5 Phil. 1

**[ G.R. No. 2205. September 07, 1905 ]**

**EMILIO BUENAVENTURA, PLAINTIFF AND APPELLEE, VS. JUANA UBBANO ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

Conrado Cerrudo was born on the 13th of November, 1884. His mother is Dolores Cerrudo. Telesforo Chuidian died on the 11th of April, 1903. On the 8th of December, 1903, Conrado Cerrudo, by his guardian, Buenaventura, brought this action against the heirs of Telesforo Chuidian to compel the recognition of Conrado Cerrudo as the natural child of Don Telesforo. He based his complaint upon paragraphs 1 and 2 of article 135 of the Civil Code. Judgment was rendered in the court below in favor of the plaintiff, based upon paragraph 2 of said article, and the defendants have brought the case here by a bill of exceptions.

There is a contention between the parties as to the law which should govern the decision of this case. It is claimed by the defendants that that law is found in the Civil Code. It is claimed by the plaintiff that inasmuch as the child was born in 1884, his rights must be determined by the law then in force, which, so far as relates to natural children, was law 11 of Toro. That law is as follows:

> "E porque no se pueda dubdar cuales son fijos naturales, ordenamos e mandamos que entonces se digan ser los fijos naturales, cuando al tiempo que nascieren o fueren concebidos, sus padres podian casar con sus madres justamente, sin dispensacion, con tanto que el padre lo reconozca por su fijo, puesto que no haya tenido

> la muger de quien lo ovo en su casa, ni sea una sola: ca concurriendo en el fijo las calidades susodichas mandamos que sea fijo natural."

It will be seen that this law, in a case like the one at bar, requires a recognition on the part of the father before the child acquires the status of a natural child. Under this law the fact that Don Telesforo was the father of the plaintiff gave to the latter no right to be recognized by him as such natural child. The mere fact of birth gave no legal right to the child, and imposed no legal duty upon the father, except, perhaps, in cases arising under the criminal law, which are always considered as being excepted in this opinion. The father was not, prior to the Civil Code, and is not now, bound to recognize his natural son by reason of the mere fact that he is its father. The recognition is and always has been a purely voluntary act on the part of the father. This is not true in regard to the mother. We have already held that, under the law in force prior to the Civil Code, proof of the maternity was sufficient to impose upon the mother the duty of recognizing the child. (Llorente *vs*. Rodriguez[1] 2 Off. Gaz., 535,) The same thing is provided by article 136 of the Civil Code. But as to the father the question is, and always has been, Has he performed any acts which indicate his intention to recognize the child as his? What acts will be sufficient to prove such intention depends upon the law relating to that matter, and that law must necessarily be the law in force when the acts are performed. In order to determine, in the case of a father, what law is applicable, the date of the birth of the child has no importance. This fact in no way fixes the status of the child. That which does fix his status is the conduct of the father after the birth. The birth of the plaintiff before the Civil Code went into effect gave to him no vested right. He did not by that act acquire a vested right that the law concerning recognition should continue during his life the same as it was when he was born. Acts performed by the father before December, 1889, when the Civil Code went into effect, which amounted to a recognition, might give the child vested rights, but acts performed by the father since 1889 must be referred to the law in force when they were performed—that is, to the Civil Code.

A careful examination of the proofs in this case will show that what was done by the father in the way of recognition prior to the 8th day of December, 1889, was not sufficient to prove a recognition under the law of Toro. Of all the witnesses produced by the plaintiff, the testimony of two only relates to that period. One of these was Fabian Diestor. He testified that the mother of the plaintiff was living in his house when she became pregnant, but that she left it before the plaintiff was born. He undertook to testify as to the treatment which the son received from Don Telesforo after this departure, but on cross examination it appeared that everything which he testified to was hearsay. He stated that he knew these facts because his wife was in the habit of frequenting the house where plaintiff lived with his mother, and also stated that after the plaintiff's mother left his house, before the birth of the plaintiff, he (the witness) had nothing to do with her.

The other witness was Francisco Chuidian. He does not in his testimony fix any definite dates. He testifies that he knew the plaintiff when he was very small; that he saw Don Telesforo in the house of the mother of the plaintiff. It appears in other parts of the evidence that the plaintiff lived with his mother for seven years after he was born, which would cover a period of two years after the Civil Code went into effect. It does not appear from the testimony of this witness whether it was during this time that he saw Don Telesforo in the house of his mother, or whether it was prior to 1889. It appears in the evidence that all the acts of the father upon which a judgment favorable to the plaintiff could be based, were performed by him after the year 1889. The law applicable to the case is therefore article 135 of the Civil Code.

There is nothing in the two decisions of this court which is opposed to this conclusion. In the case of Llorente *vs*. Rodriguez, above cited, the question turned upon the recognition by the mother. In the case of Mijares *vs*. Nery et al.[1]
(2 Off. Gaz., 387) we held that a natural child born prior to the Civil Code did not acquire vested rights to such an extent that the legislature could not afterwards change the law so as to give the quality of natural children to persons who did not possess it at the

time the plaintiff was born.

As has been said, the plaintiff relied upon paragraph 1 of article 135, and produced a letter, not signed, but which was proved to be in the handwriting of Don Telesforo. That letter is as follows;

> "26 de Julio be 1901.
>
> "Estimado Conrado :
>
> He recibido tu carta y celebro lo que dices que te has matriculado en las clases de ingle's y aritmetica mercantil. Dios quiera que saigas aprovechado y consigas tener un oficio, dejar esa vida de holgazan a que te has acostumbrado.
>
> "Si sales aprovechado y cambias de conducta; si consigues obtener buenas notas, y veo practicamente tu aprove chamiento, puedes contar entonces con mi proteccion y aprecio; pero mientras tanto, no vea tu cambio de conducta, no cuentes conmigo ni esperes nada de mi.
>
> "Por que has pedido los $10 y los $3 para la lavandera alli en Tanduay? No se lava en Conception (la propia residencia de Telesforo) tu ropa? Y por que no pedistes a Pacita o a Pedro los derechos de la matricula, sino que alli lo has pedido?
>
> "Y ?por que quieres que te de un tanto al mes? Para tus vicios y gastos de amigos? No, no, y no. Si sientes hambre en la casa clase, lleva pan en el bolsillo desde casa, que nadie, te lo prohibe; lleva dos o tres panes o cuatro, si aun lo necesitas que alli te daran, pero no quiero que tengas siquiera dos centimos en el bolsillo; porque entonces no te corregiras, y siempre seras holgazan? esperando de que tienes donde sacar dinero para tus vicios.
>
> "Si quieres tener dinero para tus vicios, busca un empleo; entra de dependiente o personero en

> cualquiera de los establecimientos de alli; en una palabra, busca trabajo, y que te pueda dar dinero buscando honradamente por ti, y entonces puedes ganar lo que quieras y no esperanzar de nadie.
>
> "Y
> por que continuas con la compana de amigos, que jo he prohibido? Si vuelves o enganar alli, tengo encargado a Pedro que te eche de casa, y vete donde quieras que yo no he de mantener y sostener a holgazanes y viciosos que a la edad que tienes, todavia no saber buscar con su trabajo dos centimos, y solo espera que le mantenga como a un nino de siete anos.

Cambia de conducta,se juicioso y estudioso y trabajador; deja los vicios y los amigos, y cuando vea que tienes voluntad de trabajar entonces puede contar conmigo."

It appears from the evidence that this letter was not sent directly to the plaintiff, but, on the contrary, was inclosed in another letter to a woman with whom the plaintiff was living, and was by her given to the plaintiff.

Paragraph 1 of article 135 requires that in the writing therein referred to, the father must expressly recognize the child. Paragraph 5 of the Law of Bases of May 11, 1888, declares that the intention to recognize the child must be "deliberately expressed to that end." A simple reading of this letter shows that it does not fulfill the requirements of the law. That Don Telesforo is the father of the plaintiff is nowhere stated in it. It may be true, as is said by the court below, that the letter furnishes some indication that he was, but that is not sufficient. The letter must contain an express recognition of that fact, deliberately stated by the father in the writing itself. Manresa, in his commentaries on article 135, says:

> "En cuanto al otro requisito de ser expreso el reconocimiento, tengase presente que no basta hacerlo por incidencia; es indispensable que se consigne en el escrito la voluntad indubitada,

> clara y terminante del padre. de reconocer por suyo al hijo, *deliberadamiente expresada pon este fin*,
> como se ordena en la base 5.a antes citada, de las aprobadas por la Ley de 11 de Mayo, de 1888; de suerte que el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural. No llena, pues, ese objeto la manifestacion que incidentalmente haga el padre de ser hijo natural suyo la persona a quien se reflera, y mucho menos el dar a una persona el titulo y tratamiento de hijo en cartas familiares: estos escritos no son admisibles para la investigacion de la paternidad, ni en ellos puede fundarse la demanda para obligar al padre al reconocimiento." (Manresa, vol. 1, p. 509.)

The complaint is also based upon paragraph 2 of article 135. That paragraph is as follows:

> "Cuando el hijo se halle en la posesion continua del estado de hijo natural del padre demandado, justificada por actos del mismo padre o de su familia."

As to what facts are sufficient to prove the continuous possession of the status of a natural child, the following statements have been made by the authorities:

In the judgment of the 21st of May, 1896, the Supreme Court of Spain said:

> "Considerando que tampoco puede prosperar la casacion por el motivo segundo, porque sobre no declararse probados los actos que la recurrente atribuyo a D. J. R., y cuya realidad la sentencia solo admite en hipotesis, consistiendo estos en que algunas veces manifesto deseos de ver a la nina, que otras la obsequio con dadivas insignificantes, valiendose para ello de terceras personas, y que revelo a algunos de sus convecinos los lazos naturales que a la misma nina le ligaban, es evidente que tales hechos no constituyen la posesion de estado que, segun el articulo 135 del Codigo Civil, ha de ser continua y justificada por actos director del padre o de su

> familia, de cuyas palabras se deduce que no se halla en posesion de estado de hija natural el que no man tiene en tal concepto relaciones constantes con el autor de sus dias."

In the judgment of the 7th of November, 1896, the Supreme Court of Spain said:

> "Considerando que la posesion de estado a que se refiere el articulo 135 del Codigo ha de revelarse necesariamente por actos que demuestren con evidencia la voluntad del padre, o de su familia en su caso, de tener como tal hijo natural al que pretenda su reconocimiento obligado, tales como tenerlo en su casa, alimentarle y educarle en tal concepto, u otros analogos, de tal valor y eficacia que acrediten cumplidamente que el hijo mantiene con aquel caracter relaciones constantes con el autor de sus dias, o en su defecto con la familia de este, como ya tiene declarado este Supremo Tribunal.
>
> "Considerando que cualesquiera que sean los fundamentos mas o menos apreciables que la Sala sentenciadora haya tenido para estimar en este caso la presuncion de la paternidad cuya investigacion no autoriza el articulo 135 del Codigo? como la autoriza con relacion a la madre el siguiente 136, es evidente que semejante presuncion de la filiacion paternal y los actos de liberalidad que por mera filantropia, segun confesion del demando, realizo este en favor de la demandante, no demuestran la posesion de estado en que la demanda se apoya, apareciendo, por el contrario, de los hechos reconocidos como ciertos por ambas partes y constan de documento autentico, que el hijo de Dona M. P. jamas desde su nacimiento, estuvo en posesion de estado de hijo natural de D. M. M., puesto que fue inscrito en el Registro Civil en calidad de exposito y depositado en la casa de maternidad, hasta que pocos meses antes de producir sus pretensiones la demandante lo saco de ella y lo reconocio como su hijo natural." (See also the judgment of February 10, 1897.)

Scaevola, in his commentaries on article 135, says:

> "Tocante el caso 2.°, el hijo debe probar el goce de la posesion constante de estado de hijo natural, esto es, los actos ejecutados porel padre y su familia expresivos de la paternidad, tales como el vivir con aquel o con esta, el haber atendido a su subsistencia y educacion." (Scaevola's Comentarios al Codigo Civil, vol. 3, p. 183.)

In examining the evidence which was produced for the purpose of showing that the plaintiff possessed the status of a natural child there should be rejected, in the first place, all the evidence concerning the relations between his mother and Don Telesforo prior to his birth. Such evidence can not, as we have just decided, be taken into consideration. (Infante *vs*. Figueras,[1] No. 1884.)

The other evidence showed that the plaintiff lived with his mother for the first seven years of his life; that he afterwards lived with his maternal grandmother, and that for five or six months in the year 1900 or 1901 he lived with Candelaria Chuidian, a sister of Don Telesforo; that he afterwards lived in the house of Sofia Lopez, a mistress of Don Telesforo. He never lived in the house of his supposed father, who maintained a house of his own, in which there lived with him for a time two of his natural children.

We reject the statements of the witnesses for the plaintiff to the effect that he was treated as the son of Don Telesforo, for these are mere conclusions, and are statements of the very fact which it is the purpose of this litigation to determine. Confining ourselves to the acts proved to have been performed by Don Telesforo, we find that he visited the mother of the plaintiff; that he paid money for her support; that he paid money for the support of the plantino; that he told one witness that the plaintiff was his son; that the plaintiff called him "Papa," and that Don Telesforo answered to this designation; that when the plaintiff visited Don Telesforo he kissed his hand; that Don Telesforo wrote letters to him; that he paid his fees for instruction in school, and secured him a position in a commercial house.

On the other hand, it is shown that the plaintiff never lived in the

house of Don Telesforo; that the latter made his will on the 19th of December, 1897; that in this will he recognized as his natural children two persons, Horacio and Beatrix Lopez, children of Sofia Lopez. He did not recognize the plaintiff by this will. Some of the aforesaid acts of Don Telesforo were done after the making of his will.

All these facts taken together are not sufficient to show that plaintiff possessed continuously the status of a natural child. They may have a tendency to show that Don Telesforo was the father of the child, but that is not sufficient. It is not sufficient that the father recognize the child as his. By the express terms of article 135 that recognition must appear either in writing, made by the father, or it must appear in acts which show that the son has possessed continuously the status of a natural child. No recognition by the father of the child which comes short of the requirements of these two paragraphs is sufficient. It must appear that it was the intention of the father to so recognize the child as to give him that status, and that the acts performed by him were done with that intention.

The evidence in this case shows beyond question, in our opinion, that Don Telesforo never intended to give this plaintiff any such status. The fact that he never lived in the house of the former, while two other of his natural children did live there; the fact that in his will he did not recognize the plaintiff as his natural child, while he did recognize two other children; the fact that he did not sign his name to the letter offered in evidence, all show, to our minds, that he never intended to give the plaintiff the status of a natural child. The acts performed by him for the purpose of giving such status must be such as to make plain to the public that the child possesses such a condition.

It is claimed by the plaintiff that article 135 has been repealed by the Code of Civil Procedure. This claim is based upon the proposition that article 135 is the law of procedure, and that all the laws of Civil Procedure have been repealed by the said new Code of Procedure. This claim can not be sustained. Section 1 of chapter 4, title 5, of book 1 of the Civil Code, being articles 129 to 141, is devoted to the

declaration of the substantive rights of illegitimate children, and the effect of these articles is to declare that a natural child has no rights unless he has been recognized in one of the ways pointed out by these articles. It is said by the appellee that article 134 is the substantive law on the subject, and declares what the rights of natural children are but it will be seen that that article simply declares what the rights of a natural child who has been recognized are, and does not declare how he shall be recognized. A natural child not recognized has no rights whatever. This recognition may be voluntary, in accordance with the provisions of article 131, or it may be, in a sense, obligatory, under article 135. In both cases after the recognition takes place the son has the rights which are stated in article 134. These articles are in no sense adjective law,, but are purely substantive.

We have arrived at the conclusion that the plaintiff did not prove that he had possessed continuously the status of a natural child, by considering as true all of the evidence offered by the plaintiffs which related to concrete facts testified to by the witnesses.

The judgment of the court below is reversed, and after the expiration of twenty days the case should be remanded to the court below with directions to that court to enter judgment in favor of the defendants, with costs. No costs will be allowed to either party in this court. So ordered.

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

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[1] 3 Phil. Rep., 697.

[1] 3 Phil. Rep., 395.

[1] 4 Phil. Rep., 738.

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