

CASIANA BISMORTE, PLAINTIFF AND APPELLANT, VS. ALDECOA & CO., DEFENDANT AND APPELLEE.*G.R. No. 5586. December 10, 1910*

Ponente: TRENT, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5586/>**TRENT, J.:**

The plaintiff, a married woman, brought this action in her own name, without joining her husband, to recover the possession of a steamboat, alleged to be her exclusive property, and for damages for the wrongful detention of the same. The fact of plaintiff's coverture does not appear on the face of the complaint but it was raised by answer, and one of the special defenses in the answer was that plaintiff has no capacity to sue, this special defense being based on the provisions of section 115 of the Code of Civil Procedure.

Judgment was rendered in favor of the defendant company, dismissing the complaint, with costs, on the ground that the plaintiff did not have the legal capacity to bring this action without joining her husband. The plaintiff appealed and during the pendency of the appeal this court, upon motion, allowed the plaintiff to amend her complaint by striking out that part which refers to damages for the alleged illegal detention of the steamer, leaving as the subject matter of the action the steamer only.; Before the amendment was made plaintiff's husband had an interest or right in the income from this steamer. (Quison vs. Salud, 12 Phil. Rep., 109; arts. 1385/1401, Civil Code.)

Passing the question whether, under ordinary circumstances, the husband has such right or interest in his wife's paraphernal property, aside from the products, so as to make him a necessary party, we will proceed to determine whether or not the defendant company can raise the question of plaintiff's exclusive ownership, between herself and husband, of the steamer in question.

It appears from Exhibit A, the only evidence before us, and which is a public notarial document, duly executed on the 2d of July, 1907, that Manuel Veloso, in his own name and as the legal representative, by the proper power of attorney, of his wife Casiana Bismorte, and William Urquhart, the duly authorized agent and liquidator of Aldecoa & Co., executed this Exhibit "A," which appears to have for its object at least a partial settlement of Veloso's indebtedness to Aldecoa & Co.; that Veloso, as the legal representative of his wife, sold to the defendant company on the 19th of August, 1905, with the right to repurchase within ten years, various parcels of real estate for the sum of P6,478, said amount to be applied on Veloso's debt to defendant company; that on the same date and under the same conditions Veloso, in his own name, sold to the defendant company for the sum of P13,583, to be applied on his debt, a number of parcels of real property; that in that same document, dated the 19th of August, 1905, Veloso promised to pay P2,000 a month on his indebtedness, guaranteeing this payment by, as he said, all of his property, credits, and interest which constituted his business in Leyte; that in a notarial document duly executed on the 3d of August, 1904, Veloso acknowledged himself to be indebted to Aldecoa & Co. in certain other specified sums, guaranteeing the payment of these amounts with the steamer San Rafael, the said boat being his own property; that a final liquidation of all the accounts was made, resulting in Veloso owing Aldecoa & Co. the sum of P129,749.65; that after this liquidation, and by virtue of this document, Exhibit A,

Veloso, for himself and as the legal representative of his wife, by and with the consent of the legal representative of the defendant company, modified the former sales of the real property, with the right to repurchase, and converted the same into an absolute sale in favor of the defendant company, together with other specified property belonging to him, in payment of his indebtedness. Paragraphs (e) and (f) of this document, Exhibit A, are as follows:

"(e) There should be excluded from the foregoing assignment, cession, and transfer, the steamer San Rafael, which will hereafter be the exclusive property of my wife, Casiana Bismorte, in consideration of the property by her transferred and assigned in payment of part of the aforesaid indebtedness.

"(f) It is further stipulated and agreed that Casiana Bismorte shall execute, within the maximum period of two months, a notarial instrument, ratifying the present one, otherwise Aldecoa & Co. can either insist upon the validity of this instrument or have the same rescinded, leaving everything in the same condition in which it was prior to the execution of the present agreement, demanding payment of all the amounts due them from the said Manuel Veloso, and such interest as may have accrued thereon."

The defendant now insists that it has not been shown that the property transferred by the plaintiff to the defendant in payment of a part of her husband's indebtedness was acquired by her separate funds, nor even that it belonged to her. The defendant is estopped from now raising this question, as it dealt with the plaintiff's husband on the theory that the plaintiff was the owner of these lands. The parties to this contract treated this fact as specifically settled. That the plaintiff was the owner of this real property forms a part of the very basis of the contract itself; in fact it is the basis or foundation of this contract as far as the plaintiff is concerned. That she was the exclusive owner of the lands can not now be questioned by the defendant. It is estopped by the contract itself. It accepted the lands as the property of the plaintiff, and it would now be against the plainest principles of justice to allow it to deny that the plaintiff was the exclusive owner of those lands.

According to the contract, Exhibit A, plaintiff's husband obligated himself to do certain things. He also, on behalf of his wife, obligated her to perform certain acts. The defendant accepted these obligations with the corresponding reciprocation. The obligations on the part of the plaintiff and her husband were distinct and separate. She had nothing to do with the fulfillment of this contract, except to consent to the conversion of the provisional sale of her lands to an absolute sale in favor of the defendant and to ratify this sale within the period of two months. She consented to the converting of the provisional sale into an absolute one, but the record does not show whether or not she executed a document ratifying this absolute sale, as provided in paragraph (f), *supra*. But this is immaterial, as the fact that she brought this action, seeking the fulfillment of the contract, is conclusive proof of her ratification, and if she never executed a document ratifying the same her conduct is a sufficient ratification. She therefore complied *en toto* with her part of this obligation. She can not be held responsible if her husband has failed to comply with his part of the contract, as no stipulation to this effect was made. The defendant did not demand, neither does it appear in the contract, that the fulfillment of same between it and the plaintiff would be dependent upon the husband's compliance with his obligations. We can not determine whether her husband has, in fact, complied with his part of the contract or not, but this is immaterial in this case.

It having been settled that the lands (which were mentioned in the contract as belonging to the plaintiff) were the plaintiff's exclusive property, and these lands having been exchanged, according to the contract, for the steamer in question, the said steamer, under article 1396 of the Civil Code, became the paraphernal or exclusive property of the plaintiff. The defendant specifically agreed in the contract that the steamer should become the exclusive property of the plaintiff, the consideration being the plaintiff's lands. Under the plain terms of this contract any defense which the defendant might set up against the plaintiff's husband for his failure to comply with his part of the contract can not be interposed against the plaintiff, as she has fulfilled her obligations. The defendant received

from the plaintiff what it then considered a valuable consideration when the contract was executed, in so far as the contract affected the plaintiff. As to whether or not it has any meritorious defenses which are not stated in the contract against the plaintiff must be left for future determination. It was specifically agreed in the contract, as we have said, that the plaintiff should be the exclusive owner of the steamer San Rafael. In the face of this express agreement, the defendant seeks to avoid complying with its part of this obligation, in so far as the plaintiff is concerned, by now claiming that the plaintiff's husband has an interest in this steamer. We think that this is a clear case of estoppel by contract. As the defendant had agreed that the plaintiff should be the exclusive owner of the boat it should not now be permitted to say that her husband has an interest in it. The estoppel of the defendant was fixed by the execution of the contract. Nothing further need be shown where the fact in question, as in this case, has been clearly agreed upon. This position was taken by the defendant when it executed the contract in question. The plaintiff acted upon this theory. The defendant can not now change its position to the prejudice of the plaintiff. The defendant can not now deny this fact in regard to its position, it having acted with full knowledge of its rights and all the material facts.

"A party can not either in the course of litigation or in dealings in pais occupy inconsistent positions. Upon that rule election is founded; 'a man shall not be allowed,' in the language of the Scotch law, 'to approbate and reprobate.' And where a man has an election between several inconsistent courses of action, he will be confined to that which he first adopts; the election, if made with knowledge of the facts, is in itself binding; it can not be withdrawn without due consent; it can not be withdrawn though it has not been acted upon by another by any change of position." (Bigelow on Estoppel, p. 673.)

In the case of *Daniels vs. Tearney* (102 U. S., 415), the suit was brought by Tearney and Wilson, executors of Collin C. Porter. The complaint set forth that the defendants on the 1st day of June, 1861, made their joint and several bond whereby they bound themselves to pay to the plaintiff a certain specified sum of money when requested, and that there was a condition affixed to the bond which was "That, whereas on the 25th day of March, 1861, a writ fieri facias was issued from the clerk's office in the name of Porter against one Daniels for a certain sum of money, with interest from the 2d day of January, 1860, and costs; if, therefore, the said Daniels should pay the debt, interest, and costs, when the operation of the ordinance before mentioned should cease, then the obligation to be void, otherwise to be in full force." In April, 1861, a convention of the State of Virginia passed an ordinance of secession, and on the 30th of that month a law entitled "An ordinance to provide against the sacrifice of property and to suspend proceedings in certain cases." It was under this law or ordinance that the bond sued upon was given. When this suit was brought the defendants pleaded, among other things, the unconstitutionality of that statute and ordinance. This law was held by the Supreme Court of the United States to be directly repugnant to the constitutional provisions which forbid the impairment of contracts by State laws. It also held that the bond sued upon, as a statutory instrument, was likewise void, but held that the defendants were estopped from raising the question of the validity of the statute and bond, the court saying:

"The principle of estoppel thus applied has its foundation in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It can not be made an instrument of wrong or oppression, and it often gives triumph to right and justice, where nothing else known to our jurisprudence can, by its operation, secure those ends. Like the statute of limitations, it is a conservator, and without it society could not well go on."

The court in quoting from the case of *Ferguson vs. Landram* (5 Bush (Ky.), 230), cited in the above case, said:

"Upon what principle of exalted equity shall a man be permitted to receive a valuable consideration through a statute, procured by his own consent or subsequently sanctioned by him, or from which he derived an interest and consideration, and then keep the consideration, and repudiate the statute?"

In applying this principle to the case at bar we might likewise ask upon what principle of exalted equity shall a

man be permitted to receive a valuable consideration, through a contract, procured by his own consent, with full knowledge of all of his rights and of all the material facts, and then keep the consideration (the land in this case) and repudiate the contract? Parties are precluded from contradicting their solemn admissions or statements deliberately made in their contracts under these circumstances. The defendant company in this contract specifically agreed that the steamer should be the exclusive property of the plaintiff. It was upon this agreement that the plaintiff parted with her lands. It would not now be just to permit it to retain the lands and question her exclusive ownership, between herself and her husband, of this boat.

"It is a principle of law of universal application (and as just as it is general) that admissions, whether of law or of fact, which have been acted upon by others are conclusive against the party making them, in all cases between him and the person whose conduct he has thus influenced; and the principle is founded upon grounds of public policy, that a man shall not be permitted to repudiate his own representations." (Toppan vs. Cleveland, C. & C. K. Co., Fed. Cas. No. 14,099.)

Under all of the facts before us we are irresistibly led to the conclusion that the defendant company is estopped from raising this question.

The judgment is, therefore, reversed, and the record will be returned to the court below for further proceedings in accordance with this decision, without special ruling as to costs. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.