

7 Phil. 194

[G.R. No. 3094. December 12, 1906]

**FRED SPARREVOHN, PLAINTIFF AND APPELLEE, VS. EMIL M. BACHRACH ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

The plaintiff brought this action upon the following document:

“\$271.

“I.O.U.

“Two Hundred and Seventy-one.

“(Sgd.) E. H. B.”

The defendant in his answer alleged that this obligation was given for money lost at a game of poker and that that game was a game of chance prohibited by the law. Article 1798 of the Civil Code is as follows:

“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.”

While the defendant, as has been said, alleged that the game of poker was a game covered by article 1798, there was no proof in the case to support this allegation. No evidence was offered to show the nature of the game. Without such evidence the court can not assume that it was a game of *suerte, envite, or azar*.

It will be noticed that no consideration is mentioned in this obligation. By the terms of article 1277 of the Civil Code, therefore, it is presumed that a consideration existed and that

it was lawful, unless the defendant prove the contrary. The case differs in this respect from the case of *Lichauco vs. Martinez*^[1] (5 Off. Gaz., 89), decided November 6, 1906, in which a consideration was expressed, which consideration was proven by the defendant to be false.

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

After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be remanded to the court from whence it came for proper action. So ordered.

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

Johnson, J., did not sit in this case.

^[1] 6 Phil. Rep., 594.
