

FELIPE CABAGUE AND GERONIMO CABAGUE, PLAINTIFFS AND APPELLANTS, VS. MATIAS AUXILIO AND SOCORRO AUXILIO, DEFENDANTS AND APPELLEES.

G.R. No. L-5028. November 26, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

According to the Rules of Court parol evidence is not admissible to prove an agreement made upon the consideration of marriage other than a mutual promise to marry.[1] This litigation calls for application of that rule.

In the justice of the peace court of Basud, Camarines Norte, Felipe Cabague and his son Geronimo sued the defendant Matias Auxilio and his daughter Socorro to recover damages resulting from defendants' refusal to carry out the previously agreed marriage between Socorro and Geronimo.

The complaint alleged, in short; (a) that defendants promised such marriage to plaintiffs, provided the latter would improve the defendants' house in Basud and spend for the wedding feast and the needs of the bride; (b) that relying upon such promises plaintiffs made the improvement and spent P700; and (c) that without cause defendants refused to honor their pledged word.

The defendants moved to dismiss, arguing that the contract was oral, unenforceable under the rule of evidence hereinbefore mentioned. And the court dismissed the case. On appeal to the Court of First Instance, the plaintiffs reproduced their complaint and defendants reiterated their motion to dismiss. From an order of dismissal this appeal was perfected in due time and form.

It should be observed preliminarily that, under the former rules of procedure, when the complaint did not state whether the contract sued on was in writing or not, the statute of frauds could be no ground for demurrer. Under the new Rules "defendant may now present a motion to dismiss on the ground that the contract was not in writing, even if such fact is not apparent on the face of the complaint. The fact may be proved by him." (Moran Rules of Court 2d ed. p. 139 Vol. I.)

There is no question here that the transaction was not in writing. The only issue is whether it may be proved in court.

The understanding between the plaintiffs on one side and the defendants on the other, really involves two kinds of agreement. One, the agreement between Felipe Cabague and the defendants in consideration of the marriage of Socorro and Geronimo. Another, the agreement between the two lovers, as "a mutual promise to marry". For breach of that mutual promise to marry, Geronimo may sue Socorro for damages. This is such action, and evidence of such mutual promise is admissible.[2] However Felipe Cabague's action may not prosper, because it is to enforce an agreement in consideration of marriage. Evidently as to Felipe Cabague and Matias Auxilio this action could not be maintained on the theory of "mutual promise to marry".[3] Neither may it be regarded as action by Felipe against Socorro "on a mutual promise to marry."

Consequently, we declare that Geronimo may continue his action against Socorro for such damages as may have resulted from her failure to carry out their mutual matrimonial promises.

Wherefore this expediente will be returned to the lower court for further proceedings in accordance with this opinion. So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] Rule 123 Sec. 21 (c).

[2] This is different from the situation in *Atienza vs. Castillo* (40 Off. Gaz., p. 2048) wherein the groom litigated against his bride and her parents for breach of matrimonial promise. We held in that case that the promise could not be proved orally because the bride-groom was suing to enforce a contract "between his parents and those of the bride."

[3] Cf. *Domalagan vs. Bolifer*, 33 Phil., 471.

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