

**TEODORO VELEZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
SALOMON RAMAS ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 14997. February 16, 1920*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Cebu by the plaintiff, Teodoro Velez, and his wife, Hermenegilda Chiong Veloso, to recover of the defendants, Salomon Ramas and Roberto Quirante, a sum of money evidenced by a written obligation signed by said defendants under date of July 30, 1917, wherein they acknowledged themselves to be jointly and severally bound for the payment to the plaintiff of the Sum of P2,303.60. It is admitted that the defendant Ramas had paid P300 upon said obligation prior to the institution of the suit, leaving a balance due of P2,003.60. Salomon Ramas answered the complaint, admitting in effect the facts alleged therein, and stating as his sole ground of defense that the alleged contract was illegal on its face. This defendant further interposed a counterclaim, seeking to recover the P300 which he had already paid. The defendant Roberto Quirante did not appear, and no defense was made for him. When the case was submitted for decision the trial court sustained the defense, absolved both the defendants from the complaint and gave judgment upon the counterclaim in favor of Salomon Ramas jointly and severally against the plaintiffs for the sum of P300, with interest at the legal rate from the date the answer was filed. From this judgment the plaintiffs appealed.

It appears in evidence that the defendant Roberto Quirante is the father of Restituta Quirante, who in turn is the wife of the defendant Salomon Ramas. Prior to July 30, 1917, the plaintiffs, Teodoro Velez and wife, were the owners of a pawnshop and had employed Restituta Quirante in some capacity or other therein. While thus employed, Restituta Quirante abstracted various sums of money belonging to the plaintiffs, amounting altogether to P2,363.60, under conditions which Supposedly constituted the offense of estafa. When this fact was discovered by the plaintiffs they threatened to prosecute her, and in order to prevent this eventuality the contract in question was executed by the defendants.

The preliminary recitals and the principal obligatory clause of this contract are expressed in the following terms:

"Whereas, it was discovered that Restituta Quirante, being an employee of Teodoro Velez and Hermenegilda Ch. Veloso, has illegally abstracted various sums of money entrusted to her for safe-keeping, amounting altogether to P2,303.60 (two thousand three hundred and three pesos and sixty centavos).

"Whereas, in order to prevent said woman from being brought before the courts for the unlawful act She has executed, the persons subscribing this document have guaranteed to the said Teodoro Velez and Hermenegilda Ch. Veloso the payment of the aforesaid sum plus an interest of 12 per cent per annum until fully paid.

"Whereas, by virtue of the foregoing obligation, said Velez and Hermenegilda Ch. Veloso agree to suspend the action they intend to bring against Restituta Quirante.

"Therefore, we, Salomon Ramas and Roberto Quirante, the first a resident of the city of Cebu and the second of the municipality of Dumanjug of the same province, jointly and severally bind ourselves to pay Teodoro

Velez and Hermenegilda Ch. Veloso the aforementioned sum of two thousand three hundred three pesos and sixty centavos (P2,303.60) with interest."

We are of the opinion that the trial court was correct in the conclusion that an action cannot be maintained upon this contract. The preliminary recitals clearly disclose the fact that the purpose of the contracting parties was to prevent a prosecution for crime; and the injured parties, on their part, agree to suspend the criminal proceedings which they had intended to promote. As regards the defendant Roberto Quirante there was absolutely no other motive for making the contract than a desire to prevent the prosecution of his daughter; and the only consideration in the legal sense for his promise to pay was the engagement of the plaintiffs whereby they bound themselves to suspend criminal proceedings. As regards the defendant Salomon Ramafe, it might be supposed that the act of his wife, Restituta Quirante, in embezzling the money of her employers created a civil debt which was binding on him as a member of the community partnership and that he at any rate would be liable for that money without reference to the contract. But that liability cannot be enforced in an action to which the wife is not a party. It results that, even as against Ramas, this case must be decided on the question of the legality, or illegality, of the contract sued on.

In our opinion the consideration for this agreement is clearly illicit, which fact is apparent on the face of the contract; and the case is accordingly governed by article 1275 of the Civil Code.

There has been no period since contract law reached the stage of consciousness, when the maxim *ex turpi causa non oritur actio* was not recognized. A contract based upon an unlawful consideration or designed to promote an unlawful object is and always has been void *ab initio* by the common law, by the civil law, moral law, and all laws whatsoever (*Collins vs. Bantern*, 2 Wils. C. Pl., 341.) It is immaterial whether the illegal character of the contract is revealed in the matter of the consideration, in the promise as expressed in the agreement, or in the purpose which the agreement, though legal in expression, is intended to accomplish. If the illegality lurks in any element, or even subsists exclusively in the purpose of the parties, it is fatal to the validity of the contract. (*Manresa*, *Codigo Civil*, 2d ed.f vol. 8, p. 686.)

By the universal consensus of judicial opinion in all ages it has been considered contrary to public policy to allow parties to make agreements designed to prevent or stifle prosecutions for crime. It is self-evident that the law cannot sanction an engagement which is subversive of the law itself or which tends to weaken the foundations of human society. The machinery for the administration of justice cannot be used to promote an unlawful purpose.

The case of *Arroyo vs. Berwin* (36 Phil. Rep., 386), would seem to be conclusive, as it is based upon the doctrine above announced, and we see no just basis for discriminating between the facts there involved and those here presented.

It seems to us that an arguable question might have been raised as to the propriety of allowing Salomon Ramas to recover the P300 which he had in fact paid upon the contract in question; but the point has not been made the subject of any assignment of error in this Court and must be passed without discussion.

The action of the trial court in absolving the defendant Roberto Quirante, although he had made no defense, was correct and is worthy of some comment as embodying a point of practice which should be called to the attention of courts and practitioners. The rule is this: Where a complaint states a common cause of action against several defendants and some appear to defend the case on the merits while others make default, the defense interposed by those who appear to litigate the case inures to the benefit of those who fail to appear; and if the court finds that a good defense has been made, all of the defendants must be absolved. The proper mode of proceeding where a complaint states a common cause of action against several defendants, and one of them makes default, is simply to enter a formal default order against him, and proceed with the cause upon the answers of the others. The

defaulting defendant merely loses his standing in court, he not being entitled to the service of notices in the cause, nor to appear in the suit in any way. He cannot adduce evidence; nor can he be heard at the final hearing. If the case is finally decided in the plaintiff's favor, a final decree is then entered against all the defendants; but if the suit should be decided against the plaintiff, the action will be dismissed as to all the defendants alike. (Frow vs. De la Vega, 15 Wall., 552; 21 L. ed., 60.)

For the reasons stated the judgment must be affirmed; and it is so ordered, with costs against the appellants.

Arellano, C. J., Johnson, Malcolm, and Avanceña, JJ., concur.

DISSENTING

TORRES, J., with whom concurs ARAULLO, J.:

The undersigned regrets that he has to dissent from the respectable opinion of the majority of this court, affirming the judgment appealed from by accepting the stand taken by the trial judge.

Be it noted in the first place that the document marked as Exhibit A does not disclose nor express a contract entered into between Restituta Quirante's father and husband, Roberto Quirante and Salomon Ramas respectively, as parties to the first part, and the spouses Teodoro Velez and Hermenegilda Ch. Veloso, as parties to the second part. The content of the document is an open and spontaneous statement made by the aforesaid interested parties recognizing the crime committed by the daughter and wife of those subscribing it to the damage and prejudice of the spouses Velez and Veloso and an express acknowledgement of the amount defrauded or embezzled by the latter's unfaithful employee, Restituta Quirante. As between the parties to said document, there has been no agreement or stipulation to prevent the persecution and punishment of a crime. The only fault which might be imputed to the defrauded party is the fact of having accepted said document as sufficient security for the payment and indemnification of the lump sum of which they were unlawfully deprived.

However, the aggrieved spouses not being lawyers, the foregoing fault cannot give rise to the fact that, after having been the victims of the bad faith of their employee, they still find themselves obliged to lose the money embezzled simply because of a certain species of complicity with the embezzler's father and husband to the end of rendering her unpunished for the criminal act she has committed against the offended spouses.

The presumption of complicity or of being an accessory to a crime cannot be born from the fact that the offended spouses received, kept in their possession and made use of the aforesaid document marked as Exhibit A, which was written by the persons executing it without the least intervention on the part of said spouses whose signatures do not appear signed thereto and who neither put anything concerning their part therein nor committed any act preventing the persecution of the crime. Teodoro Velez and his wife did not file any complaint or information accusing the embezzler, because they are not in duty bound to denounce her before the courts conscious as they are of the vexations and difficulties commonly suffered by the offended parties in criminal prosecutions and because perhaps moved with pity, they have remained satisfied with the doubtful promise that they would be paid of the lump sum they have lost.

The case decided in *Arroyo vs. Berwin* (36 Phil. Rep., 386) is not applicable to the instant case, for the reason that the complaining witness Arroyo took part in the suspension of a criminal cause already instituted and managed to dismiss the prosecution already brought before the courts. The complaining witness, by virtue of an entirely illegal agreement with the person charged with the theft, directly aided in the definite suspension of the criminal prosecution, a case entirely distinct from the instant one.

The mere fact that the offended party, Velez and Veloso, received the document aforesaid (written and signed by those interested to save from a criminal prosecution the embezzler who misappropriated a lump sum of money belonging to the spouses aforesaid) and did not complain of said crime, does not constitute a burden or a fact prejudicial to their rights, at least, to recover the amount embezzled, nor does it justify the fact (inaccurately taken for granted) that they have entered into a contract with the embezzler's father and husband in order to prevent said embezzler from being duly prosecuted and punished.

By prescinding from the criminal action which they had the right to institute, the spouses Velez and Veloso could have only chosen to enforce the civil action, and they did not immediately make use of it because they were deluded by the offer of the aforementioned persons who guaranteed the payment of the lump amount embezzled. And when they institute the civil action for the recovery of said amount, they did it not only by virtue of the offer of the aforementioned father and husband of the embezzler in the document aforesaid, but also by virtue, and as a result of the crime of which the offended spouses have been the victim, inasmuch as in accordance with article 17 of the Penal Code "every person criminally liable for a felony or misdemeanor is also civilly liable." Therefore, the aggrieved persons have the right to ask for the compliance of the civil liability comprising: restitution, reparation of the damage caused and indemnification for consequential damages.

It is true that a felon's accessories referred to in article 16 of the same Penal Code are exempted from the penalties of the crime they shall have committed. But when the embezzler's father and husband bind themselves to reimburse and indemnify the amount embezzled to the aggrieved party, it is not just that the former be exempted and be discharged from the civil liability which they have contracted on the pretext that their promise to pay the sum embezzled has been given with the object of preventing the prosecution of their relative who was the author of the crime of estafa. In whatever way they would have desired to be legally bound by their agreement, they should be so bound in favor of the legitimate and offended creditors who are not interested in the impunity of the criminal but in the recovery of the amount embezzled.

The interest of the persons subscribing the document Exhibit A is undoubtedly very clear as the content of said document shows; but in no way does it appear therein that the poor victims of the estafa have agreed to the impunity of the embezzler.

Nor could they be blamed for not having filed their complaint for said crime and for having contended themselves with trying to collect and bringing an action for the recovery of the lump sum they have lost.

Because article 1275 of the Civil Code so declares, the undersigned agrees that contracts without consideration or with an illicit consideration which is contrary to law or morality produce no effect whatsoever. And as the spouses Velez and Veloso did not enter into a contract with Restituta Quirante's father and husband with such consideration—as is proved by the document itself, for the only thing they did as offended parties is to refrain from complaining of the crime—and as by not complaining of said crime they did not incur any responsibility nor did they lose their right to recover the sum embezzled, it is therefore indubitable that they retain the right to ask before the courts of justice for the payment of the amount embezzled from those who guaranteed said payment and bound themselves to do so.

For the foregoing reasons, it is proper, in the opinion of the undersigned, that the judgment appealed from be reversed and that the plaintiffs be sentenced to pay the amount mentioned in the complaint as they spontaneously bound themselves, without any special finding as to the costs.

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