

JOSE V. RAMIREZ AND ELOISA DE MARCAIDA, PLAINTIFFS AND APPELLANTS, VS. J. R. REDFERN, DEFENDANT AND APPELLEE.

G. R. No. 26062. December 31, 1926

Ponente: MALCOLM, J.

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MALCOLM, J.:

This case calls for the application of article 1894 of the Civil Code to the facts.

The plaintiffs are Jose V. Ramirez and his wife, Eloisa de Marcaida. The defendant is J. R. Redfern. Jose V. Ramirez and J. R. Redfern are brothers-in-law.

The action is brought by the plaintiffs to recover from the defendant the sums of £600, £185, and P875 for alleged advances to the defendant's wife for her support and maintenance. The answer is a general denial. The judgment of the trial court absolves the defendant from the demands of the plaintiffs, with costs against the plaintiffs.

In 1908, J. R. Redfern took his wife and three minor children to England and left them there. He returned to the Philippines the following year. Beginning with 1910 and continuing until 1922, Mr. Redfern provided his wife with funds for her expenses as follows: 1910—£20 to £30 per month and P1,000 for travelling expenses to the Philippines; 1911—£20 to £30 per month; 1912—£20 to £30 per month; 1913—£20 to £30 per month; 1914—£345; 1915—£425; 1916—£590; 1917—£650; 1918—£660; 1919 —£560; 1920—£600; 1921—£440; 1922—February to October, \$8 per month when the wife returned to Manila. Mr. Redfern is now furnishing his wife P300 per month for the support of herself and one child. The two grown sons are employed and are earning their own living.

In 1920, while still in England, Mrs. Redfern obtained from her sister, Mrs. Ramirez, the sum of £600. Mrs. Redfern later secured an additional £185 from her sister in England. Mrs. Redfern did not make use of this money until 1922. Eight hundred seventy-five pesos were advanced by Mr. and Mrs. Ramirez to Mrs. Redfern after the latter had returned to Manila.

The foregoing skeletonized statement of the case and of the facts is taken principally from the decision rendered by Judge Harvey, His Honor's findings are entirely confirmed by the record. There can be no vital difference of opinion as to any essential fact.

The result reached by the trial judge was this: "Under the facts and circumstances of this case, the court is of the opinion that defendant was amply providing for his wife and children in London, and that defendant is not liable to plaintiffs for the sums of money here sought to be recovered, which were delivered to defendant's wife without his knowledge or consent and when there was no necessity therefor." Said conclusion is assailed by the plaintiffs as appellants in an argument on four errors.

The case falls squarely within the provisions of the first paragraph of article 1894 of the Civil Code. This article provides: "When, without the knowledge of the person who is bound to give support to a dependent, a stranger supplies it, the latter shall be entitled to recover the same from the former, unless it appears that he gave it out of charity, and without the expectation of recovering it." For one to recover under the provisions of article 1894 of

the Civil Code, it, must be alleged and proved, first, that support has been furnished a dependent of one bound to give support but who fails to do so; second, that the support was supplied by a stranger; and third, that the support was given without the knowledge of the person charged with the duty. The negative qualification is when the support is given without the expectation of recovering it.

With special reference to the combined facts and law, it may be conceded that Mr. and Mrs. Ramirez did not supply Mrs. Redfern with money out of charity. The third requisite of the law is also taken out of consideration since Mr. Redfern is the first to acknowledge that the money was handed to his wife by Mr. and Mrs. Ramirez without his knowledge. We think, however, that there is a failure of proof as to the first essential, and possibly the second essential, of the law.

The first requisite of the law has a legal introduction, but ends as a question of fact. The husband and wife are mutually bound to support each other. By support is understood all that is necessary for food, shelter, clothing and medical attendance, according to the social standing of the family. Parents are also required to bring up and educate their children. But in this connection, the point of interest is that the wife accepted assistance from another, when it is not shown that she had ever made any complaint to her husband or any of his agents with regard to her allowance. The testimony of the husband is uncontradicted that he had given his English agent instructions to furnish his wife with any reasonable sum she needed bearing in mind his financial condition, but that she never took advantage of this offer. Mr. Redfern's reason for reducing the allowance, he says, was his precarious financial situation in 1921 and 1922. Before one can tender succor to the wife of another with an expectation of recouping himself for the loan, the husband should be given an opportunity to render the needful assistance.

With reference also to the first requirement of the law above-mentioned, it is clear that there is evidence in the record which corroborates the finding of the trial judge that the defendant was amply providing for his wife and children in London. The only debatable question relates to the year 1922 when the allowance was reduced to £8 a month. But a wife's fortunes and a husband's fortunes coincide. For children of proper age to be made to look after themselves, is not always a hardship. As to the £600 first advanced to Mrs. Redfern, this was not primarily for support because she retained it for some time before using it.

What has been said makes superfluous a discussion of the novel question of whether a sister and her husband are "strangers" within the meaning of the law. (There can be noted and compared *Pelayo vs. Lauron* [1909], 12 Phil., 453, and *Gorayeb vs. Hashim* [1922], R. G. No. 19284,[1] not reported.)

We are unable to say that reversible error was committed by the trial judge in rendering judgment in favor of the defendant and against the plaintiffs. Accordingly, let the judgment appealed from be affirmed, with costs against the appellants.

Avanceña, C. J., Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1]Promulgated October 24, 1922

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