

JUAN MALONDA, PLAINTIFF AND APPELLANT, VS. JUSTINA INFANTE VDA. DE MALONDA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 49081. May 28, 1948*

Ponente: BENGZON, J.

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In the year 1936, Eufonio Malonda died in Camarines Sur leaving the defendant Justina Infante as his widow and the other defendants as his legitimate children .

On March 15, 1943, Juan Malonda instituted this petition to obtain a partition of the properties belong to the estate of said Eufonio Malonda. He alleged he was a natural son of the deceased, had continuously enjoyed possession of the status of acknowledged child, and was entitled to share in the inheritance.

After the plaintiff had rested his case, upon motion of defendant, the Court of First Instance of Camarines Sur, Judge Gabriel Prieto, dismissed the proceeding the reason that the action involved a petition which, according to the Civil Code, could only be considered during the lifetime of the putative parent, except in two cases, none of which — His Honor said — applied to herein plaintiff. Such exceptions are these: (1) if the father or mother died during the minority of the child * * *; and (2) if, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged. (Article 137 Civil Code.)

Juan Malonda was born in Aug. 1897, in Iriga, Camarines Sur. At that time the Civil Code was already in force, it having become law in 1889. His rights are therefore governed by that system of legislation. Now, in 1936 when Eufonio Malonda departed, Juan Malonda was no longer a minor. Hence, the first exception above-mentioned is inapplicable .

Plaintiff-appellant, without contesting the general rule invokes the second exception, by presenting Exhibit B and by declaring about, two letters Eufonio Malonda had addressed to him. Exhibit B is not in the record, as reconstituted. It seems to be a "certifico de confirmación", taken from the church registry of the Bishop of Nueva Caceres. Supposing that — as plaintiff claims — it actually contains a statement that Juan Malonda is the son of Eufonio Malonda, in default of proof that Eufonio had signed it, no recognition of paternity may thereby be imputed to him. It is safe to assume that such certificate is signed merely by church authorities, attesting to what appears in their records. And statements in ecclesiastical books have consistently been held insufficient acknowledgments of the filiation of natural children.[1]

Anyway Exhibit B — or what it represents — Is not a document unknown to Juan Malonda before the death of his father, as everyone in this Catholic and Christian country is supposed to be cognizant of the existence of such church records. And the letters to which Juan Malonda referred in his oral testimony included no declaration expressly acknowledging Juan Malonda as the offspring of Eufonio. Again, such communications are not documents discovered after the death of Eufonio. They were received by, and therefore were known to Juan before the demise of his alleged father.

It follows from the above exposition that the trial judge made no mistake in refusing to entertain the demands of plaintiff-appellant, for it is settled that a natural child not acknowledged has no rights whatsoever against his father or his estate.[2] Some authors and jurists regard this rule as unfair to natural children who are brought into this world through no fault of their own. Others sustain it upon the ground that it protects the rights of the legitimate family and serves [to discourage illicit relations. Much could be written expounding or criticizing the opposing schools of thought. But it is unnecessary to do so at this time. The Code Commission has taken a definite stand on the latter in the draft of the Civil Code it has submitted to the Congress, — which is currently under study by a committee of the House of Representatives — and any official pronouncements made in this connection might be considered as an attempt to Influence the members thereof and the Congress itself, whose wisdom, patriotism and vision will surely be put to a test in the discussion of the many statutory reforms the Code Commission has chosen to recommend. In the meantime, until this particular rule about natural children is modified by legislative authority our duty is to apply it in proper cases, regardless of our preferences.

Wherefore, the appealed decision is affirmed, with cost. So ordered.

Parás, Actg. C. J., and Tuason, J., concur.

FERIA, J.:

I concur in the result.

DISSENTING

PERFECTO, J.:

There is no course of action more commodious in dispensing justice than that of applying the law as we find it clearly printed in a book. When the law we are called upon to apply harmonizes with our sense of justice or does not appear to contravene any rule of fair play, the course of action should be followed without the least hesitation. In this case we are faced with a provision of law that provokes revolt in our conscience. The situation creates the alternative of whether to apply or not the provision as it is. It calls for a resolute attitude from one who, by the nature of his office and by his oath, is duty bound to administer true justice.

The law in question is that embodied in article 137 of the Civil Code which provides:

"Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases:

"1. If the father or mother died during the minority of the child, in which case the latter may commence the action within the four years next following the attainment of its majority.

"2. If, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

"In this case the action must be commenced within the six months next following the discovery of such document."

There are several fundamental reasons why the provision should be considered obsolete and should be denied enforcement:

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Being procedural or adjective in nature, it was nullified and superseded since July 1, 1940, by the Rules of Court

adopted by the Supreme Court as provided by the Constitution.

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Being a regulation as to the time when a petition for the acknowledgment of a natural child should be filed and considered, the matter is governed by the Statute of Limitations and provisions on prescription of the Code of Civil Procedure, and since the latter's enactment, it ceased to have any effect.

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The provision would compel a natural child to bring action against his own father, during his lifetime, to seek judicial confirmation of his acknowledgment, which is shocking upon moral considerations.

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The provision is discriminatory against a natural child, and, therefore, is unconstitutional, because it violates the "equal protection of the law" clause.

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The provision is one of the manifestations of feudal ideology, absolutely incompatible with the tenets of our present day constitutional democracy.

The philosophy underlying the provision in question is the product of the twisted medieval mentality which, giving back to the healthy processes of reason, would punish or impose civil sanction or social ostracism not upon the guilty parents, but upon the innocent children who have no choice whether to be born out of approved wedlock or out of more or less clandestine illegitimate relationship. The injustice is so glaring that only defective morbid mentality can fail to perceive it.

It is high time that, in the light of the equal protection of the law and social justice clauses of the fundamental law, the discriminatory provisions against illegitimate children in the Spanish Civil Code should be erased from our statute books as a nullity and permanently relegated to the archaeological museum of the mistakes and injustices of a socially and morally immature humanity.

All children are entitled to equal protection from their parents. Only a distorted concept of that parental duty, Which springs from and is imposed by nature, may justify discriminatory measures to the prejudice of those born out of illicit sexual relations. The legal or moral violations upon which some of our present day legal provisions penalize. illegitimate children with social, economic and financial sanctions, are perpetrated by the parents without the consent or knowledge of the children. If the erring parents deserve to have their foreheads branded with the stigma of illegitimacy, it is iniquitous to load the innocent children with the evil consequences of that stigma. There can be illegitimate parents but there should not be any illegitimate children.

In affording protection to their offspring, animals, including the wildest and most ferocious, do not make unjust distinctions. Can a people of the 20th century afford to face the indictment of lacking the sense of justice with which even the most sanguinary beasts are endowed? There will not be enough water in the Jordan to wash out such shame nor enough flames in the Phlegethon to melt the plaque of that sin.

Agreement on the need of surrounding the institution of marriage with legal guarantees cannot enshrine it as a cult where the votaries may blindly sacrifice innocent children in the altar of Mammon. No matter how high we may place it in the category of human institutions, marriage cannot be an end in itself. It is only one of the many means devised by mankind to serve its well-being. The security, welfare, and happiness of children, so as to Insure the survival and perpetuation of humanity, are among the essential purposes of marriage. If marriage cannot serve

those purposes in the case of illegitimate children, it should not be used as a pretext to hamper or destroy them. Created and established to promote social welfare, it should not be used as a pretext for or an instrument of injustice. Otherwise, the hatred it may provoke will engender revolt against its existence.

The present legal discriminations against illegitimate children are perpetrated avowedly in the interest of the Institution of marriage. But they are miserably missing the mark. By unjustly punishing the innocent illegitimate offspring, marriage is not promoted nor protected, while there is no statistical evidence that the procedure has reduced the number of parents bent on begetting children of free love or of mere lust. The authors of the discriminatory laws have committed injustice because they did not look at social phenomena realities with their retinas but only, as jesting youngsters, with eyelids in entropion. No matter how pullulating the number of their unfortunate victims may be, their cruelty does not have the effect of an antidote against illicit love or simple lust which—call them vices, morbid conditions, or mere weaknesses, as you may choose—have afflicted even many of the greatest specimens of humanity, including outstanding names in history, starting from David and Solomon of the Sacred Scripture, if we choose not to delve further beyond remote antiquity.

The ever present distressing problems of love, sex and marriage, should be solved with deeper wisdom than that shown by the rudimentary reasoning process behind the discriminatory legal provisions. The problems seem to be part of the common ailments of mankind and are becoming more difficult and complex with the growing complexity of modern society. They had been and continue to be among the main preoccupations of man in all times. Only hypocrisy may conceal the fact. The spicy conversations on account of sex very often occupy considerable time of many men, without excluding the most cultured ones and those placed in the higher brackets of social hierarchy or official authority. Phallicism was a characteristic of the most ancient religions. Greek mythology created the cult of Priapus in the Dionysiac mysteries. Priam, one of the protagonists of the Illiad, was distinguished by his one hundred children. Widespread divorces in the most civilized countries, measures to eradicate prostitution, war babies, clandestine polygamy, are just some of the problems that so far have defied all solution. Certainly, the solution cannot be found in increasing the number of social injustices if allowing the continuation of discriminatory measures against illegitimate offsprings. Let it be remembered illegitimate children are human beings like others and are entitled to the same rights and privileges. And no one can deny that many of them have afforded substantial contributions for the improvement of the lot of man. Much of the strength and greatness of the greatest democracy of modern times is due to the genius of Alexander Hamilton, who has been called the "sublime bastard."

The prevailing attitude towards illegitimate children and their mothers should be revised. Besides causing Iniquities against the children, it is directly responsible for many abortions and infanticides. Without in any way encouraging illicit sexual relations, it is high time that the social anatema against them should subside in the face of motherhood, which should be taken as a redeeming happening, fecundation should give the woman the feeling of being blessed by nature, and that should give her enough pride to overcome the shame of social taboos so as to preclude her from attempting against the life of her child and make her feel that the event had placed in her hands a noble mission, the rearing of her child, born in accordance with the inscrutable plans of nature. By dedicating herself to such mission she must feel that she is contributing to achieve the perpetuation of mankind.

The order of dismissal should be reversed and the lower court should be ordered to give plaintiff his day in court to try and decide the case on the merits, by following general rules of procedure and evidence.

[1] Adriano vs. De Jesus 23 Phil., 450; Samson vs. Corrales Tan, 48 Phil., 401.

[2] Buenaventura vs. Urbono, 5 Phil., 1.

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