

MARIANO B. ARROYO, PLAINTIFF AND APPELLANT, VS. DOLORES C. VAZQUEZ DE ARROYO, DEFENDANT AND APPELLEE.*G. R. No. L-17014. August 11, 1921*

Ponente: STREET, J.

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Mariano B. Arroyo and Dolores C. Vazquez de Arroyo were united in the bonds of wedlock by marriage in the year 1910, and since that date, with a few short intervals of separation, they have lived together as man and wife in the city of Iloilo until July 4, 1920, when the wife went away from their common home with the intention of living thenceforth separate from her husband. After efforts had been made by the husband without avail to induce her to resume marital relations, this action was initiated by him to compel her to return to the matrimonial home and live with him as a dutiful wife. The defendant answered, admitting the fact of marriage, and that she had left her husband's home without his consent; but she averred by way of defense and cross-complaint that she had been compelled to leave by cruel treatment on the part of her husband. Accordingly she in turn prayed for affirmative relief, to consist of (1) a decree of separation; (2) a liquidation of the conjugal partnership; (3) and an allowance for counsel fees and permanent separate maintenance. Upon hearing the cause the lower court gave judgment in favor of the defendant, authorizing her to live apart from her husband, granting her alimony at the rate of P400 per month, and directing that the plaintiff should pay to the defendant's attorney the sum of P1,000 for his services to defendant in the trial of the case. The plaintiff thereupon removed the case with the usual formalities by appeal to this court.

The trial judge, upon consideration of the evidence before him, reached the conclusion that the husband was I more to blame than his wife and that his continued ill-treatment of her furnished sufficient justification for her abandonment of the conjugal home and the permanent breaking off of marital relations with him. We have carefully examined and weighed every line of the proof, and are of the opinion that the conclusion stated is wholly untenable. The evidence shows that the wife is afflicted with a disposition of jealousy towards her husband in an aggravated degree; and to this cause are chiefly traceable without a doubt the many miseries that have attended their married life. In view of the decision which we are to pronounce nothing will be said in this opinion which will make the resumption of married relations more difficult to them or serve as a reminder to either of the mistakes of the past; and we prefer to record the fact that so far as the proof in this record shows neither of the spouses has at any time been guilty of conjugal infidelity, or has given just cause to the other to suspect illicit relations with any person. The tales of cruelty on the part of the husband towards the wife, which are the basis of the cross-action, are in our opinion no more than highly colored versions of personal wrangles in which the spouses have allowed themselves from time to time to become involved and would have little significance apart from the morbid condition exhibited by the wife. The judgment must therefore be recorded that the abandonment by her of the marital home was without sufficient justification in fact.

In examining the legal questions involved, it will be found convenient to dispose first of the defendant's cross-complaint. To begin with, the obligation which the law imposes on the husband to maintain the wife is a

duty universally recognized in civil society and is clearly expressed in articles 142 and 143 of Civil Code. The enforcement of this obligation by the wife against the husband is not conditioned upon the procurance of a divorce by her, nor even upon the existence of a cause for divorce. Accordingly it has been determined that where the wife is forced to leave the matrimonial abode and to live apart from her husband, she can, in this jurisdiction, compel him to make provision for her separate maintenance (*Goitia vs. Campos Rueda*, 35 Phil., 252); and he may be required to pay the expenses, including attorney's fees, necessarily incurred in enforcing such obligation. (*Mercado vs. Ostrand and Ruiz*, 37 Phil., 179.) Nevertheless, the interests of both parties as well as of society at large require that the courts should move with caution in enforcing the duty to provide for the separate maintenance of the wife, for this step involves a recognition of the de facto separation of the spouses—a state which is abnormal and fraught with grave danger to all concerned. From this consideration it follows that provision should not be made for separate maintenance in favor of the wife unless it appears that the continued cohabitation of the pair has become impossible and separation necessary from the fault of the husband.

In *Davidson vs. Davidson*, the Supreme Court of Michigan, speaking through the eminent jurist, Judge Thomas M. Cooley, held that an action for the support of the wife separate from the husband will only be the reasons for it are imperative (47 Mich., 151). That imperative necessity is the only ground on which such a proceeding can be maintained also appears from the decision in *Schindel vs. Schindel* (12 Md., 294).

In the State of South Carolina, where judicial divorces have never been procurable on any ground, the Supreme Court fully recognizes the right of the wife to have provision for separate maintenance, where it is her to continue safely to cohabit with her husband; but the same court has more than once rejected the petition of the wife for separate maintenance where it appeared, that the husband's alleged cruelty or ill-treatment was provoked by the wife's own improper conduct. (*Rhame vs. Rhame*, 1 McCord's Chan. [S. Car.], 197; 16 Am. Dec., 597; *Boyd vs. Boyd*, Har. Eq. [S. Car.], 144.)

Upon one occasion Sir William Scott, pronouncing the judgment of the English Ecclesiastical Court in a case where cruelty on the part of the husband was relied upon to secure a divorce for the wife, made use of the following eloquent words,—which are perhaps even more applicable in a proceeding for separate maintenance in a jurisdiction where, as here, a divorce cannot be obtained except on the single ground of adultery and this, too, after the conviction of the guilty spouse in a criminal prosecution for that crime. Said he:

"That the duty of cohabitation is released by the cruelty of one of the parties is admitted, but the question occurs, What is cruelty? * * *

"What merely wounds the mental feelings is in few cases to be admitted where they are not accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty: they are high moral offences in the marriage-state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties, for it may exist on the one side as well as on the other, the suffering party must bear in some degree the consequences of an injudicious connection; must subdue by decent resistance or by prudent conciliation; and if this cannot be done, both must suffer in silence. * * *

"The humanity of the court has been loudly and repeatedly invoked. Humanity is the second virtue of courts, but undoubtedly the first is justice. If it were a question of humanity simply, and of humanity which confined its views merely to the happiness of the present parties, it would be a question easily decided upon first impressions. Every body must feel a wish to sever those who wish to live separate from each other, who cannot live together with any degree of harmony, and consequently with any degree of happiness; but my situation does not allow me to indulge the feelings, much less the first feelings of an individual. The law has said that married persons shall not be legally separated upon the mere disinclination of one or both to cohabit together. *

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"To vindicate the policy of the law is no necessary part of the office of a judge; but if it were, it would not be difficult to show that the law in this respect has acted with its usual wisdom and humanity with that true wisdom, and that real humanity, that regards the general interests of mankind. For though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individual, yet it must be carefully remembered that the general happiness of the married life is secured by its indissolubility. When people understand that they must live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes. * * * In this case, as in many others, the happiness of some individuals must be sacrificed to the greater and more general good." (Evans vs. Evans, 1 Hag. Con., 35; 161 Eng. Reprint, 466, 467.)

In the light of the considerations stated, it is obvious that the cross-complaint is not well founded and none of the relief sought therein can be granted.

The same considerations that require the dismissal of the cross-complaint conclusively prove that the plaintiff, Mariano B. Arroyo, has done nothing to forfeit his right to the marital society of his wife and that she is under an obligation, both moral and legal, to return to the common home and cohabit with him. The only question which here arises is as to the character and extent of the relief which may be properly conceded to him by judicial decree.

The action is one by which the plaintiff seeks the restitution of conjugal rights; and it is supposed in the petitory part of the complaint that he is entitled to a permanent mandatory injunction requiring the defendant to return to the conjugal home and live with him as a wife according to the precepts of law and morality. Of course if such a decree were entered, in unqualified terms, the defendant would be liable to attachment for contempt, in case she should refuse to obey it; and, so far as the present Writer is aware, the question is raised for the first time in this jurisdiction whether it is competent for the court to make such an order.

Upon examination of the authorities we are convinced that it is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to, the other. Of course where the property rights of one of the pair are invaded, an action for restitution of such rights can be maintained. But we are disinclined to sanction the doctrine that an order, enforceable by process of contempt, may be entered to compel the restitution of the purely personal right of consortium. At best such an order can be effective for no other purpose than to compel the spouses to live under the same roof; and the experience of those countries where the courts of justice have assumed to compel the cohabitation of married people shows that the policy of the practice is extremely questionable. Thus in England, formerly the Ecclesiastical Court entertained suits for the restitution of conjugal rights at the instance of either husband or wife; and if the facts were found to warrant it that court would make a mandatory decree, enforceable by process of contempt in case of disobedience, requiring the delinquent party to live with the other and render conjugal rights. Yet this practice was sometimes criticised even by the judges who felt bound to enforce such orders, and in *Weldon vs. Weldon* (9 P. D., 52), decided in 1883, Sir James Hannen, President in the Probate, Divorce and Admiralty Division of the High Court of Justice, expressed his regret that the English law on the subject was not the same as that which prevailed in Scotland, where a decree of adherence, equivalent to the decree for the restitution of conjugal rights in England, could be obtained by the injured spouse, but could not be enforced by imprisonment. Accordingly, in obedience to the growing sentiment against the practice, the Matrimonial Causes Act (1884) abolished the remedy of imprisonment; though a decree for the restitution of conjugal rights can still be procured, and in case of disobedience may serve in appropriate cases as the basis of an order for the periodical payment of a stipend in the

character of alimony.

In the voluminous jurisprudence of the United States, only one court, so far as we can discover, has ever attempted to make a peremptory order requiring one of the spouses to live with the other; and that was in a case where a wife was ordered to follow and live with her husband, who had changed his domicile to the City of New Orleans. The decision referred to (*Gahn vs. Darby*, 36 La. Ann., 70) was based on a provision of the Civil Code of Louisiana similar to article 56 of the Spanish Civil Code. It was decided many years ago, and the doctrine evidently has not been fruitful even in the State of Louisiana. In other states of the American Union the idea of enforcing cohabitation by process of contempt is rejected. (21 Cyc., 1148.)

In a decision of January 2, 1909, the supreme court of Spain appears to have affirmed an order of the Audiencia Territorial de Valladolid requiring a wife to return to the marital domicile, and in the alternative, upon her failure to do so, to make a particular disposition of certain money and effects then in her possession and to deliver to her husband, as administrator of the ganancial property, all income, rents, and interest which might accrue to her from he property which she had brought to the marriage. 113 Jur. Civ., pp. 1, 11.) But it does not appear that his order for the return of the wife to the marital domicile was sanctioned by any other penalty than the consequences that would be visited upon her in respect to the use and control of her property; and it does not appear that her disobedience to that order would necessarily have been followed by imprisonment for contempt.

We are therefore unable to hold that Mariano B. Arroyo in this case is entitled to the unconditional and absolute order for the return of the wife to the marital domicile, which is sought in the petitory part of the complaint; though he is, without doubt, entitled to a judicial declaration that his wife has absented herself without sufficient cause and that it is her duty to return.

Therefore, reversing the judgment appealed from, in respect both to the original complaint and the cross-bill, it is declared that Dolores Vazquez de Arroyo has absented herself from the marital home without sufficient cause; and she is admonished that it is her duty to return. The plaintiff is absolved from the cross-complaint, without special pronouncement as to costs of either instance. So ordered.

Mapa, C. J., Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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