

MARIA QUINTANA, PLAINTIFF AND APPELLEE, VS. GELASIO LERMA, DEFENDANT AND APPELLANT.

G.R. No. 7426. February 05, 1913

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PER CURIAM:

This is an appeal from a judgment in favor of the plaintiff for a sum of money due upon a contract between the plaintiff and defendant husband and wife, for support.

The action is by a wife against her husband for support. It is based upon a written contract. The evidence shows that the parties were lawfully married in 1901 and that in February, 1905, they entered into a written agreement of separation whereby each renounced certain rights as against the other and divided the conjugal property between them, the defendant undertaking in consideration of the premises to pay the plaintiff within the first three days of each month the sum of P20 for her support and maintenance.

In the original answer, the defendant set up as a special defense that the wife had forfeited her right to support by committing adultery. This allegation was stricken out by the court on motion, upon the ground that under the provisions of article 152 of the Civil Code the commission of adultery is not recognized as a ground upon which the obligation to support ceases. Notwithstanding that such special defense was stricken out by order of the court, the defendant, after plaintiff had filed an amended complaint, inserted the same defense in his answer to the amended complaint. The court upon the trial, however, refused to recognize such defense or to permit any evidence to be introduced in support thereof, to which the defendant duly excepted.

Article 1432 of the Civil Code provides: "In default of express declarations in the marriage contract, the separation of the property of the consorts, during marriage, shall only take place by virtue of a judicial decree, except in the case provided by article 50."

Under this article the agreement in suit is void. The wife, however, has a right of action against her husband for support under the provisions of the Civil Code and, although the contract in question is void, her right of action does not for that reason fail.

We are of the opinion that the special defense of adultery set up by the defendant in his answer both to the original and the amended complaint is a good defense, and if properly proved and sustained will defeat the action.

The judgment of the court below is reversed and the cause remanded for a new trial, with instructions to permit the interposition of the special defense of adultery and such amendments of the complaint and answer as may be necessary to carry this judgment into effect. So ordered.

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

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