when it was consummated and saw the money paid by the plaintiff to the defendant.

The only testimony to overcome this evidence was the declaration of the defendant, who said that he never gambled with the plaintiff but once; that on that occasion he lost 15,000 pesos to the several people present, among whom was the plaintiff; that the entire amount lost by him to the various players was put into one sum and an obligation for 15,000 pesos was executed in favor of the plaintiff, and that two or three days later this obligation, which was in the form of a note, was destroyed, and the document sued upon executed before the notary public. He stated that among the players was one Zamora. Zamora was called as a witness by the defendant, but instead of corroborating the latter's testimony, he stated that he never had gambled in the house of the plaintiff. This is practically all of the evidence in the case, because we consider of no importance the testimony of the witness for the defendant who said that an obligation similar to the one in question had been

offered for sale to him at a discount of 25 per cent.

If such evidence as this were sufficient to destroy the value of an obligation such as the one sued upon, it would be difficult to see how any person with a genuine document of this character would be secure in his rights. It is hardly necessary to say that this case must be decided upon the evidence presented to the judge who tried it and not upon evidence presented to other judges in other cases relating to this transaction or other transactions between Martinez and other persons and which have come to our knowledge.

The defendant also alleged in his answer that after the execution of the obligation he had compromised and settled it by the payment of 4,000 pesos to the plaintiff. The payment of the 4,000 pesos was admitted, but the plaintiff claims that it was on account. It was admitted that the receipt which the plaintiff gave the defendant when the payment was made expressly stated that it was on account.

The defendant, however, said that the payment was in full settlement of the entire obligation and that he did not read the receipt when it was given to him because he had Confidence in the plaintiff and his attention was not called to the fact that the receipt stated that it was on account until sometime afterwards. He made the payment by a check on the International Bank and when he learned what the terms of the receipt were he ordered the bank to stop payment on the check. This was done. The plaintiff had several interviews with the manager of the bank in which he attempted to collect the check but was unsuccessful. He thereupon placed it in the hands of his lawyers and after an interview with the bank the check was paid.

The evidence supports the finding of the court below, that there was no settlement of the entire obligation by this payment of 4,000 pesos. If the claim of the defendant is true, it is difficult to understand why he finally consented to the payment of the check.

The defendant also complains because the court refused to continue the case to allow him to present other witnesses. The trial was commenced on November 8, 1907. At the opening of the court on November 9, counsel for the defendant stated that some of his witnesses were in the provinces and he asked for a continuance until after the rebuttal of the plaintiff, saying that if there was no rebuttal, then he had no more evidence to offer. He stated that he had two witnesses, one living in Mindoro and the other in Pangasinan. The court said the witnesses would be allowed, but only for rebuttal of the plaintiff's proofs. The plaintiff did present evidence in rebuttal. After the rebuttal evidence of the plaintiff was presented, the defendant presented one witness and then asked for a continuance until the end of the month in order that he might bring his witnesses from the province. This was opposed by the plaintiff but the court continued the case until the 13th of November. On the 13th of November the witnesses not being present, counsel for the defense asked for a further continuance, which was objected to by the plaintiff, but the court continued the case to the 19th of November. On the 19th of November, the defendant stated that his witnesses had not yet arrived and asked for a further continuance, which the court refused to grant. It is apparent that in this ruling there was no error.

The defendant states that the court committed an error in not compelling the witness George to testify. Mr. George, who is the prosecuting attorney, was called by the defendant for the purpose of testifying as to certain statements which had been made by Luis Santos, deceased, in reference to this and other transactions connected with the defendant Martinez. The court refused to allow the evidence on the ground that it was hearsay. This ruling was clearly correct as the supposed statements by the deceased Santos did not come within any of the provisions of the Code of Civil Procedure allowing testimony to be given as to declarations made by deceased persons.

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

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.
Johnson, J., dissents.

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