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[G.R. No. 1913. September 29, 1905]

FRANCISCO RODRIGUEZ, PLAINTIFF AND APPELLANT, VS. FRANCISCO MARTINEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

The judgment of the court below contains the following finding of facts: "The evidence introduced at the trial shows that the defendant executed his promissory note on the 17th of October, 1902, for the sum of 4,000 pesos, Mexican currency, payable to one Felipe C. Montalvo; that the said Montalvo, for value received, sold and transferred the said promissory note to the plaintiff before maturity; that the said plaintiff received the same without notice of any conditions existing against the note; that the plaintiff, before buying the note, went to the defendant and asked him in respect thereto, and was informed by him that the note was good and that he would pay the same at a discount; and that the note was delivered by the defendant to the said Montalvo in payment of a gambling debt which the defendant owed Montalvo. This note was presented to the court as evidence of that debt without the stamp required by law, and no stamp had ever been attached thereto. After the trial the plaintiff offered to put the necessary stamp on the note, and tendered such stamp."

These are the only facts which we shall take into consideration in deciding this case. We must assume that they were duly established as found by the court below for the reason that neither party moved for a new trial.

Without considering whether the game at which this debt was incurred

is a prohibited game or not, and in view of the fact that the judgment of the court below contains no finding as to the name or nature of the game, which omission could perhaps create the presumption in favor of the plaintiff, since article 1277 of the Civil Code provides that the consideration of the contract must be presumed to be lawful and valid until the contrary is proved; and without considering as we have said these questions which we do not think necessary to discuss for the purposes of this decision, yet there are other grounds upon which this case can be decided.

According to the facts set out in the judgment of the court below, the plaintiff acquired the ownership of the note in question by virtue of its indorsement, he having paid the value thereof to its former holder. He did so without being aware of the fact that the note had an unlawful origin, since he was not given *notice*, as the court found, of any *conditions existing against the note*.
Furthermore, he accepted it in good faith, believing the note was valid and absolutely good, and that the defendant would not repudiate it for the reason that he, the defendant, had assured him before the purchase of the note that the same was good *and that he would pay it at a discount*.
Without such assurance from the defendant we can hardly believe that the plaintiff would have bought the note. It is thus inferred from the fact that he, the plaintiff, inquired from the defendant about the nature of the note before accepting its indorsement. These facts sufficiently show that the plaintiff bought the note upon the statement of the defendant that the same had no legal defect and that he was thereby induced to buy the same by the personal act of said defendant.
In view of this, we are of the opinion that the defendant can not be relieved from the obligation of paying the plaintiff the amount of the note alleged to have been executed for an unlawful consideration. If such unlawful consideration did in fact exist, the defendant deliberately and maliciously concealed it from the plaintiff.
Therefore, to hold otherwise would be equivalent to permitting the defendant to go against his own acts to the prejudice of the plaintiff.
Such a holding would be contrary to the most rudimentary principles of justice and law. Paragraph 1, section 333 of the Code of Civil

Procedure, which is applicable to this case, provides as follows: "Whenever a party has, by his own declaration, act, or omission intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

The defendant contends that this provision is not applicable to the case at bar for the reason that the same has for its object the recovery of a gambling debt as to which the defendant can not renounce any right because the law does not give him any. This is not altogether true. Article 1798 of the Civil Code provides that "the person who loses at a game of chance, luck, or hazard can not recover what he has voluntarily paid." This shows that the law at least permits a person to pay what he has actually lost, considering such payment absolutely valid and irrevocable; this aside from the fact, as we have stated before, that it does not appear whether the debt in question, as evidenced by this note, was incurred at a game of the class prohibited by law.

As to the omission of the stamp required by law upon such documents, this fact is not sufficient to invalidate the note sued upon; there is no such provision of law. Section 11 of the royal decree of the 29th of May, 1894, published in the Official Gazette in Manila on the 29th of July of the same year provided, it is true, that such documents would be null and void unless they were duly stamped, but this does not mean that such *documents* would be absolutely null and void, but that no *executive action* could be brought upon them in accordance with the laws then in force regarding mercantile documents. The provisions of that section are so clear that they leave no room for doubt. It reads as follows: "Every note not stamped in accordance with the provisions of the foregoing sections shall be null and void and will not be admitted in any court or any Government office whatsoever, and will not have the efficacy inherent to commercial instruments; this, however, *will not bar a purely civil action which may be brought m the manner,provided by law for the enforcement of civil obligations*."

In accordance with this provision, the note in question, not being

stamped, did not give the holder thereof the right to bring an *executive action* and could not, therefore, be the basis of such an action; but it was a valid document in that it was proof of a purely civil obligation and could be utilized as such in an *ordinary* action. *Executive actions* having been abolished by the enactment of the present Code of Civil Procedure, the penalty provided in the section above quoted is practically of no importance in this particular case.

We do not know of any law which provides that the lack of a stamp on an instrument of this kind can not be supplied. We are therefore of the opinion that the court below should have allowed the plaintiff to supply this deficiency when he tendered the stamp for that purpose.

The judgment of the court below is hereby reversed, and the defendant ordered to pay to the plaintiff the sum of 4,000 pesos, Mexican currency, or its equivalent in Philippine currency, with legal interest at the rate of 6 per cent per annum from the 22d day of April, 1903, when the complaint in this action was filed, after first attaching to the said note the necessary stamp. The defendant shall pay the costs of the proceedings in the Court of First Instance without express condemnation as to the costs of this instance.

After the expiration of twenty days let judgment be entered in accordance herewith and the record be remanded to the Court of First Instance from whence it came for execution. So ordered.

Arellano, C. J., Torres, Johnson, and *Carson, JJ.,* concur.
Willard, J., did not sit in this case.

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