

[WITH RESOLUTION OF AUGUST 29, 1961]

G.R. No. 13114. November 25, 1960

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

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

Direct appeal on both questions of fact and law from the decision of the Court of First Instance of Davao, the amount involved being more than P200,000.00.

This action was commenced in the Court of First Instance of Davao on December 27, 1954 by Elenita Ledesma Silva, assisted by her husband Saturnino R. Silva, against Esther Peralta, seeking to enjoin the latter from representing herself as Mrs. Esther Peralta Silva; to order said defendant to pay Elenita Silva the sum of P250,000.00 as moral, nominal and exemplary damages, allegedly suffered by reason of such misrepresentation, plus P10,000.00 by way of attorney's fees. Defendant's answer contains both specific denials and counterclaims for actual damages and fees due to harassment and moral-damages caused by Sil-va's marital relation with defendant, without disclosing to her that he was married; and his subsequent refusal to acknowledge their offspring.

After trial the lower court rendered judgment, the dispositive portion of which reads, to wit:

"En su virtud, el Juzgado dicta decision en esta causa contra de los demandantes, y a favor de la demandada;

a) Ordena el sobreseimiento de la demanda en autos por falta de meritos;

b) Condena a los demandantes, mancomunada y solidariamente a pagar a la demandada la suma de P30,000.00 por los conceptos indicados;

c) Condena a los demandantes a pagar la suma de P5,000.00 por honorarios de abogado; y

d) Las costas del juicio. Asi se Ordena."

The findings of fact of the lower court may be briefly summarized as follows:

At the outbreak of the war in 1941, the defendant Esther Peralta abandoned her studies as a student nurse at the Zamboanga General Hospital. In June of 1942, she resided with her sister, Mrs. Pedro Pia, in Maco, Tagum, Mabini Davao. Saturnino Silva, then an American citizen and an officer of the United States Army and married to one Prescilla Isabel of Australia, had been ordered sent to the Philippines during the enemy occupation to help unite the guerrillas in their fight for freedom. In 1944, he was the commanding officer of the 130th Regiment, under the overall command of Colonel Claro Laureta of the 107th Division, with general headquarters at Magugpo, Tagum, Davao.

Some time during the year 1944, Florence, a younger sister of the defendant was accused of having collaborated with the enemy, and for this she was arrested, and, accompanied by Esther, brought to Anibongan and later to the general headquarters at Magugpo for investigation. It was during said investigation that Silva first met Esther. Florence was exonerated of the charges made against her and was ordered released, but with the advice that she

should not return to Maco for the time being. Heeding such advice, Florence and her sister, appellee herein, went to live with the spouses Mr. and Mrs. Camilo Doctolero at Tipas, Magugpo, Davao.

Silva started to frequent the house of the Doctoleros, and soon professed love for Esther. Having been made to believe that he was single, she accepted his marriage proposal; and the two were married on January 14, 1945 by one Father Cote on the occasion of a house blessing. No documents of marriage were prepared nor executed, allegedly because there were no available printed forms for the purpose. Hence, the lovers lived together as husband and wife. From the "marriage", a child, named Saturnino Silva, Jr., was born.

On May 8, 1945, Silva sustained serious wounds in the battle of Ising, for which reason, he was transferred to Leyte, and later to the United States, for medical treatment. While in the States, he divorced Priscilla Isabel and later, on May 9, 1948, contracted marriage with plaintiff Elenita Ledesma Silva.

Upon his return to the Philippines, appellee Esther Peralta demanded support for their child, and, upon his refusal, instituted a suit for support in the Court of First Instance of Manila. Thereupon, the present action was filed against Esther, and another suit against her was instituted in Cotabato.

Except for the statement that a marriage actually took place between Saturnino Silva and Esther Peralta; the evidence on record fully supports the foregoing findings of fact of the lower court. No evidence was offered, than the testimonies of the defendant herself and her counsel, Atty. Juan Quijano, to prove any such alleged marriage, although there is convincing proof that the defendant and Saturnino Silva, for a time, actually lived together as common-law husband and wife. But the witnesses' asseverations regarding the marriage, taken by themselves and considered with other circumstances appearing on record, reveal too much uncertainty and incoherence as to be convincing. .

In the course of the pre-trial conference, Esther Peralta testified as follows:

"Court, (To the defendant) ..

Do you have any evidence to show that you are married?

Defendant:

That was during guerrilla days and it was the justice of the peace of free Davao who solemnized our marriage." (pp. 2-3, t.s.n.) (Italics supplied)

On cross-examination, however, she declared.:

"Q.-Who was the justice of the peace who performed the marriage?

A.-It was Father Cote who, asked us the questions and after that Tie said" I pronounce you as husband and wife. The justice of the peace was also there (p. 411 t.s.n.) (Italics supplied)

It is difficult to imagine how appellee could have easily forgotten or be confused as to who performed the alleged marriage when such fact, if true, heralded an important and memorable event in her life. But this is not all. In her written statement to the President of the Davao Local Council, Girl Scouts of the Philippines, when asked to explain on her use of the surname Silva, this witness-defendant never revealed any marriage contracted by herself and Silva. In fact, she declared-

"Sometime later, he proposed marriage to me. As was natural, I told him to talk to my sisters and to the oldest relative of mine living in Magugpo. With all sincerity, he complied with my request and in due time my relatives gave their consent to our marriage.

For some reason or another, and because I myself wished, that our marriage take place after liberation-which

was then nearing-marriage was delayed. But he pleaded to me that he needs me and that I join him and live with him in his quarters. After thinking the matter over, I agreed. I have nothing to be ashamed of for this because I was convinced of the sincerity of his request and of the fact that we were going to get married soon after liberation.

We started living together as man and wife in December, 1944. As a result of our living together, I bore a child, named after him. He was baptized and registered as Saturnino Silva, Jr., and he has been carrying that name ever since. * * *." (Exh. 22-C).

Noteworthy also is the fact that while in her foregoing declarations she asserted that they started living together as man and wife since December, 1944, in her testimony In court, however, she attested as follows:

"Q.-And it was also on that day (January 14, 1945) when you Said you were married to Mr. Silva?

A.-Yes, sir.

* * * * *

Q.-Do we understand from you now that it was the first time that you began to live together as husband and wife with Mr. Silva?

A.-Yes, sir, because that was the time when we were legally married." (p. 411, t.s.n.)

Again, Juan Quijano, presented as witness for the defendant, only testified to the following:

* * * * *

Q.-And you affirm to this Court that plaintiff Saturnino R. Silva is lawfully wedded to the defendant Esther Peralta?

A.-Except for the fact of final formal marriage contract, for all intents and purposes they were legally married.

* * * * *

Q.-Would you, Mr. Quijano, say that a man and woman are legally married without the marriage contract having been signed by both contracting parties to the marriage, and the marriage solemnized?

A.-I would say, in my humble way of thinking, having in mind the provisions of the new civil code, that even without the signing of marriage contract by the parties, but if the parties have acted and believed that they are husband and wife, to my humble way of thinking, that is even better than signing marriage contract which the parties cannot agree.

Q.-Do I understand from you that between plaintiff Saturnino R. Silva and defendant Esther Feralta, no marriage was ever solemnized?

A.-I did not say that there was marriage solemnized, but I was present when Silva asked the hands of Esther Peralta in marriage from her older sister." (t.s.n., pp. 223-226, Exhibit A-l).

The records also disclose that in a complaint for support in Civil Case No. 22816 of the Court of First Instance of Manila, filed by appellee herein on behalf of her son, Saturnino Silva, Jr., it was alleged that appellant Saturnino Silva maintained appellee "as his common-law-wife" (Exhs. "H" and "H-l"). In the affidavit (Exhibit "H-2") attached to the aforementioned complaint she affirmed under oath that she was "single". Appellee Esther Peralta, being a woman of sufficient schooling, must have known the significance of the terms thus employed.

All the foregoing circumstances, coupled with the admitted fact that no marriage documents of any kind prior to, during or after the marriage were ever prepared or executed by anybody, and that a vigorous denial of the

supposed marriage was made by Saturnino Silva, the alleged consort, lead to the conclusion that no marriage had really taken place.

In the face of the evidence, we cannot give value on the presumption of the marriage under section 69 (bb) of the Rules of Court, especially because, at the time of the alleged marriage on January 14, 1945, Saturnino Silva was still married to one Priscilla Isabel, an Australian national.

In view of the non-existence of appellee's marriage with Saturnino Silva and the latter's actual marriage, to plaintiff Ledesma, it is not proper for Esther to continue representing herself as the wife of Saturnino. Article 370 of the Civil Code of the Philippines authorizes a married woman to use the surname of her husband; impliedly, it also excludes others from doing likewise.

As to plaintiff Elenita Silva's claim for moral damages, the Court below has carefully analyzed the evidence in its decision and found (Rec. App., p. 47-49) that her claims of humiliation and "distress are not satisfactorily proved; and we have found no ground to disturb such findings, considering the trial judge's ample opportunity to observe the witnesses at the stand. The plaintiff's distress upon learning from her lawyer that her husband had a child defendant, and was being sued for its support, con- no right to claim damages, in the absence of. proof that the suit was reckless or malicious. Although Article 2216 of the Civil Code expressly provided that "no proof of pecuniary loss is necessary in order that moral, nominal, * * * or exemplary damages may be adjudicated", and the assessment thereof "is left to the discretion of the court, there should be a clear showing of the facts giving rise to such damages (Art. 2217). This is particularly the case here, since it appears that appellee had acted in good "faith, Silva having formerly introduced appellee to other persons as Mrs. Silva, and sent her letters thus addressed (Exh. 2), implying authority to use the disputed appellation prior to his subsequent marriage to Elenita Ledesma.

Regarding the counterclaim for damages, the lower court awarded damages to the defendant appellee, stating in its decision;

"El Juzgado estima en P15,000.00, los danos que la demandada ha sufrido por haber perdido el puesto en la Davao Council, y por los sufrimientos moral que aquella ha sufrido, la suma de P15,000.00, mas la adicional de P5,000.00 por honorarios de abogado."

This award is contested by appellants on the ground that defendant appellee's resignation from the Girl Scouts Davao Council was voluntary; according to her own letter Exhibit "S", she applied for an indefinite leave of absence to attend to a personal matter in Manila, which turned out to be the civil case that she had filed against Silva for the support for her child by him, Witness Felicidad Santos, asked about the reason why Esther Peralta left her position, testified:

"She resigned. She told me there was a case. In fact that was the time when she told me that there was a case which (she) filed in Manila and to attend that case it will interfere too much of her activities as an Executive of the Davao Girl Scout." (t.s.n., pp. 245-246, Restauo)

No great effort is needed to discern that Esther Peralta would never have agreed to live maritally with appellant Silva nor beget a child by him had not Silva concealed that he was already married; and in that case appellee Peralta would not have been compelled to relinquish her employment to attend to the litigation filed to obtain for the child the support that Silva refused. Wherefore, Esther's loss of employment is ultimately a result of Silva's deception and she should be indemnified therefor. It is well to note in this connection, that' Silva's act in hiding from the appellee that he could not legally marry her, because he already had an Australian wife, was not mere negligence, but actual fraud (dolo) practiced upon the appellee. Consequently, he should stand liable for any and all damages arising therefrom, which Include the expense of maintaining the offspring and the expenses of

litigation to protect the child's rights, and the loss of the mother's own earnings. This is a liability that flaws even from Articles 1902 and 1107 (par. 2) of 1889 (Arts. 2176 and 2202 of the New Code).

"Art. 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

"Art. 1107. In case of fraud (dolo) the debtor shall be liable for all losses and damages which clearly arise from the failure to fulfill the obligation."

Considering that the child was born on October 30, 1945, and has had to be supported exclusively by his mother since then up to the present, because the appellant Silva has refused to pay or even contribute to such support, and that appellee was earning P150.00 a month until she had to leave Davao to attend to her son's case, we can not say that P15,000.00 pecuniary damages awarded by the Court below are excessive or inequitable.

The lower court's award of moral damages is, likewise, assailed as unjustified and not allowable under the law and jurisprudence governing before the effectivity of the new Civil Code of the Philippines.

Granting arguendo the correctness of the proposition that, under the old law, no moral damages were allowable as a consequence of sexual relations outside of wedlock, still the evidence of record satisfies us that after the filing in May of 1954 of the first action by Esther Peralta against appellant Saturnino Silva, seeking support of their minor child, said appellant managed to avoid the service of summons, which were still unserved on him until the case at bar was tried, and in addition exercised improper pressure upon the appellee to make her withdraw the suit; that to this effect, appellant's brother and one Mrs. Misa, Girl Scouts executive of Hoilo, went to see Esther Peralta to press her to drop the case, warning her of untoward consequences otherwise; and when she refused, appellants, through counsel, filed against her the present action in Pavao and another one in the Court of First Instance of Cotabato, charging her with conversion of Silva's properties in addition to bringing to the attention of the higher authorities of the Girl Scouts organization (wherein Esther Peralta was then employed) appellee's claim to be the wife of Col. Saturnino Silva, to whom "she must have been wedded in contemplation" (sic, Exh. 22), and unchaining a series of investigations that brought to light her condition as an unwedded mother, there is apparent here an obvious pattern of harassment, with a view to forcing appellee into abandoning the interests of her child. That such deliberate maneuvers caused the mother mental anguish and even physical suffering (she actually became ill as a result), can be easily understood and needs no special demonstration beyond her testimony to that effect.

As this injury was inflicted upon the appellee from 1954 onwards, after the new Civil Code had become operative, it constitutes a justification for the award of moral damages (Art. 2217), claimed by appellee in the first counterclaim of her amended answer (Record on Appeal, pp. 26-27). The court below, as already noted, awarded her P15,000.00 as moral damages and P5,000.00 attorney's fees; and taking all the circumstances of record, we are not inclined to disturb the award. However, we agree with appellants that it was error for the court to sentence both appellants to the solidary payment of the damages. The liability therefor should be exclusively shouldered by, the husband Saturnino Silva.

As to the admission of the amended complaint, the same is discretionary in the trial court, and we do not see that the appellants were substantially prejudiced by the admission.

In view of the foregoing, the judgment appealed from is modified and defendant appellee Esther Peralta is enjoined from representing herself, directly or indirectly to be the wife of appellant Saturnino R. Silva; and appellant Saturnino R. Silva is in turn ordered to pay Esther Peralta the amount of P30,000.00 by way of pecuniary and moral damages, plus P5,000.00 as attorneys' fees. No costs.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment modified.

RESOLUTION

August 29, 1961

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

Appellants spouses Saturnino Silva and Elenita Ledesma Silva pray for the reconsideration of this Court's¹ decision of November 25, 1960, claiming that:

(1) Appellant Elenita Silva should be awarded moral damages for Esther Peralta's unauthorized use of the designation in "Mrs. Esther Silva".

(2) The award of pecuniary damages against appellant Saturnino Silva is unwarranted by the facts and the law.

I

It is contended that the prohibition imposed upon appellee Esther Peralta from representing herself, directly or indirectly, as the wife of Saturnino Silva should result in an award of moral damages in favor of appellant Elenita Ledesma, whose exclusive right to the appellation is recognized by the decision.

This argument misapprehends the basis of the decision. Esther Peralta was forbidden from representing herself as Mrs. Saturnino Silva for the reason that it was proved in the case that she was not legally married to him, and because he is now lawfully married to Elenita Ledesma. But an award of damages in the latter's favor would require a further finding that the assumption of the disputed status by Esther Peralta was made in bad faith or through culpable negligence and no such finding has been made in the decision. The facts are that Esther in good faith regarded herself as Saturnino's lawful wife, and that the man himself led her into this belief prior to his desertion. That later on, unknown to Esther, Silva should have married his co-appellant in the United States is not sufficient to impose upon Esther any liability for damages or to destroy her original good faith, there being no proof that the existence of a valid marriage between Saturnino and Elenita was adequately driven home to Esther before this case was instituted. That the two appellants Silva were living together as husband and wife was certainly not sufficient proof, considering Saturnino Silva's past history and conduct. How was appellee to know that Saturnino's connection with Elenita Ledesma was any more legitimate than his previous one with appellee herself?

Moreover, the trial court found Elenita Silva's claim for damages not adequately proved, and we have not found in the record any justification to depart from that finding.

II

As to the award of damages against Saturnino Silva, it is to be noted that while the latter's liability was extra-contractual in origin, still, under the Civil Code in 1889, the damages resulting from a tort are measured in the same manner as those due from a contractual debtor in bad faith, since he must answer for such damages, whether he had foreseen them or not, just as he must indemnify not only for *damnum emergens* but also for

lucrum cessans, as required by Article 1106. Article 1002 of the 1889 Civil Code of Spain formulated no standard for measuring quasi-delictual damages, the article merely prescribing that the guilty party "shall be liable for the damages so done". This indefiniteness led modern civil law [writers to hold that the standards set in articles 1106 and 1107, placed in the general rules on obligations, "rigen por igual para las contractuales y las extras contractuales, las preestablecidas y las que borten ex-lege de actos ilicitos". (Roces, Notes to Fisher) "Los Daños Civiles y su Reparación," (1927). Since liability for damages arises in either case from a breach of a pre-existing obligation (to behave without fault or negligence in case of quasi-delicts, and, in case of contracts, to observe the conduct required by the stipulation), it is logical to conclude with Planiol that "La responsabilidad contractual y la extra contractual tienen el mismo fundamento, por lo que se hallan sujetas en principio a idénticas reglas" (6 Planiol-Ripert, *Derecho Civil*, p. 529, sec. 378). Giorgi is of the same opinion (5 *Teoría de Obligaciones*, pp. 133, 207-208). So is de Cossio y Corral ("El Dolo en el Derecho Civil," pp. 132-133):

"Pero si ello es así, resulta claro que la aproximación entre esta clase de culpa y la contractual, es cada día mayor, hasta el extremo de que, según hemos antes indicado, solamente se pueden señalar diferencias accesorias, y muchas veces aparentes entre una y otra. En primer término, porque el concepto de culpa contractual se extiende no solo a las obligaciones nacidas ex contractu, sino, en general, a todas aquellas preexistentes entre las partes a la realidad del acto dañoso (obligaciones legales). De otra parte, porque si bien consideramos las cosas, la responsabilidad llamada extracontractual, deriva siempre del quebrantamiento de un deber general, implícitamente reconocido por la ley cual es el de que todos deben actuar escrupulosamente con la debida diligencia, evitando causar daño a los demás, y con derecho que todo ciudadano tiene, correlativamente, a no ser dañado en su patrimonio y bienes por la conducta dolosa o negligente de los demás. En tal sentido, habría siempre entre el autor del daño y la víctima, una relación jurídica, constituida por este derecho y aquel deber.

Esta idea de unidad entre ambas instituciones se traduce en que las pretendidas diferencias en cuanto a la extensión de la indemnización, en ambos casos, no puedan defenderse a la vista de los preceptos de nuestro Derecho positivo. En efecto, no contiene el Capítulo II del Título XVI del Libro de nuestro Código civil norma alguna referente a la extensión de la indemnización que en cada caso haya de prestarse, lo que nos obliga forzosamente a acudir a las normas generales contenidas en el capítulo II, del Título I de dicho libro IV, relativo a los "efectos de las obligaciones", que ninguna razón permite limitar a las de naturaleza contractual, ya que el artículo 1.101 habla genéricamente de obligaciones; el 1.102, de "todas las obligaciones"; el 1.103, de "toda clase de obligaciones", y en ninguno de los artículos subsiguientes se hace referencia a una clase especial de obligaciones, sino a todas en general.

Que las disposiciones de este Capítulo son aplicables en los casos de culpa extracontractual, es doctrina constantemente reconocida por la jurisprudencia del Tribunal Supremo. Así, en la sentencia de 14 de diciembre de 1894, concretándose a los artículos 1.101, 1.101 (y 1.104, afirma que son de carácter general y aplicables a toda clase de obligaciones, no ofreciendo contradicción con las especiales de los artículos 1.902 y 1.903; la sentencia de 15 de enero de 1902, permite interpretar los artículos 1.902 y 1.903 por los 1.103 y 1.106, a los efectos de determinar los elementos que han de entrar en la indemnización. La misma doctrina se mantiene en la sentencia de 2 de diciembre de 1946, y en otras muchas que pudiéramos aducir."

Whether or not the damages awarded to appellee are a natural and direct consequence of Silva's deceitful maneuvers in making love to appellee, and inducing her to yield to his advances and live with him as his wife (when Silva knew all the time that he could not marry Esther Peralta because of his undissolved marriage to an Australian woman, a prior wedlock that he concealed from appellee), is a question of appreciation. It is clear that Esther Peralta would not have consented to the liaison had there been no concealment of Silva's previous marriage, or that the birth of the child was a direct result of this connection. That Esther had to support the child because Silva abandoned her before it was born is likewise patent upon the record, and we can not see how said appellant can be excused from liability therefor.

Silva's seduction and subsequent abandonment of appellee and his illegitimate child were likewise the direct cause for the filing of the support case in Manila, and in order to prosecute the same, appellee had to quit her employment in Davao. While the case could have been filed in Davao, we do not believe that this error in selecting a more favorable venue (due to her unfamiliarity with the technicalities of the law) should be allowed to neutralize the appellant Silva's responsibility as the primary causative factor of the prejudice and damage suffered by appellee.

It is argued that the maintenance of the child can not be considered as an element of damage because the child's case for support was dismissed. This contention fails to take into account the action there was for support as an acknowledged natural child, and that under the Civil Code of 1889 (the law in force when the child was born), the right of natural children to be supported by their father depended exclusively on the recognition by the father of his paternity; the rule being thus-

"The mere fact of birth gave no legal right to the child, and imposed no legal duty upon the father, except, perhaps, in cases arising under the criminal law. * * * The father was not, prior to the Civil Code, and is not now, bound to recognize his natural son by reason of the mere fact that he is its father. * * * But as to the father the question is," and always has been, has he performed any acts which indicates his intention to recognize the child as his?" (Buenaventura vs. Urbano, 5 Phil., pp. 2-3)

It follows that in said suit, the real issue was whether the child had been duly recognized, the support being a mere consequence of the recognition. Therefore, the failure of the child's action for support did not adjudge that he was not the defendant's child, but that the defendant never recognized him as such. That the decision of the Court of Appeals (CA-G. R. No. 24532-E) rejecting the child's action did not declare him without right to support under all circumstances can be seen from the following statement in the decision:

"The proofs so far found in the record may possibly warrant the filing of an action for compulsory recognition, under paragraphs 3 and 4 of Art. 283, but there was no action presented to that effect."

Plainly, the issues and parties being different, the result of the child's action can not constitute *res judicata* with regard to the mother's claim for damages against the father on account of the amounts she was compelled to spend for the maintenance of their child. On the contrary, the very fact that the child was not allowed to collect support from the father (appellant therein) merely emphasizes the account of his birth and rearing, which, in turn, was a direct consequence of appellants' tortious conduct. Since Esther Peralta had expressly pleaded that she had had to support the child (Record of Appeal, p. 27, in fine), and had prayed for such relief "as may be deemed just and equitable in the premises", there is no reason why her expenses for the child's maintenance should not be taken into account.

Appellants submit that the damages allowed for maintenance of the son should be limited to P600.00 a year, because the income tax law allows only that much deduction for each child. We do not believe that income tax deductions constitute a reasonable basis for an award of damages, since they are fixed for, an entirely different purpose (to arrive at the net taxable income) and merely represent the amount that the state is willing to exempt from taxation. At that, it should be noted that the deductible amount has been lately increased to P1,000.00 per annum. But even at P600.00 per annum, the damages suffered by appellee on this count, from 1945 to 1960, already amounts to around P9,000.00, to which must be added the loss of appellee's salary as executive of the Girl Scouts in Davao; so that the P15,000.00 damages awarded by the court below is by no means excessive, as already held in our decision in chief.

Appellants also contend that the claim for pecuniary damages has prescribed, because they date back to 1945. Suffice it to note that the defense of prescription was not invoked by appellants against the claim for pecuniary

damages, and this defense must be regarded as waived in relation to the same. Appellant's reply to the appellee's first counterclaim in her second amended answer (which was for actual or pecuniary damages) reads as follows (Answer to Counterclaim, Rec. App. p. 33);

"1.-That plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained under paragraphs 6, 7, 8, 9, 10, 11 and 12 of the first counterclaim and, therefore, specifically denies the same."

The defense of prescription was actually interposed on against the second counterclaim, in this wise:

"1.-That the cause of action alleged in the second counterclaim has already prescribed, more than ten years having already elapsed." (Answer, to Counterclaim, Rec. App. 34)

The second counterclaim referred to was for damages due to "mental torture, anguish and hurt feelings, all to her damage in the amount of P250,000.00" (Rec. App. p. 28). Upon the other hand, our own award for moral damages was based, not on the deceit practiced by Silva in securing Esther's assent to live maritally with him, but on his subsequent harassment of her in 1954, by filing suits against her in different provinces and otherwise applying pressure to cause her to abandon her child's case. As this cause of action arose less than three years before the present action was filed, the defense of prescription is rendered untenable against it, for the limitation period had not yet expired when the suit was brought.

Wherefore, the motion for reconsideration is denied.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

Motion denied.

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