

6 Phil. 475

[ G.R. No. 2420. September 24, 1906 ]

**MARTIN CASALLA, PLAINTIFF AND APPELLEE, VS. EMETERIO ENAGE ET AL.,  
DEFENDANTS AND APPELLANTS.**

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

**WILLARD, J.:**

We can not say that the findings of fact contained in the judgment of the court below are plainly and manifestly against the weight of the evidence, and the judgment based upon such findings can not, therefore, be reversed by us. (*Benedicto vs. De la Rama*, 201 U. S., 303.)

The court erred in admitting as evidence the books of account presented by the plaintiff. There was nothing in them which tended to support the claim of the plaintiff, but that error could not have in any way prejudiced the defendants (sec. 503, Code of Civil Procedure), for there was evidence in addition to that claimed to have been presented by these books to the effect that the plaintiff received as compensation in the sawmill 300 pesos a month. The court found that he received at least 150 pesos. As we have said, this finding is not so plainly and manifestly against the evidence that we can disregard it.

The defendant Claudia Mendiola was, during the time in controversy, the wife of the defendant Emeterio Enage. She made the contract in question with the plaintiff without the permission or authority of her husband. The contract related to services to be performed by the plaintiff in connection with litigation against the husband. This litigation related to the property of the wife which she had acquired from her first husband. It is claimed by the appellant that the contract thus made between the wife and the plaintiff was void because made without the permission of the husband.

Article 60 of the Civil Code, upon which the plaintiff relies, is not in force in these Islands (*Benedicto vs. De la Rama*,<sup>[1]</sup> 2 Off. Gaz., 166); but article 49 of the Law of Civil Marriage of

1870, which was extended to these Islands by the royal decree of the 13th of April, 1883 (notes to Spanish Civil Code, p. 12), contains substantially the same provisions as article 60 above referred to. The property in this case being the *bienes parafernales*, the wife, by virtue of article 1384 of the Civil Code, had the right to administer them, and that right of administration includes the right to make such a contract as that in question without the permission of her husband. (Judgment of the supreme court of Spain, November 8, 1898.)

The judgment of the court below is affirmed, with the costs in this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the cause remanded to the lower court for proper procedure. So ordered.

*Torres, Mapa, Johnson, Carson, and Tracey, JJ.*, concur.

*Arellano, C. J.*, disqualified.

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<sup>[1]</sup> 3 Phil. Rep., 34.

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