

[G.R. No. L-6705. December 23, 1954]

**PATROCINIO RAYMUNDO, PLAINTIFF-APPELLANT, VS. DOROTEO PEÑAS,
DDEFENDANT-APPELLEE.**

D E C I S I O N

REYES, J.B.L., J.:

Patrocinio Raymundo has brought up this case by direct appeal on points of law against a decision of the Court or First Instance of Manila (case No. 1169), denying her petition for a decree of divorce under Act 2710.

The facts are clear and not disputed. Appellant Raymundo and appellee Doroteo Peñas were validly married to each other in Manila on March 29, 1941. The spouses lived together until 1949, but had no children, nor acquired conjugal property. Sometime in July 1949, the husband Doroteo Peñas abandoned his wife appellant herein, and during August and September, 1949, lived martially with another woman, Carmen Paredes. At the instance of the deserted wife, an information for concubinage was filed on October 3, 1949 (Criminal Case No. 11140). The husband, Peñas, was convicted and sentenced to imprisonment by the Court of First Instance of Manila on May 25, 1950. Pending his appeal, on July 14, 1950, the wife instituted the present proceedings, praying for a decree of absolute divorce. The conviction of Doroteo Peñas was affirmed by the court of Appeals on October 31, 1951.

The Court below found that the acts of concubinage that gave rise to the action, as well as the judgment of conviction rendered by the Court of First Instance, took place before the repeal of Act 2710 by the new Civil Code, (which became effective on August 30, 1950, as held by this

Court in *Lara vs. Del Rosario*, 50 Official Gazette, p. 1975)

Nevertheless, the Court *a quo* dismissed the complaint on the ground that the appellant had acquired no right to a divorce that the Court was bound to recognize after the effectivity of the new Civil Code. The Court reasoned out as follows:

“Counsel’s argument in support of the alleged right of the plaintiff would be indisputable if (it were) not for the following provision of Article 2254 of the new Civil Code.

‘Art. 2254. No vested or acquired right can rise from acts or omissions which are against the law or¹ which infringe upon the rights of others.’

The above-quoted provisions is entirely new, not found in the old Civil Code. Evidently it is designed to meet situations like the present. Under its explicit and unequivocal terms no acquired or vested right can rise from offenses or acts which infringe upon the right of others. It follows therefore that the acts of concubinage of the defendant, which are not only against the law, but infringe upon the rights of his wife, could not and did not give rise to a vested right in favor of the plaintiff which would entitle her to secure a divorce from her husband, the defendant herein. Under Article 97. of the new Civil Code the most that the wife is now entitled to in case of concubinage on the part of the husband is to secure a legal separation.” (Rec. 011 Appeal, p. 14).

In our opinion, the judgment appealed from is incorrect. It should be of Art. 2254 apparent, upon reflection, must be directed at the offender, not the offended party who is in no way responsible for the violation of legal duty. The interpretation adopted by the Court below result of the very in depriving a victim of acts that injured him. The protection of vested rights is but a consequence of the constitutional

guaranty against deprivation of property without due process, and a violation of law by another can in no way constitute such due process

Our view of the true import of Art. 2254 is supported by the Report of the Code Commission submitted to the Legislature in explanation of the motives behind the innovations of the proposed Civil Code. Speaking of Art 2254 of the draft (now Art. 2254 of the Code) the Report states.

“It is evident that no one can validly claim any vested or acquired right if the same is founded upon his having violated the law or invaded the rights of others.”

It follows that Article 2254 can not militate against the right of appellant to secure an absolute divorce as a result of the concubinage of her husband. Despite the change in legislation, plaintiff-appellant is protected by art. 2253 of the Civil Code.

“Art. 2253. The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them.”

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Conceding that there can not be a vested right in the continuing of a law recognizing absolute divorce (Grant vs.

Grant, 32 A. Rep. 506), still, the terms of Article 2253 are sufficiently broad to protect the rights of the appellant to a remedy against her husband’s infidelity in conformity with the terms of the old legislation. True that the new Civil Code does not recognize absolute divorce, but only legal separation (Arts. 97 to 108), thereby impliedly repealing Act 2710; but other provisions of the Code clearly safeguard rights and actions arising under the preceding law. Its Art. 4 expresses the well established principle that “laws shall have no

retroactive effect unless the contrary is provided”; and Article 2258 plainly indicates that rights and actions already existing (and a *fortiori*, actions already initiated) should be governed by the prior legislation.

“ART. 2258. Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court. If the exercise of the right or the action was commenced under the old laws, but is pending on the date this Code takes effect, and the procedure was different from that established in this new body of laws, the parties concerned may choose which method or course to pursue.”

Further, Art. 2267 explicitly enumerates the articles that are to apply to actions pending (like the present) when the new Civil Code became effective, and articles 97 to 108 on legal separation are not included therein.

“ART. 2267. The following provisions shall apply not only to future cases but also to those pending on the date this Code becomes effective:

(1) Article 29, relative to criminal prosecutions wherein the accused is acquitted on the ground that his guilt has not been proven beyond reasonable doubt;

(2) Article 33, concerning cases of defamation, fraud, and physical injuries.”

The plain implication of these provisions is that the Code did not intend its provisions on legal separation to apply retroactively; and that the change from absolute divorce to legal separation was not designed to affect cases of which the Courts had already taken recognizance at the time the reform was introduced.

Thus the present case is readily distinguished from the case of divorce proceedings instituted under Executive Order No. 141 of the Japanese occupation Executive Commission, and which were pending at the liberation of the Islands. We ruled in *Peña de Luz vs. Court of First Instance of Leyte*, 43 Off. Gaz. p. 4102, that such pending divorce proceedings must be dismissed because the occupation divorce law ceased to be in force and effect upon liberation of the national territory, and because the proclamation of General McArthur in Leyte on October 23, 1944, had abrogated all occupation legislation absolutely and without qualification. The repeal of Act 2710 by the new Civil Code is in a different position, since the transitional provisions of the latter law expressly prescribed, as we have seen, the subsistence of rights derived from acts that took place under the prior legislation.

It is of no moment that the conviction of the husband only became final after the new Civil Code, denying absolute divorces, came into effect, for this Court has already ruled in *Chereau vs. Fuentebella* (43 Phil. 220) that sec. 8 of Act 2710^[1]

is only evidentiary in character, since it merely “has reference, of course, to the species of proof required to established the basal fact on which the right to the divorce rests; and the circumstance that this fact is not so proved in no wise impairs the jurisdiction of the court.”

The decision appealed from is reversed, and a new judgment shall be entered granting a decree of absolute divorce as prayed for. Without costs.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., and Bautista Angelo, concur.

^[1] A divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action. Sec. 8, Act 2710.

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