4 Phil. 705

[G.R. No. 1815. August 24, 1905]

ALEJO EBBEO, PLAINTIFF AND APPELLEE, VS. LUISA SICHON, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The court below found as a fact that on the 13th day of October, 1889, Manuel Sichon borrowed of the plaintiff 150 pesos, and to secure the payment of the same, on that day he, as principal, and Bernardino Regalado and Luisa Sichon, the appellant, wife of Bernardino as sureties, signed a document in which they promised to pay this debt, with interest at the rate of 27 per cent per annum. This action was commenced by the plaintiff against the defendant in 1900, to recover the balance due on this document, and judgment was entered in his favor for 74 pesos, with interest at the rate of 27 per cent per annum from the 23d of August, 1891. The defendant excepted to this judgment, and has brought the case here by bill of exceptions.

At the trial she introduced evidence tending to show that she never signed the document in question, and at the time of its execution was absent in the Island of Negros. In our opinion, however, the proof presented by the plaintiff sustained the finding of fact made by the judge, to the effect that she did execute the document.

The appellant makes the further claim that under the provisions of law 61 of Toro, she incurred no obligation by signing the document, because her husband joined with her in its execution. The law above cited is as follows:

> "De aqui adelante la muger no se pueda obligar por fiadora de su marido, aunque se diga e alege que se convertio la tal deuda en provecho de la muger; e asi mismo mandamos, que cuando se obligare a mancomun marido, e muger en un contrato e en diversos, que la muger no sea obligada a cosa alguna, salvo si se provare que se convertio la tal deuda en provecho della, ca estonces mandamos, que por rata del dicho provecho sea obligada; pero si lo que se convertio en provecho della fue en las cosas que el marido le era obligado a dar, asi como en vestirla e darle de comer, e las otras cosas necesarias, mandamos que por esto ella no sea obligada a cosa alguna, lo cual todo que dicho es, se entienda si no fuera la dicha flanza e obligacion a mancomun por maravedis de nuestras rentas, e pechos, 6 derechos dellas."

There was no evidence in the case upon which a finding could be based that the defendant received any benefit from this contract.

The contract having been entered into in October, 1889, and the Civil Code not having gone into effect until December 8, 1889, this contract must be governed by the laws in force prior to the last-mentioned date. That the above-mentioned law 61 of Toro was then in force we think is clear. This law, with other laws of Toro relating to the rights of husband and wife with reference to each other and to third persons, among them law 56, which authorized the husband to give to his wife permission to make contracts, was carried forward into the *Novisima Recopilacion*. Laws 55, 56, 57, 58, and 59 of Toro are found in book 10, title 1, of the *Novisima*, which title treats of contracts and obligations in general. Law 61, however, is found in title 2 of said book 10, which treats of debts and suretyship.

The fact that these laws all stood together in the Laws of Toro and in the *Novisima* shows that one did not repeal the other. The parties have argued the case upon the theory that these laws of the *Novisima* relating to the general rights of husband and wife, and to the contracts which the wife might make were in force in the Philippines at the time the contract in question was made. In this we think they are

in error. The law of Civil Marriage of 1870, in force in the Peninsula, regulated these rights, and by the royal decree of April 13, 1883, articles 44 to 78 of that law were extended to the Philippines. They were published in the *Gaceta de Manila* of June 22, 1883, and are also found in Notes to the Spanish Civil Code, page 12 et seq. Of these articles so extended, articles 56 to 66 treat of the rights and obligations of husband and wife, and they relate to the same subject as the provisions which are found in title 1, book 10 of the *Novisima*. These articles, thus made applicable to the Philippines, do not expressly repeal the law of Toro, and inasmuch as they treat of the same matter as the laws of the *Novisima*, and as those laws did not repeal law 61, their presence in the Law of Civil Marriage could not have that effect.

It has been said by several commentators that this Law of Toro has been repealed by the Civil Code. This opinion is based upon the fact that while the laws of the *Novisima* relating to the general rights and obligations of husband and wife are carried into the Civil Code, and appear in book 1, law 61 is not found there nor in that title of the Civil Code which treats of suretyship, and consequently they consider that it has been repealed. It is not necessary, however, to decide this question, as it must be determined by the law in force prior to the Civil Code.

The question remains, Is the contract in this case within the terms of that law? It is directly within the letter of the law, because the husband and wife are bound *en mancomun*. to the same thing, viz, to the payment of this debt, and it also appears that the wife got no benefit from the contract. If the wife had signed this contract alone, and her husband had not joined in it, but had given his consent to his wife signing it, the contract would have been valid, and it has been suggested that it would be contrary to common sense to hold that a contract which the wife alone had signed and which was perfectly valid against her, would be made invalid by the addition of her husband's signature, an addition which, so far from increasing her liability, would diminish it. In answer to this view it may be said that the evident purpose of the law was to prevent the wife from contracting debts for the benefit of her husband. That was accomplished partly by

saying distinctly in the first part of the law that the wife should not become surety for her husband. It was evidently considered, however, that this would not cover a case in which the fact of suretyship would be concealed, and the contract be made to appear as a contract equally for the benefit of the wife as for the husband. For this purpose the law contained a further absolute prohibition against the wife or husband binding themselves to the performance of the same thing, and it will be observed that this important provision was inserted in the law, viz, that they not only could not bind themselves to the performance of the same thing by signing together one document, but they could not even do it by signing different documents. We think the intention of the law was absolute to prohibit a husband and wife from binding themselves, either in one contract or in two, to the performance of the same thing.

In the judgment of the 1st of October, 1887, by the supreme court of Spain, it appeared that the husband and wife signed the same contract, and that this contract was sustained, but it also appeared that they did not bind themselves to the same obligation by this contract, for the husband bound himself thereby to sell certain real estate belonging to him, and the wife bound herself to sell certain other real estate belonging to her.

The judgment of the court below is reversed, and after the expiration of twenty days the cause will be remanded to the Court of First Instance, with directions to enter a judgment in favor of the defendant, absolving her from the complaint, with the costs of first instance. Each party will pay his own costs in this court.. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and *Carson, JJ,*, concur.

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