

FLORA INSON, PLAINTIFF AND APPELLANT, VS. AGUSTIN BELZUNCE, DEFENDANT AND APPELLEE.

G.R. No. 8873. November 29, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Iloilo, on the 22d of April, 1913. Its purpose was to recover damages for the breach of an alleged contract of marriage and to compel the defendant to recognize and maintain children resulting from alleged marital relation which had existed for some time prior to the commencement of the action.

To said petition the defendant demurred, which demurrer was sustained, whereupon the plaintiff presented an amended complaint which asked for damages resulting from the breach of an alleged contract to marry.

Upon the issue thus presented the cause was brought on for trial. After hearing the evidence, the Honorable James S. Powell, judge, reached the conclusion that the alleged contract of marriage was illegal for the reason that it was contrary to good morals and absolved the defendant from all liability under the complaint, without costs.

From that decision the plaintiff appealed to this court, after first having obtained permission in the lower court to continue the litigation as a pauper. In this court an attorney de officio was appointed for the appellant. The attorney for the appellant, after a brief statement of the facts, reached the conclusion that no error had been committed by the lower court and recommended that the judgment of the lower court be affirmed.

After an examination of the evidence brought to this court, we are of the opinion that the alleged contract to marry was based upon immoral and illegal considerations. The plaintiff, during the trial of the cause, testified, in answer to the question "It is true, then, that he (the defendant) promised to marry you in consideration that you would first go to live with him?"—"Yes." Thus the plaintiff clearly demonstrates that the consideration for the promise to marry was illegal and rendered the contract, if any was ever made, null and void.

A promise of marriage, based upon carnal connection, is founded upon an unlawful consideration and no action can be maintained by the woman against the man therefor. (Arts. 1305 and 1306, Civil Code.) An action for damages can not be maintained under article 1902 of the Civil Code, where the party claiming such damages voluntarily consented thereto.

The intercourse between the plaintiff and defendant in the present case, considering all of the facts and circumstances connected therewith, constituted a crime or misdemeanor, common to both of them. Neither of them, under such circumstances, can claim damages against the other. (Art. 1305, Civil Code; Batarra vs. Marcos, 7 Phil. Rep., 156; Tengco vs. Sanz, 11 Phil. Rep., 163.) The plaintiff in the present case was twenty-eight years of age.

After a careful examination of the record brought to this court and the law applicable to the facts therein, we find no reason for reversing or modifying the decision of the lower court. The same is, therefore, hereby affirmed, and

without any finding as to costs, it is so ordered.

Torres, Carson, Moreland, and Araullo, JJ., concur.

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