

4 Phil. 285

[ G.R. No. 1770. March 16, 1905 ]

**TOMASA FIDELINO, PLAINTIFF AND APPELLANT, VS. BENITO LEGARDA,  
DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**CARSON, J.:**

On April 29, 1903, the plaintiff in this case filed a complaint wherein she prayed the court to award damages against the defendant for breach of promise of marriage, alleging therein that trusting in the promises of marriage made to her by the defendant and being convinced that he would not fail to keep said promises, she had consented to her own dishonor at the solicitation of the defendant.

On May 23, 1903, the defendant filed a demurrer to this complaint, alleging that the facts set forth therein did not constitute a cause of action under existing law.

Thereafter, and without waitin for a ruling upon said demurrer, the plaintiff, with the permission of the court and over the objection of the defendant, filed an amended complaint, wherein she set out substantially that in the year 1900 she was a virtuous woman of 20 years of age; that at that time and on various occasions thereafter, the defendant made proposals of marriage to her and to her father for her; that on a certain occasion the defendant surprised her alone in her house, and by use of force and violence had carnal connection with her; that for some time there-after, trusting to the defendant's promises of marriage and because "she had lost her virginity," she consented to continue illicit relations with the defendant; that as a result of said relations she had later given birth to a child; that the

defendant, since that time, had refused and continued to refuse to comply with said promises of marriage, and therefore because and on account of said breach of promise of marriage, and because and on account of the birth of the child as a result of said illicit carnal relations, and because and on account of the grave injury to her reputation, and because and on account of all the facts set out, the plaintiff prayed the court to give judgment against the defendant in the sum of \$20,000, United States currency. The plaintiff alleged that she first met the defendant in the year 1898, when she went to his house with a female friend who had some favor to ask of him; that thereafter on various occasions the defendant made improper advances, which she refused to admit because she "put no credence in his words;" that on the 30th of January, 1900, at about 4 in the afternoon, the defendant unexpectedly entered her house, and finding her alone with her two nephews, he forcibly violated her, and that thereafter she had continued for some time in illicit relations with the defendant, in consideration of his renewal of his promises of marriage, and "because she considered herself disgraced already."

On cross-examination she stated that the house wherein the alleged rape was consummated stands directly in front of the Divisoria market place and is adjoined by other houses on the same street; that the room she occupied at the time opened directly upon the street fronting the market place, and that one Juliana Ventura occupied the upper floor of the house, but could not say whether she was or was not at home on that occasion,

In reply to questions of the trial judge, she said that she did not cry out nor ask for help because she "was asleep when defendant entered the house, and because she was ashamed and because he caught her by the throat," and that she did not tell her father of the occurrence at the time because she was ashamed to do so; and to the question whether she had resisted the forcible efforts of the defendant, she replied, "What could I do? I was only a woman."

The father of the plaintiff admitted knowledge of illicit relations between the defendant and his daughter, but insisted that these

relations were based on various promises of marriage made to her and to him, and that aside from these promises of marriage he had never received anything from the defendant in consideration of his acquiescence in the dishonor of his daughter.

The defendant himself went on the stand and frankly admitted his illicit relations with the plaintiff and his paternity of the child mentioned in the complaint, insisting, however, that these relations were the result of mutual agreement and in consideration of gifts and money advanced to the father and the daughter; he further declared that he had never made any promise of marriage to the plaintiff or her father and that all the evidence touching the alleged rape of plaintiff was absolutely false and untrue in every particular.

The judge below was of opinion that the alleged rape had not been committed, and that the allegations of the complaint and the evidence of plaintiff upon that point were incredible and false, and therefore rendered judgment in favor of the defendant.

Counsel for defendant moved the court to make a specific finding as to the alleged breach of promise, which was denied.

We do not deem it necessary to discuss the question whether the amended complaint in this cause should have been admitted over the objection of the defendant, but we think that, having admitted said complaint, and having admitted evidence in support of the allegations of rape and of breach of promise, upon which it bases its prayer for judgment, the trial court, having been requested so to do by the defendant, ought to have made a finding of facts touching both causes of action.

After a careful examination of the record in this case, we are of opinion that the evidence wholly fails to sustain either the allegation of rape or of breach of promise upon which the complaint is based, and therefore, that the judgment of the trial court in favor of the defendant, with costs in both instances against the plaintiff, should be affirmed. So ordered.

*Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.*

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Date created: April 24, 2014