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[G.R. No. 893. March 18, 1903]

I. O. CONCHEGULL; PLAINTIFF AND APPELLANT, VS. JOSEPH B. HYAMS, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

The plaintiff, the owner of a horse, harness, and calesa, arranged a rattle for the purpose of disposing of them. He received for the tickets sold $210. On January 3,1902, he took the property to the place where the drawing was to be made. The tickets were placed in a box, and the last one drawn, which was the defendant's, was the winning one. Immediately after the drawing it was discovered that a ticket owned by Irwin had not been placed in the box. A discussion arose among the twenty or forty ticket holders present as to what should be done, some demanding that there should be another drawing. The defendant in the meantime settled with Irwin by giving him a half interest in the property, got into the calesa, remained there five minutes or more, and then drove away. It appears that the plaintiff did not, after the drawing, expressly give his consent to this act of the defendant. But. it is also proved to our satisfaction that the plaintiff was there at the time and made no objection to it.

The defendant refused to return the property, and the plaintiff brought this action to recover it. He bases his right on the proposition that he was the owner of it, that the defendant took it from him against his will and has refused to return it.

1. The case turns, in our opinion, upon the question whether these effects were voluntarily delivered by the plaintiff or not. The plaintiff had received for them $210. The only purpose of the drawing was to determine which one of the ticket holders was the owner. The plaintiff brought the property to the drawing for the purpose of allowing the owner to take it away when that owner should have been designated. As the plaintiff himself says in his brief, it was "waiting" outside. After the winner was

known no affirmative action on the part of the plaintiff was necessary in order to place him, the winner, in possession. The property was there for the express purpose of being taken away by him. The plaintiff saw it so taken away and made no objection.

To our minds the case does not differ from one in which two persons playing a prohibited game place the stakes on the table. At the end of the game the winner takes up the money and goes away with it. It is true that after the game there is no actual delivery of the money by the loser to the winner, nor is there any express consent that the latter may take it away, but it can not in such a case be doubted that the loser has voluntarily paid what he has lost. He expressed his consent that the winner might take the money when he placed it on the table and agreed that it should abide the result of the game.

We should have had a different question had the plaintiff not taken the property to the place for the drawing. So the case would have been different had the plaintiff after the drawing objected to its removal by the defendant. In our opinion the plaintiff voluntarily delivered the property to the defendant, and he can not, therefore, recover.

It makes no difference whether the transaction was or was not illegal. If, as respects the plaintiff, the raffle was illegal because prohibited by the ordinance of the city of Manila of December 5, 1901, and it can be said that he lost the property by a prohibited game of chance, then article 1798 of the Civil Code prevents him from recovering it, for he voluntarily paid what he lost.

If, on the contrary, it should be said that, while the defendant won the horse by a prohibited game, yet the plaintiff, having been paid $210 for it, did not lose it by such a game, we have an ordinary sale of personal property, the payment of the price, and the delivery of the article to the purchaser.

2. The defendant, against the objection and exception of the plaintiff, was allowed to prove the facts connected with the raffle, ‘this ruling was correct. When an action is brought to recover property it is competent for the defendant to show, if he can, that he won the property from the plaintiff by gambling, and that the plaintiff voluntarily delivered it to him. Such evidence defeats a recovery. (Art 1798, Civil Code.)

The judgment is affirmed, with costs against the appellant

Arellano, C J., Cooper, Mapa, and *Ladd, JJ.,* concur.

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