

ELOISA GOITIA Y DE LA CAMARA, PLAINTIFF AND APPELLANT, VS. JOSE CAMPOS RUEDA, DEFENDANT AND APPELLEE.*G.R. No. 11263. November 02, 1916*

Ponente: TRENT, J.

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This is an action by the wife against her husband for support outside of the conjugal domicile. From a judgment sustaining the defendant's demurrer upon the ground that the facts alleged in the complaint do not state a cause of action, followed by an order dismissing the case after the plaintiff declined to amend, the latter appealed.

It was urged in the first instance, and the court so held, that the defendant cannot be compelled to support the plaintiff, except in his own house, unless it be by virtue of a judicial decree granting her a divorce or separation from the defendant.

The parties were legally married in the city of Manila on January 7, 1915, and immediately thereafter established their residence at 115 Calle San Marcelino, where they lived together for about a month, when the plaintiff returned to the home of her parents. The pertinent allegations of the complaint are as follows:

"That the defendant, one month after he had contracted marriage with the plaintiff, demanded of her that she perform unchaste and lascivious acts on his genital organs; that the plaintiff spurned the obscene demands of the defendant and refused to perform any act other than legal and valid cohabitation; that the defendant, since that date had continually on other successive dates, made similar lewd and indecorous demands on his wife, the plaintiff, who always spurned them, which just refusals of the plaintiff exasperated the defendant and induced him to maltreat her by word and deed and inflict injuries upon her lips, her face and different parts of her body; and that, as the plaintiff was unable by any means to induce the defendant to desist from his repugnant desires and cease from maltreating her, she was obliged to leave the conjugal abode and take refuge in the home of her parents."

Marriage in this jurisdiction is a contract entered into in the manner and with the solemnities established by General Orders No. 68, in so far as its civil effects are concerned requiring the consent of the parties. (Garcia vs. Montague, 12 Phil. Rep., 480, citing article 1261 of Civil Code.) Upon the termination of the marriage ceremony, a conjugal partnership is formed between the parties. (Sy Joe Lieng vs. Encarnacion, 16 Phil. Rep., 137.) To this extent a marriage partakes of the nature of an ordinary contract. But it is something more than a mere contract. It is a new relation, the rights, duties, and obligations of which rest not upon the agreement of the parties but upon the general law which defines and prescribes those rights, duties, and obligations. Marriage is an institution, in the maintenance of which in its purity the public is deeply interested. It is a relation for life and the parties cannot terminate it at any shorter period by virtue of any contract they may make. The reciprocal rights arising from this relation, so long as it continues, are such as the law determines from time to time, and none other. When the legal existence of the parties is merged into one by marriage, the new relation is regulated and controlled by the state or government upon principles of public policy for the benefit of society as well as the parties. And when the object of a marriage is defeated by rendering its continuance intolerable to one of the parties and productive of no

possible good to the community, relief in some way should be obtainable. With these principles to guide us, we will inquire into the status of the law touching and governing the question under consideration.

Articles 42 to 107 of the Civil Code are not in force in the Philippine Islands (*Benedicto vs. De la Rama*, 3 Phil. Rep., 34). Articles 44 to 78 of the Law of Civil Marriage of 1870, in force in the Peninsula, were extended to the Philippine Islands by royal decree on April 13, 1883 (*Ebreo vs. Sichon*, 4 Phil. Rep., 705). Articles 44, 45, and 48 of this law read:

"Art. 44. The spouses are obliged to be faithful to each other and to mutually assist each other.

"Art. 45. The husband must live with and protect his wife. (The second paragraph deals with the management of the wife's property.)

"Art. 48. The wife must obey her husband, live with him, and follow him when he changes his domicile or residence.

"Notwithstanding the provisions of the foregoing paragraph, the court may for just cause relieve her from this duty when the husband removes his residence to a foreign country.

And articles 143 and 149 of the Civil Code are as follows:

"Art. 143. The following are obliged to support each other reciprocally to the whole extent specified in the preceding article.

"1. The consorts.

* * * * *

"Art. (149) 49. The person obliged to give support may, at his option, satisfy it, either by paying the pension that may be fixed or by receiving and maintaining in his own home the person having the right to the same." .

Article 152 of the Civil Code gives the instances when the obligation to give support shall cease. The failure of the wife to live with her husband is not one of them.

The above quoted provisions of the Law of Civil Marriage and the Civil Code fix the duties and obligations of the spouses. The spouses must be faithful to, assist, and support each other. The husband must live with and protect his wife. The wife must obey and live with her husband and follow him when he changes his domicile or residence, except when he removes to a foreign country. But the husband who is obliged to support his wife may, at his option, do so by paying her a fixed pension or by receiving and maintaining her in his own home. May the husband, on account of his conduct toward his wife, lose this option and be compelled to pay the pension? Is the rule established by article 149 of the Civil Code absolute? The supreme court of Spain in its decision of December 5, 1903, held:

"That in accordance with the ruling of the supreme court of Spain in its decisions dated May 11, 1897, November 25, 1899, and July 5, 1901, the option which article 149 grants the person, obliged to furnish subsistence, between paying the pension fixed or receiving and keeping in his own house the party who is entitled to the same, is not so absolute as to prevent cases being considered wherein, either because this right would be opposed to the exercise of a preferential right or because of the existence of some justifiable cause morally opposed to the removal of the party enjoying the maintenance, the right of selection must be understood as being thereby restricted.

"Whereas the only question discussed in the case which gave rise to this appeal was whether there was any reason to prevent the exercise of the option granted by article 149 of the Civil Code to the person obliged to furnish subsistence, to receive and maintain in his own house the one who is entitled to receive it; and

inasmuch as nothing has been alleged or discussed with regard to the parental authority of Pedro Alcantara Calvo, which he has not exercised, and it having been set forth that the natural father simply claims his child for the purpose of thus better attending to her maintenance, no action having been taken by him toward providing the support until, owing to such negligence, the mother was obliged to demand it; it is seen that these circumstances, together with the fact of the marriage of Pedro Alcantara, and that it would be difficult for the mother to maintain relations with her daughter, all constitute an impediment of such a nature as to prevent the exercise of the option in the present case, without prejudice to such decision as may be deemed proper with regard to the other questions previously cited in respect to which no opinion should be expressed at this time."

The above was quoted with approval in *United States and De Jesus vs. Alvir* (9 Phil. Rep., 576), wherein the court held that the rule laid down in article 149 of the Civil Code "is not absolute." But it is insisted that there existed a preexisting or preferential right in each of these cases which was opposed to the removal of the one entitled to support. It is true that in the first the person claiming the option was the natural father of the child and had married a woman other than the child's mother, and in the second the right to support had already been established by a final judgment in a criminal case. Notwithstanding these facts, the two cases clearly established the proposition that the option given by article 149 of the Civil Code may not be exercised in any and all cases.

Counsel for the defendant cite, in support of their contention, the decision of the supreme court of Spain, dated November 3, 1905. In this case *Don Benso Comas*, as a result of certain business reverses and in order not to prejudice his wife, conferred upon her powers to administer and dispose of her property. When she left him he gave her all the muniments of title, mortgage credits, notes, P10,000 in accounts receivable, and the key to the safe in which he kept a large amount of jewels, thus depriving himself of all his possessions and being reduced in consequence to want. Subsequently he instituted this civil action against his wife, who was then living in opulence, for support and the revocation of the powers heretofore granted in reference to the administration and disposal of her property. In her answer the wife claimed that the plaintiff (her husband) was not legally in a situation to claim support and that the powers voluntarily conferred and accepted by her were bilateral and could not be canceled by the plaintiff. From a judgment in favor of the plaintiff the defendant wife appealed to the *Audiencia Territorial* wherein, after due trial, judgment was rendered in her favor dismissing the action upon the merits. The plaintiff appealed to the supreme court and that high tribunal, in affirming the judgment of the *Audiencia Territorial*, said:

"Considering that article 143, No. 1, of the Civil Code, providing that the spouses are mutually obliged to provide each other with support, cannot but be subordinate to the other provisions of said Code which regulates the family organization and the duties of spouses not legally separated, among which duties are those of their living together and mutually helping each other, as provided in article 56 of the aforementioned code; and taking this for granted, the obligation of the spouse who has property to furnish support to the one who has no property and is in need of it for subsistence, is to be understood as limited to the case where, in accordance with law, their separation has been decreed, either temporarily or finally and this case, with respect to the husband, cannot occur until a judgment of divorce is rendered, since, until then, if he is culpable, he is not deprived of the management of his wife's property and of the product of the other property belonging to the conjugal partnership; and

"Considering that, should the doctrine maintained in the appeal prevail, it would allow married persons to disregard the marriage bond and separate from each other of their own free will, thus establishing, contrary to the legal provision contained in said article 56 of the Civil Code, a legal status entirely incompatible with the nature and effects of marriage in disregard of the duties inherent therein and disturbing the unity of the family, in opposition to what the law, in conformity with good morals, has established; and

"Considering that, as the spouses *D. Ramon Benso* and *Dona Adela Galindo* are not legally separated, it is their duty to live together and afford each other help and support; and for this reason, it cannot be held that the

former has need of support from his wife so that he may live apart from her without the conjugal abode where it is his place to be, nor of her conferring power upon him to dispose even of the fruits of her property in order therewith to pay the matrimonial expenses and, consequently, those of his own support without need of going to his wife; wherefore the judgment appealed from, denying the petition of D. Ramon Benso for support, has not violated the articles of the Civil Code and the doctrine invoked in the assignments of error land 5 of the appeal."

From a careful reading of the case just cited and quoted from it appears quite clearly that the spouses separated voluntarily in accordance with an agreement previously made. At least there are strong indications to this effect, for the court says, "Should the doctrine maintained in the appeal prevail, it would allow married persons to disregard the marriage bond and separate from each other of their own free will." If this be the true basis upon which the supreme court of Spain rested its decision, then the doctrine therein enunciated would not be controlling in cases where one of the spouses was compelled to leave the conjugal abode by the other or where the husband voluntarily abandons such abode and the wife seeks to force him to furnish support. That this is true appears from the decision of the same high tribunal, dated October 16, 1903. In this case the wife brought an action for support against her husband who had willfully and voluntarily abandoned the conjugal abode without any cause whatever. The supreme court, in reversing the judgment absolving the defendant upon the ground that no action for divorce, etc., had been instituted, said:

"In the case at bar, it has been proven that it was Don Teodoro Exposito who left the conjugal abode, although he claims, without however proving his contention, that the person responsible for this situation was his wife, as she turned him out of the house. From this state of affairs it results that it is the wife who is the party abandoned, the husband not having prosecuted any action to keep her in his company and he therefore finds himself, as long as he consents to the situation, under the ineluctable obligation to support his wife in fulfillment of the natural duty sanctioned in article 56 of the Code in relation with paragraph 1 of article 143. In not so holding, the trial court, on the mistaken ground that for the fulfillment of this duty the situation or relation of the spouses should be regulated in the manner it indicates, has made the errors of law assigned in the first three grounds alleged, because the nature of the duty of affording mutual support is compatible and enforceable in all situations, so long as the needy spouse does not create any illicit situation of the sort above described."

If we are in error as to the doctrine enunciated by the supreme court of Spain in its decision of November 3, 1905, and if the court did hold, as contended by counsel for the defendant in the case under consideration, that neither spouse can be compelled to support the other outside of the conjugal abode, unless it be by virtue of a final judgment granting the injured one a divorce or separation from the other, still such doctrine or holding would not necessarily control in this jurisdiction for the reason that the substantive law is not in every particular the same here as it is in Spain. As we have already stated, articles 42 to 107 of the Civil Code in force in the Peninsula are not in force in the Philippine Islands. The law governing the duties and obligations of husband and wife in this country are articles 44 to 78 of the Law of Civil Marriage of 1870. In Spain the complaining spouse has, under article 105 of the Civil Code, various causes for divorce, such as adultery on the part of the wife in every case and on the part of the husband when public scandal or disgrace of the wife results therefrom; personal violence actually inflicted or grave insults: violence exercised by the husband toward the wife in order to force her to change her religion; the proposal of the husband to prostitute his wife; the attempts of the husband or wife to corrupt their sons or to prostitute their daughters; the connivance in their corruption or prostitution; and the condemnation of a spouse to perpetual chains or hard labor, while in this jurisdiction the only ground for a divorce is adultery. (*Benedicto vs. De la Rama*, 3 Phil. Rep., 34, 45.) This positive and absolute doctrine was announced by this court in the case just cited after an exhaustive examination of the entire subject. Although the case was appealed to the Supreme Court of the United States and the judgment rendered by this court was there reversed,

the reversal did not affect in any way or weaken the doctrine in reference to adultery being the only ground for a divorce. And since the decision was promulgated by this court in that case in December, 1903, no change or modification of the rule has been announced. It is, therefore, the well settled and accepted doctrine in this jurisdiction.

But it is argued that to grant support in an independent suit is equivalent to granting divorce or separation, as it necessitates a determination of the question whether the wife has a good and sufficient cause for living separate from her husband; and, consequently, if a court lacks power to decree a divorce, as in the instant case, power to grant a separate maintenance must also be lacking. The weakness of this argument lies in the assumption that the power to grant support in a separate action is dependent upon a power to grant a divorce. That the one is not dependent upon the other is apparent from the very nature of the marital obligations of the spouses. The mere act of marriage creates an obligation on the part of the husband to support his wife. This obligation is founded not so much on the express or implied terms of the contract of marriage as on the natural and legal duty of the husband; an obligation, the enforcement of which is of such vital concern to the state itself that the law will not permit him to terminate it by his own wrongful acts in driving his wife to seek protection in the parental home. A judgment for separate maintenance is not due and payable either as damages or as a penalty; nor is it a debt in the strict legal sense of that term, but rather a judgment calling for the performance of a duty made specific by the mandate of the sovereign. This is done from necessity and with a view to preserve the public peace and the purity of the wife; as where the husband makes so base demands upon his wife and indulges in the habit of assaulting her. The pro tanto separation resulting from a decree for separate support is not an impeachment of that public policy by which marriage is regarded as so sacred and inviolable in its nature; it is merely a stronger policy overruling a weaker one; and except in so far only as such separation is tolerated as a means of preserving the public peace and morals may be considered, it does not in any respect whatever impair the marriage contract or for any purpose place the wife in the situation of a feme sole.

The foregoing are the grounds upon which our short opinion and order for judgment, heretofore filed in this case, rest.

Torres, Johnson, and Carson, JJ., concur.

Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

I based my vote in this case upon the ground that a husband cannot, by his own wrongful acts, relieve himself from the duty to support his wife imposed by law; and where a husband, by wrongful, illegal, and unbearable conduct, drives his wife from the domicile fixed by him, he cannot take advantage of her departure to abrogate the law applicable to the marital relation and repudiate his duties thereunder. In law and for all purposes within its purview, the wife still remains an inmate of the conjugal domicile; for I regard it as a principle of law universally recognized that where a person by his wrongful and illegal acts creates a condition which under ordinary circumstances would produce the loss of rights or status pertaining to another, the law will, whenever necessary to protect fully the rights or status of the person affected by such acts, regard the condition by such acts created as not existing: and will recur to and act upon the original situation of the parties to determine their relative rights or the status of the person adversely affected.

I do not believe, therefore, that the case is properly conceived by defendant, when the consideration thereof

proceeds solely on the theory that the wife is outside the domicile fixed by the husband. Under the facts alleged in the complaint the wife is legally still within the conjugal domicile.

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