

SINFOROSO DE GALA, PLAINTIFF AND APPELLANT, VS. PEDRO DE GALA ET AL., DEFENDANTS. JOSEFA ALABASTRO AND GENEROSO DE GALA, APPELLEES.*G. R. No. 15756. February 15, 1922*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Tayabas on the 29th day of August, 1917. Its purpose was to compel the defendant Pedro de Gala to recognize the plaintiff as his natural son. The complaint alleged that the plaintiff had been in the uninterrupted possession of the status of a natural child of the defendant, justified by the conduct of the latter and that of his family. To that complaint the defendant interposed a general denial.

Upon the issue thus presented the cause was brought on for trial, at the close of which the Honorable Jose C. Abreu, judge, rendered a judgment dismissing the plaintiff's complaint and absolved the defendant from all liability thereunder, without any finding as to costs. From that judgment the plaintiff appealed to this court. During the pendency of the appeal, in this court, the defendant Pedro de Gala died: and, at the suggestion of the plaintiff, the deceased defendant was substituted in this instance by his surviving spouse, Josefa Alabastro, and his only legitimate son, Generoso de Gala.

The appellant alleges that the lower court committed an error—

(1) In not admitting plaintiff's Exhibit C in evidence; (2) in finding that the facts in this case are very similar, if not identical, to those in the case of Buenaventura vs. Urbano (5 Phil., 1) ; and (3) in finding that the facts in the present case do not show that the plaintiff has been in the uninterrupted possession of the status of a natural child of the defendant Pedro de Gala.

Exhibit C is a transcript of the stenographic notes taken during the trial of an election protest case (Nadres vs. Javier) in the Court of First Instance of Tayabas, on the 10th day of August, 1916, two years before the trial of the present case. During that trial (of Nadres vs. Javier) Generoso de Gala, the said only legitimate son of the defendant Pedro de Gala, testifying as a witness, declared in open court that the plaintiff herein, Sinforoso de Gala, was his brother. The pertinent part of his testimony was as follows:

"Q. Is Eugenio de Gala, the witness who testified before, your brother?—A. Brother by my father.

"Q. And Sinforoso de Gala?—A. Also, brother by my father." (Pages 9 and 10, Exhibit C.)

That testimony of Generoso de Gala, duly identified by Juan Merchan, clerk of the Court of First Instance of Tayabas, was offered in evidence by the plaintiff during the trial of this cause. To its admission the defendant objected upon the ground that it was "impertinent." The lower court sustained the objection, stating that, in the first place, the said Generoso de Gala was not an interested party in this case, and, in the second place, the mere fact that Generoso de Gala declared that Sinforoso de Gala was his brother would not entitle the latter to be

recognized as a natural son of the defendant.

Generoso de Gala, the only legitimate son of the defendant Pedro de Gala, being a member of the latter's family, his spontaneous admission, publicly made, in open court, that the plaintiff, Sinforoso de Gala, was his brother, cannot be said to be "impertinent" for the purpose of proving the plaintiff's claim; for, that admission was a "conduct" on his part which tends to confirm the status claimed by the alleged natural child. Neither can it be said that the said only legitimate child of the defendant Pedro de Gala was not an interested party in this case (he is now a party appellee herein), for he is a forced heir of the defendant, and the latter's recognition of the plaintiff as a natural son would diminish his hereditary rights. And, while it is true that such admission of the defendant's only legitimate son would not, of itself, be sufficient to entitle the plaintiff to a compulsory recognition by the defendant as his natural child, yet it should have been admitted in evidence as a *factum probans*, which would help to establish the *factum probandum*—the uninterrupted possession of the status of a natural child. Such status, of course, cannot be proved by a single specific act or conduct of the defendant or of his family. It must necessarily be proved by showing a series, of acts, conduct, and circumstances indicative of the intention of the putative father to acknowledge his alleged natural child. Hence, to reject evidence of a single act, conduct, or circumstance as being insufficient to prove the status claimed, would be to prevent the claimant from proving it at all.

The evident purpose of presenting Exhibit C was to show that the plaintiff had been "in the uninterrupted possession of the status of a natural child of the defendant father, justified by the conduct of the father himself or that of his family." For that purpose Exhibit C was perhaps admissible. However, considering the fact that the plaintiff was born in the year 1879, before the adoption of the Civil Code, the provisions of *la Ley de Toro* may govern in the solution of the question of recognition. If by the recognition a right was vested in the plaintiff from acts realized under the legislation preceding the Civil Code, and if such act gave him the status of legal recognition, then it is clear from the provisions of the transitory provisions of the Civil Code that the legislation preceding that Code must govern.

Under *la Ley de Toro*, a natural child might be recognized tacitly, and the recognition was open to such proof as would support the fact in an ordinary action. (Decision of the supreme court of Spain, November 8, 1893, 74 *Jurisprudencia Civil*, p. 301; *Llorente vs. Rodriguez*, 3 *Phil.*, 697.)

It will be found upon an examination of the facts hereinafter stated, that the defendant not only made a tacit, but an express recognition of the plaintiff as his natural child, both before and after the adoption of the Civil Code (year 1879).

If acts of recognition took place before the adoption of the Civil Code, and if they were sufficient under the prior law to constitute a recognition, then the defendant cannot require the proof of recognition prescribed by the new law (Civil Code).

Appellant's second and third assignments of error may be discussed together, for it is necessary to determine first the facts in the present case in order to be able to compare them with those in the case of *Buenaventura vs. Urbano*, referred to in the second assignment of error.

The plaintiff-appellant was born on the 17th day of July, 1879, in the municipality of Tiaong, Province of Tayabas, and was baptized with the name "Sinforoso Dimatulac." The baptismal certificate (Exhibit B) described him as "a natural son of Dominga Dimatulac, a single woman, and of an unknown father;" that the said "unknown father" was no other than the defendant Pedro de Gala in this case, which the evidence adduced during the trial of the cause, reveals in an indirect but most convincing manner; that at the time of the birth of the plaintiff there existed no impediment to the marriage of the mother with the alleged father.

Less than a month after the birth of the plaintiff, the defendant was married to Josef a Alabastro. (Exhibit A.)

During his infancy and childhood, the plaintiff lived with his mother in the barrio of Quinatihan, of the municipality of Candelaria (formerly Tiaong). In the same barrio also lived the defendant. The defendant not only frequented the house where the plaintiff lived with his mother, but provided sustenance for both the latter and the plaintiff, giving them rice out of his camarin.

Later, and during his childhood, the defendant sent the plaintiff to a school in the town, conducted by one Norberto Virrey, and the defendant paid for his instruction. While in school, the plaintiff was enrolled under the name of "Sinforoso Dimatulac," but was known and called by his classmates and others by the name "Sinforoso de Gala." It appears that when he became old enough to know that his father's surname was not Dimatulac but "De Gala," he adopted the latter surname, with the acquiescence of the defendant.

But the defendant's paternal care and attention for the plaintiff were not confined to the period of the latter's childhood. He continued to give the plaintiff money to spend even after the latter had reached more mature years. And not only that: he had a house built for the plaintiff, and also gave him a parcel of land to cultivate as his own. Later, however, the plaintiff returned said parcel of land to the defendant, asking that another, planted with coconuts, be given him in lieu thereof, which the defendant promised to do.

The proof shows that the plaintiff always addressed the defendant as "father" (tatay), in public as well as in private, to which address the defendant responded. He was a frequent caller at the defendant's home. He used to kiss defendant's hand after the evening prayers. He sat at the table with defendant and his family frequently. He was in constant company with defendant in the cockpit, not only of Candelaria but also of other towns. He was regarded as a brother by defendant's only legitimate son; and, in fact, according to one of the witnesses, the whole town of Candelaria knew the plaintiff as the natural son of Capitan Pedro de Gala, the defendant. It was not until the present suit was instituted, that the defendant withdrew his apparent paternal considerations which he had theretofore always shown towards the plaintiff.

A few quotations from the testimony of witnesses will emphasize the foregoing facts. Narciso de Gala, nephew of the defendant Pedro de Gala, testified in part as follows:

"Q. What is your connection with the plaintiff Sinforoso de Gala?—A. He is my first cousin.

"Q. What is Sinforoso de Gala's connection with the defendant Pedro de Gala?—A. He is a natural son.

"Q. Why do you say that the plaintiff Sinforoso de Gala is the natural child of Pedro de Gala?—A. Because when he was a child (Sinforoso de Gala) it was the herein defendant who supported him until he grew up.

"Q. Can you tell us whether the plaintiff Sinforoso de Gala has attended any school?—A. Yes, sir.

"Q. Who paid for his education while in school?—A. It was Capitan Pedro de Gala who arranged with the school-master so that he might attend school.

"Q. Until when has the plaintiff Sinforoso de Gala been supported or given support by Capitan Pedro de Gala?—A. After the reconcentration, and even before it I have seen him give support or maintenance to the herein plaintiff, and it was only one year since he ceased to do so." (Pages 3 and 4, part I, test.)

* * * * *

"Q. Can you tell from your own personal observation the treatment the defendant Pedro de Gala gives in public and in private and in his house to the plaintiff, Sinforoso de Gala?—A. As a son. A good treatment.

"Q. Have you seen Sinforoso de Gala eat in the house of Pedro de Gala?—A. Yes, sir.

"Q. Who else ate with him at the table?—A. We and the married couple.

"Q. Whom do you mean by married couple?—A. Capitan. Pedro and his wife.

"Q. How does the plaintiff Sinforoso de Gala call Pedro de Gala?—A. Father.

"Q. How did Pedro de Gala answer him?—A. He answered him, "What do you want?" (Pages 5 and 6, sten. notes.)

"Q. Do you know whether Sinforoso de Gala ever had a house in Candelaria—A. Yes, sir.

"Q. Who paid for the construction of that house?—A. Capitan Pedro.

"Q. Have you seen Sinforoso de Gala in company with Pedro de Gala?—A. Yes, sir.

"Q. On what occasions did you see them?—A. I have seen them together on various occasions, but cannot tell exactly when.

"Q. Are you in the habit of going to the cockpit?—A. Yes, sir.

"Q. Have you ever seen them go together to the cockpit?—A. Yes, sir; and Capitan Pedro used to tell him to bet on the favorite roosters." (Pages 8 and 9, sten. notes.)

Hermenegildo Nadres, who had been a neighbor of, and had known, the plaintiff since his infancy, testified in part as follows:

"Q. Do you know who looked after the support of Sinforoso de Gala since his birth?—A. Pedro de Gala.

"Q. Why can you state that?—A. Because Sinforoso de Gala had no other means of support, and lived only on what Pedro gave him, and I saw him give several times because Sinforoso had no means of support and lived only on what Pedro gave.

"Q. How often did you see Pedro de Gala go to the house of Sinforoso de Gala?—A. Many times.

"Q. Do you know if Sinforoso de Gala studied in any school?—A. He studied under Norberto Virrey.

"Q. Do you know who sent him to the school of Norberto Virrey and who paid for his schooling?—A. Yes, sir.

"Q. Who?—A. Pedro d—Gala.

* * * * *

"Q. Have you ever heard how Sinforoso de Gala calls Pedro de Gala?—A. I have.

* * * * *

"Q. How?—A. Father.

"Q. Have you heard Sinforoso de Gala call Pedro de Gala father?—A. The whole town of Candelaria knows that." (Pages 20, 21 and 22, sten. notes.)

* * * * *

"Q. What treatment did you see Pedro de Gala give the plaintiff Sinforoso de Gala when he went to the house of the latter?—A. The treatment accorded to a son.

"Q. Did you ever see Sinforoso de Gala kiss the hand of Pedro de Gala?—A. Yes, sir.

"Q. When did you see Sinforoso kiss Don Pedro's hand? On what occasion?—A. Many times I have seen him kiss his hand, but I cannot remember how many.

"Q. But was it before, or after the revolution against the Americans?—A. Since the time of the Spanish regime.

"Q. Until when?—A. Until they quarreled, and that was the time when the action was commenced against Don Pedro." (Pages 23 and 24, sten. notes.)

Cross-examination:

"Q. You said, have you not, that Sinforoso was treated by Pedro de Gala as his child. What is your ground for saying that?—A. Because since Sinforoso was born until he grew up, he always went in company with Don Pedro wherever he went." (Page BO, sten. notes.)

Sinforoso de Gala, the plaintiff, testified in part as follows:

"Q. Since your earliest recollection, who supported you?—A. My father.

"Q. Who is your father? To whom do you refer?—A. That is my father (pointing to the defendant).

* * * * *

"Q. How often did your mother take 'palay,' from the warehouse?—A. Frequently. Sometimes we took the 'palay,' and sometimes it was brought home.

"Q. When it was taken to your house by other people, how do you know that it was Pedro de Gala who sent it?—A. Because my father used to go there and my mother used to ask him when we had no 'palay.' " (Pages 32 and 33, sten. notes.)

* * * * *

"Q. How do you call Capitan Pedro when you meet him?—A. Father.

"Q. How does he answer?—A. He says to me, 'What is it?'

"Q. When did you stop going to the house of Pedro de Gala? A. It is now about a year that I stopped going to that house.

"Q. How many years have you been attending the school of the teacher Berto?—A. I believe I have been studying with him for over two years.

"Q. Have you ever been in company with Pedro de Gala in any other place besides your house?—A. Many times.

"Q. In what places?—A. In Manila, in Tayabas, and here in Lucena on feast days.

"Q. How many times in a month did you receive money from Pedro de Gala when he was giving you money?—A. At any time. Sometimes before the end of the month, sometimes in the middle of the month, and at certain other times after the end of the month.

"Q. What amount did Pedro de Gala use to give you?—A. He did not give me a fixed amount; sometimes thirty, sometimes twenty and other times ten pesos." (Pages 36, 37, and 38, sten. notes.)

The facts hereinabove set forth are the salient facts which we find have been proved by a clear preponderance of the evidence in this case. In arriving at this conclusion we have taken into consideration (1) the fact that the trial judge himself evidently did not give credit to the testimony of the defendant and his witnesses, for in his decision he found certain facts to have been proved which were specifically denied by the defendant and his witnesses; and (2) by the fact that a perusal of the testimony for the defense cannot but impress one with its inherent weakness, the same being purely negative. "It is a general rule of evidence that, all other things being equal, affirmative testimony is stronger than negative; in other words, that 'the testimony of a credible witness, that he saw or heard

a particular thing at a particular time and place is more reliable than that of an equally credible witness who, with the same opportunities, testifies that he did not hear or see the same thing at the same time and place.' " (5 Jones on Evidence, sec. 898, citing several cases; see also 3 Greenl. on Evidence, par. 375; and 10 R. C. LM 1011.)

In the case of Buenaventura vs. Urbano (5 Phil., 1), Conrado Cerrudo claimed to be a natural child of Telesforo Chuidian, and the action was brought to compel the latter's heirs to acknowledge or recognize the former as such. In that case this court found the facts to be as follows:

"The other evidence showed that the plaintiff lived with his mother for the first seven years of his life; that he afterwards lived with his maternal grandmother, and that for five or six months in the year 1900 or 1901 he lived with Candelaria Chuidian, a sister of Don Telesforo; that he afterwards lived in the house of Sofia Lopez, a mistress of Don Telesforo. He never lived in the house of his supposed father, who maintained a house of his own, in which there lived with him for a time two of his natural children * * *. Confining ourselves to the acts proved to have been performed by Don Telesforo, we find that he visited the mother of the plaintiff; that he paid money for her support; that he paid money for the support of the plaintiff; that he told one witness that the plaintiff was his son; that the plaintiff called him 'Papa,' and that Don Telesforo answered to this designation; that when the plaintiff visited Don Telesforo he kissed his hand; that Don Telesforo wrote letters to him; that he paid his fees for instruction in school, and secured him a position in a commercial house.

"On the other hand, it is shown that the plaintiff never lived in the house of Don Telesforo; that the latter made his will on the 19th of December, 1897; that in this will he recognized as his natural children two persons, Horacio and Beatriz Lopez, children of Sofia Lopez. He did not recognize the plaintiff by this will. Some of the aforesaid acts of Don Telesforo were done after the making of his will."

Upon the foregoing facts this court held as follows:

"All these facts taken together are not sufficient to show that plaintiff possessed continuously the status of a natural child. * * * It must appear that it was the intention of the father to so recognize the child as to give him that status, and that the acts performed by him were done with that intention.

"The evidence in this case shows beyond question, in our opinion, that Don Telesforo never intended to give this plaintiff any such status. The fact that he never lived in the house of the former, while two other of his natural children did live there; the fact that in his will he did not recognize the plaintiff as his natural child, while he did recognize two other children; the fact that he did not sign his name to the letter offered in evidence, all show, to our minds, that he never intended to give the plaintiff the status of a natural child. The acts performed by him for the purpose of giving such status must be such as to make plain to the public that the child possesses such a condition." There was no proof presented in that case showing that there were any acts of recognition prior to the adoption of the Civil Code, and therefore the acts of recognition, whatever they were, must conform to that Code.

We are inclined to agree with the appellant herein that the facts in the Urbano case, supra, are not similar to those in the present case in form of recognition. It will be noted that in the said case there were clear and unmistakable indications that the putative father did not intend to recognize his alleged natural child: (1) Conrado (the alleged natural child) never lived with Don Telesforo (the putative father), while two other of his natural children did live there; (2) in his will Don Telesforo did not recognize the said Conrado as his natural child, while he did recognize two other children; (3) Don Telesforo wrote a letter to Conrado, but purposely avoided signing it; (4) while in the present case there were not only tacit but actual recognition.

In the present case there are no indications that the defendant Pedro de Gala did not intend to recognize the plaintiff as his natural son. On the contrary, it clearly appears that he had always treated the plaintiff as a son; and his only legitimate son, Generoso, had also treated the plaintiff as a brother. Generoso certainly would not

recognize the plaintiff as a brother if his father had been in any way reticent about his paternity with the plaintiff. It is also worthy of notice that the defendant permitted the plaintiff to bear his (defendant's) surname.

We are fully persuaded that the facts proven in the present case clearly establish the uninterrupted possession by the plaintiff of the status of a natural son of the defendant Pedro de Gala. The fact that the plaintiff was not baptized as the natural child of the defendant is not sufficient to overcome the effect of the subsequent treatment accorded by the latter to the former, as above indicated. Such a statement in the certificate or record of baptism, while it would aid in proving the status in question, is not an indispensable element of such proof. The fact that the plaintiff did not live with the defendant is explained by the circumstance that the latter shortly after the birth of the former, married a woman other than the plaintiff's mother; and, it would have been unreasonable to expect the defendant to introduce to his bride, and ask her to take care of, the fruit of his vice. It does not appear here, as it does in the Urbano case, *supra*, that the defendant kept other natural children in his house. The fact that the defendant disowned the plaintiff during the trial of this cause, cannot divest the latter of the right to recognition, which had theretofore been vested in him. In the case of *Dalistan vs. Armas* (32 Phil., 648), the defendant father abandoned and disowned his natural children after having treated them as such, but that fact did not prevent this court from compelling him to recognize them.

We are not unmindful of the fact that the law sedulously guards the rights of the legitimate family against any possible illegal encroachment by an alleged illegitimate child. But, when as in the present case, the proof is clear and convincing that the said natural child has been continuously treated as such, not only by the natural father, but by the members of the legitimate family themselves, we feel that it is but a matter of simple justice that the natural father should be required to recognize him as the law provides, thus extending to him all the rights that, under the law, such recognition may entail. In this connection Manresa says: "He who is born of an illegitimate union is as free from fault on his part as the one born of a legitimate union. Yet, from the time of his birth, he finds himself abandoned, without a family, and at times does not even feel the affection of his parents, who after satisfying their animal instincts usually separate, and if they do not attempt against the child's existence, they leave to society the duty of taking care of the fruit of their crime or offense; and society, although sympathizing with him, stamps the mark of infamy and scorn upon the forehead of the unfortunate illegitimate child." (6 Manresa, 534.)

For all of the foregoing reasons, the judgment of the lower court is hereby revoked, with the costs of this instance against the appellees, and it is hereby ordered and decreed that a judgment be entered, requiring the appellees, Josefa Alabastro and Generoso de Gala, to recognize and acknowledge the appellant, Sinforoso de Gala, as the natural son of the deceased Pedro de Gala. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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