

**ANTONIA L. DE JESUS ET AL., PLAINTIFFS AND APPELLANTS, VS.
CESAR SYQUIA, DEFENDANT AND APPELLANT.***G.R. No. 39110. November 28, 1933*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by Antonia Loanco de Jesus in her own right and by her mother, Pilar Marquez, as next friend and representative of Ismael and Pacita Loanco, infants, children of the first-named plaintiff, for the purpose of recovering from the defendant, Cesar Syquia, the sum of thirty thousand pesos as damages resulting to the first-named plaintiff from breach of a marriage promise, to compel the defendant to recognize Ismael and Pacita as natural children begotten by him with Antonia, and to pay for the maintenance of the three the amount of five hundred pesos per month, together with costs. Upon hearing the cause, after answer of the defendant, the trial court entered a decree requiring the defendant to recognize Ismael Loanco as his natural child and to pay maintenance for him at the rate of fifty pesos per month, with costs, dismissing the action in other respects. From this judgment both parties appealed, the plaintiffs from so much of the decision as denied part of the relief sought by them, and the defendant from that feature of the decision which required him to recognize Ismael Loanco and to pay for his maintenance.

At the time with which we are here concerned, the defendant, Cesar Syquia was of the age of twenty-three years, and an unmarried scion of a prominent family in Manila, being possessed of a considerable property in his own right. His brother-in-law, Vicente Mendoza is the owner of a barber shop in Tondo, where the defendant was accustomed to go for tonsorial attention. In the month of June Antonia Loanco, a likely unmarried girl of the age of twenty years, was taken on as cashier in this barber shop. Syquia was not long in making her acquaintance and amorous relations resulted, as a consequence of which Antonia was gotten with child and a baby boy was born on June 17, 1931. The defendant was a constant visitor at the home of Antonia in the early months of her pregnancy, and in February, 1931, he wrote and placed in her hands a note directed to the padre who was expected to christen the baby. This note was as follows:

"Saturday, 1.30 p. m.

"February 14, 1981

"Rev. FATHER,

"The baby due in June is mine and I should like for my name to be given to it.

"CESAR SYQUIA"

The occasion for writing this note was that the defendant was on the eve of his departure on a trip to China and Japan; and while he was abroad on this visit he wrote several letters to Antonia showing a paternal interest in the

situation that had developed with her, and cautioning her to keep in good condition in order that "junior" (meaning the baby to be, "Syquia, jr.") might be strong, and promising to return to them soon. The baby arrived at the time expected, and all necessary anticipatory preparations were made by the defendant. To this end he employed his friend Dr. Crescenciano Talavera to attend at the birth, and made arrangements for the hospitalization of the mother in Saint Joseph's Hospital of the City of Manila, where she was cared for during confinement.

When Antonia was able to leave the hospital, Syquia took her, with her mother and the baby, to a house at No. 551 Camarines Street, Manila, where they lived together for about a year in regular family style, all household expenses, including gas and electric light, being defrayed by Syquia. In course of time, however, the defendant's ardor abated and, when Antonia began to show signs of a second pregnancy, the defendant decamped, and he is now married to another woman. A point that should here be noted is that when the time came for christening the child, the defendant, who had charge of the arrangements for this ceremony, caused the name Ismael Loanco to be given to him, instead of Cesar Syquia, jr., as was at first planned.

The first question that is presented in the case is whether the note to the padre, quoted above, in connection with the letters written by the defendant to the mother during pregnancy, proves an acknowledgment of paternity, within the meaning of subsection 1 of article 135 of the Civil Code. Upon this point we have no hesitancy in holding that the acknowledgment thus shown is sufficient. It is a universal rule of jurisprudence that a child, upon being conceived, becomes a bearer of legal rights and capable of being dealt with as a living person. The fact that it is as yet unborn is no impediment to the acquisition of rights. The problem here presented of the recognition of an unborn child is really not different from that presented in the ordinary case of the recognition of a child already born and bearing a specific name. Only the means and resources of identification are different. Even a bequest to a living child requires oral evidence to connect the particular individual intended with the name used.

It is contended, however, in the present case that the words of description used in the writings before us are not legally sufficient to identify the child now suing as Ismael Loanco. This contention is not, in our opinion, well founded. The words of recognition contained in the note to the padre are not capable of two constructions. They refer to a baby then conceived which was expected to be born in June and which would thereafter be presented for christening. The baby came, and though it was in the end given the name of Ismael Loanco instead of Cesar Syquia, jr., its identity as the child which the defendant intended to acknowledge is clear. Any doubt that might arise on this point is removed by the letters Exhibits F, G, H, and J. In these letters the defendant makes repeated reference to junior as the baby which Antonia, to whom the letters were addressed, was then carrying in her womb, and the writer urged Antonia to eat with good appetite in order that junior might be vigorous. In the last letter (Exhibit J) written only a few days before the birth of the child, the defendant urged her to take good care of herself and of junior also.

It seems to us that the only legal question that can here arise as to the sufficiency of the acknowledgment is whether the acknowledgment contemplated in subsection 1 of article 135 of the Civil Code must be made in a single document or may be made in more than one document, of indubitable authenticity, written by the recognizing father. Upon this point we are of the opinion that the recognition can be made out by putting together the admissions of more than one document, supplementing the admission made in one letter by an admission or admissions made in another. In the case before us the admission of paternity is contained in the note to the padre and the other letters suffice to connect that admission with the child then being carried by Antonia L. de Jesus. There is no requirement in the law that the writing shall be addressed to one, or any particular individual. It is merely required that the writing shall be indubitable.

The second question that presents itself in this case is whether the trial court erred in holding that Ismael Loanco

had been in the uninterrupted possession of the status of a natural child, justified by the conduct of the father himself, and that as a consequence, the defendant in this case should be compelled to acknowledge the said Ismael Loanco, under No. 2 of article 135 of the Civil Code. The facts already stated are sufficient, in our opinion, to justify the conclusion of the trial court on this point, and we may add here that our conclusion upon the first branch of the case that the defendant had acknowledged this child in the writings above referred to must be taken in connection with the facts found by the court upon the second point. It is undeniable that from the birth of this child the defendant supplied a home for it and the mother, in which they lived together with the defendant. This situation continued for about a year, and until Antonia became enceinte a second time, when the idea entered the defendant's head of abandoning her. The law fixes no period during which a child must be in the continuous possession of the status of a natural child; and the period in this case was long enough to evince the father's resolution to concede the status. The circumstance that he abandoned the mother and child shortly before this action was started is unimportant. The word "continuous" in subsection 2 of article 135 of the Civil Code does not mean that the concession of status shall continue forever, but only that it shall not be of an intermittent character while it continues.

What has been said disposes of the principal feature of the defendant's appeal. With respect to the appeal of the plaintiff, we are of the opinion that the trial court was right in refusing to give damages to the plaintiff, Antonia Loanco, for supposed breach of promise to marry. Such promise is not satisfactorily proved, and we may add that the action for breach of promise to marry has no standing in the civil law, apart from the right to recover money or property advanced by the plaintiff upon the faith of such promise. This case exhibits none of the features necessary to maintain such an action. Furthermore, there is no proof upon which a judgment could be based requiring the defendant to recognize the second baby, Pacita Loanco.

Finally, we see no necessity or propriety in modifying the judgment as to the amount of the maintenance which the trial court allowed to Ismael Loanco. And in this connection we merely point out that, as conditions change, the Court of First Instance will have jurisdiction to modify the order as to the amount of the pension as circumstances will require.

The judgment appealed from is in all respects affirmed, without costs. So ordered.

Malcolm, Abad Santos, Hull, Vickers, and Butte, JJ., concur.

DISSENTING

VILLA-REAL, J., with whom concur AVANCEÑA, C. J., and IMPERIAL, J.:

The majority opinion is predicated on two grounds: First, that the defendant-appellant Cesar Syquia has expressly acknowledged his paternity of the child Ismael Loanco in an indubitable writing of his; and secondly, that said child has enjoyed the uninterrupted possession of the status of a natural son of said defendant-appellant Cesar Syquia, justified by his direct acts, as required by article 135 of the Civil Code.

The first conclusion is drawn from Exhibits C, F, G, H and J.

Exhibit C, which is in the handwriting of and signed by the defendant-appellant Cesar Syquia, reads as follows:

"Sabado, 1.30 p. m.—14 febrero, 1931

"Rev. PADRE:

"La criatura que vendra el junio es mio y que yo quisiera mi nombre que se de a la criatura.

"(Fdo.) CESAR SYQUIA"

Exhibits F, G, H, and J, which are letters written by the said defendant-appellant Cesar Syquia to plaintiff-appellee Antonia L. de Jesus prior to the birth of the child contain the following expressions:

Exhibit F, Feb. 18, 1931: "No hagas nada malo; ni manches mi nombre y el de junior tambien no lo manches. Acuerdate muy bien Toni que es por ti y por junior volvere alli pronto. * * *"

Exhibit G, Feb. 24, 1931: "Toni por favor cuida bien a junior eh? * * *."

Exhibit H, March 25, 1931: "Toni, cuida tu bien a junior y cuidate bien, y come tu mucho. * * *."

Exhibit J, June 1, 1931: "Cuidate bien y junior tambien * * *."

Article 135, number 1, provides as follows:

"Art. 135. The father may be compelled to acknowledge his natural child in the following cases:

"1. When an indisputable paper written by him, expressly acknowledging his paternity, is in existence."

Manresa (Codigo Civil, Vol. 1, page 596, 4th ed.), commenting on said article, says:

"Con arreglo al articulo que comentamos, no puede haber cuestion acerca de si es posible admitir por otro medio la prueba de la paternidad natural. Entendemos que no, porque el articulo es terminante y la intencion de la ley mAs terminante aun. Se establecio en la base 5.^a que 'no se admitira investigacion de la paternidad sino en los casos de delito, o cuando exista escrito del padre en el que conste su voluntad indubitada de reconocer por suyo al hijo, deliberadamente expresada con ese fin, o cuando medie posesion de estado', y esto mismo es lo que se ordena en el presente articulo.

"No puede, pues, prosperar la demanda para obligar al padre al reconocimiento de un hijo natural, aunque solo se limite a pedir alimentos, si no se funda en el reconocimiento expreso del padre hecho por escrito, en la posesion constante de estado de hijo natural o en sentencia firme recaida en causa por delito de violacion, estupro o rapto. El escrito y la sentencia habran de acompaÑarse a la demanda, y no puede admitirse otra prueba que la conducente a justificar que el escrito es indubitadamente del padre que en el reconozca su paternidad, o la relativa a los actos directos del mismo padre o de su familia, que demuestren la posesion continua de dicho estado. Para la prueba de estos dos hechos podran utilizarse todos los medios que permite la Ley de Enjuiciamiento Civil, debiendo el juez rechazar la que por cualquier otro concepto se dirija a la investigacion de la paternidad.

"En cuanto al otro requisito de ser expreso el reconocimiento, tengase presente que no basta hacerlo por incidencia; es indispensable que se consigne en el escrito la voluntad indubitada, clara y terminante del padre, de reconocer por suyo al hijo, deliberadamente expresada con este fin, como se ordena en la base 5.^a antes citada, de las aprobadas por la Ley de 11 de mayo de 1888; de suerte que el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural. No llena, pues, ese objeto la manifestacion que incidentalmente haga el padre de ser hijo natural suyo la persona a quien se refiera, y mucho menos el dar a una persona el titulo y tratamiento de hijo en cartas familiares. Sin embargo, en cada caso decidiran los tribunales, y cuando el escrito por si solo no reconozca de un modo suficientemente expresivo la paternidad, servira de base para acreditar, en union con otros datos, la posesion constante del estado del hijo a los efectos de este articulo, y con arreglo a su numero 2.^o"

Let it first be noted that the law prohibits the investigation of paternity (*Borres and Barza vs. Municipality of Panay*, 42 Phil., 643; *Donado vs. Menendez Donado*, 55 Phil., 861). The only exceptions to this rule are those established in article 135 of the Civil Code quoted above, the first of which is that the father may be compelled to acknowledge his paternity, "When an indubitable writing of his exists in which he expressly acknowledges his paternity." The writing that is required by said provision must be complete in itself and by itself, and must contain all the statements that are necessary to constitute a full and clear acknowledgment by a father of his paternity of a child, in order that it may serve as a basis for compelling him to acknowledge said child should he afterwards deny his paternity. If several writings put together, each not being complete in itself, should be necessary in order to obtain a full and complete expression of acknowledgment by a father of his paternity of a child, the general prohibition to investigate paternity would be violated.

By the mere reading of all said letters, the one addressed to a priest and the others to the herein plaintiff-appellee, Antonia L. de Jesus, the reader cannot ascertain which is the "creature that is coming in June", which the defendant-appellant, Cesar Syquia, says in the said letter addressed to the priest is his, nor who is the "junior" that he recommends to said Antonia L. de Jesus to take good care of, as there is nothing in anyone of said letters from which it may be inferred that Antonia L. de Jesus was enceinte at the time, that the "junior" was the being she was carrying in her womb, and that it was the "creature that is coming in June." To connect all these facts it was necessary to prove that Cesar Syquia had had illicit relations with Antonia L. de Jesus, that as a result of such relations the woman became pregnant, and that she gave birth to a boy in June 1931. All this certainly constitutes an investigation of the paternity of Cesar Syquia of said child outside of the documents, which is prohibited by law.

Either taken alone therefore, or in connection with Exhibits F, G, H, and J, Exhibit C is insufficient to constitute a "indubitable writing of Cesar Syquia, in which he expressly acknowledges his paternity of the child Ismael Loanco," as required by number 1 of article 135 of the Civil Code.

As to the second ground of the decision of the majority, number 2 of article 135 of the Civil Code provides:

"Art. 135. The father may be compelled to acknowledge his natural child in the following cases:

* * * * *

"2. When the child has 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."

The majority decision bases its conclusion on the second point on Exhibits C, F, G, H and J and the following facts, as found by the lower court in its decision:

"Cuando la demandante Antonia L. de Jesus estaba para dar a luz, el demandado Cesar Syquia llamo a su comprovinciano Dr. Crescenciano Talavera, medico que entonces ejercia su profesion en la Ciudad de Manila, para que asistiera a aquella en su parto y a ese efecto llevo a la demandante Antonia L. de Jesus acompañado del Dr. Talavera al Hospital San Jose, de esta Ciudad, donde ella dio a luz el 17 de junio de 1931 asistida por dicho Dr. Talavera, que firmo el certificado de nacimiento Exhibit E.

"Despues del nacimiento del demandante Ismael Loanco, el demandado estuvo viviendo con este y con la demandante Antonia L. de Jesus en la casa No. 551 de la Calle Camarines, Manila, entregando a dicha demandante el dinero para los gastos de casa y el pago del consumo de gas y luz electrica, habiendo firmado el contrato para el suministro del fluido electrico en dicha casa."

Exhibits C, F, G, H, and J, are inadmissible in evidence for the purpose of showing that Ismael Loanco has enjoyed the continuous possession of the status of a natural child, because being of prior date to the birth of said

child they can not be considered as direct acts of Cesar Syquia showing possession of the status of natural child, as no human being can enjoy such possession until he be born with legal capacity for acquiring civil rights (Infante vs. Figueras, 4 Phil., 738; Granados vs. Leynes, G. R. No. 31224, promulgated September 9, 1929, not reported).

It must also be stated that Cesar Syquia refused to allow his name to be given to the child Ismael when it was baptized, so that the name of its mother, Loanco, had to be given to it.

The facts which were found by the court below to have been proved by the testimony of the witnesses during the trial, are not sufficient to constitute the uninterrupted possession of the status of Ismael Loanco as natural child of said Cesar Syquia, in the light of the following authorities:

In the case of Buenaventura vs. Urbano (5 Phil., 1, 9), this court said:

"* * * 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.

* * * * *

"All these facts taken together are not sufficient to show that plaintiff possessed continuously the status of a natural child. They may have a tendency to show that Don Telesforo was the father of the child, but that is not sufficient. It is not sufficient that the father recognize the child as his. By the express terms of article 135 that recognition must appear either in writing, made by the father, or it must appear in acts which show that the son has possessed continuously the status of a natural child. No recognition by the father of the child which comes short of the requirements of these two paragraphs is sufficient. 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."

Manresa (Codigo Civil, Vol. 1, page 602, 4th ed.) in citing some decisions of the Supreme Court of Spain says:

"En la sentencia de 5 de julio de 1906 declarase que para justificar la posesion de estado de hijo natural se requiere que los actos sean de tal naturaleza que revelen, a la vez que el convencimiento de la paternidad, la voluntad ostensible de tener y tratar al hijo como tal en las relaciones sociales y de la vida, y esto no accidentalmente, sino continuadamente, porque en tal supuesto los actos tienen el mismo valor que el reconocimiento expreso.

"En el mismo criterio restrictivo se inspira la de 12 de octubre de 1907, que estima que el hecho de que dos nodrizas criaron a otros tantos niños, sufragando el gasto el demandado, quien ademas iba a casa de la demandante, los besaba, los llamaba hijos y encargaba para los mismos el mayor cuidado; el de que subvenia a las necesidades de la madre y de los seis hijos que la nacieron, el primero de los cuales se llamaba como el padre; y el de que los porteros de la casa donde vivio la actora sabian que el finado visitaba a esta, se lamentaba de la mucha familia que tenia y era tenido en el concepto publico como padre de los menores, no son suficientes para fundar la declaracion de paternidad, pues no es legal confundir actos que puedan revelar mas o menos la presuncion o convencimiento en que una persona este de su paternidad con relacion a hijos naturales, con los que demuestren su proposito de poner a estos hijos en la posesion de tal estado."

It will thus be seen from the foregoing discussion and authorities that the herein defendant-appellant Cesar Syquia cannot be compelled to acknowledge the child Ismael Loanco as his natural son because there exists not an indubitable writing of his in which he expressly acknowledges his paternity of said child, and because the said

child has not enjoyed the uninterrupted possession of the status of a natural child of the said defendant-appellant, justified by his own conduct or that of his family, as required by article 135 of the Civil Code.

The decision appealed from should, therefore, be reversed and the complaint dismissed.

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