

ROBERTA DE LEON, PLAINTIFF AND APPELLANT, VS. JOSE VILLANUEVA, DEFENDANT AND APPELLEE.*G.R. No. 27738. March 13, 1928*

Ponente: ROMUALDEZ, J.

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Considering herself entitled to one-half of the property referred to in her complaint, Roberta de Leon asks in this case that the defendant, as executor of the deceased Domingo Florentino, be ordered to deliver to her said one-half, with the costs of the proceeding.

She alleges having maritally lived together with the said Domingo Florentino from the year 1888 until three weeks before the latter's death, and also having formed a partnership with him from said year 1888, to which each of them contributed the sum of 1,000 pesos, to devote itself indefinitely to various businesses, the profits to be capitalized in their favor. She also alleges that there has been no liquidation or partition of the property of such partnership enumerated in her complaint up to the present time.

Defendant answers denying the facts alleged by the plaintiff, except those relating to the personal circumstances of the parties and the death of Domingo Florentino on January 16, 1924, the institution of proceeding No. 2019 for the settlement of his estate, the probating of his will and the executorship granted to the defendant by the will and later by the court; and, setting up a special defense and counterclaim states that Domingo Florentino engaged in business alone and never in any way had the plaintiff for a partner; that all the property claimed in this suit belongs to the said deceased who possessed it as owner publicly, continuously, and peacefully, to the exclusion of the plaintiff, who was a mere concubine of said deceased, and that they never lived together as husband and wife; that the properties cited in the counterclaim, and which belong to the deceased, are in the possession of the plaintiff who withholds them and refuses to deliver them to the defendant, the value of said properties being P15,323.50. In conclusion, the defendant prays that the complaint be dismissed and that the plaintiff be ordered to deliver the properties claimed in the crosscomplaint, or their value of P15,323.50, to the defendant.

This crosscomplaint was answered by the plaintiff with a special defence to the effect that, excepting certain properties specified, all those claimed by the defendant are in the possession and at the disposal of the plaintiff as being property of the partnership alleged in the complaint, and that the value of said property in the possession of the plaintiff is only about P3,700. Wherefore, it is prayed that plaintiff be absolved from the crosscomplaint.

After the hearing, at which numerous documents and the testimony of several witnesses were introduced as evidence, some of whom were subjected to a long cross-examination, so that the transcript of the stenographic notes taken consists of over 700 sheets, and about 400 documents were presented by the respective parties Judge Juan G. Lesaca, who tried the case, rendered the following judgment:

"In view of the foregoing, the court dismisses the complaint with the costs of action against the plaintiff, and holds that the property which is the subject of the counterclaim belonged to the deceased Domingo Florentino at the time of his death, as sole and exclusive owner, and today belongs to his testamentary estate, and the

plaintiff Roberta de Leon is hereby ordered to return and deliver the possession of the property located in Aparri, which is the subject matter of the cross-complaint, as well as all other personal property mentioned in the cross-complaint to the defendant, and in case she is unable to return said property, to pay its value, that is, P15,323.50.

"The provincial fiscal is hereby ordered to make immediate investigation to determine who is responsible for the falsifications of documents Exhibits B and C and to file the proper information or informations.

"It is so ordered."

Counsel for appellant also contends that the trial court committed the following errors:

"(1) In not granting plaintiff ample opportunity to present her evidence both oral and documentary, even in cases where similar evidence introduced by the defendant was admitted. (2) In refusing to admit as evidence Exhibits B, C, D, E, F, G, H, I, J, K, L, M, N, O, Q, R, S, U, AA, AA-1, AA-2, BB, CC, DD, FF, GG, HH, II, JJ, and XXX presented by the plaintiff. (3) In holding plaintiff's Exhibits B and C to be apocryphal and falsified. (4) In not taking into consideration plaintiff's Exhibit T, when it considered and decided the question of the authenticity of Exhibit C, notwithstanding the fact that Exhibit T was admitted as evidence, and notwithstanding the manifest relevancy and importance of the same with respect to the stamped seal on the questioned Exhibit C. (5) In finding that plaintiff's witness hesitated before answering, when it appears from the record that it was the defendant's witnesses who hesitated in testifying. (6) In holding that plaintiff's witnesses Fidel Reyes and Jorge Nolasco showed evident partiality, thus rendering their testimony suspicious and even improbable. (7) In finding that defendant's witnesses had a better opportunity to know and become informed of the manner in which the latter was treated by Domingo Florentino and what consideration she received from him than the witnesses for the plaintiff. (8) In giving undue importance to the testimony of Primitivo Singson and Bernardino Qutoriano, witnesses of the defendant. (9) In admitting as evidence Exhibits 1, 2, 3, 4, 5, 6, 6-A, 6-B, 7, 8, 9, 10, 11, 11-A, 11-B, 12, 13, 14, 15, 15-A, 16, 17, 18, 19, 19-A, 19-B, 19-C, 20 to 30 inclusive, 31, 32, 33, 34 to 54 inclusive, 55 to 60 inclusive, 61, 62, 63, 64 to 72 inclusive, 73 to 77 inclusive, 78, 79, 80, 81 to 88 inclusive, 89, 90, 91 to 124 inclusive, 125 to 127 inclusive, 128 to 345 inclusive, 347 to 353 inclusive, 354, 355 and 356, all of which are the defendant's. (10) In holding that in defendant's Exhibits 131 to 208 inclusive, and in plaintiff's Exhibit S, Domingo Florentino's civil status is that of a bachelor. (11) In giving credit to the contradictory testimony of the defendant's expert witnesses, Dr. Jose I. del Rosario and Dr. Charles Banks. (12) In denying plaintiff's petition to the effect that the substances used by the expert chemist Jose I. del Rosario be marked as exhibits for the analysis and other purposes. (13) In finding that the plaintiff Roberta de Leon was nothing more than a concubine of the deceased Domingo Florentino. (14) In finding that public opinion considered plaintiff to be a concubine of the deceased Domingo Florentino. (15) In holding that there existed no partnership or community of property between the plaintiff and the deceased Domingo Florentino. (16) In holding that Domingo Florentino and the plaintiff lived with complete separation of property and business. (17) In failing to find plaintiff to be a pro indiviso owner of one-half of the property in question. (18) In holding that the case of Faustina Marata vs. Francisco Dionio, G. R. No. 24449, of the Supreme Court is not applicable to the present case, and in not giving the decision of this court in that case the force of jurisprudence on the ground that it was rendered by only one division of the said court. (19) In ordering the plaintiff to return and deliver to the defendant the possession of the property described in the latter's cross-complaint or the value thereof in the sum of fifteen thousand, three hundred twenty-three pesos and fifty centavos (P15,323.50), and in upholding said cross-complaint. (20) In denying plaintiff's motion for a new trial."

These numerous points of error are cleverly and vigorously discussed in the respective bulky briefs.

There are three principal questions which are involved in this controversy, namely: The intimate relations between the plaintiff and Domingo Florentino, the partnership contract, and the cross-complaint.

THE PERSONAL RELATIONS

A careful consideration of the tenor and scope of the allegations contained in the complaint, reveals the fact that the ground on which the present action is based, is not the conjugal partnership between the plaintiff and Domingo Florentino. Aside from the fact that it is not alleged in any part of the complaint that they contracted matrimony, without which there cannot be conjugal partnership, it is categorically alleged that from the time they began to live together they formed a partnership capitalized by both of them.

It is this partnership, thus formed, that the plaintiff's action is really based upon. And this is why, after alleging its formation in paragraph 3 of the complaint, said partnership is referred to in the subsequent paragraphs up to the seventh inclusive.

It may then be said, with abundant support, that the plaintiff does not rest her action on the conjugal partnership; and it is certain she cannot legally do so because she does not even mention it in her complaint, nor alleges a marriage that could have produced it. On the contrary, she expressly bases her action on an ordinary partnership, which could not have coexisted, being incompatible with the conjugal partnership between a husband and wife.

For this reason, any evidence regarding a marriage between the plaintiff and Domingo Florentino, would have been inadmissible, because such marriage was not alleged in the complaint, following the provisions of section 296 of the Code of Civil Procedure which reads:

"Evidence must be relevant.—Evidence must correspond with the substance of the material allegations and be relevant to the question in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the court to permit the inquiry into a collateral fact when such fact is directly connected with the question in dispute and is essential to its proper determination, or when it affects the credibility of a witness."

And such evidence would have been irrelevant as it does not agree with the allegations nor has any bearing on the question (the marriage could not have been considered as in question the same not having been alleged).

Hence we must, as we do, consider appellant's assignments of error one, seven, eight, ten, thirteen and fourteen as unnecessary to the decision of the present case. The lower court should indeed have treated both parties equally in the presentation of their respective evidence. But the points which the appellant regrets the trial court did not grant her an opportunity to prove relative to the marital life of the appellant with Domingo Florentino cannot, for the reasons given, alter the outcome of the suit.

And, furthermore, even supposing that such cohabitation as husband and wife had really been proved, this fact by itself did not, nor could it, create, any partnership giving rise to patrimonial rights and obligations.

Neither may the presumption of marriage from such marital cohabitation be invoked, since such presumption would be inadmissible evidence in view of the fact that the marriage is not alleged in the complaint. It must not be lost sight of that presumptions are not allegations, nor do they supply their absence; presumptions are evidence according to the law, which considers and regulates them as such (art. 1215, Civil Code; secs. 333 and 334, contained in Chapter X and in the portion dealing with evidence, of the Code of Civil Procedure). And as they constitute evidence, presumptions are irrelevant and, therefore inadmissible when they do not correspond with the allegations and the facts at issue in the allegations (sec. 296, Code of Civil Procedure, already cited).

Furthermore, just as the allegations do not state it, so neither does the evidence prove that Roberta de Leon was ever married to Domingo Florentino.

The parties deal with the question whether, in the illicit relations between the two, the plaintiff was treated by her lover as a wife or as a mere concubine. In view of the tenor of the complaint, as marriage was not alleged nor has

it been proved, no practical use to the solution of this case, can come from proving that Domingo Florentino treated the plaintiff whether his wife or as a mere concubine. At all events, between being treated as a wife by a man to whom one is not married, and being treated by him as a concubine, makes very little difference, if we consider the definition of the word "concubine" in the Dictionary of the Royal Spanish Academy, 15 edition, 1925, namely, "a mistress or women who lives or cohabits with a man as though he were her husband."

THE PARTNERSHIP CONTRACT

Was the partnership referred to in the complaint really constituted between the plaintiff and Domingo Florentino with a contribution of 1,000 pesos each? This is the second point which we now take up.

Plaintiff brought up as direct evidence of the organization and existence of said partnership, the documents Exhibits B and C, whose authenticity is the subject of vigorous discussion by the parties.

The full text of Exhibit B is as follows:

"We, Domingo Florentino y Villanueva and Roberta de Leon y Garcia, of age and residents of the town of Vigan, Province of Ilocos Sur, do hereby declare and make known, that from this day we have formed a partnership to which each of us has contributed the sum of one thousand pesos as capital, so that at present the partnership capital amounts to only two thousand pesos. The purpose of this partnership is to devote itself, indefinitely, to various kinds of businesses, and the profits or benefits derived by the partnership from such business shall be capitalized in favor of both of us, and in testimony thereof, we sign the present contract in Vigan, this fifteenth day of October, eighteen hundred and eighty-eight. (15-Oct.-1888.)

(Sgd.) "DOMINGO FLORENTINO
"ROBERTA DE LEON

(Sgd.) "CASIMIRO ESPIRITU
"Witness

(Sgd.) "JORGE NOLASCO
"Witness"

The defendant assails the genuineness of this document, calling attention, in the first place, to the signature of Domingo Florentino which is one of several at the bottom thereof, pointing out certain details, such as the capital D and F, and the small m, g, and the first o, which, according to experts presented as witnesses, differ widely from other signatures submitted as genuine. Attention is also called to the pen stops in said signature in question, the personal slant of the letters and, particularly, the absence of a flourish, the abbreviation "Oct.," etc.

We find that some of these observations, graphically set forth in photographs and enlargements, some by themselves, and others in juxtaposition, in order to facilitate comparison, merit our consideration. It is true that even during the Spanish sovereignty, the month of octubre was abbreviated to its first three letters, Oct., in the Philippines. Numerous instances of such abbreviation using only the first three letters Oct., may be seen for example, throughout the "INDICE CRONOLOGICO " and the "INDICE" of the Laws for the Indies, shown on pages XI-XXXVII of the book entitled "Guia del Comprador de Terrenos Baldios y Realengos de Filipinas," by D. Miguel Rodriguez Berriz, published in Manila in the year 1886. It is likewise true that chemical experiments, though certain in their results when duly carried out, are not safe when some error is committed in their application, as happened during the trial of this case in the experiment made on Exhibits C and 15, when these manuscripts were subjected to a chemical analysis of the ink to determine their age.

But it is true that some details of the signature of Domingo Florentino in Exhibit B cast grave suspicions on its

genuineness. And in addition to these extrinsic details of the document, one circumstance is noted which, though in itself not conclusive, serves to confirm the suspicion formed as a result of the expert examination. We refer to the place of the date in the document.

It was customary in the Philippines during the Spanish sovereignty, when drawing up a document, first of all to write the place and date of its execution, then the names of the parties executing it. This practice, already followed in our towns, was prescribed in the "Manual del Gobernadorcillo," a work by D. Jose Feced y Temprado, published at Manila in 1867, at the end of which there are several chapters under the caption "Parte Escrituraria," where the following appears (page 260): "But little intelligence is needed in order to understand that an instrument should contain: the place, the day, the month and the year of its execution; the name, surname, race, capacity, and residence (and it would not be superfluous to add also the barangay) of the parties executing it." etc., etc. and in said "Parte Escrituraria" various forms of documents are given, and all of them invariably start with the place and date of execution.

The same practice is advocated by D. Ezequiel Zarzoso y Ventura in his work which was well-known in the Philippines during the Spanish regime, entitled "Teoria y Practica de la Redaction de Instruments Publicos," the first edition of which was published in Valencia in 1871. According to this work, an instrument has four parts: Appearance, exposition, stipulation and execution, beginning with the appearance which starts with the place and date of execution. (Page 85, Work cited, 1900 edition.)

Now then, judging from the language of Exhibit B, which evinces a certain degree of culture, it is somewhat difficult to believe that the one who drew it up did not know the current way of executing documents at that time, and hence it is rather strange that he should have diverged from the usual mode and begun the document with the names of the parties and end it with the date of the execution,—a practice more usually followed to-day, after due publication of the forms of documents given at the end of the Land Registration Law, Act No. 496.

Passing to the document Exhibit C, it is as follows:

"AFFIDAVIT

"I, Domingo Florentino, of age, a native of Vigan, Ilocos Sur, but residing at Aparri, Cagayan, voluntarily, freely and spontaneously do recognize, confess and declare under oath:

"That, since the year 1888, Roberta de Leon, of age, also a native of Vigan, Ilocos Sur, but residing at Aparri, Cagayan, and I have lived together under the same roof as husband and wife, and that from that time we formed a partnership for an indefinite period to which each of us contributed, as capital, the sum of P1,000, Mexican currency, for the purpose of devoting ourselves, as partners, to whatever business we might deem profitable for our joint support, and principally to seek our economic prosperity, likewise jointly, on the condition that the profits are to be capitalized in our favor, so that this partnership, in accordance with what we have mutually agreed and covenanted, shall be dissolved only by the death of either of us, in which case, after the proper liquidation, it is to be divided and distributed between the survivor on the one hand and the heirs of the deceased on the other.

"That we have in fact engaged in various transactions, employing the partnership capital, such as the purchase and sale of jewelry, native textile products, sugar, rice, leaf tobacco, bagoong (a footstuff prepared by allowing small shrimps covered with salt to remain standing for about three days until all the juice is extracted) and other goods of lesser importance; but since I am the man, it was I who principally managed, as I still do, the business of our partnership, and this is why the documents by which the partnership has acquired the property it now possesses as well as that which it may acquire in the future, also the documents relating to its cattle (domestic animals of all kinds), and the invoices and bills of lading and receipts for goods sent to Manila for sale or delivery, have been and shall be issued in my name only to simplify operations; but this circumstance

will never mean that such realty, property and cattle evidence by documents in my name belong to me exclusively, because my partner Roberta de Leon is and shall always be the owner of one-half thereof.

"That, since I am the one principally charged with the direction and management of the affairs of our partnership, Roberta de Leon, my partner, devotes the time during which she is free from the duties of our partnership, with my consent and approval, to other business of less importance, in which she uses capital distinct from that of our partnership and, therefore, I will neither pretend, nor hold, nor claim any portion of the property acquired by her, unless it clearly appears in an authentic and indisputable document.

"That, after great sacrifices and privations on our part (Roberta de Leon's and mine) our partnership capital which, at the beginning was only two thousand pesos, (P2,000) at present already amounts to the sum of about two hundred thousand Mexican pesos (P200,000); and my partner, Roberta de Leon, in her own business has a capital of only about ten thousand pesos (P10,000) which, in the beginning, amounted to no more than five hundred pesos (P500).

"That I happen to be in Vigan, Hocos Sur, today on my way to Manila for the purpose of purchasing a boat there for our partnership so that in future we may be able to send our goods to Manila on our own boat and, further, to increase our income should fortune favor us; and, in view of these circumstances I today execute the present affidavit for all legal purposes.

"In testimony whereof and in order that all may appear as the law demands, I sign the present sworn statement in Vigan, Ilocos Sur, this twenty-fifth day of December, nineteen hundred and two.

(Sgd.) "DOMINGO FLORENTINO

"Subscribed and sworn to before me this day in the Fernandina City of Vigan of the Province of Ilocos Sur, December 25, 1902.

(Sgd.) "JOSE MA. DE VALLE

"Justice of the Peace"

(There is a seal on the margin which reads: court of the JUSTICE OF THE PEACE—VIGAN.)

(All the written pages of said Exhibit C, except the last, bear the signature "D. Florentino," the initial "V" of Valle, and a seal which reads: "COURT OF THE JUSTICE OF THE PEACE—VIGAN" on the margin.)

The authenticity of document Exhibit C is also strongly contested. As in the case of Exhibit B, the defendant makes various observations touching what purports to be Domingo Florentino's signature, which were meticulously studied by the experts who testified in this case. The signature attributed to Jose Ma. de Valle, and the seal of the court of the justice of the peace, are also under discussion. For the decision of the present case, we deem it needless to enter at length into a discussion of such controversies. Suffice it to say that the details pointed out by the defendant raise grave doubts as to the genuineness of this document.

And such doubts are strengthened by the fact that on the margin of each written page of the document, except the last, which bears the declarant's signature as well as that of the justice of the peace, also appears the signature "D. Florentino," Valle's initial "V," and the seal of the court of the justice of the peace of Vigan. This circumstance is significant when we consider that the document is dated 1902, and that neither before, nor in said 1902, nor afterwards was it usual in our towns to sign the margins of notarial documents on each written page. During the time when the Provisional Regulation of Notaries of the Spanish regime prevailed in the Philippines, which regulation was approved on April 11, 1890, it was the notaries, and not the parties executing the document, who put their marks (not their signature) on the margins of the instruments and documents executed before them, since it was so required in article 48, last paragraph of the said regulation. During the present sovereignty it has not

been customary to sign the margins of the pages of a document. It was only in the year 1916, and solely in dealing with wills that such a formality began to be required by virtue of Act No. 2645, passed February 24, 1916, amending section 618 of the Code of Civil Procedure, in the original text of which this was not required.

How did it occur to the authorizing justice of the peace in 1902 to require Domingo Florentino to sign, or to the latter to do so, the margins of each written page of said document? May not such a circumstance give rise to the suspicion that the same was drawn up not in the year 1902, but after the year 1916, when it was already customary to sign the margins of each used page, except the last, in wills, and that such detail was resorted to in order to give the document an air of genuineness, without taking into account the fact that in the year 1902, such practice of signing the margins of documents was not customary and was probably wholly unknown in our towns?

It was incumbent upon the plaintiff to show, at least by a preponderance of the evidence, that these two documents, Exhibits B and C, in question herein, were genuine, which has not been done. Consequently, such documents cannot be given any value or efficacy as evidence of the alleged partnership between the plaintiff and Domingo Florentino.

In view of the foregoing, it is unnecessary to examine here the other circumstances against the authenticity of Exhibits B and C, assigned by the defendant, as also those referring to Casimiro Espiritu's signature, to Domingo Florentino's legal capacity by reason of his minority, and some other defects in Exhibit 6, and the signature of Jose Ma. de Valle and the seal of the court of the justice of the peace, and other defects of Exhibit C.

As to the evidence of identification adduced by the plaintiff, it is insufficient. The testimony of Jorge Nolasco and Julio Espiritu as to Exhibit B and that of Fidel Reyes as to Exhibit C taken in connection with the evidence as a whole, lack probatory value. The disinterestedness of the first and the last, as well as the knowledge of the facts of the second, appear extremely dubious.

By virtue of these considerations, we find no merit in the second (as to Exhibits B and C), third, fourth, sixth, eleventh, and twelfth assignments of error.

Neither do the several letters of Domingo Florentino presented as evidence, sufficiently establish the existence of such a partnership. Of course, they show confidence in the plaintiff, and even familiarity in the ones addressed to her; but such confidence and familiarity are not strange seeing that they were lover and mistress, and they do not necessarily reveal the partnership established for economic purposes as alleged in the complaint.

Counsel for the plaintiff finds in the text of several of said letters data which seem to him to indicate a community of property, of cooperation in the business between the plaintiff and Domingo Florentino, and a partnership constituted between the two for purposes of profit. Although some phrases here and there, as for example, "our carabaos" in the letter Exhibit J, considered together with more authentic facts, might indicate the existence of the alleged partnership or community; however, such authentic fact being absent from the record, said phrases can signify nothing more than the manifestations of friendship, politeness and good will, nothing strange or singular in the case before us, taking into consideration the amorous relations between Domingo Florentino and the plaintiff. If there are some expressions in said letters which might convey the idea of a community of property between the two, such an idea is dispelled by the defendant's oral and documentary evidence. For example, we might cite Domingo Florentino's inventory of his property in Aparri, Cagayan, marked Exhibit 129 in this case, upon the cover of which Domingo Florentino wrote the following title: "Inventory of my goods," not of our goods, or of the goods of the partnership, or another similar expression indicative of the community of business or of property, or demonstrative of the partnership on which the plaintiff bases her right of action.

It is to be noted that the greater portion of the goods claimed in the counterclaim and which the plaintiff alleges to

be hers in common with Domingo Florentino, are included in this inventory.

As to the oral evidence, it does not prove the existence of such a partnership or of such community of business, property or interests.

The plaintiff, therefore, has not established her right of action. Consequently, the fifth, ninth, fifteenth, sixteenth and seventeenth assignments of error in addition to those already named in the preceding paragraphs, lack merit.

Counsel for the plaintiff cites the case of *Marata vs. Dionio*, G. R. No. 24449.[1] Considering the facts proved in said case and the result of the evidence of the present one, the decision in the case of *Marata vs. Dionio* is not applicable to the instant case. There it was shown that during the cohabitation of Faustina Marata and Francisco Dionio, which lasted for more than twenty years, they had six children, and the property claimed by Marata was acquired by the joint labor, industry and efforts of both of them. Here, while it appears that there were illicit amorous relations between the plaintiff and Domingo Florentino, yet it was not proven that the property claimed by the former was acquired by the labor, industry or efforts of both of them, nor has it been established that the partnership alleged in the complaint to have been formed between them in the year 1888 existed. Whence it follows that there is no merit in the eighteenth assignment of error.

CROSS-COMPLAINT

The judgment appealed from orders the plaintiff "to return and deliver to the defendant the possession of the property situated in Aparri which is the subject matter of the cross-complaint, as well as all the other goods stated in said cross-complaint, and in case she cannot return said property, to pay its value, which is, P15,323.50."

This order is the subject of the nineteenth assignment of error wherein counsel for the plaintiff claims that the latter is not in possession of the round table, nor of the image of St. Joseph, nor of the cinematographic apparatus and motor, and that the value of the property claimed in the cross-complaint is not P15,323.50, but only P3,700.

We find the defendant's evidence insufficient concerning the said round table, the image, and apparatus and motor. Sufficient evidence has not been adduced to support a finding that the plaintiff took said property or that she has them in her possession, or that she is accountable for them.

With regard to the other property enumerated in the cross-complaint, the plaintiff admits in her answer that she has them in her possession, alleging that she possesses them as property of the partnership alleged in the complaint. Such partnership not having been proved, nor any other right of the plaintiff to such property alleged or established, it necessarily follows that she must deliver them to the defendant as a portion of the estate of the deceased Domingo Florentino.

And as to the value of said property the defendant himself admitted in his testimony that the present value of the fire-proof safe is not more than P100. According to the inventory presented by the defendant the value of the house in Aparri is P3,510. And according to inventory Exhibit 129, one of the documents presented by the defendant as evidence, the values of said property are as follows: the copper and iron bed, the wicker bed, and the wire bed, P190; the narra umbrella-stand, P30; the writing desk, P100; the rotary chair, P40; dressing table, P10; two rocking chairs, P35; two armchairs, P25; the ebony wardrobe, P40; six pedestals, P40; five wicker and wooden chairs, P20; the eight electric bulbs together with shades, P50, and a pillow, P3. And according to parol evidence, the following are worth: water filter, P2; the twenty-five empty jars, P37.50; the four empty earthen jars in a poor condition, P1.

We therefore find the nineteenth assignment of error well taken. The twentieth is a consequence of the rest.

In view of the evidence and by virtue of the considerations set forth, we find that the plaintiff has not proved her

complaint and that the defendant, in the capacity in which he is a party to these proceedings, is entitled to the property claimed in his cross-complaint, with the exception of the round table, the image of Saint Joseph, and the cinematographic apparatus and motor, and that the value of the property to which the defendant is entitled is that which has been respectively stated in the next preceding paragraph.

Wherefore, the judgment appealed from is modified as indicated above, and affirmed in all other respects, with costs of the action against the appellant. So ordered.

Johnson, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

[1] Promulgated December 31, 1925, not reported.

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