

1 Phil. 602

[G.R. No. 34. December 31, 1902]

PABLO PALMA, PLAINTIFF AND APPELLEE, VS. JUAN CAÑIZARES, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

On the 28th of April, 1900, Attorney Arsenio Cruz Herrera, on behalf of Pablo D. Palma, filed a complaint to which was attached a note dated on the 21st of July, 1899, signed by Francisco Ong, as attorney in fact of Juan Cañizares, indorsed by the payee, Saturnina Salazar, to Palma. He also attached, as an exhibit, a notarial act. The complaint was filed for the purpose of instituting an ordinary action against Cañizares to recover judgment against him for the sum of 4,500 pesos, the amount indicated on the indorsement of the note as still due and unpaid, together with interest at the legal rate and the costs of the action. The plaintiff had formerly made an unsuccessful attempt to bring an executive action. The facts alleged in the complaint were that as Cafiizares has failed to pay the second and third installments of \$500 each on account of his indebtedness of 5,000 pesos, evidenced by the said note, and by reason of the fact that the payee, Salazar, needed the money, she had indorsed the said note to the plaintiff, Palma, with the consent of Cañizares; that Palma had paid the woman, Salazar, \$4,500 in currency, as shown by the indorsement of October 20, 1899; that the debtor, Cafiizares, Up to the date of the complaint, had not paid the debt so indorsed in the manner agreed upon between himself and the original creditor, notwithstanding demand to that end made upon him by the creditor, Palma; that, as appears from the preliminary proceedings had for the purpose of instituting an executive action, the debtor did not allege that the document in question was false, nor did he expressly deny the validity of the claim; that the Chinaman, Francisco Ong, a brother-in-law of the debtor, and who lived with the latter, signed the said note by order of the debtor, and that he admitted before a notary public on the 17th of April the authenticity of his signature and rubric appearing at the foot of the said document, all of which appears from the said notarial act.

The plaintiff also argued as the law applicable to the case that the debtor, Juan Cañizares, had impliedly acknowledged and confessed the legitimacy and certainty of the note and of the indebtedness mentioned, because he did not assert that the document was a forgery, nor did he deny the existence of the credit; that it was not probable, in view of the importance of the amount and the recent date of the note, that he should be unable to remember, as he had stated, whether he did or did not owe this sum to Saturnina Salazar de Abreu, or whether his brother-in-law, Francisco Ong, had or had not executed this instrument by his orders; that obligations arising from contracts have the force of law and should be performed as provided by article 1091 of the Civil Code, and that consequently Cañizares is under obligation to pay the said sum of ₱ 5,000 at the rate of \$500 per month, from the 21st of July, 1899, in accordance with the agreement; that as he only paid the first installment it is evident that he can be required to pay, not only the installments overdue, but also the whole remaining sum of \$4,500, in accordance with the provisions of paragraph 1 of article 1129 of the Civil Code, in addition to interest at the legal rate of 6 per cent as damages, he having been in default since the 7th of November, 1899, upon which date demand was first made upon him in court at the instance of Palma (arts. 1100 and 1108 of the Civil Code); that subrogation, according to article 1212 of the same Code, transfers to the subrogated creditor the claim, with all the rights thereto annexed, against the debtor, and that therefore Palma, who was subrogated to the said credit by the indorsement in his favor by Salazar, can maintain his action to recover from Cañizares the whole sum of \$4,500, with interest at 6 per cent per annum, in accordance with the undertaking of the debtor.

The notarial act referred to contains a transcript of the note on page 87, for \$5,000, in favor of Saturnina Salazar, with the promise to pay \$500 per month. The note bears date the 21st of July, 1899, and is signed by Francisco Ong as attorney in fact of Juan Cañizares. On the back of the note is an indorsement directing payment to the order of Pablo D. Palma of the sum of \$4,510 still unpaid by the debtor, Cañizares, which sum Saturnina Salazar, who signs the indorsement, declares she received in cash from Palma in Manila on the 20th of October of the same year. On the margin of the back of the paper there is a note of the payment of the sum of ₱ 500 on the 20th of August

At the instance of Palma, a notary public made demand upon Francisco Ong to state whether he recognized as his the signature and rubric appearing at the foot of the note, to which the said Ong replied that he recognized the said signature and rubric as authentic, adding that he executed this document by the order of the woman, Salazar, who had won from his brother-in-law, Cañizares, in a monte game played in a house on Calle del Rosario,

Binondo, the sum of money expressed in the said note.

Attorney Alfredo Chicote, on behalf of the defendant, Juan Cañizares, filed an answer to Palma's complaint, setting up the following facts: That in a monte game in which Cañizares, Salazar, and several other persons took part on the afternoon of the 22d of June, 1899, in the house belonging to the Chinaman, Lim-Cong-Quian, Cañizares lost the sum of \$5,000, which was won by Salazar; that this sum not having been paid the creditor made persistent demands for a settlement, and finally succeeded in obtaining the document in question, which, by order of Cañizares, was drawn and subscribed by the Chinaman, Francisco Ong, the document referred to being the same attached to the complaint; that it was false that the said document was the result of any mercantile operation or transaction between Cañizares and Salazar, or that any mercantile transaction had ever transpired between them, or between the plaintiff and the defendant; that it was false that Cañizares had received from Salazar as a loan the money mentioned in the note, or that he had made any agreement whatsoever with respect to the said note, which had no other value than that it records a sum of money won in a monte game; that he denies all the allegations of fact contained in the complaint in so far as the same are in contradiction of or do not agree with those stated in the answer.

As the law applicable to the case, the defendant contended that a debt can not be regarded as confessed unless it appears clearly and expressly that the debtor admits it, and that in such a case the debt can not be regarded as confessed by the mere fact that the debtor has refrained from alleging the falsity of the document by which the indebtedness is evidenced, because such a confession must be express and not implied; that even if it can be held that a debtor has acknowledged his indebtedness' by reason of his refusal to answer interrogatories or by reason of an evasive answer, this declaration must be made by a court and must be based upon the refusal to testify, and after formal judicial demand (arts. 569 of the Law of Civil Procedure and 1220 of the Civil Code); that there is no contract unless the essential requisites for its validity are present, among which w a lawful consideration, not opposed to the law or to good morals (arts. 1261 and 1275 of the Civil Code); that as the consideration in this case arises from a gambling game—an illicit consideration—it follows that the obligation expressed in the document referred to could produce no legal effect and is absolutely unenforceable, there being no valid contract (art. 1278 of the Civil Code); that the law does not allow any action for the recovery of money won in a game of chance, and that losses in a prohibited game, such as *monte*, do not produce any civil obligation (arts. 1798 and 1801); that the subrogation is not legal and does not transfer the credit with the rights thereto annexed when the debtor has not expressly or by implication assented to the

payment made by a third person not interested in the obligation (arts, 1209, 1210, and 1212 of the Civil Code); that the burden of proof of obligations rests upon him who demands their performance and that the marginal note; is only of effect in so far as it may be favorable to the debtor; that all legal value and effect is denied this subrogation by the defendant, and that the same is impugned as civilly false, and concludes with the petition that the action be dismissed.

In the notarial act attached to the answer of the defendant it appears that at the instance of the Chinaman, Francisco Ong, the notary public, Calixto Reyes, recorded in that act the statements of Emiliano Boncan, the Chinaman, Yap Pueco, the Chinaman, So-Tiaoqui, the Chinaman, Alejandro R. S. Liocsin, the Chinaman, Lu-Hwun, and the Chinaman, Lim-Canguí, who, having been informed of the four questions addressed to them, replied that on the evening of the 22d of June, 1899, they were engaged in a monte game with Juan Cañizares and Saturnina Salazar, in the house of Lim-Cong-Quian, upon which occasion the woman, Salazar, won from Cañizares the sum of \$5,000, which, at the termination of the game, was not paid; that to avoid trouble Cañizares consented to the demand of his creditor that he execute a note, and that he did so, giving a note for \$5,000, with the obligation of paying this sum at the rate of \$500 per month; that this note was dated July 21 and was signed by Francisco Ong, and that this the last three witnesses knew, because they were in Ong's house, the first three stating that they did not remember the day of the month, but had been informed thereof by the woman, Salazar, and that the statement was subsequently confirmed by Cañizares and by Francisco Ong.

Counsel for the plaintiff, Palma, in his replication, repeated the demand made by his complaint, alleging that the story of the *monte* game was wholly false and was a pure invention of the defendant, who, further, when demand was made upon him to recognize the document, did not allege that the debt arose from a gambling game, and, reasserting the facts set up in the complaint, alleged further that the credit in question having been indorsed by Salazar to the plaintiff, Palma, with the consent of Cañizares, the latter on various occasions requested the creditor to extend the time of payment, and that the plaintiff had attempted an act of conciliation with the defendant, as shown by the attached certificate.

He also reasserted the propositions of law relied upon in the complaint, and added that the subrogation of Palma to the rights of Salazar was in accordance with the provisions of articles 1210 and 1212, in connection with article 1528 of the Civil Code, and that when the act of conciliation was attempted with Cañizares the latter failed to appear, the plaintiff

therefore believing that an attempt to get an amicable settlement was useless.

Counsel for the defendant, Cañizares, in his rejoinder added to the facts stated in the answer that he had absolutely and expressly denied that Cañizares had consented to or approved, expressly or impliedly, the payment alleged to have been made by the plaintiff to the woman, Salazar; furthermore, that he denied that such a payment had been effected, and that he considered at all binding the subrogation whereon plaintiff based his claim, and denied that Cañizares had at any time asked Palma for an extension of time, or that he had had dealings with Palma with respect to the sum in suit, denying the facts alleged in the complaint and rejoinder, and reasserted the propositions of law relied on in the answer.

An examination of the evidence produced by both parties in the course of the trial discloses, by the testimony of several unimpeachable witnesses, that on the afternoon of the 22d of June, 1899, a gambling game was played in the house of the Chinaman, Lim-Cong-Quian, in which, among others, Saturnina Salazar and the Chinaman, Juan Cañizares, took part; that the latter, having lost in the game, became indebted to the woman, Salazar, in the sum of \$5,000, which, as a result of repeated demands of the creditor, the debtor recorded in a note dated the 21st of July, 1899, signed by Francisco Ong, a brother-in-law of Cañizares, as the attorney in fact of the latter.

Cañizares paid his creditor, on the 20th of August of the same year, on account of the debt, the sum of \$500. On the 20th of October following Saturnina Salazar, who affirms that she received from Pablo Palma the sum of \$4,500 still owing by Cañizares, indorsed the instrument to Palma, who, by virtue of the indorsement, and availing himself of his rights as subrogated creditor, demanded payment of the said sum.

It is indubitable that the indebtedness of 5,000 pesos expressed in the note referred to arose in a monte game, a game of chance, and therefore expressly prohibited by law. As the law does not allow an action for the recovery of money won in such games (art. 1798 of the Civil Code), it follows that the action brought by Palma can not be maintained, nor can any judgment be rendered by the courts directing the payment of the sum claimed in the complaint.

The undertaking expressed in the note executed by a third person in favor of the woman, Salazar, by order of Cañizares does not constitute a ratification or confirmation of the obligation contracted to pay the sum lost in a monte game.

Saturnina Salazar conveyed or assigned the credit of \$4,500 to Pablo Palma, as appears

from the indorsement on the note, but it has not been satisfactorily proven that the debtor, Juan Cañizares, gave his consent or approval to the subrogation. The testimony of the witnesses presented by the plaintiff is not sufficient to overcome the absolute denial of Cañizares. These witnesses were unable to testify that they were present when the indorsement was written and the note assigned, or that they saw the delivery of the \$4,500 by the assignee to the assignor. Their testimony does not show that the defendant consented to or approved of this assignment.

It follows, therefore, that the plaintiff, Palma, in this suit has brought the same action which might have been brought by the woman, Salazar, and as that action can not be maintained, for the reason that the obligation of the supposed debtor, because of its vicious origin, is not enforceable in court, it follows that no recovery can be had in this suit.

For these reasons we are of the opinion that the defendant, Juan Cañizares, is under no obligation to pay to Pablo Palma the sum of \$4,500 represented by the note, and the action is therefore dismissed, without special condemnation as to costs. So ordered.

Cooper, Smith, Willard, and Ladd, JJ., concur.

Arellano, C. J., and Mapa, J., dissent.