

**JUSTO MELLA, PLAINTIFF-APPELLANT, VS. THE, PHILIPPINE CHARITY SWEEPSTAKE OFFICE, DEFENDANT-APPELLEE.***G.R. No. 49054. February 11, 1944*

Ponente: OZAETA, J.

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In the sweepstakes draw of December 17, 1939, picket No. J-16923 won the second prize amounting to P41,431.86. Claiming to be the owner and holder of the second quarter-unit of that ticket, the plaintiff seeks to recover the sum of P10,357.96, which the defendant has refused to pay because the ticket presented by him was so mutilated, with its lower right-hand corner torn off, that the last digit of the number was missing, the ticket as presented bearing only the number J-1692, and because the ticket in question contains the following stipulation:

"No prize shall be paid except upon the surrender of the ticket entitled thereto, which must be free from any erasure or stain on both sides making the numbers thereon illegible."

Upon motion of the defendant based on the ground that the complaint does not state a cause of action, the Court of First Instance of Manila, presided over by Judge Marcelo T. Boncan, dismissed the complaint. Subsequently, upon motion for reconsideration filed by the plaintiff, and over the exception of the defendant, the same court, presided over by Judge Mamerto Roxas, set aside the judgment of dismissal, reinstated the case, and admitted the proofs offered by the plaintiff to show that his mutilated ticket originally bore the winning number and that the missing digit was 3. But the same judge was not convinced by the proofs thus adduced by the plaintiff and absolved the defendant from the complaint. Hence this appeal, which has been certified to this Court by the Court of Appeals on the ground that it presents only a question of law.

The question to decide is that raised by the appellee's counterassignment of error, namely, whether secondary evidence of the number of the sweepstakes ticket relied upon by a prize claimant is admissible.

We think Judge Boncan's opinion answering that question in the negative is correct. The contract between the parties provides that no prize shall be paid except upon presentation of the winning ticket "free from any erasure or stain on both sides making the numbers thereon illegible." A mutilated ticket with one digit of its number missing is worse than an entire ticket with an erasure or stain making the number thereof illegible. Under the stipulation relied upon by the appellee, it is indisputable that if the ticket presented by the appellant, instead of being mutilated, was merely so stained that the last digit of its number was illegible, the illegible number could not be restored or established by secondary evidence, because when the appellant bought said ticket he agreed in effect that he was not entitled to collect any prize it might win unless the ticket was presented to appellee with all the numbers thereon legible. The same reason applies with greater force to the instant situation wherein the appellant presents a ticket which is not merely stained but mutilated and with one of the figures not merely illegible but entirely missing.

The reasonableness and validity of the stipulation in question is undisputed and indisputable. Its purposes are apparently (1) to facilitate and expedite the payment of the prize by requiring the ticket holder to preserve the

ticket intact and untampered with so as to do away with the necessity of proofs aliunde as to its genuineness and authenticity; and (2) to close all possible avenues of fraud.

For analogous reasons we denied the claims for prizes in the cases of *Santiago vs. Millar*, 38 Off. Gaz., 816, and *Rubis vs. Philippine Charity Sweepstakes*, G. R. No. 46686, wherein the claimants alleged having lost their respective tickets and tried to prove them by secondary evidence. It is to the best interests of all concerned that the distribution of the sweepstakes prizes be entirely free from all possible frauds or mistakes, and in the maintenance of that sound policy there is no material difference between a lost ticket or a mutilated ticket on the one hand and a stained ticket on the other. The difference is one of degree and not of substance, for secondary evidence would be necessary as much in the case of the loss, as in that of the mutilation, or the defacement, of the ticket. And it is to avoid the presentation of such secondary evidence with all the loss of time and money it entails, and the temptation to perjury or prevarication, that the parties have expressly stipulated in advance for the presentation and surrender of the winning ticket as the only proof of title to the prize claimed.

The secondary proofs offered by the appellant being incompetent and inadmissible, we cannot and need not examine them to determine whether Judge Roxas' conclusion as to their insufficiency and incredibility is correct.

Wherefore, the judgment of dismissal is affirmed, with the costs of this instance against the appellant.

Yulo, C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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